



## MASTER SERVICE AGREEMENT

This Master Service Agreement is between you individually, or if you represent an entity, the entity you represent ("Customer," "you," or "your") and onTop Technology Corp., an Arizona corporation ("onTop," "we," "us," or "our"), and consists of the below terms and conditions, incorporating the items, terms, and details specified in an Order Form, if any, executed by you (collectively, the "Agreement"). If you are accepting on behalf of Customer, you represent and warrant that: (i) you have full legal authority to bind Customer to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of Customer, to this Agreement. You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this Agreement. Please see [Section 20](#) for definitions of certain capitalized terms used in this Agreement.

### 1. Scope and Effective Date.

This Agreement applies to all Services that you access or use, regardless whether you selected the Services on an Order Form or subscribed to the Services at a different time. The effective date (the "Effective Date") of this Agreement is the earlier of: (i) the Start Date specified on your initial Order Form, if any; (ii) the date of your first use of any of the Services associated with your Account; or (iii) when you click an "I Accept" button or check box presented with this Agreement. You enter into this Agreement on behalf of Customer and any of your Affiliates which will use the Services; an Affiliate agrees to (and expresses its assent to) the terms of this Agreement by using any of the Services.

### 2. Use of Services.

2.1. Your Account. You must create an Account with onTop to access and use any of the Services. Unless waived by us in writing, your Account must be associated with a valid email account and only one Account may be created per email address. We will provide non-public credentials for you to authenticate access to your Account.

2.2. Software. We may provide you with the option of installing, running, accessing, and/or using Software with the Services (for example, in a virtual machine). You may use such Software only within the Services and only in conjunction with your permitted use of the Services.

2.3. Third Party Content. Your use of any Third Party Content, including Software provided by third parties, is at your sole risk and may be subject to separate terms and conditions, and/or fees from the applicable third parties.

2.4. Service Specific Terms. The use of certain Services may be subject to certain Service Specific Terms. Please see [Section 19](#) for the Service Specific Terms.

2.5. Service Level Agreement. We are committed to the efficient delivery and performance of the Services and detail the Acceptable Service Level for certain Services in the Service Level Agreement ("SLA"). Please see [Section 18](#) for the SLA.

### 3. Changes to Services.

3.1. Generally. We may add new Applications, Software, application program interface (“API”), tools, features and/or functionality (each a “Service Capability,” collectively, the “Service Capabilities”) available through the Services and/or install updates from time to time.

3.2. Cancellation. We may change, discontinue, or deprecate any of the Services (or all of the Services) or change or remove certain Service Capabilities from time to time. If we remove or discontinue a material Service Capability, by providing us written notice within 60 days of the discontinuance/removal of the Service Capability, you may (and your exclusive remedy is the option to) cancel your subscription for the applicable Service without incurring an Early Termination Fee for that Service. If a Service is discontinued by us, your subscription for such Service will be cancelled without penalty.

3.3. SLA Changes. We may change, amend, add to, replace, and/or discontinue the SLA from time to time. If the Acceptable Service Level of a Service, as stated in the SLA, is lowered by more than 1% (in comparison to the Acceptable Service Level detailed in the SLA on the Effective Date), by providing us written notice within 60 days of the material change to the SLA, you may (and your exclusive remedy is the option to) cancel your subscription for the applicable Service without incurring an Early Termination Fee for that Service.

#### 4. Licenses.

4.1. To Customer. Subject to the terms and conditions of this Agreement, we grant to Customer a worldwide, non-sublicensable, non-transferable, non-exclusive, terminable, limited license for the Customer's own internal use during the Term to: (i) access and use each Service to which you have subscribed; and (ii) as applicable, install and use the proprietary Service Capabilities, if any, developed by us as part of or for the Services. To the extent we are able to sublicense Third Party Content that is access or used through a Service, we grant to Customer a non-sublicensable, non-transferable, non-exclusive, terminable, limited sublicense for the Customer's own internal use during the Term to: (a) access and use the Third Party Content; and (b) as applicable, install and use the Third Party Content in conjunction with your use of the applicable Service. We reserve all other rights.

4.2. From Customer. By submitting, posting, generating, or displaying any Content on or through the Services, you give us a worldwide, non-sublicensable, non-transferable, non-exclusive, limited license to use such Content for the purpose of enabling us to provide, maintain, protect, and improve the Services in accordance with this Agreement.

4.3. License Restrictions. You and the End Users, if any, may use the Services only in accordance with this Agreement. All other uses of the Services are prohibited. Neither you, any third party under your control, nor an End User may or may attempt to: (i) reverse engineer, disassemble, decompile, tamper with, work around technical limitations, or apply any other process or procedure to derive the source code of any Software included with or available through a Service, except to the extent that applicable law permits it despite these limitations; (ii) modify, alter, tamper with, repair, or otherwise create derivative works of any Service Capability included with, for or through any of the Services, except to the extent that you have a separate license that expressly permits the creation of derivative works; (iii) access or use a Service in a way intended to avoid incurring Service Fees; (iv) resell, transfer, sublicense, lease, lend, or rent a Service or any portion thereof to or for third parties; or (v) use a Service for or as a data center, time-sharing, or service bureau. All licenses granted to you in this Agreement are for Customer's benefit only and not the benefit of any third party. The licenses are conditional

on your continued compliance with all of the terms and conditions of this Agreement, and will immediately and automatically terminate if you do not so comply.

## 5. Service Fees and Payment Terms.

5.1. Service Fees. You agree to pay us all applicable Service Fees, charges, and Taxes, if any, associated with or caused by your use of the Services, together with all additional fees that you may incur. As applicable, any Service Fees stated on an Order Form (or other written confirmation) accepted by us will apply to the applicable Services to which you subscribe, subject to the terms and conditions of this Agreement. Absent an Order Form (or other written confirmation) accepted by us stating specific Service Fees for certain Services or Service Capabilities, our standard Service Fees, as of the date of your subscription, will apply, subject to the terms and conditions of this Agreement. As applicable, our measurement of your use of the Services is final. From year-to-year, we may increase the Service Fees for any existing Services or Service Capabilities not more than 5% without advance notice and without your prior consent. We may increase the Service Fees for any existing Services or Service Capabilities from time to time with 60 days' advance notice, if above year-to-year increase of 5%. If we increase the Service Fees for a particular Service or Service Capability by more than 5% within the then most recent rolling 12 month period without your prior consent, by providing us notice within 60 days of the change to the Service Fees which resulted in an increase above 5% within the applicable time period, you may (and your exclusive remedy is the option to) cancel your subscription for such Service or Service Capability without incurring an Early Termination Fee for that Service/Service Capability. The Service Fees, charges, and Taxes, if any, for a new Service or Service Capability will be effective immediately unless we provide written notice of a different effective date.

