



ITOPIA GENERAL TERMS AND CONDITIONS OF SERVICE

The itopia General Terms of Service set forth below (hereinafter referred to as the "Terms" or "Agreement") apply to Customer's use of the Service provided by itopia, Inc., a Delaware corporation ("itopia") or any of its Affiliates.

These Terms are a contract between you and itopia and cover important information about itopia services and equipment. Unless otherwise stated, these Terms apply to all itopia-branded services (collectively, the "Service" or "Services"), and any itopia-supplied equipment (regardless of how branded) you use, purchase or lease in connection with the Services ("Equipment"). You accept and agree to comply with, and be bound by, these Terms when you (a) sign or otherwise acknowledge that you accept these Terms on paper or electronically; (b) order, activate, accept, use or pay for itopia's Service or Equipment through any means; or (c) start any program that says you are accepting these Terms when doing so, whichever occurs first. These Terms incorporate and include any or all terms and conditions, addenda and/or policies posted on itopia's "Legal Information Page", which can be found at <http://www.itopia.us/legal> (collectively, the "Other Documents"). To the extent that these Terms conflict with the provisions of any of these Other Documents, then these Terms shall control, unless itopia has expressly stated or agreed otherwise in writing, and the conflicting provisions of the Other Document(s) shall be deemed modified to the minimum extent necessary to be read consistently with these Terms.

itopia reserves the right to change any of the Terms (including any Other Documents incorporated into the Terms) at any time. itopia will provide you notice of any material changes through your invoice or by e-mail to the most recent email address associated with your account. Changes will become effective on the date itopia sends or posts notice. Except as otherwise provided below, if you continue to use Service or Equipment after itopia sends notice, this will mean that you have agreed to be bound by the changes announced in that notice.

1. Definitions.

"Access Credentials" means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Services.

"Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.

"Authorized User" means Customer's employees, consultants, contractors, and agents (a) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement; and (b) for whom access to the Services has been purchased hereunder.

"Customer Data" means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services or that incorporates or is derived from the Processing of such information, data, or content by or through the Services. For the avoidance of doubt, Customer Data does not include Resultant Data or any other information reflecting the access or use of the Services by or on behalf of Customer or any Authorized User.

"Customer Systems" means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.

"Documentation" means any manuals, instructions, or other documents or materials that the Provider provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of



the Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

“**Harmful Code**” means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Services or Provider Systems as intended by this Agreement. Harmful Code does not include any Provider Disabling Device.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“**Losses**” means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Permitted Use**” means any use of the Services by an Authorized User for the benefit of Customer in the ordinary course of its internal business operations as permitted by this Agreement.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

“**Personal Information**” means any information that does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located. Personal Information includes all “nonpublic personal information” as defined under the Gramm-Leach-Bliley Act, “protected health information” as defined under the Health and Insurance Portability and Accountability Act of 1996, “Personal Data” as defined in the European General Data Protection Regulation (GDPR) (Regulation (EU) 2016/6790, and all rules and regulations issued under any of the foregoing.

“**Process**” means to take any action or perform any operation or set of operations that the SaaS Services are capable of taking or performing on any data, information, or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy. “**Processing**” and “**Processed**” have correlative meanings.

“**Provider Disabling Device**” means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by Provider or its designee to disable Customer’s or any Authorized User’s access to or use of the Services automatically with the passage of time or under the positive control of Provider or its designee.

“**Provider Materials**” means the Services, Specifications, Documentation, and Provider Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials include Resultant Data and any information, data, or other content derived from Provider’s monitoring of Customer’s access to or use of the Services, but do not include Customer Data.



“**Provider Personnel**” means all individuals involved in the performance of Services as employees, agents, or independent contractors of Provider or any Subcontractor.

“**Provider Systems**” means the information technology infrastructure used by or on behalf of Provider in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Provider or through the use of Third-Party Materials.

“**Representatives**” means, with respect to a party, that party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, subcontractors, and legal advisors.

