



## INSTITUTE FOR SUPPLY MANAGEMENT® - CHAPTER AFFILIATION AGREEMENT

JULY 2019

ISM® has gathered feedback over the years and identified the support our affiliated local networks need to fully thrive. As such, at a global level, ISM is invested in and dedicated to address local pain points, provide meaningful long-term solutions and revitalize our membership network. A crucial part is the transition from ISM “Affiliates” to ISM “Chapters,” which will provide a host of benefits, support, resources and partnership with ISM, to continue in perpetuity.

The attached agreement documents the transition elements, process and ISM’s thoughtful and positive approach to ensure our chapters succeed, are sustainable and the member experience is consistent.

The agreement covers the areas of: (1) affiliation terms, (2) intellectual property, Chapter rights and obligations, (4) ISM activities and obligations, (5) the relationship, (6) indemnification, (7) termination, (8) liability and, (9) general/miscellaneous provisions. The following are key highlights that are included in the formal agreement and corresponding exhibits.

- *Dues Billing:* ISM Global will collect and remit payment for all membership dues.
- *ISM Brand Alignment:* ISM Chapters will agree to align with the ISM Brand Guidelines and all that entails.
- *Chapter Structure:* Chapters agree to maintain their not-for-profit status, remain independent organizations, file appropriate financial and legal documents, and maintain recordkeeping and insurance.
- *Continuing Education Hours (CEHs):* Chapters provide minimum eight CEHs as part of base chapter dues and will conduct events and meetings for local networking and professional development.
- *Board Members:* Chapter boards to include no less than five volunteer directors, of ISM members in good standing, who are practitioners, with noted term limits, extensions, and defined officer positions.
- *Membership:* All ISM members will be part of a Chapter, unless there isn’t one in their geographic region. Associate members will complete current terms and transition to full members upon their renewal.
- *Corporate Program:* Corporate Program participants will receive Chapter benefits and ISM will provide revenue share to Chapters (effective upon signature for renewing and new participants).
- *Non-Compete:* ISM and Chapters are partners and collaborators, serving supply management professionals as the unbiased source, and will align on content, training and events accordingly.
- *Leadership Support:* ISM Global will provide training to Chapter leaders, guidance on succession planning, recruitment, retention, best practices and infrastructure.
- *Privacy:* ISM Global and Chapters will abide by established privacy policies and best practices.

Please review the following and provide any questions you have to the ISM team. Completing this agreement ensures that our network of supply management professionals continues to thrive. Signing this agreement is required to move forward as an ISM chapter, and to receive the noted benefits and support.

We appreciate your efforts and leadership in this exciting time for our profession and organizations.

Sincerely,

Thomas W. Derry  
CEO, ISM®

Debbie Fogel-Monnissen  
Chief Financial Officer, ISM®

Susan Marty  
Chief Product Officer, ISM®

**Institute for Supply Management  
Chapter Affiliation Agreement**

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EXHIBIT A: DEFINITION OF CHAPTER REGION

EXHIBIT B: IDENTIFIED ENTITIES

This Chapter Affiliation Agreement (“*Agreement*”) is made and entered into effective \_\_\_\_\_, 2019, by and between the Institute for Supply Management, a New York non-profit corporation (“*ISM*”), and \_\_\_\_\_, a \_\_\_\_\_ (the “*Chapter*”).

## RECITALS

- A. ISM was formed in New York on March 1, 1915.
- B. The U.S. Internal Revenue Service granted ISM tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code effective May 11, 1982.
- C. The purpose of ISM is to advance the practice of supply management, to drive value and competitive advantage, and contribute to a prosperous, sustainable world (the “*ISM Purpose*”).
- D. Chapters are an integral part of the ISM organization and critical to its success.
- E. The U.S. Internal Revenue Service granted the Chapter tax-exempt status pursuant to Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code effective \_\_\_\_\_.
- F. This Agreement between ISM and the Chapter is intended to demonstrate the collective commitment of ISM and the Chapter to excellence and to provide a framework to establish common policies, practices, and organizational standards to help ensure Chapter success and sustainability by ensuring quality member experiences and sustainable operational framework.

## AGREEMENT

NOW THEREFORE; in consideration of the premises set forth above and the promises set forth below, the sufficiency and receipt of which are hereby acknowledged, the parties hereby agree as follows:

### 1. GRANT AND ACCEPTANCE OF NON-EXCLUSIVE, NON-TRANSFERABLE AFFILIATION DURING TERM OF AGREEMENT

**1.1. Grant of Affiliation.** ISM hereby grants to the Chapter and the Chapter accepts the non-exclusive, non-transferrable right to be affiliated with ISM and, subject to the terms of Section 2, to be known as the \_\_\_\_\_ Chapter for as long as this Agreement remains in effect.

#### 1.2. Geographic Scope.

**(a) Designation of Region.** As further defined in Exhibit A attached hereto, the Chapter’s geographic region is hereby designated as \_\_\_\_\_ (the “*Region*”). Any changes to this designation must be approved by ISM board of directors.

**(b) Geographic Scope of Chapter Activities.** The Chapter may carry out activities inside the Region. The Chapter may not carry out activities outside the Region without prior written consent by ISM. The Chapter may not direct targeted fundraising solicitations to persons or organizations outside of the Region.

#### 1.3. Non-Exclusivity.

**(a)** ISM may, within its sole discretion, conduct its own activities within any geographic territory or region served by the Chapter during the term of this Agreement. The scope of such activities shall be determined solely by ISM.

(b) ISM may authorize the creation of additional chapter affiliations and thereby change the geographic region designated for the Chapter as set forth in Section 1.2(a), provided that any such change to the Chapter's geographic designation shall become effective only after ISM has given 60 days' advance written notice to the Chapter of the new designation.

**1.4. Term of Agreement.** The term of this Agreement shall be for a period of one year commencing on the Effective Date and shall thereafter automatically renew for successive one-year terms unless terminated in accordance with Section 7.