5.2. Billing and Payment. All Service Fees, including any applicable Taxes, are due in advance, calculated and billed monthly, based on your subscription of Services and Service Capabilities. We may bill you more frequently if we suspect that your Account is at risk of non-payment or that your Account information is inaccurate. We may provide you with an electronic bill/invoice to the email address associated with your Account. All amounts owed are due within 15 days of notice (*i.e.*, Net 15). We may provide you with optional payment methods from time to time and you will tender payment with one of the payment terms we support. Specific terms may apply to certain payment methods. In the event of a conflict between the terms of this paragraph and the express terms of a specific payment method, the terms of the specific payment method control, but only to the extent of such conflict. You will pay all amounts due in U.S. Dollars or in such other currency as we agree to in writing.

5.3. Delinquent Payments. We may charge you interest at the rate of 1.5% per month (or the highest rate permitted by applicable law, if less) on all late payments until paid/collected in full.

5.4. Invoice Disputes and Refunds. To the fullest extent permitted by law, Customer waives all claims relating to Service Fees (and all other amounts payable under this Agreement) unless claimed within 60 days after charged (this does not affect your rights with your credit card issuer, if applicable). All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deductions or withholding fees. All sales and services are final. Refunds, if any, are at our sole discretion, and at our option may be in the form of credit for Services. Nothing in this Agreement obligates us to extend refunds or credit to any party.

5.5. Taxes. You are responsible for the payment of any Taxes (including any past Taxes owed but not paid by you, regardless whether you were invoiced for the Taxes) and will pay us for the Services without any reductions for Taxes. You will provide us with any information we reasonably request to determine whether we are obligated to collect Taxes from you. Some taxing authorities require that sales tax, based on the total purchase price, be invoiced and collected at the time of sale. If we are obligated to collect or pay Taxes, the Taxes will be invoiced to Customer unless (and until) you provide us with legally-sufficient tax exemption certificates from the appropriate taxing authorities. If Customer is required to withhold or deduct any Taxes from its payment to us, Customer must: (i) notify us in writing regarding the requirement; (ii) provide us with appropriate documentation to support such withholdings/deductions; (iii) pay us any additional amounts necessary to ensure that the net amount that we receive, after any deductions and withholdings, equals the amount we would have received if the withholdings/deductions were not required; and (iv) provide us with an official tax receipt evidencing that the amounts withheld/deducted were paid to the appropriate taxing authority.

## 6. Customer Responsibilities.

6.1. Permitted Use. Your access and use of the Services, Your Content, and any End User Data, must fully comply with the terms and conditions of this Agreement, the Site Terms, the Acceptable Use Policy, the Privacy Policy, and any Service Specific Terms regarding the Service(s) that you use.

6.2. Compliance. You must adhere to all laws, rules, and regulations applicable to you (and your industry) and your use of the Services, including, as applicable, import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Asset Control, Department of the Treasury ("OFAC").

6.3. Your Account. You are responsible for maintaining the confidentiality of the non-public credentials that are associated with your Account. You are also responsible for all activities, including the subscription of Services, that occur under your Account, regardless whether the activities are undertaken by you, your employees, your agents, or a third party (including your contractors) and we are not responsible for any unauthorized access to (and the activities undertaken with) your Account absent clear and convincing evidence that we breached this Agreement and that such breach caused the unauthorized access. You must promptly notify our customer support team in writing about any misuse (or any fact or circumstances which could reasonably be expected to result in or cause a reasonable suspicion of a misuse) of your Account, authentication credentials or any Security Concerns related to the Services or your Account.

6.4. Your Content and End User Data. As between you and us, you are solely responsible for the development, content, operation, maintenance, and use of Your Content and any End User Data and for ensuring that Your Content complies with the Acceptable Use Policy. As between you and us, you are also solely responsible for any claims related to or stemming from Your Content and/or End User Data. You will secure and maintain all rights in Your Content and the End User Data, as applicable, necessary for us to provide the Services to you without violating the rights of any third party or otherwise obligating us to you or any third party. We do not and will not assume any obligations with respect to Your Content and any End User Data other than as expressly set forth in this Agreement or as required by applicable law.

6.5. End User Support. As between you and us, you are solely responsible for providing support to End Users regarding the Services, Your Content, or any End User Data, unless we and you (or an End User) have made a separate agreement (or you have Subscribed for a Service) which is clearly and specifically for the purpose of us providing such End User support.

6.6. Privacy. You consent to our collection, use and disclosure of information associated with the Services in accordance with our Privacy Policy. If End Users will access or use Your Content, you will protect the privacy of End Users and any End User Data under all applicable laws, rules, and regulations. Customer will communicate a legally adequate privacy notice to such End Users. Customer will also obtain and maintain required consents from such End Users for Customer and third parties (*i.e.*, onTop) to access, use, review, monitor, and disclose the End User Data as part of the Service and to confirm that the End User Data complies with the Acceptable Use Policy.

6.7. Restrictions. Customer will not, and will not allow third parties under its control and/or any End Users to: (i) use any of the Services to create, train, or improve (directly or indirectly) a substantially similar product or service; (ii) use a Service for High Risk Activities; (iii) unless with or through a Service clearly and specifically for such use (*i.e.*, VoIP), use a Service to operate or enable any telecommunications service or in connection with any Software that allows you or an End User to place calls or to receive calls from any public switched telephone network; or (iv) process or store any End User Data that is subject to the International Traffic in Arms Regulations maintained by the Department of State.