“**Resultant Data**” means data and information related to Customer’s use of the Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

“**Services**” or “**CAS**” means the Company’s Cloud Automation Stack (CAS), which is an end-to-end RDS management platform that automates the discovery, orchestration, migration and management of Windows desktops and apps on Google Cloud. CAS integrates on the backend with Google Cloud Deployment Manager and Compute Engine and as may be more specifically described in Exhibit A or any SOW.

“**Specifications**” means the description and identification of requirements and other specifications for the Services described in the Documentation.

“**Statement of Work or SOW**” means a document duly executed by the Parties, referencing and subject to the terms of this Agreement, specifying additional details, terms and conditions relating to provision of the Services.

“**Third-Party Materials**” means any systems, services, products, materials and information, in any form or medium, including any websites, portals, hosting platforms, software (open source or otherwise), documents, data, content, specifications, equipment, or components of or relating to the Third-Party Systems that are operated by a third party and not proprietary to Provider.

2. **Services.**

2.1 Access and Use. Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-transferable (except in compliance with [Section 15.8](#)) right to access and use the Services during the Term, solely for Customer’s internal business purposes by Authorized Users in accordance with the terms and conditions herein.

2.2 Documentation License. Provider hereby grants to Customer a non-exclusive, non-sublicenseable, non-transferable license to use the Documentation during the Term solely in connection with its use of the Services pursuant to the terms and conditions herein.

2.3 Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties: (a) Provider has and will retain sole control over the operation, provision, maintenance, and management of the Provider Materials; and (b) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Provider Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Services or Provider; (ii) results obtained from any use of the Services or Provider Materials; and (iii) conclusions, decisions, or actions based on such use.

2.4 Reservation of Rights. Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Provider Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the Provider Materials, and the Third-Party Materials are and will remain with Provider and the respective rights holders in the Third-Party



Materials.

2.5 Service Management. Each party shall, throughout the Term, maintain within its organization a service manager to serve as such party's primary point of contact for day-to-day communications, consultation, and decision-making regarding this Agreement. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each party shall ensure its service manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. Each party shall use commercially reasonable efforts to maintain the same service manager in place throughout the Term.

2.6 Changes. Provider reserves the right, in its sole discretion, to make any changes to the Services and Provider Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Provider's services to its customers; (ii) the competitive strength of or market for Provider's services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law.

2.7 Suspension or Termination of Services. Provider may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other Person's access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its good faith and reasonable discretion, that: (i) Customer or any Authorized User has failed to comply with any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement of the Specifications; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This Section 2.8 does not limit any of Provider's other rights or remedies, whether at law, in equity, or under this Agreement.

3. Use Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Services or Provider Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits: (a) copy, modify, or create derivative works or improvements of the Services or Provider Materials; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Services or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or Provider Materials, in whole or in part; (d) input, upload, transmit, or otherwise provide to or through the Services or Provider Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code; (e) access or use the Services or Provider Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law; or (f) otherwise access or use the Services or Provider Materials beyond the scope of the authorization granted under this Agreement.

4. Customer Obligations.

4.1 Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Services are accessed or used; (b) provide Provider Personnel with such access to Customer's premises and Customer Systems as is necessary for Provider to perform the Services in accordance with the Availability Requirement and Specifications; and (c) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with this Agreement.

4.2 Effect of Customer Failure or Delay. Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "Customer Failure").



4.3 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 3, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider of any such actual or threatened activity.

5. Service Levels and Credits.

5.1 Service Levels. Subject to the terms and conditions of this Agreement, Provider will use commercially reasonable efforts to make the Services Available at least ninety-nine and nine-tenths percent (99.9%) of the time as measured over the course of each calendar month during the Term (each such calendar month, a “**Service Period**”), excluding unavailability as a result of any of the Exceptions described below in this Section 5.1 (the “**Availability Requirement**”). “**Service Level Failure**” means a material failure of the Services to meet the Availability Requirement. “**Available**” means the Services are available for access and use by Customer and its Authorized Users over the Internet and operating in material accordance with the Specifications. For purposes of calculating the Availability Requirement, the following are “**Exceptions**” to the Availability Requirement, and neither the Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Customer or its Authorized Users to access or use the Services that is due, in whole or in part, to any: (a) access to or use of the Services by Customer or any Authorized User, or using Customer’s or an Authorized User’s Access Credentials, that does not strictly comply with this Agreement and the Specifications; (b) Customer Failure; (c) Customer’s or its Authorized User’s Internet connectivity; (d) Force Majeure Event; (e) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Provider pursuant to this Agreement; (f) Scheduled Downtime; or (g) disabling, suspension, or termination of the Services pursuant to Section 2.7.