## **2. INTELLECTUAL PROPERTY**

**2.1. License.** ISM hereby grants to the Chapter, subject to the terms of this Agreement, a non-exclusive license (the "**License**") to use at reduced rates or no charge ISM trademarks (collectively with such other marks as may hereafter become subject to this Agreement by mutual agreement in writing) (the "**Marks**") solely in connection with the Chapter's name and various training products, as defined by ISM, as long as the Chapter is in good standing with ISM and abiding by the terms of this Agreement. The License includes the right to use the Marks in advertising and promotional materials as defined by ISM, subject in each case to ISM's approval as set forth in Section 2.2 below. The License includes the right to use the Marks in limited circumstances in the name of the Chapter ("**Chapter Name**"), and such Chapter Name shall be considered one of the Marks subject to the usage guidelines provided below.

**2.2. Usage.** The Chapter shall at all times use Marks in compliance with the most current version of chapter mark usage guidelines as published by ISM. The Chapter shall use best efforts to preserve the prestige and goodwill of the Marks and shall not take any action that would denigrate the value of any of the Marks. The Chapter will only use the Marks pursuant to this Agreement. ISM shall have the right to review and approve or disapprove the Chapter's advertising and promotional materials prior to their distribution and/or publication and to retain a copy of any such materials in final form. To avoid confusion and protect the value of the Marks, the Chapter shall not use the Marks in any advertising or promotional materials for services or activities in which an entity listed in Exhibit B, attached hereto, is also identified as a sponsor or advertiser of the same services or activities without the prior written consent of ISM. ISM may amend Exhibit B in its sole discretion from time to time and shall notify the Chapter of any such amendment. ISM shall have the rights to monitor the usage of the Marks and to impose additional requirements for quality control and monitoring as they relate to use of the Marks, in ISM's sole discretion.

**2.3. Quality.** The Chapter agrees that its programs and, if applicable, any continuing education hours offered by the Chapter, administered in conjunction with the License provided herein, shall provide quality of instruction that is consistent with the quality of instruction provided in ISM's current certification and training programs. The Chapter shall, at the Chapter's reasonable expense, if requested by ISM, allow ISM the right to take steps or implement mechanisms to evaluate the quality of instruction provided by the Chapter to ensure that the Chapter is in compliance with the quality control requirements.

**2.4. Ownership.** The Chapter hereby acknowledges that ISM owns certain rights, title and interest in the Marks, which Marks have intrinsic value. The Chapter acknowledges that it is not, and will not become by virtue of this Agreement, the owner of any right, title, or interest in and to any of the Marks in any form or embodiment (including, without limitation, the Chapter name and any new trademark, service mark, trade name, domain name, or company name). Subject to the license rights specifically granted to the Chapter herein on a non-exclusive basis, ISM reserves and retains all of its rights in and to the Marks and the goodwill appurtenant thereto. Any goodwill generated by the Chapter's use of the Marks shall inure to the ultimate benefit of ISM.

**2.5. Waiver.** The Chapter shall not knowingly at any time commit any act which might reasonably be expected to have an adverse effect on the rights of ISM (or any affiliate or other licensee of ISM) in and to any of the Marks, or any registrations therefor, or any applications for registration thereof. Without limiting the generality of the foregoing, the Chapter hereby covenants and agrees not to, and waives all rights the Chapter may have to, question, contest or challenge, or assist others to question, contest or challenge, either during or after the term of this Agreement, ISM's rights to any of the Marks, whether registered or not, or any present or future registration thereof.

**2.6. Registration.** The Chapter shall not file any application in any state or country (including the United States) to register the Marks or any other trademark, trade name, domain name, or service mark which is the same as or confusingly similar to any of the Marks, in whole or in part. If any such application for registration is filed by the Chapter, ISM may take appropriate action against the Chapter to prohibit or otherwise restrain the Chapter's use of the Marks for which the application was filed and the Chapter shall reimburse ISM for all costs thereof. At ISM's request, the Chapter shall execute all documents reasonably requested by ISM to confirm ISM's rights in and to the Marks. From time to time, ISM may file and prosecute trademark applications in its own name pertaining to the Marks and, in connection with any registrations that issue therefrom, ISM may endeavor to maintain and renew such registrations. The Chapter shall cooperate at ISM's reasonable request in connection with the filing and prosecution of such applications and the maintenance and renewal of such issued registrations, provided that ISM shall be responsible for the payment of all governmental fees with respect to any such applications and registrations.

**2.7. No Sublicensing Rights.** The Chapter shall not grant to any other person or entity a sublicense in any of the rights granted to it in the License.

**2.8. Infringement.** In the event that the Chapter learns of any infringement, threatened infringement or passing off of any of the Marks, or that any person claims or alleges that any of the Marks infringes on such person's rights or is likely to cause deception or confusion to the public, or other violation of rights in, to or involving the Marks, the Chapter shall promptly notify ISM thereof. Upon receipt of notice, ISM may advise the Chapter that it has assumed the defense thereof. The Chapter has no right to require ISM to take any action concerning the Marks.

**3. CHAPTER RIGHTS AND OBLIGATIONS.** The Chapter hereby covenants and agrees as follows:

**3.1. Chapter Members.**

**(a) Membership Definition.** The Chapter bylaws and governance policies and procedures shall recognize only such classes of membership as are adopted for chapters by ISM from time to time ("*Classes of Membership*"). All Chapter members must meet the requirements of one of the Classes of Membership and conform to the terms of membership set forth in the ISM Bylaws and governance policies and procedures. No other Classes of Membership will be authorized by individual chapters. All Classes of Membership will require membership in ISM.

**(b) Transitional Rules for Chapter Membership.**

**(i) Persons Within the Region Who Become Members of ISM On or After the Effective Date.** All persons within the Region who become a member of ISM on or after the Effective Date will be required to join the Chapter.



**(ii) Existing Members of Another Chapter That Move Into the Region On or After the Effective Date.** Existing members that are part of another chapter and move into the Region on or after the Effective Date will be required to join the Chapter at their next renewal date.

**(iii) Existing Members Who Are Within or Move Into the Region On or After the Effective Date But Are Not Members of Another Chapter.** Existing members of ISM who are within or move into the Region on or after the Effective Date but who are not members of another chapter will be permitted to maintain their current membership with ISM only as long as they keep their membership current. If such person's membership terminates for any reason, such person will be required to join the Chapter to reinstate his or her membership.

**(iv) Existing Associate Members.** Existing Associate Members of the Chapter on the Effective Date will be permitted to maintain their memberships through their current membership terms, but will not be permitted to renew their Associate Membership. Any membership renewals must meet the requirements of Section 3.1(a), including the Classes of Membership as adopted by ISM.