6.8. End User Violations. As between you and us, you control End User's access to the Services, Your Content, and the End User Data, and you are responsible for their access and use. You will ensure that: (i) all End Users comply with your obligations under this Agreement; (ii) the End User Data complies with the Acceptable Use Policy; and (iii) the terms of your agreement with each End User are consistent with this Agreement. If you become aware of any violation (or any fact or circumstances which could reasonably be expected to result in or cause a reasonable suspicion of a violation) of the above obligations, you will immediately terminate the applicable End User's access to the Services, Your Content, and End User Data.

6.9. Third Party Content. Your download, storage, installation, set up, access and/or use, if any, of Third Party Content on or through the Services is subject to all licenses and/or terms of use, as applicable, that are required by the owner and/or licensor of the Third Party Content and you agree to be bound by such licenses/terms at all times during the Term of this Agreement. You agree to review and read all such licenses and/or terms of use for the Third Party Content prior to using the same with or through the Services. You also agree that any Third Party Content that we install for your use with the Services is installed at your direction and that you authorize us to demonstrate, on your behalf, the Customer's assent to all licenses and/or terms required for the installation and/or use of the Third Party Content. If at any time you do not agree to be bound by the license and/or terms of use for a particular Third Party Content, you will immediately cease using such Third Party Content and will notify our customer support team in writing regarding your decision to not use the Third Party Content. Early Termination Fees may apply should you terminate your subscription to the applicable Service. In the event of a conflict between the terms of this paragraph and the license and/or terms of use of a Third Party Content, this paragraph controls to the extent necessary to effectuate the intent of the parties.

6.10. Security and Backup. You are solely responsible for creating, implementing and maintaining appropriate security, protection, and backup (with routine archiving) of Your Content

and End User Data. You will bear the entire risk of loss of, or damage to, any of Your Content or End User Data.

6.11. DMCA Policy. Customer will establish instructions and processes, as set out in the U.S. Digital Millennium Copyright Act ("DMCA"), for notifications and responses regarding potential copyright infringements in Your Content and/or any End User Data. Customer will also obtain and maintain required consents from each End User for Customer and third parties (*i.e.*, onTop) to access and review the End User Data as part of a review or investigation regarding potential copyright infringements.

6.12. Maintenance. When feasible and within scope of services ordered, upgrades, patches, bug fixes or other maintenance to the Services will be scheduled for and completed after normal business hours (*i.e.*, after 6:00 p.m., PST). You agree to collaborate and make reasonable accommodations for all maintenance to the Services, regardless whether scheduled in advance or completed on an emergency basis.

## 7. Our Responsibilities.

7.1. Generally. We will provide the Services to the Customer subject to the terms and conditions of this Agreement.

7.2. Security and Data. We implement and maintain reasonable and appropriate measures, internal controls, and data security routines intended to protect Your Content and End User Data against accidental or unlawful access, change, loss, or disclosure. Notwithstanding any other agreement (whether written or verbal) between you and us, the preceding sentence contains our and our Affiliate's entire obligation regarding the security of Your Content and any End User Data. Unless we and you have made a separate agreement otherwise, we are not obligated to provide you, End Users, or your customers notice of a security breach.

7.3. No Backups. Unless you have subscribed for (and we have agreed to provide) a Service which is clearly and specifically for the purpose of providing backups of Your Content and/or End User Data, we have no responsibility to provide backups and/or archives of Your Content or any End User Data.

7.4. Privacy. We value your privacy and detail our policies and procedures regarding the use of your information (including Your Content and any End User Data) in our Privacy Policy. Notwithstanding any other agreement (whether written or verbal) between you and us, the preceding sentence contains our and our affiliate's entire obligation regarding the privacy and confidentiality of Your Content and any End User Data.

8. Technical Support. As between you and us, you are responsible for all technical support for or regarding Your Content and any End User Data, and you will provide such support, unless we and you (or an End User) have made a separate agreement (or you have Subscribed for a Service) which is clearly and specifically for the purpose of us providing such technical support.

## 9. Representations.

9.1. By Us. We represent and warrant to you that we have full power and authority to enter into this Agreement.

9.2. By Customer. Customer represents and warrants to us that: (i) you will comply with all laws, rules, and regulations applicable to you (and your industry); (ii) you or your licensors own all right, title, and interest in and to Your Content; (iii) each End User or its respective licensors have all right, title, and interest in and to its End User Data; (iv) you have all rights in Your Content and End User Data necessary to grant the rights contemplated by this Agreement; (v) Your Content and any End User Data has at all times, and will in the future be, in compliance with the Acceptable Use Policy; and (vi) you and End User's use and access of the Services will comply with the Acceptable Use Policy.

9.3. Trade Restrictions Representations. Customer represents and warrants to us that it and each of its subsidiaries, predecessors, direct and indirect owners, as applicable, have at all times been, and will in the future be, in compliance with the requirements of Executive Order No. 133224, 66 Fed. Reg. 49079 (September 25, 2001) and other similar requirements contained in the rules and regulations of the OFAC and in any enabling legislation regarding the same (collectively, the "Orders"). After due investigation and inquiry, Customer has no knowledge or notice of any fact or circumstances which could reasonably be expected to result in: (i) any action, proceeding, investigation, charge, claim, report or notice being filed, commenced or threatened against any of them alleging any failure to comply with the Orders; or (ii) the imposition of any civil or criminal penalty against any of them for any failure to comply with the Orders. Customer further represents and warrants to us that it and each of its subsidiaries, predecessors, direct and indirect owners, as applicable, are neither owned nor controlled by, nor acts for or on behalf of, any person or entity on the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or any other similar list from a controlling governing authority.

## 10. Suspensions and Removals.

10.1. Access and Use. We may suspend your Account and/or your or any End User's right to access or use any portion of the Services immediately if: (i) your subscription for Services is (or reasonably appears to us to be) fraudulent; (ii) you fail to pay any amounts due under this Agreement; (iii) you or an End User fail to comply with the Acceptable Use Policy; (iv) you or an End User violate other terms of this Agreement or any applicable Service Specific Terms; or (v) you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding. The suspension will be lifted upon our reasonable satisfaction that the triggering issue has been resolved.