5.2 Service Level Failures and Remedies. In the event of a Service Level Failure, Provider shall issue a credit to Customer in the amount of ten percent (10%) of the monthly Fees for the Services due for the Service Period in which the Service Level Failure occurred (each a “**Service Credit**”), subject to the following: (a) Provider has no obligation to issue any Service Credit unless: (i) Customer reports the Service Level Failure to Provider immediately on becoming aware of it; and (ii) requests such Service Credit in writing within thirty (30) days of the Service Level Failure; and (b) in no event will a Service Level Credit for any Service Period exceed fifty percent (50%) of the total Fees that would be payable for that Service Period if no Service Level Failure had occurred. Any Service Credit payable to Customer under this Agreement will be issued to Customer in the calendar month following the Service Period in which the Service Level Failure was reported. This Section 5.2 sets forth Provider’s sole obligation and liability and Customer’s sole remedy for any Service Level Failure.

5.3 Scheduled Downtime. Provider will use commercially reasonable efforts to: (a) schedule downtime for routine maintenance of the Services between the hours of 12a.m. – 6a.m. Eastern Time; and (b) give Customer at least twenty-four (24) hours prior notice of all scheduled outages of the Services (“**Scheduled Downtime**”).

5.4 Service Support. The Services include Provider’s standard customer support services delivered in accordance with the Provider’s service support processes and procedures as set forth in the Documentation and Specifications and made available to Customer through Provider’s web-based support portal (“**Support Services**”). Provider may amend the Support Services from time to time in its sole discretion.

6. Data Backup. The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. PROVIDER HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA.

7. Security.

7.1 Provider Systems and Security Obligations. Provider will employ security measures in accordance with applicable industry practice and Provider’s data privacy and security policy as amended from time to time (“**Privacy and Security Policy**”).



7.2 Data Breach Procedures. Provider maintains a data breach plan in accordance with the criteria set forth in Provider's Privacy and Security Policy and shall implement the procedures required under such data breach plan on the occurrence of a "Data Breach" (as defined in such plan).

7.3 Prohibited Data. Customer acknowledges that the Services are not designed with security and access management for Processing the following categories of information: (a) data that is classified and or used on the U.S. Munitions list, including software and technical data; (b) articles, services, and related technical data designated as defense articles or defense services; and (c) ITAR (International Traffic in Arms Regulations) related data, (each of the foregoing, "**Prohibited Data**"). Customer shall not, and shall not permit any Authorized User or other Person to, provide any Prohibited Data to, or Process any Prohibited Data through, the Services, the Provider Systems, or any Provider Personnel. Customer is solely responsible for reviewing all Customer Data and shall ensure that no Customer Data constitutes or contains any Prohibited Data.

7.4 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services ("**Customer Systems**"); (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Provider Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

7.5 Access and Security. Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Services.

8. Fees and Payment.

8.1 Fees. Customer shall pay Provider the fees and charges as set forth in the quote generated in connection with the purchase of Provider's Services more specifically described in Exhibit A attached hereto or as may be otherwise specified in any applicable SOW ("**Fees**").

8.2 Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

8.3 Payment and Billing.

8.3.1 Payment. All invoices are due upon receipt and all payments must be made in U.S. currency. Customer shall pay Fees for any partial month during the Initial Term or any Renewals Term on a pro rata basis. Unless otherwise specified, all Fees comprising monthly recurring charges for Service ("MRC") will be billed and paid one calendar month in advance. Fees comprising non-recurring and professional services ("NRC") will be billed and paid in arrears as and when they are incurred. Customer is solely responsible for any and all charges incurred as the result of the use of the Service, whether or not such charges were authorized or intended. Any amounts not paid to Provider within twenty (20) days of the date of the applicable invoice shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less. Customer shall also reimburse Provider for all reasonable attorneys' fees and other costs associated with collecting delinquent payments or with Customer's breach of this Agreement.