### **3.2. Programs and Activities.**

**(a) In General.** The Chapter is authorized to plan, develop, carry out, and publicize its activities as it sees fit, subject to the general principle that the Chapter's right to identify itself as an ISM chapter and to hold itself out as an ISM chapter, is subject to the Chapter's carrying out programs and activities that further the purposes and objectives of ISM and that provide content, materials, logistical preparation, and otherwise, consistent with the quality of such items as provided by ISM. Such activities may include, but are not limited to, (i) organizing events in order to promote Chapter projects, plant tours, and culture, including participation in trade shows, panel discussions or lectures; (ii) promoting member benefits and projects through such vehicles as Chapter may determine; (iii) entering into arrangements with organizations within the Region to sponsor Chapter activities; (iv) engaging in public relations and outreach activities on Chapter's own behalf; and (v) conducting fundraising activities within the Region to support Chapter's activities, in accordance with all laws of the Region.

**(b) Continuing Education Hours.** The Chapter shall provide its members with the opportunity to earn no less than eight (8) continuing education hours annually as part of the member benefits derived from dues charged by the Chapter. This opportunity can be in any format selected by the Chapter including, but not limited to, breakfast/lunch/dinner meeting, study groups, webinars, plant tours and/or conferences.

**(c) Course Content.** ISM may contract with or otherwise engage various providers to develop, produce, or provide course content or other educational content to Chapter Members. The Chapter may not contract with or otherwise engage the same providers to develop, reproduce, or provide the same, or substantially similar, content to Chapter Members. If the Chapter purchases course content from ISM, such content must be provided to Chapter Members (i) at ISM's listed price, or (ii) at a price as agreed to in writing by ISM.

#### **(d) Conduct.**

**(i)** The Chapter shall not engage in (A) social or political activism which could distract from the purposes of ISM, (B) any illegal activity, or (C) any activity which might negatively affect the work, reputation, or image of ISM.

(ii) The Chapter shall conduct its activities in accordance with its bylaws, and shall comply with relevant requirements set forth in ISM's bylaws, as amended from time to time, and all chapter-related policies, procedures, handbooks, manuals, or other written guidance that may be promulgated by ISM from time to time, including but not limited to those ISM policies posted at <https://www.instituteforsupplymanagement.org/content.cfm?ItemNumber=30468>.

(e) **Responsibility.** The Chapter acknowledges that it has sole responsibility for the planning, management, and carrying out of the Chapter's programs and operations, including but not limited to payment of all expenses and other liabilities that it may incur in such operations.

**3.3. No Authority to Act for ISM.** The Chapter shall not hold itself out as an agent or representative of ISM. The Chapter shall not permit its employees, agents, or representatives to speak or act on behalf of or purport to speak or act on behalf of ISM, including but not limited to making statements that purport to be official positions of ISM. The Chapter may permit its employees, agents, or representatives to speak or act on behalf of the Chapter or as a Member of the Chapter.

**3.4. Prohibited Activities.** The Chapter agrees that (1) it is not currently, and will not become, a chapter of any entity listed in Exhibit B, attached hereto; or (2) it will not contractually affiliate with any entity listed in Exhibit B, attached hereto.

**3.5. Maintenance of Non-Profit Status; Compliance with Law.**

**(a) Maintenance of Non-Profit Status.**

(i) The Chapter at all times shall remain in good standing as a non-profit entity in the jurisdiction of its incorporation in the United States.

(ii) The Chapter shall not dissolve except following approval by (A) the Chapter Board in accordance with the Chapter's bylaws; and (B) ISM. Upon dissolution, subject to applicable laws, not less than 50% of remaining assets of the Chapter shall be donated to ISM to further the ISM Purpose. The remaining assets of the Chapter must be donated to a nonprofit organization, including ISM, described in IRC section 501(c)(3) to further one or more aspects of the tax-exempt missions of ISM with the approval of the Chapter Board and ISM. This donation may be made to ISM for specific purposes (e.g., Richter Scholarship Fund). If the Chapter's organizational or governing documents are in conflict with this Section 3.5(a)(ii), the Chapter shall amend such organizational and governing documents to the extent necessary to comply with this Section 3.5(a)(ii). On or before the execution of this agreement, the Chapter shall provide to ISM a copy of the Chapter's organizational and governing documents demonstrating compliance with this Section 3.5(a)(ii).

**(b) Compliance with Law.** In carrying out its obligations and exercising its rights under this Agreement, the Chapter shall comply with all applicable laws, statutes, ordinances, regulations, rules, codes, orders, constitutions, treaties, common law, judgments, decrees, other requirements or rule of law. The Chapter shall, at its sole cost and expense, make all filings and maintain all permits, licenses, and other governmental approvals that may be required in the Region in connection with the Chapter's carrying out of its business, including, without limitation, the performance of its obligations under this Agreement, and the Chapter's ownership, operation or lease of its properties and assets.

### **3.6. Chapter Board of Directors and Governance.**

#### **(a) Board of Directors.**

**(i) Number of Directors.** Chapter board of directors will be comprised of not less than five (5) directors.

**(ii) Qualifications for Directors.** Chapter bylaws and governance policies will include a requirement that all of its directors must, at all times during their board service, be current active members and in good standing in both ISM and the Chapter.

#### **(iii) Term Limits for Directors.**

**(A) Limitation on Maximum Period of Service of Director.** Except as otherwise provided in this Section 3.6(a)(iii)(A), the Chapter will limit the maximum period an individual may serve as a director to eight (8) consecutive years unless the member joined the board to fill a vacancy, in which case such director may serve a maximum of ten (10) consecutive years on the board. A member that leaves the Chapter's board of directors due to term limits is able to rejoin the board after a break in service of no less than four (4) consecutive years. For avoidance of doubt, a director may not serve more than ten (10) years on the board in a fourteen (14) consecutive year period.

**(B) Transitional Rule.** Upon the request of the Chapter, ISM may, in its sole discretion, authorize a director serving as of the Effective Date of this Agreement to serve an additional two years beyond the current term of service.

#### **(b) Chapter Officers.**

**(i) Chapter Officers.** The officers of the Chapter shall consist of, at minimum, President, Vice President, Secretary, and Treasurer, with such duties as shall be determined by the Chapter.