10.2. Emergency Suspension. Despite the foregoing, if there is a Security Concern, we may immediately suspend (and remove, as applicable) the offending item, code, Content (including Your Content, End User Data, and Third Party Content) until the Security Concern is resolved in our reasonable discretion.

10.3. Suspension of End User. If you become aware that an End User's access or use of the Services, any End User Data, or Third Party Content violates the Acceptable Use Policy or other terms of this Agreement, you will immediately: (i) notify us in writing regarding the violation; (ii) to the extent that you are capable (by administrative control or contractual right), immediately suspend and/or remove the violating End User Data or Third Party Content, as applicable, and suspend such End User's access and use of the Services and Your Content until such violations are corrected.

10.4. Effect of Suspension. You and End Users will not be able to access or use the Services or portions thereof (including Your Content and End User Data) during a suspension. Our right to suspend your or any End User's right to access or use the Services is in addition to our right to terminate your Account, pursuant to the terms of this Agreement. If we suspend your right to access or use any portion or all of the Services, you remain responsible for all Service Fees, charges, and Taxes, if any, associated with or caused by: (i) your use of the Services, through the date of suspension, and/or (ii) your use of the Services, if any, that you continue to access or use on and after the date of suspension. Absent a Security Concern, we will not erase any of Your Content or End User Data due to a suspension, but such items may be subject to deletion in the event of a termination of your Account. If we suspend your Account without notice, at your request, we will provide you with the reason for the suspension as soon as is reasonably possible.

## 11. Term, Cancellation, and Termination.

11.1. Term. This Agreement will remain in effect for the Term, which will consist of the Initial Term and all Renewal Terms, if any. The initial term of this Agreement (the "Initial Term") will be for 36 months, commencing on the Effective Date, unless the Order Form or other written agreement approved by both you and us states a different Initial Term, in which case, the duration stated on the Order Form will be the Initial Term.

11.2. Renewal. Provided this Agreement has not been cancelled or terminated prior to the expiration of the Initial Term (or a Renewal Term, as applicable), pursuant to other provisions of this Agreement, the term of this Agreement (and your subscriptions for Services) will be automatically extend for an additional 12 months (each a "Renewal Term"), unless you provide us a written notice of non-renewal at least 60 days before the expiration of the then current term.

11.3. Cancellation or Termination For Convenience. You may terminate this Agreement (or cancel your subscription for certain Services) for any reason by providing us written notice, subject to all Early Termination Fees which apply to the Services associated with your Account. We may terminate this Agreement for any reason by providing you with at least 60 days' advance notice.

### 11.4. Cancellation or Termination For Cause.

11.4.1. Terminated By Either Party. Either you or we may terminate this Agreement for cause if: (i) the other party is in material breach of the Agreement and fails to cure that breach within 30 days after receipt of written notice (a "Default Notice"); or (ii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches following receipt of a Default Notice. If this Agreement is terminated due to your breach, you will be responsible for all Early Termination Fees, if any, for the Services associated with your Account.

11.4.2. Cancellation and Termination By You. Unless you and we otherwise agree in writing, if on three or more occasions within a rolling 6 month period we are unable or unwilling to deliver the Acceptable Service Level (as stated in the applicable SLA for a particular Service, if any), you may (and your exclusive remedy is the option to) cancel your subscription for such Service without incurring an Early Termination Fee for the Service by providing us written notice of cancellation of the Service within 60 days of the rolling 6 month period. You may terminate this Agreement



when you no longer have a subscription for any Services, subject to any applicable Early Termination Fees and all other terms and conditions of this Agreement.

11.4.3. Terminated By Us. We may immediately terminate this Agreement upon notice to you: (i) for cause, if any act or omission by you or any End User results in a suspension of your Account for more than 30 days, in which event, you will be responsible for all Early Termination Fees, if any, for the Services associated with your Account; (ii) if our relationship with a third party vendor who provides Software or other Content, hardware, servers, data, or other technology we use to provide a Service expires, terminates, or requires us to change the way we provide, integrate, or use such items with the Services; (iii) if providing the Services to you could create, in our sole opinion, a material security risk, an economic or technical burden, or a legal/regulatory burden; or (iv) in order to comply with applicable law or a request from a controlling governing authority.

11.5. Effect of Cancellation or Termination.

11.5.1. Generally. Upon termination or expiration of this Agreement (or your cancellation of a Service): (i) all of your rights under this Agreement relating to the applicable Service(s) immediately terminate; (ii) any and all Service Fees, charges, and Taxes, associated with or caused by your use of the Services are immediately due upon your receipt of the final bill/invoice; (iii) you will delete from all of Customer's applicable computers and equipment all Software, code, and/or APIs that were provided with or for the Services; (iv) upon request, you will use commercially reasonable efforts to return or destroy all copies of Confidential Information that are in your possession or control; and (v) Customer will not, and will not allow third parties under its control to access or use any of the Services. Customer will not be entitled to a copy or separate license for use of any Software or other Content which was installed or used through the Services (for example, in a virtual machine).

11.5.2. Data Retention. Upon termination or expiration of this Agreement (or your cancellation of a Service), we will not erase Your Content or End User Data for 60 days, but we may suspend your access or ability to extract such items until you pay all amounts due under this Agreement. Subject to the condition stated in the preceding sentence, during this retention period, we will provide you with the same data retrieval assistance we generally make available to all of our customers. Following the expiration of the retention period, we may immediately delete any of Your Content and End User Data, including any cached or back-up copies. You agree that we have no additional obligation to continue to hold, export, or return Your Content and End User Data and that we have no liability whatsoever for their deletion pursuant to these terms.

11.5.3. Survival of Terms. The following Sections will survive expiration or termination of this Agreement: Sections 4.3, 5, 6, 7.5, 11.5, 12, 13, 14, 15, 16, and 17.

11.5.4. Early Termination Fee. If you cancel your subscription for a Service or terminate this Agreement prior to its Initial Term, unless specifically and clearly waived by us in writing or pursuant to the terms of this Agreement, you must immediately pay us an early termination fee (an "Early Termination Fee") equal to the then current Service Fees for 6 months of the cancelled/terminated Service(s).