8.3.2 Invoice and Statement Periods, Format and Delivery. Billing periods and invoice formats may vary. Provider reserves the right to change the billing period, invoice format, or method of delivery from time to time, with or without notice to Customer. Unless otherwise agreed, all invoices shall be delivered electronically via the email address on file for Customer. Customer is obligated to keep its account and billing information accurate and current. An incorrect or



obsolete email address shall not release Customer from any of its payment obligations.

8.3.3 Methods of Payment. In its sole discretion and in limited instances, Provider reserves the right to accept payment by credit card. In situations where Provider agrees to accept payment by credit card, Provider reserves the right to discontinue acceptance of payment by credit card at any time.

8.3.4 Billing Disputes. If Customer believes that it has been charged in error, Customer must notify Provider in writing within thirty (30) days after delivery of Customer's invoice. Any billing disputes must be in writing, including a detailed statement describing the nature and amount of the disputed charge(s) and the reason(s) why a credit or refund is being requested, and sent via email to billing@itopia.us. Customer shall cooperate fully with Provider to promptly address and attempt to resolve the disputed charge(s). If Customer fails to provide written notice of dispute within the enumerated thirty (30) day deadline, the charges and invoice will be considered correct and binding on Customer. Irrespective of the foregoing, Customer shall pay the full amount of the invoice, including the disputed amounts, in a timely manner and in accordance with the payment terms set forth in this Agreement.

8.3.5 Authorization to Verify Credit Rating. Customer agrees to supply Provider with the information necessary to verify Customer's credit rating prior to providing Customer with access to any Service. Provider may also, during the term of this Agreement, update its information regarding Customer's credit rating without notice to Customer.

8.3.6 Deposit. If Provider determines, prior to providing Customer with access to any Service, or during the term of this Agreement, that it requires a deposit to ensure Customer's payment, Customer may be required to provide a deposit. In the event Provider requires a deposit, the deposit will be held and applied in accordance with applicable law. Provider may apply Customer's deposit to past due obligations as well as to any fees or other assessments to Customer's Account.

8.3.7 No Deductions or Setoffs. All amounts payable to Provider under this Agreement shall be paid by Customer to Provider in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than Service Credits issued pursuant to Section 5 any deduction or withholding of tax as may be required by applicable Law.

8.4 Audits. Provider or its nominee (including its accountants and auditors) may, on reasonable notice to Customer, inspect and audit Customer's use of the Services under this Agreement at any time during the Term and for two (2) years following the termination or earlier expiration of this Agreement. All audits will be conducted during regular business hours, and no more frequently than once in any 12-month period, and in a manner that does not unreasonably interfere with Customer's business operations. Customer shall make available all such books, records, equipment, information, and personnel, and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of Provider with respect to such audit.

9. Confidentiality

9.1 Confidential Information. In connection with this Agreement each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to Section 9.2, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party identifies as confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations.

9.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.



9.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall during the Term and for a period of two (2) years thereafter: (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (b) except as may be permitted by and subject to its compliance with Section 9.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 9.3; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 9; (c) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and (d) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps and cooperate with Disclosing Party to prevent further unauthorized use or disclosure. Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 9 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

9.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights hereunder; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

10. Intellectual Property Rights.

10.1 Provider Materials. All right, title, and interest in and to the Provider Materials, including all Intellectual Property Rights therein, are and will remain with Provider and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the Provider Materials except as expressly set forth in this Agreement or the applicable third-party license, in each case subject to Section 3. All other rights in and to the Provider Materials are expressly reserved by Provider. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Provider an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

10.2 Customer Data. As between Customer and Provider, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in this Section 10.

10.3 Consent to Use Customer Data. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data as are necessary or useful to Provider, its Subcontractors, and the Provider Personnel to enforce this Agreement and exercise Provider's rights and perform Provider's obligations hereunder.

11. Representations and Warranties.

11.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that: (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in



accordance with its terms.