**(ii) Qualifications for Chapter Officers.** All officers of the Chapter must be employed in the supply management field.

#### **(iii) Term Limits for Officers.**

**(A) Limitation on the Maximum Period of Service as an Officer.** The Chapter will limit officers to a term of not more than four (4) consecutive years as the President or Vice President. Except as provided in Section 3.6(b)(iii), officers may not serve as the President or Vice President for more than four (4) years in any ten (10) consecutive year period. For avoidance of doubt, except as provided in Section 3.6(b)(iii), Chapter officers may not serve more than an aggregate of eight (8) years in the positions of President and Vice President in any ten (10) consecutive year period.

**(B) Transitional Rule.** Upon the request of the Chapter, ISM may, in its sole discretion, authorize an officer serving as of the Effective Date of this Agreement to serve an additional two years beyond the current term of service.

**(c) No Compensation.** Chapter board of directors will not be compensated for their involvement as a director or officer of the Chapter. The Chapter may, at its sole discretion, elect to reimburse directors for reasonable expenses incurred while acting on behalf of the Chapter.

**3.7. Chapter Organization, Governance and Financial Documentation and Recordkeeping.**

**(a) Information Required Prior to the Execution of this Agreement.** Prior to the execution of this Agreement, the Chapter has provided ISM with copies of the following:

- (i)** Application of tax-exempt status with the Internal Revenue Service;
- (ii)** IRS determination letter (verification of not-for-profit status);
- (iii)** Articles of incorporation, certificate of incorporation or certificate of formation; and
- (iv)** Bylaws.

**(b) Information Required Within 180 Days of the Effective Date of this Agreement.** Within 180 days of the Effective Date of this Agreement, the Chapter will provide ISM with copies of the following:

- (i)** Duties of the Chapter directors and officers;
- (ii)** Training calendar for the next 12 months;
- (iii)** One-year operating budget;
- (iv)** Names of the current directors, maximum of six (including the Chapter President and Vice President), that will receive benefits from ISM, as defined by ISM from time to time; and
- (v)** Chapter Officer succession plan.

**(c) Changes in Documentation.** The Chapter shall promptly advise ISM of any change in any documentation or information provided by the Chapter to ISM, including, without limitation, any change to the articles of incorporation, bylaws or other governing documents of the Chapter.

**(d) Financial and Chapter Operational Reports Required From Chapter.** The Chapter shall provide ISM with the following information within the times prescribed below:

- (i)** A copy of the Chapter's Form 990 no later than 10 business days after the filing of such form with the Internal Revenue Service;
- (ii)** Chapter financial statements for each fiscal year no later than 90 days following the end of the Chapter's preceding fiscal year;
- (iii)** A one-year operating budget for the fiscal year no later than 30 days after the commencement of such year;
- (iv)** Names of outgoing and incoming board members and officers no later than 30 days after elections;
- (v)** Continuing education hours event evaluations no later than 60 days after a Chapter event; and

(vi) Evidence of insurance, as described in Section 3.11, within 10 days after (A) renewal of the insurance policy, or (B) any change in coverage.

(e) **Recordkeeping.** The Chapter shall maintain records related to all of its operations, including but not limited to minutes of the meetings of its members and board of directors, and reports and filings made with governmental agencies relating to its nonprofit status. ISM shall not be responsible for maintaining any of the Chapter's records.

(f) **Inspection.** Upon the written request of ISM, the Chapter shall provide at its expense such other documents and data to ISM as ISM may reasonably request, and shall permit ISM or ISM's designated agent to review and copy records of the Chapter (including, without limitation, any records required to be submitted to ISM pursuant to Section 3.7).

**3.8. Taxes.** The Chapter shall have sole responsibility for all tax returns and payments required by the United States, or any state, or foreign tax authority in connection with any of its operations. ISM shall not be liable for any tax liability incurred by the Chapter.

**3.9. ISM Brand Guidelines.** The Chapter will abide by ISM branding guidelines, including guidelines relating to social media and public relations.

**3.10. Dues and Fees; Billing.**

(a) **Dues.** The Chapter will determine Chapter specific dues that will be assessed to members in addition to ISM dues. Chapter membership dues may vary in amount based on the type of membership. Chapter dues will be set annually by the Chapter.

(b) **Fees.** The Chapter will determine Chapter specific fees that will be assessed to members. For example, a fee may be assessed for dinner at a meeting if not included in the Chapter dues.

(c) **Billing.**

(i) **Collection.** All Chapter dues will be collected by ISM. ISM will collect ISM dues and Chapter dues concurrently for each member on an annual basis. ISM shall have no liability to the Chapter in connection with ISM's inability to collect any Chapter dues or fees from a member.

(ii) **Amount of Chapter Dues.** Chapter dues will be billed by ISM at the Chapter's rates for the immediately prior year unless the Chapter provides ISM written notice of a rate change at least 30 days prior to ISM billing the individual member.

(iii) **Remittance of Chapter Dues to Chapter.** Upon collection, ISM will retain ISM dues and will remit to the Chapter all Chapter dues and fees within 30 days of ISM's collection of the same.

**3.11. Chapter Insurance.** The Chapter will maintain the following insurance coverage at all times during the term of this Agreement and for a period of at least two (2) years thereafter:

(a) Directors and officers liability insurance in such amounts and upon such terms as ISM may direct from time to time; and

(b) General commercial liability insurance, with ISM listed as an additional insured, in such amounts and upon such terms as ISM may direct from time to time.

In addition to the requirements of Section 3.7(d)(vi), the Chapter shall provide evidence of insurance at such times as ISM may request.

### **3.12. Non-Compete.**

(a) **No Chapter Events During Annual Conference.** The Chapter shall not hold events during ISM's annual conference.

(b) **No Chapter Events During ISM Events Within Region.** If ISM is holding an event within the Region, the Chapter shall not hold any event at the same time as ISM's local event unless the Chapter's event is scheduled, and necessary facilities for the event are booked, prior to ISM scheduling the local event. The Chapter acknowledges and understands that ISM typically holds conferences, seminars, and other events annually. ISM may, upon request from the Chapter and at ISM's sole discretion, grant permission for the Chapter to hold an event at the same time as an ISM event.