## 12. Intellectual Property and Proprietary Rights.

12.1. Our Proprietary Rights. Except as expressly set forth herein, nothing in this Agreement grants you, your Affiliates, or the End Users any rights, implied or otherwise, to any of our Intellectual Property Rights or the Services, and Customer hereby disclaims any interest. As between you and us, we or our Affiliate or licensors own and reserve all right, title, and interest in and to the Services and our Content.

12.2. Your Proprietary Rights. As between you and us, you own all right, title, and interest in and to Your Content and End User Data, and except as expressly set forth herein, nothing in this Agreement grants us any rights, implied or otherwise, to Your Content and the End User Data. As applicable, you consent to our hosting, access, use, and reproduction of Your Content and End User Data as reasonably necessary to provide the Services to you and any End Users.

12.3. Third Party Requests. We may disclose Your Content and End User Data to comply with any request from a controlling government entity or a regulatory body (including law enforcement, subpoenas, or court orders). You are responsible for responding to requests by third parties regarding your use of the Services, such as requests to take down content under the DMCA.

12.4. Feedback and Suggestions. If you provide any Suggestions to us or any of our affiliates, even if you designate the information as confidential, we and our Affiliates may use the information without restriction, and you irrevocably assign to us all rights, title, and interests in and to the Suggestions.

12.5. Publicity. If you provide us consent to disclose that you are one of our customers, we may state publicly that you are our customer and may include your name, logos, and/or trademarks in a list of our customers, online or in promotional materials. However, neither party may issue a press release with respect to this Agreement without the written consent of the other party. You may not make any public communication regarding your use of the Services nor use our name, logos, or trademarks without our prior written consent. Neither party may misrepresent or embellish the relationship between the parties.

12.6. Copyright Notices. You agree that we may access and review Your Content and End User Data as part of any review or investigation we undertake regarding potential copyright infringements, and you will cooperate in such efforts. If we determine, in our sole discretion, that a copyright infringement occurred, we may remove the infringing Content. We may terminate the Accounts of repeat infringers, whether the infringing Content is in Your Content or End User Data.

13. Disclaimer. THE SERVICES ARE PROVIDED "AS IS" AND "WHERE IS." WE AND OUR AFFILIATES AND LICENSORS MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, INCLUDING WITHOUT LIMITATIONS WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, SATISFACTION QUALITY, NONINFRINGEMENT, QUIET ENJOYMENT, USAGE OF TRADE, COURSE OF DEALINGS, OR ANY WARRANTY OR REPRESENTATION THAT A SERVICE, CONTENT, SOFTWARE, OR THIRD PARTY CONTENT WILL BE SECURE, TIMELY, ERROR-FREE, FREE OF VIRUSES OR HARMFUL COMPONENTS, OR UNINTERRUPTED. NEITHER THE SERVICES NOR ANY SOFTWARE

OR OTHER CONTENT PROVIDED FOR OR THROUGH THE SERVICES ARE DESIGNED FOR OR INTENDED FOR HIGH RISK ACTIVITIES.

#### 14. Limitations of Liability.

14.1. LIMITATION ON THE AMOUNT OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN ANY CASE, OUR AND OUR AFFILIATES AND LICENSOR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE AMOUNT THAT YOU ACTUALLY PAID US FOR THE SERVICE(S) THAT GAVE RISE TO THE LIABILITY DURING THE 2 MONTHS IMMEDIATELY PRECEDING WHEN THE LIABILITY FIRST AROSE. THIS LIMITATION ON THE AMOUNT OF LIABILITY APPLIES TO ALL CLAIMS, WHETHER UNDER CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY AND REGARDLESS WHETHER THE LIABILITY ARISES FROM DAMAGES OR AN AWARD OF ATTORNEYS' FEES AND COSTS.

14.2. LIMITATIONS ON LIABILITY AND DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY, WE AND OUR AFFILIATES AND LICENSORS WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUE, BUSINESS INTERRUPTION, GOODWILL, USE, OR LOSS OF DATA OR BUSINESS INFORMATION), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, WE AND OUR AFFILIATES AND LICENSORS WILL NOT BE LIABLE FOR ANY DAMAGES, COMPENSATION, REIMBURSEMENT ARISING OR IN CONNECTION WITH: (I) YOUR OR ANY END USER'S INABILITY TO USE THE SERVICES OR ANY SOFTWARE OR OTHER CONTENT AVAILABLE WITH OUR THROUGH THE SERVICES, FOR ANY REASON; (II) YOUR OR ANY END USER'S INABILITY TO ACCESS OR USE YOUR CONTENT OR ANY END USER DATA, FOR ANY REASON; (III) A SUSPENSION OF YOUR OR AN END USER'S ACCESS TO OR USE OF THE SERVICES, YOUR CONTENT, AND/OR END USER DATA; (IV) A SUSPENSION OR TERMINATION OF YOUR ACCOUNT; (V) A CHANGE, DISCONTINUANCE, OR DEPRECIATION OF ANY OF THE SERVICES (OR ALL OF THE SERVICES) OR CHANGE OR REMOVAL OF ANY SERVICE CAPABILITIES; (VI) SCHEDULED AND UNSCHEDULED INTERRUPTIONS OR OUTAGES, FOR ANY REASON, (VII) COST OF PROCUREMENT OF SUBSTITUTE SERVICES OR GOODS; (VIII) ANY INVESTMENTS OR EXPENDITURES; OR (IX) ANY CHANGE, LOSS, DELETION, DAMAGE, FAILURE, DISCLOSURE, OR UNLAWFUL (OR UNAUTHORIZED) ACCESS TO ANY CONTENT, INCLUDING YOUR CONTENT AND END USER DATA.