11.2 Additional Provider Representations, Warranties, and Covenants. Provider represents, warrants, and covenants to Customer that Provider will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

11.3 Additional Customer Representations, Warranties, and Covenants. Customer represents, warrants, and covenants to Provider that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Provider and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

11.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 11, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED “AS IS.” PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

12. Indemnification.

12.1 Provider Indemnification. Provider shall indemnify, defend, and hold harmless Customer and Customer’s officers, directors, employees, agents, permitted successors, and permitted assigns (each, a “**Customer Indemnitee**”) from and against any and all Losses incurred by a Customer Indemnitee resulting from any Action by a third party (other than an Affiliate of a Customer Indemnitee) that Customer’s use of the Services (excluding Customer Data and Third-Party Materials) in accordance with this Agreement (including the Specifications) infringes or misappropriates such third party’s patents, copyrights, or trade secrets. The foregoing obligation does not apply to the extent that the alleged infringement arises from: (a) Third-Party Materials or Customer Data; (b) access to or use of the Provider Materials in combination with any hardware, system, software, network, or other materials or service not provided by Provider or specified for Customer’s use in the Documentation; (c) modification of the Provider Materials other than: (i) by or on behalf of Provider; or (ii) with Provider’s written approval in accordance with Provider’s written specification; or (d) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of Provider.

12.2 Customer Indemnification. Customer shall indemnify, defend, and hold harmless Provider and its officers, directors, employees, agents, successors, and assigns (each, a “**Provider Indemnitee**”) from and against any and all Losses incurred by such Provider Indemnitee resulting from any Action by a third party (other than an Affiliate of a Provider Indemnitee) to the extent that such Losses arise out of or result from, or are alleged to arise out of or result from: (a) Customer Data, including any Processing of Customer Data by or on behalf of Provider in accordance with this Agreement; (b) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer or any Authorized User, including Provider’s compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by Provider; (c) allegation of facts that, if true, would constitute Customer’s breach of any of its representations, warranties, covenants, or obligations under this Agreement; or (d) negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.

12.3 Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such



party believes it is entitled to be indemnified pursuant to this Section 12. The party seeking indemnification (the “**Indemnitee**”) shall cooperate with the other party (the “**Indemnitor**”) at the Indemnitor’s sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action without the Indemnitee’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed. The Indemnitee’s failure to perform any obligations under this Section 12.3 will not relieve the Indemnitor of its obligations under this Section 12, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

12.4 Mitigation. If any of the Services or Provider Materials are, or in Provider’s opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer’s or any Authorized User’s use of the Services or Provider Materials is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense: (a) obtain the right for Customer to continue to use the Services and Provider Materials materially as contemplated by this Agreement; (b) modify or replace the Services and Provider Materials, in whole or in part, to seek to make the Services and Provider Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Provider Materials, as applicable, under this Agreement; or (c) by written notice to Customer, terminate this Agreement with respect to all or part of the Services and Provider Materials, and require Customer to immediately cease any use of the Services and Provider Materials or any specified part or feature thereof.

12.5 Sole Remedy. THIS SECTION 12 SETS FORTH CUSTOMER’S SOLE REMEDIES AND PROVIDER’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND PROVIDER MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

13. Limitations of Liability.

13.1 EXCLUSION OF DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 13.3, IN NO EVENT WILL PROVIDER OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (A) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (B) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO SECTION 5; (C) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (D) COST OF REPLACEMENT GOODS OR SERVICES; (E) LOSS OF GOODWILL OR REPUTATION; OR (F) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2 CAP ON MONETARY LIABILITY. EXCEPT AS OTHERWISE PROVIDED IN SECTION 13.3, IN NO EVENT WILL THE AGGREGATE LIABILITY OF PROVIDER ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED ONE (1) TIMES THE TOTAL AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO LICENSOR UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$250,000, WHICHEVER IS LESS. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13.3 Exceptions. The exclusions and limitations in Sections 13.1 and 13.2 do not apply to Provider’s obligations under Section 12 or liability for Provider’s gross negligence or willful misconduct.



14. **Term and Termination.**

14.1 **Initial Term.** The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect during the period of time stated in Exhibit A or any applicable Service Order, Proposal, Addendum, SOW, or if no period of time is specifically stated in Exhibit A, until thirty-six (36) months from the Effective Date (the "**Initial Term**").