### **3.13. Privacy.**

#### **(a) Membership Directory for Official Use Only.**

(i) The Chapter will not maintain membership directories available to the public or private, except as provided in this Section 3.13(a).

(ii) Lists of members are available through ISM for official use by the Chapter and are only available to key officers of the Board of Directors for the Chapter. Each Chapter key officer who accesses any membership list shall keep such information confidential and shall not use the information contained therein other than for purposes of carrying out his/her obligations to the Chapter and ISM.

(iii) Membership lists will be utilized by the Chapter for communications from the Chapter to its membership related to authorized Chapter events, ISM or Chapter business, and other communications as authorized by the Board.

(iv) The Chapter will not share or sell any membership lists to anyone not authorized by ISM.

(b) **Payment Card Industry DSS Policy.** The Chapter will maintain a Payment Card Industry Data Security Standard policy. This policy will comply with current Payment Card Industry requirements.

(c) **Privacy Policy.** The Chapter will adopt and maintain a privacy protection policy consistent with applicable laws and that complies with ISM's privacy protection policy. The Chapter must comply with all data privacy and protection laws to which they are subject, including those applicable laws in the Chapter's jurisdiction as well as those laws having extraterritorial scope which would require the Chapter's compliance, and that are currently in effect or that become effective in the future. Those laws may include, but are not limited to, the European Union's General Data Protection Regulation (GDPR), Canada's Personal Information Protection and Electronic Documents Act (PIPEDA), Brazil's General Data Protection Law (LGPD) and similar laws. The Chapter will make a reasonable effort not to transmit data across international boundaries, unless necessary for reporting purposes, either to government authorities or ISM.

The Chapter must comply with all laws addressing marketing and other communications to which they are subject, including those applicable laws in the Chapter's jurisdiction as well as those laws having

extraterritorial scope which would require the Chapter's compliance, and that are currently in effect or that become effective in the future. Those laws may include, but are not limited to, the CAN-SPAM Act, the Telephone Consumer Protection Act (TCPA), the EU's Privacy and Electronic Communications Directive 2002/58/EC (the ePrivacy Directive), Canada's Anti-Spam Legislation (CASL). The Chapter may not send email to an address obtained via Internet harvesting methods or any surreptitious methods (e.g., scraping or harvesting). The Chapter may not send email to an address that is incomplete, inaccurate and/or not updated for all applicable opt-out notifications, using best efforts and best practices in the industry. The Chapter must promptly comply with all opt-out, unsubscribe, "do not call" and "do not send" requests.

**(d) Photo and Media Release.** Chapter shall obtain a member's express written consent prior to utilizing any recording, videotape, or photograph of that members' voice, image, or likeness for any purpose including, but not limited to, Chapter announcement and promotion.

**3.14. Satellite Offices.** The Chapter may establish satellite offices in its Region. The operation of satellite offices will be governed by this Agreement. Satellite offices will not have separate names, be separate legal entities, or have a separate board of directors from the Chapter.

**3.15. Chapter Mergers.** The Chapter shall not undertake a merger with another chapter or any other entity without the prior written consent of ISM, which consent may be withheld by ISM in its sole discretion.

#### **4. ISM ACTIVITIES AND OBLIGATIONS**

**4.1. Communications.** ISM shall include the Chapter in any communications targeted to ISM's chapters generally and shall make its representatives reasonably available to the Chapter.

**4.2. Changes in Nonprofit Status of Bylaws of ISM.** ISM shall promptly advise the Chapter of any changes in ISM's nonprofit status or bylaws.

**4.3. Responsibility.** ISM shall support the activities of its chapters, including the Chapter, in such manner and with such resources as it may determine in its sole discretion.

**4.4. Training.** ISM will provide training programs for the Chapter Board Members. This training may include: online training program, webinars, training at conferences, onsite training, or other methods as determined by ISM in its sole discretion. ISM will provide established best practice information regarding Chapter board position functions along with training that correlates to these board positions.

**4.5. Information.** ISM will provide meetings, webinars and/or conference calls designed to keep the Chapter leadership informed about ISM and the current state of the supply management industry.

**4.6. Corporate Program.** ISM retains the right to offer corporate membership packages (the package, a "*Corporate Membership*" and the purchasing corporation a "*Corporate Participant*"), which may include Chapter memberships for individual persons ("*Individual Corporate Participant*"). For Chapters that have Individual Corporate Participants join the Chapter as part of the Corporate Membership, ISM will provide to such Chapter an amount of the revenue collected as part of the Corporate Membership ("*Chapter's Corporate Membership Remittance*"). The amount paid as part of the Chapter's Corporate Membership Remittance will be based on the proportional number of Individual Corporate Participants that join the Chapter at the time of purchase or renewal of the Corporate Membership. For the avoidance of doubt, where Individual Corporate Participants are located within a Region that is covered by multiple Chapters, the Chapter's Corporate Membership Remittance will be paid to the Chapter that the Individual Corporate Participant has elected to join.

## 5. RELATIONSHIP

**5.1. Independent Organizations.** ISM and the Chapter expressly acknowledge and agree that ISM and the Chapter are, and intend to remain, separate corporate entities. The Chapter agrees that the conduct of the Chapter and its employees and agents, and any other legal obligations of the Chapter, are the sole responsibility of the Chapter. The relationship of the Chapter and ISM under this Agreement is that of independent contracting parties. Neither the Chapter nor ISM shall be deemed to be an employee, agent, partner, or legal representative of the other for any purpose and neither shall have any right, power, or authority to create any obligation or responsibility on behalf of the other.

**5.2. No Financial Support.** Except as provided herein, neither the Chapter nor ISM has any obligation to provide any financial support to the other for any reason. Any financial support provided by one party is in that party's sole discretion and shall not create any right in the other party to further financial support.

**5.3. Press Releases and Public Statements.** The Chapter shall obtain ISM's prior written consent before making any press release, official public statement, or other announcement (including by way of web logs, news groups, mailing lists, or similar communications media) concerning this Agreement or any rights or obligations hereunder, and which references ISM.