#### 15. Indemnification.

15.1. General. Unless prohibited by applicable law, Customer will indemnify, defend, and hold harmless us, our Affiliates, and our licensors (and the respective employees, agents, officers, directors, members, managers, and owners of us, our Affiliates, and our licensors) from and against all damages, liabilities, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim concerning or arising from (each a "Third Party Claim"): (i) Your Content and/or End User Data (including any damage caused by malicious or harmful code included in Your Content and/or End User Data) or any allegation or claim that Your Claim and/or End User Data infringes or misappropriated a third party's Intellectual Property Rights or makes unlawful or unauthorized use of a third party's trade secrets; (ii) your or any End User's access or use of the Services or any Software or other Content available from or through the Services, including use in violation of the Acceptable Use Policy; (iii) your or

an End User's breach of any representation, warranty, or other term of this Agreement and/or the Site Terms; (iv) your or an End User's violation of any law, rule, or regulation applicable to you (or your industry) and/or an End User; (v) a dispute between you and an End User; and/or (vi) a dispute regarding or arising from any acts or omissions of any of your current or former employees or contractors.

15.2. Process. We will promptly notify you of a Third Party Claim, but our failure to provide prompt notice will only reduce your obligations to the extent that such failure substantially prejudices your ability to defend the Third Party Claim. You will have control over the defense and may select your own counsel, however, at our election, we may select separate counsel to defend us at your expense. You may settle the Third Party Claim in your discretion, provided that any settlement which requires us to admit any liability or wrongdoing will require our prior written consent at our sole discretion. Further, any settlement which requires us to pay any money or incur any obligations may not be made without our prior written consent.

## 16. Dispute Resolution.

16.1. Governing Law. This Agreement and any dispute of any sort that might arise between you and us regarding or stemming from this Agreement are governed by the laws of the State of Arizona, without regard to its conflict of laws principles, except that (i) if you are a U.S. Government entity, the laws of the United States govern, and (ii) if you are a state or local government entity in the United States, the laws of your local state govern.

16.2. Precondition. You agree that as a condition for you to bring any legal claim against us (regardless whether brought as a complaint or a counterclaim) relating in any way to this Agreement or the Services, you must have provided us a Default Notice within 60 days that you first knew of (or with reasonable inquiry, could have discovered) the act or omission that gave rise to your claim.

16.3. Time Limitation. Any claim against us must be filed within 1 year that you first knew of (or with reasonable inquiry, could have discovered) the act or omission that gave rise to your claim.

16.4. Small Claims. Any dispute relating in any way to this Agreement or the Services where a party seeks aggregate relief of \$3,500 or less will be adjudicated in any state court in Maricopa County, Arizona, and both you and we consent to exclusive jurisdiction and venue in those courts for such disputes.

16.5. Other Claims; Arbitration. Any dispute relating in any way to this Agreement or the Services where a party seeks aggregate relief in excess of \$3,500 will be adjudicated by binding arbitration administered by the American Arbitration Association (AAA) in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Both you and we consent to exclusive jurisdiction and venue in such arbitration proceedings for such disputes. The place of the arbitration shall be Phoenix, Arizona. Both you and us will select a single arbitrator who is acceptable to the parties. If you and we cannot reach agreement on a single arbitrator within thirty (30) days in which arbitration is demanded by the initiating party, you and we will each appoint an arbitrator and the two arbitrators selected will then select a third arbitrator. The arbitrator(s) shall award to the prevailing party, if any, as determined by the arbitrator(s), all of its costs and fees. As used in this Agreement, "costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses,

out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees.

16.6. Equitable Relief. We may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of our, our Affiliates, or any third party's intellectual property or other proprietary rights.

## 17. Miscellaneous.

17.1. No Exclusivity. We are free to offer the Services to other customers. Nothing in this Agreement shall be interpreted to create any type of exclusivity for your use or access to the Services.

17.2. Amendments. We may make modification (by amendment, replacement, and/or adding new terms) to this Agreement at any time by: (i) posting the amended version of the Agreement on our Site; (ii) posting a notice on our Site; or (iii) emailing notice to the email account associated with your Account. The modified terms of the Agreement will be effective when posted on our Site. You are responsible to check our Site regularly for modifications of this Agreement. If you opine that a modification of the terms of this Agreement create (or appear to create) a material adverse effect for you or an End User, you will notify us in writing regarding the modification's adverse effect (a "Objection Notice") prior to you continuing to use or access any of the Services; provided, however, regardless whether you provided an Objection Notice, your continued use and/or access of any of the Services after the effective date of a modification to the terms of this Agreement will be conclusive proof that: (a) you agree to be bound by the modified terms of this Agreement; and (b) you acknowledge and agree that the modification of the terms do not create a material adverse effect for you or any End User. If the modification of the terms do create a material adverse effect for you or any End User, as determined by the arbitrator(s) or us, provided that you gave us an Objection Notice prior to your continued use or access of any of the Services, you may (and your exclusive remedy is the option to) cancel your subscription for the applicable Service(s) without incurring an Early Termination Fee for such Service(s). This Agreement was last amended on the date listed at the beginning of this Agreement.

17.3. Entire Agreement. This Agreement sets out all of the terms and is the entire agreement between you and us regarding its subject matter. The terms, if any, located at a URL referenced in this Agreement, as may be amended from time to time, are hereby incorporated by this reference. This Agreement supersedes all prior or contemporaneous representations, communications, understandings, or agreements between you and us, whether written or verbal, regarding its subject matter. In entering this Agreement, you have not relied on, nor will you any right or remedy based on, any statement, representation or warranty (whether made negligently or innocently), except those expressly set out in this Agreement. We will not be bound by, and specifically object to, any term, condition, obligation, or other provision which is different from or in addition to the provisions of this Agreement (regardless whether it would materially alter this Agreement) and which is submitted by you in an order, receipt, acceptance, confirmation, correspondence, or other document.

17.4. Language. All communications and notices to be made or given pursuant to this Agreement must be in the English language. If we provide a translation of the English language version of this Agreement or any notice, the English language version will control if there is any conflict.

17.5. Notices. We may provide notices regarding us, our Site, and/or the Services by posting a notice on our Site and such notices will be effective when posted on the Site. We may also provide any notice to you regarding or pursuant to this Agreement by emailing a message to the email address associated with your Account. You are solely responsible for ensuring that the email account associated with your Account is accurate and current, and you agree that any notice sent by email to such email address will be effective when sent, whether or not you actually receive the email. To give us notice regarding this Agreement, the Services, or your Account, you must provide the notice by emailing a message to our support team at [support@ontopcorp.com](mailto:support@ontopcorp.com). Any such notice will be deemed effective 3 business days after it was received.