14.2 **Renewal Term.** This Agreement will automatically renew for additional successive three (3) year terms unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**").

14.3 **Termination.** In addition to any other express termination right set forth elsewhere in this Agreement: (a) Provider may terminate this Agreement, effective on written notice to Customer, if Customer fails to pay any amount when due hereunder, and such failure continues more than ten (10) days after Provider's delivery of written notice thereof; or (b) either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and (c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

14.4 **Effect of Termination or Expiration.** Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement: (a) all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate; (b) Provider shall immediately cease all use of any Customer Data or Customer's Confidential Information; (c) Customer shall immediately cease all use of any Services or Provider Materials and promptly return to Provider, or at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Provider Materials or Provider's Confidential Information; and (d) Provider may disable all Customer and Authorized User access to the Provider Materials.

14.5 **Early Termination Charge.** If this Agreement is terminated by Customer prior to the expiration of the Initial Term or any Renewal Term and such termination is not due to Provider's material breach and failure to cure, or if Provider terminates this Agreement pursuant to Section 14.3, in addition to any Fees becoming due prior to the date of termination, Customer shall pay to Provider an early termination charge equal to one hundred percent (100%) of the Fees comprising monthly recurring charges that would become due and payable through the end of the Initial Term or Renewal Term in effect at the time, including applicable taxes. The parties agree that the precise damages resulting from an early termination by Customer or termination by Provider due to Customer's material breach are difficult to ascertain and the early termination charge set forth in this Section 14.5 is a reasonable estimate of anticipated actual damages and not a penalty. The early termination charge shall be due and payable upon receipt of an invoice therefor.

14.6 **Surviving Terms.** The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 3, Section 9, Section 11.4, Section 12, Section 13, Section 14.4, Section 14.5 and Section 15.

15. **Miscellaneous.**

15.1 **Further Assurances.** On a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.



15.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15.3 Public Announcements. Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided, however, that Provider may, without Customer's consent, include Customer's name and similar indicia in its lists of Provider's current or former customers of Provider in promotional and marketing materials.

15.4 Notices. Any notice, request, consent, claim, demand, waiver, or other communications under this Agreement have legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 15.4):

If to Provider: itopia
 200 SE 1st Street, #104
 Miami, FL 33137
 Attn: Jonathan Lieberman, CEO
 jlieberman@itopia.us.

If to Customer: To the information provided by Customer to Provider in writing.

Notices sent in accordance with this Section 15.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third (3rd) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

15.5 Interpretation. For purposes of this Agreement: (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

15.6 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

15.7 Entire Agreement. This Agreement, together with any related exhibits, schedules, attachments, statements of work and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, schedules, attachments, and appendices, the following order of precedence governs: (a) first, this Agreement, excluding its exhibits, schedules, attachments, and



appendices; (b) second, the exhibits, schedules, attachments, and appendices to this Agreement as of the Effective Date; and (c) third, any other documents incorporated herein by reference.

15.8 Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. No assignment, delegation, or transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 15.8 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

15.9 Force Majeure. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any obligations to make payments)], when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of thirty (30) days or more.

15.10 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

15.11 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15.12 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.13 Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Florida. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Florida, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

15.14 Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

15.15 Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 9 or, in the case of Customer Sections 3. 4.3 or 7.3, would cause the other party irreparable harm



for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

15.16 Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party against the other party arising out of or related to this Agreement, the prevailing party is entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

15.17 Counterparts. This Agreement is incorporated by reference into any applicable Service Order, Proposal, Addendum or SOW and may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.



EXHIBIT A

FEES

Customer shall pay Provider the Fees for the Services as set forth in this Exhibit A or in any applicable Service Order, Proposal or Quote.

Special Terms and Conditions:

- Rates will remain in effect with no increase for the duration of the Initial Term
- Provider may increase the rates annually at no more than 2% per year.

Out-Of-Pocket Expenses

Out-of-pocket expenses are to be reimbursed by Customer to Provider as incurred. Travel, if required, shall be in accordance with Customer's standard policy governing travel and business expenses.

Currency

All Fee amounts are US Dollars and are shown exclusive of Sales Tax.