## 6. INDEMNIFICATION

The Chapter shall indemnify, defend, and hold harmless ISM and its officers, directors, members, agents, and assignees (other than, in any case, any member, officer or director of the Chapter), from and against any and all claims, actions, suits, demands, losses, damages, judgments, settlements, costs, and expenses, including reasonable attorney's fees and expenses, and liabilities of every kind and character whatsoever arising out of or resulting from (a) any breach by the Chapter of its obligations or representations under or in respect of this Agreement, (b) any other act or omission by the Chapter, its officers, directors, members, or agents, whether in connection with this Agreement or otherwise, or (c) any claim by any person arising out of or in respect of any alleged action or inaction under or in respect of this Agreement, except in each case to the extent such claim, damage, loss, liability, cost, or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from ISM's gross negligence or willful misconduct.

## 7. TERMINATION

**7.1. Termination by ISM.** ISM shall have a right to terminate this Agreement as set forth in this Section 7.1 and additionally as set forth in the bylaws of ISM.

**(a) Material Breach.** ISM may terminate this Agreement immediately if the Chapter or any of its directors or officers violates any provision of this Agreement in any material respect or is not in compliance in any material respect with the laws and governmental regulations and interpretations applicable to the conduct of the Chapter's business.

**(b) Failure to Maintain Membership Requirements.** If the Chapter's membership falls below minimum membership requirements of 20 active members, and such failure to maintain membership requirements continues for a period of 12 months. At the time the Chapter's membership falls below 20 active members, the Chapter will be placed into a review period of 12 months ("**Review Period**"). During such Review Period, ISM will make a reasonable attempt to assist the Chapter to increase membership.



(c) **Dissolution and Insolvency.** ISM may terminate this Agreement immediately if the Chapter (i) dissolves, liquidates, ceases to engage in its operations, or authorizes, adopts, or approves a plan therefore, or (ii) commences any proceeding under any bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, appointment of a custodian, receiver, or trustee, or other relief.

(d) **Reputational Harm.** If the Chapter engages in activity or markets any services or products or otherwise engages in conduct which, in ISM's sole opinion, reflects materially and unfavorably upon the reputation of ISM or subjects or could subject ISM to public disrepute, ISM may immediately terminate this Agreement.

(e) **Misrepresentations.** If the Chapter has made or makes any misrepresentation in any statement or document it supplies to ISM, including but not limited to (i) those statements and materials supplied to ISM to induce ISM to enter into this Agreement or in connection with its request for affiliation with ISM, (ii) the Chapter's annual reports under Section 3.7, and (iii) the Chapter's bylaws and incorporation documents, ISM may immediately terminate this Agreement.

(f) **Other Agreements.** Upon termination or expiration of any other agreement between ISM and the Chapter, ISM may immediately terminate this Agreement.

(g) **Without Cause.** ISM may terminate this Agreement for any reason in its sole discretion by giving the Chapter at least 60 days' prior written notice.

**7.2. Termination by Chapter.** The Chapter may terminate this Agreement for any reason if such termination is approved by the Board of Directors of the Chapter and if the Chapter gives ISM at least 120 days prior written notice before the automatic renewal of this Agreement.

**7.3. Effect of Termination.** Upon termination or expiration of this Agreement, the rights of the Chapter granted under this Agreement shall immediately, automatically, and without consideration terminate and revert to ISM. The Chapter shall no longer identify itself as affiliated with ISM. The Chapter shall immediately discontinue using the Chapter Marks identified in Section 2.1, and all other rights and privileges associated with affiliation with ISM. The Chapter shall return to ISM any and all property belonging to or associated with ISM.

**7.4. Survival.** The provisions of Sections 3.8, 3.11, 3.13, 5, 6, 7.3, 7.4, 8 and 9 shall survive termination of this Agreement regardless of the reason for termination.

## **8. AGREEMENTS REGARDING LIABILITY AND REMEDIES**

**8.1. Damages and Limitation of Liability.** NEITHER ISM NOR THE CHAPTER SHALL BE LIABLE TO THE OTHER FOR ANY EXEMPLARY OR PUNITIVE DAMAGES, OR LOSSES THAT ARE NOT THE RESULT OF A BREACH BY SUCH PARTY OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

**8.2. Chapter Remedies and Claims.** The Chapter shall under no circumstance be entitled, directly or indirectly, to any form of compensation or indemnity from ISM or to obtain an injunction, specific performance, or other equitable remedy as a consequence of the termination of this Agreement for any reason. The Chapter waives any claims it may have against ISM arising from any alleged goodwill created by the Chapter for the benefit of ISM or from the alleged creation or increase of a market for products, services, or other items bearing the Chapter Marks.

**8.3. Attorney's Fees.** Subject to Section 8.7, in the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs, and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including but not limited to such reasonable fees and expenses of attorneys and accountants, which shall include without limitation all reasonable fees, costs, and expenses of appeals. As used in this Section 8.3, the term "prevailing party" means the party that establishes a breach of this Agreement or any agreement referred to herein by the other party or otherwise establishes liability of the other party for wrongful conduct, regardless of whether actual damages are awarded. In the case where both parties prevail on different claims, the prevailing party shall be the party that is awarded the greater amount of damages.

**8.4. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Arizona, U.S.A., without regard to principles of conflicts of law.

**8.5. Venue.** SUBJECT TO SECTION 8.7, THE CHAPTER AND ISM CONSENT TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE CITY OF PHOENIX, MARICOPA COUNTY, ARIZONA, U.S.A., AND IRREVOCABLY AGREE THAT ALL ACTIONS OR PROCEEDINGS RELATING TO THIS AGREEMENT OR ANY RELATED MATTER SHALL BE LITIGATED IN THOSE COURTS. THE CHAPTER AND ISM EACH WAIVE ANY OBJECTION WHICH IT MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

**8.6. Waiver of Jury Trial.** EACH PARTY HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY, FROM WHATEVER SOURCE ARISING, IN CONNECTION WITH ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**8.7. Alternative Dispute Resolution.**

(a) **Exclusive Dispute Resolution Mechanism.** The parties agree that arbitration shall be the exclusive mechanism for resolving any dispute, controversy, or claim arising out of or relating to this Agreement, or the scope, breach, termination or validity of the Agreement or this Section 8.7 (the "*Dispute*"). The parties further agree that such arbitration ("*Arbitration*") shall be binding and shall be fully and finally resolved through arbitration under the administration of Federal Arbitration, Inc. ("*FedArb*") and in accordance with its Rules for Arbitration ("*FedArb Rules*"). The parties agree that the FedArb Rules constitute their sole and exclusive rights to dispute resolution, notwithstanding federal or state statutes to the contrary.