17.6. Force Majeure. We, our Affiliates and licensors, will not be liable for any failure or delay in performance of any obligation under this Agreement where the failure or delay results from circumstances beyond our reasonable control, including acts of God, fire, explosion, earthquake, flood, storms or other elements of nature, blockages, embargoes, riots, acts of civil or military authority, war, terrorism (including cyber terrorism), labor disputes, strikes, acts or omissions of internet traffic carriers, internet service disruptions; utility failures, systemic electrical, telecommunications or other industrial disturbances, or actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Services) (each an "Uncontrollable Event").

17.7. No Waiver. Neither you nor we will be deemed to have waived any rights by not exercising (or delaying the exercising) any rights provided under this Agreement. All waivers by us must be in writing to be effective.

17.8. Confidentiality. You may use the Confidential Information only as permitted by this Agreement. You will take all commercially reasonable efforts to avoid the unauthorized use, disclosure, dissemination, exploitation, or copying of any part of the Confidential Information, and will take, at a minimum, the measures you take to protect your own confidential or proprietary information. During the Term only, you may use the Confidential Information as reasonably needed for your use of the Services, but you will not disclose the Confidential Information during the Term nor at any time during the 3 year period following the end of the Term without our prior written consent, unless disclosure is required due to Legal Process. If disclosure is required by Legal Process, you will use commercially reasonable efforts to: (i) promptly notify us of the required disclosure before making the disclosure; and (ii) if applicable, comply with our reasonable requests regarding any lawful efforts to oppose the disclosure. As between you and us, you are responsible for responding to third party requests regarding access or use of the Services by either you or an End User.

17.9. Assignments. We may assign this Agreement, including our respective rights and obligations, to an Affiliate or third party at our discretion. You may not assign this Agreement, in whole or in part, or delegate or sublicense any of your rights and/or obligations under this Agreement, without our written consent. Any other attempt to assign or transfer is void. Subject to the restrictions provided in the preceding two sentences, this Agreement will be binding upon, and inure to the benefits of the parties and their respective successors and assigns.

17.10. No Agency. You and us are independent contractors. Nothing in this Agreement shall be interpreted to create an agency, partnership, or joint venture. We may develop (or have developed) or assist third parties with their development of products, services, Content, concepts, systems, and/or techniques that are similar to or compete with your products, services, Content, concepts, systems, and/or techniques.

17.11. No Third Party Beneficiaries. Nothing in this Agreement shall be interpreted to create or confer any rights or benefits for any third party.

17.12. U.S. Government Rights. The Services are developed solely at private expense and, as may be provided to the U.S. Government, are provided with the same rights and restrictions generally applicable to the Services. As provided to the U.S. Government, if applicable, the Services are provided as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data,” within the meaning of the applicable Federal Acquisition Regulation and agency supplements thereto. If you are using the Services on behalf of the U.S. Government and the terms of this Agreement fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Services.

17.13. Construction and Interpretation. No inference in favor of, or against, us shall be drawn from the fact that we drafted all or any portion of this Agreement. The titles and captions in this Agreement are for convenience of reference only and do not define, limit or control the scope, intent or effect of any part of this Agreement. As used in this Agreement, words of masculine, feminine or neuter gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural number, and vice versa.

17.14. Severability. If any part of this Agreement is held to invalid, illegal, or unenforceable, such portion(s) will be interpreted to effect the intent of the original portion. If such construction is not possible, the invalid, illegal, or unenforceable portions will be severed from this Agreement and the remaining portions of this Agreement will remain in full force and effect.

17.15. Conflicting Terms. If there is a conflict between this Agreement or any Policies, the documents will control (but only to the extent of such conflict) in the following order: (i) the applicable Service Specific Terms, if any; (ii) this Agreement, then (iii) the applicable Policies.

## 18. SERVICE LEVEL AGREEMENT.

18.1. Scope. This SLA applies to each of the Services.

18.2. Acceptable Service Level. **We will use commercially reasonable efforts to make the Services associated with your Account available to you with a Monthly Uptime Percentage of at least 99.9%, in each case during any monthly billing cycle (the “Acceptable Service Level”).**

18.3. Monthly Uptime Percentage. As used in the SLA: (i) “Monthly Uptime Percentage” is calculated, for each Service separately, by subtracting from 100% the percentage of minutes during the applicable monthly billing cycle in which a particular Service was in a state of Unavailability; and (ii) “Unavailability” means when all running instances of a Service within our control have no external connectivity, outside of and not including Excluded Downtime. Absent manifest error, our internal records, logs, and calculation of Monthly Uptime Percentage will be deemed conclusive.

18.4. Excluded Downtime. As used in the SLA, “Excluded Downtime” refers to Service downtime or performance issues: (i) that result from maintenance or updates of the Services, Service Capabilities, Third Party Content, or any of our networks or servicers used to provide the Services, but limited to no more than 2 hours of such maintenance

in a monthly billing cycle; (ii) that result from any maintenance or updates which you request and/or preapprove; (iii) that result from a suspension or termination of your Account, in accordance with the terms of the Agreement; (iv) caused by an Uncontrollable Event; (v) that result from any actions or inaction of you or any third party; and/or (vi) that result from Your Content, End User Data, third party equipment, or any of your equipment, or other technology (other than third party equipment within our direct control).

18.5. **Remedy.** The terms of this Agreement govern your available remedies, if any, in the event that the Monthly Uptime Percentage of a particular Service is less than the Acceptable Service Level.

19. **SERVICE SPECIFIC TERMS.** The following Service Specific Terms apply only to the specific Service(s) to which the Service Specific Terms refer.