(b) **Single Arbitrator.** The Arbitration shall be decided by a sole arbitrator (the "*Arbitrator*").

(c) **Place of Arbitration.** The Arbitration hearing shall be held in such neutral location as the parties may mutually agree or, if the parties are unable to agree, in Maricopa County, Arizona.

(d) **Substantive Laws.** Except as otherwise provided herein, the substantive laws of the State of Arizona, excluding its conflicts of laws rules, shall apply to the Arbitration.

(e) **Procedural Rules and Rules of Evidence.** The Federal Rules of Civil Procedure ("*FRCP*") and the Federal Rules of Evidence shall be applied in the Arbitration proceeding to the extent their application is consistent with the FedArb Rules.

**(f) Selection of Arbitrator.** The parties to the Arbitration shall, within 90 days of the filing of the arbitration demand, agree on an Arbitrator who is a former U.S. federal judge appointed under Article III of the U.S. Constitution to conduct all aspects of the Arbitration, failing which the parties shall choose such an Arbitrator under the supervision of FedArb through an agreed process or through the process specified by the FedArb Rules. The Arbitrator chosen shall have significant experience or expertise in entity governance and in respect of businesses relevant to ISM. If a party objects to consideration of an Arbitrator on the ground of required experience or expertise, such dispute between the parties related to that objection shall be finally resolved by FedArb.

**(g) Commencement of Arbitration.** A party or parties shall initiate an arbitration by submitting to FedArb a Notice of Arbitration pursuant to Rule 3.01 of the FedArb Rules.

**(h) Authority of Arbitrator.** The Arbitrator is specifically authorized to attempt to mediate the Dispute under FedArb Rules, to direct discovery in accordance with the FRCP, and to render partial or full summary judgment as provided for in the FRCP. The Arbitrator has no authority to award punitive damages and each party hereby waives any right to seek or recover punitive damages with respect to any dispute resolved by Arbitration.

**(i) Jurisdiction.** The Arbitrator shall have the power to rule on his or her own jurisdiction, including any objections as to the existence, scope or validity of this Section 8.7 or to the arbitrability of any claim or counterclaim.

**(j) Arbitrator's Decision.** In any award rendered by the Arbitrator (the "*Award*"), the Arbitrator shall be required to state in writing the facts and conclusions of law relied upon to support the decision rendered.

**(k) Record.** A complete record of all proceedings before the Arbitrator shall be made, with the cost of that record to be borne according to the arbitrator's decision.

**(l) Appeals.** The parties hereby agree that the Arbitrator's Award may be appealed pursuant to the FedArb Arbitration Appeals Rules ("*Appellate Rules*"). Appeals must be initiated by filing a Notice of Appeal and as prescribed by the Appellate Rules with the FedArb. The appeal panel shall review the factual and legal decisions of the Arbitrator *de novo*, but the record on appeal shall contain only materials originally filed with the Arbitrator or entered into evidence before the Arbitrator renders his or her decision on the merits. The Award shall not be considered final until 30 days after the time for filing the notice of appeal pursuant to the Appellate Rules has expired ("*Final Award*").

**(m) Confidentiality.** All papers, filings, documents, information, testimony, exchanges, hearings, and decisions in the Arbitration proceeding ("*Confidential Material*"), shall be and shall remain confidential, except to the extent that (i) the information has been previously disclosed, or (ii) disclosure is necessary in connection with a judicial challenge to or enforcement, in a court of competent jurisdiction, of any Final Award, or (iii) disclosure is required by law. In the event a party or person makes an application or files any pleading concerning a Final Award in a court of competent jurisdiction, or if a party makes a disclosure required by law, all Confidential Material (i) filed with the court must be filed under seal, and (ii) any disclosure required by law shall be made subject to a written undertaking of confidentiality or a protective order.

**(n) Cost Allocation.** The party or parties commencing the Arbitration will bear one-half (1/2) of all fees, costs and expenses of the Arbitrators, and the other parties to the Arbitration shall bear their pro rata share of the remaining one-half (1/2) of such fees, costs and expenses; provided that each party will bear all the fees, costs, and expenses of its own attorneys, experts, and witnesses; provided,

further, that in connection with any judicial proceeding to compel arbitration pursuant to this Agreement or (to the extent provided for in this Section 8.7) to confirm, vacate, or enforce a Final Award pursuant to subsection (o) of this Section 8.7, the prevailing party in such a proceeding will be entitled to recover reasonable attorneys' fees and expenses incurred in connection with such proceeding, in addition to any other relief to which it may be entitled.

**(o) Confirming, Enforcement, Vacating, Modification and/or Correction of an Award.** Subject to subsection (m) of this Section 8.7, the parties may seek confirmation and enforcement of a Final Award from a court of competent jurisdiction, but the parties agree that no other relief may be sought from a court, their exclusive remedies, before a Final Award, being within the FedArb Rules, Appellate Rules and FedArb.

**8.8. English Language.** The Chapter and ISM confirm that it is their understanding that this Agreement, as well as all other documents relating to the relationship contemplated by this Agreement, including notices, be written in the English language only. This Agreement as presently written in the English language shall be interpreted, and the rights of the Chapter and ISM shall be determined, by the English text only. Should this Agreement be translated into a language other than English, the English version shall remain controlling and shall prevail on questions of interpretation or otherwise.

## **9. GENERAL/MISCELLANEOUS PROVISIONS**

### **9.1. Assignability.**

**(a) Assignment by Chapter.** The Chapter shall not assign its rights or delegate any of its duties by merger or otherwise under this Agreement without ISM's prior written consent, which consent may be granted or withheld in ISM's sole discretion. Any attempted assignment by the Chapter without ISM's prior written consent shall be null and void.

**(b) Assignment by ISM.** ISM may assign or transfer its interest in this Agreement or engage in any merger, consolidation, sale of assets, reorganization, or other transaction, without consent of or notice to the Chapter.

**9.2. Entire Agreement.** This Agreement, including the Exhibits contains the entire agreement of ISM and the Chapter and supersedes any prior agreements and all other prior or contemporaneous communications, representations, understandings, and agreements, either oral or written, relating to the subject matter of this Agreement.

**9.3. Amendment.** Except as contemplated by the next sentence, this Agreement may not be amended except by a written instrument signed by both the Chapter and ISM. From time to time ISM may require the Chapter to amend this Agreement so that it is in compliance with ISM's bylaws and governance policy (as same may be amended or modified from time to time) or to improve, as determined by ISM in its sole discretion, the experience for the members of ISM.

**9.4. Waiver.** Any waiver of the provisions of this Agreement or of the parties' rights or remedies under this Agreement must be in writing and signed by an officer or other duly authorized representative of the waiving party to be effective. Failure, neglect, or delay by a party at any time to enforce the provisions of this Agreement or such party's rights or remedies shall not be construed as a waiver of such party's rights, powers, or remedies under this Agreement. Waiver of any breach or provision of this Agreement shall not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

**9.5. Severability.** If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

**9.6. No Presumption Against Drafter.** This Agreement shall be construed without regard to any presumption or rule requiring construction against the party drafting the Agreement.

**9.7. Notices.** Notices, approval, and consent under this Agreement shall be in writing and shall be delivered by mail, courier, fax, or email to the addresses set out on the signature page of this Agreement. All notices and other communications between the parties shall be in writing and shall be deemed to have been duly given when (a) delivered in person, (b) three days after posting in the United States mail having been sent registered or certified mail return receipt requested, (c) when delivered by a nationally recognized overnight delivery service, or (d) received by electronic mail and promptly confirmed by delivery in person, by post or by delivery service as aforesaid in each case, with charges prepaid.

**9.8. Counterparts.** This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original. Such counterparts together shall constitute one and the same Agreement. Any facsimile or electronic portable document format copies hereof or signature hereon shall, for all purposes, be deemed originals.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, effective as of the date first written above.

**Chapter Endorsement:**

I, the undersigned, on behalf of the below-designated Chapter, agree and commit to the above stated Chapter Agreement. The Chapter shares in the ISM's vision and mission and commit to fulfilling our role in this Agreement.

Chapter: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**Institute for Supply Management:**

By: \_\_\_\_\_

Debbie Fogel-Monnissen

Chief Financial Officer

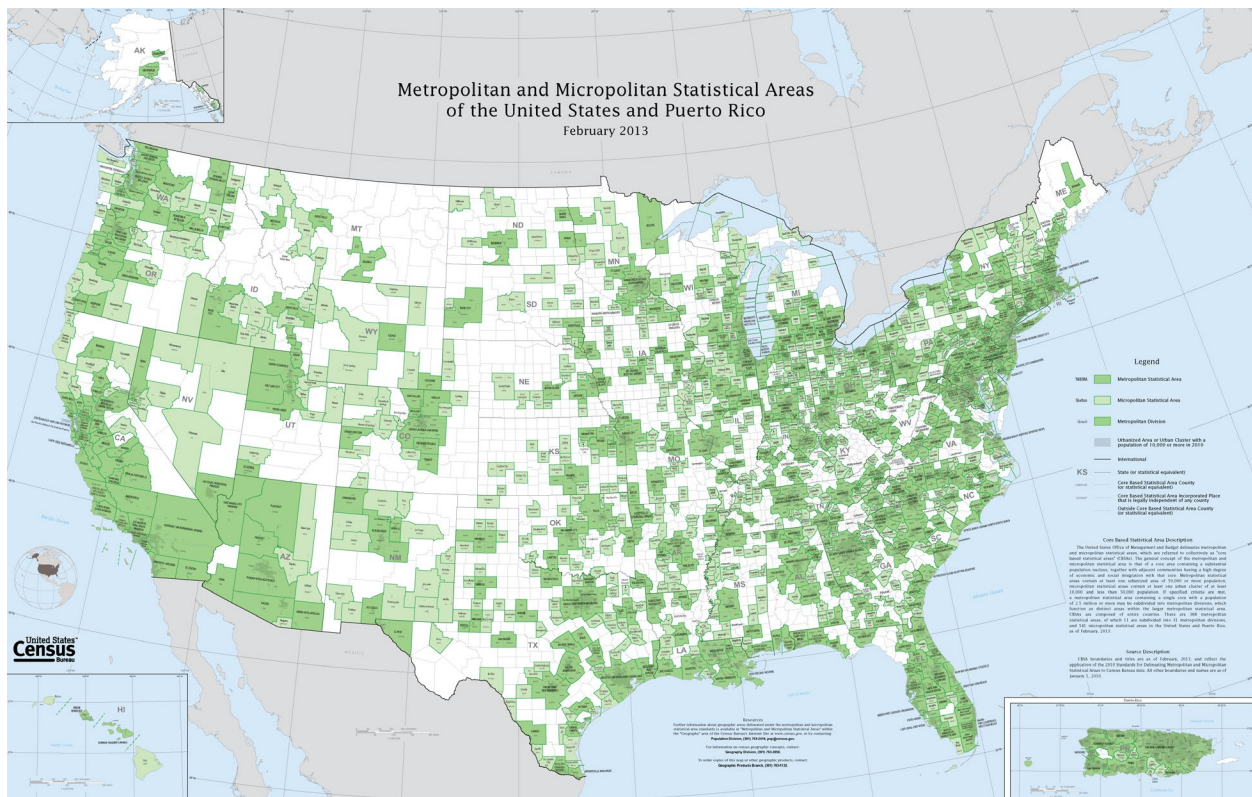
Date: \_\_\_\_\_

## EXHIBIT A: DEFINITION OF CHAPTER REGION

The region for ISM Chapter Affiliation loosely follows the metropolitan statistical area (MSA) definition and is further defined by a 75-mile radius of the primary address that is on file with ISM.

In the United States, a metropolitan statistical area (MSA) is a geographical region with a relatively high population density at its core and close economic ties throughout the area.

An example of these geographical regions is illustrated below:



## **EXHIBIT B: IDENTIFIED ENTITIES**

- American Production and Inventory Control Society (APICS)
- Association for Supply Chain Management (ASCM)
- Chartered Institute of Procurement & Supply (CIPS)
- Council of Supply Chain Management Professionals (CSCMP)
- Sourcing Industry Group (SIG)