19.1. **Universal Service Specific Terms.** The following terms apply to all Services:

19.1.1. **Your Content and End User Data.** All of Your Content and any End User Data under your control which is stored, accessed, or executed on or through the Services must be owned, licensed or lawfully obtained by you, your customer, or the applicable End User. We reserve the right to access, review, and monitor Your Content and the End User Data to confirm that it complies with the terms of the Agreement and the Acceptable Use Policy. You will not block or interfere with our monitoring. You will comply with our reasonable requests for information and cooperation to verify compliance, and as applicable, to identify the source of any problem with a Service that we reasonably believe may be attributable to Your Content or End User Data that you control.

19.1.2. **Violations.** If we reasonably believe that any of Your Content and/or End User Data violates the law, infringes or misappropriates the rights of any third party, or otherwise violates the terms of the Agreement ("Prohibited Content"), we may disable access to or remove the Prohibited Content from the Services, pursuant to the DMCA, or to comply with law or any judicial, regulatory or other government order or request. In the event that we disable access to or remove Prohibited Content without prior notice, we will provide prompt notice to you unless prohibited by law.

19.1.3. **Other Equipment.** As between you and us, you are responsible for the procurement, configuration, operation, performance, and security of all equipment and computing resources that you use with the Services, including any gateways or other devices you may use to access the Services.

19.1.4. **Software; Content.** As part of a Service, you may be allowed to use certain Software and other Content (including related Technical Documentation) provided by us or third party licensors. This Software and other Content is neither sold nor distributed to you and you may use it solely as part of the Services. If you install, run, access, or use any Software or other Content in conjunction with your use of a Service, you are responsible for adhering to the terms of such Software or other Content and maintaining any applicable licenses. Unless you and we otherwise agree in writing, as between you and us, you are responsible for the procurement,



configuration, operation, performance, and security of all Software and other Content that you install with the Services.

19.1.5. Technical Documentation. You must comply with the Technical Documentation, if any, that we provide related to any of the Services associated with your Account. We reserve the right to update or modify the Technical Documentation at any time.

19.1.6. Facilities and Data. Unless you and we have otherwise agreed in writing, we may host, access, use, process and reproduce Your Content and End User Data in the United States or any other country in which we or our service providers (including data centers) maintain facilities.

19.1.7. Computer Resource Information. We may collect certain information about computer resources you use with or through any of the Services, including CPU utilization, memory usage, IO performance, and error and information messages.

19.1.8. Cooperation with Government Authorities. We may cooperate with all government, regulatory and law enforcement authorities in accordance with applicable law.

19.1.9. Discounts. As between you and us, you are responsible for requesting and demonstrating your eligibility to any discounts or promotions that we may offer.

19.1.10. Protected Health Information. Unless you and we have entered into a Business Associate Agreement (“BAA”), you may not use the Services for the storage, disclosure, or dissemination of protected health information (“PHI”), as such term is defined under HIPAA. Notwithstanding the foregoing, should you use the Services to store, disclose, or disseminate PHI without a BAA with us and there is a breach of HIPAA’s requirements, to the fullest extent permissible under applicable law: (i) we will have no liability to you, third parties, nor the subject(s) of the PHI for the breach; (ii) you will indemnify us against all liability, fines and expenses stemming from the breach; and (iii) any obligations to notify individuals or governmental agencies of the breach will be fulfilled by you at your expense.

19.1.1. Using Microsoft Software. In conjunction with the Services, you may be allowed to use certain software (including related documentation) developed and owned by Microsoft Corporation or its licensors (collectively, the “Microsoft Software”). If you choose to use the Microsoft Software, you must agree to and comply with all additional terms, if any, required by Microsoft and/or its licensors. Execution of this Master Service agreement acknowledges your acceptance.

19.1.2. Using Citrix Software. In conjunction with the Services, you may be allowed to use certain software (including related documentation) developed and owned by Citrix Systems, Inc., or its licensors (collectively, the “Citrix Software”). If you choose to use the Citrix Software, you must agree to and comply with all additional terms, if any, required by Citrix and/or its licensors. Execution of this Master Service agreement acknowledges your acceptance.

19.1.3. Using VMWare Software. In conjunction with the Services, you may be allowed to use certain software (including related documentation) developed and owned by VMWare, Inc., or its licensors (collectively, the “VMWare Software”). If you choose

to use the VMWare Software, you must agree to and comply with all additional terms, if any, required by VMWare and/or its licensors. Execution of this Master Service agreement acknowledges your acceptance.

19.2. Hosted Servers. The following terms apply to the Hosted Servers Service:

19.2.1. Domain and SSL. As between you and us, you are responsible to procure, renew, and maintain all necessary rights to use any domain name or Secure Sockets Layer (SSL) certificate that you or an End User use in conjunction with the Hosted Servers Service. Unless you and we otherwise agree in writing, you are also responsible for the security, property configuration, and maintenance of any website, application, and/or SSL certificate that you or an End User use in conjunction with the Hosted Servers Service. You are responsible for any third party requests for the disclosure of your SSL certificates.

19.2.2. Software. We may provide you with the option of running Software (including an operating system) on a Hosted Server. You may use such Software and/or operating system only within the Hosted Server Service and subject to the terms of this Agreement. You have no other rights under this Agreement to run the Software or operating system outside of the Hosted Server without a separate license to do so. You agree to secure the rights necessary to install and run all Software (including the operating system) that is installed on the Hosted Server associated with your subscription. Unless you and we otherwise agree in writing, you are responsible for patching, configuring and maintaining any Software or operating system that is installed on the Hosted Server. You may not modify or tamper with, or attempt to modify or tamper with any Software that we pre-load on the Hosted Server (including the operating system running on the Hosted Server except as permitted by us in writing. As part of regular operation of the Hosted Server Service, the Hosted Server may be updated with latest operating system and Software patches.

19.2.3. Testing. Before you make Your Content available to the public or use it for commercial use, you will thoroughly test Your Content to ensure that it operates properly with the applicable Service and that Your Content complies with the applicable Technical Documentation.

19.2.4. Payment Processing. To the extent that Your Content is used for payment transactions, regardless of the purpose of the transactions, as between you and us, you are responsible for: (i) such activities' compliance with all applicable laws, regulations, and codes; (ii) compliance with all applicable Payment Card Industry (PCI) data security standards; (iii) the collection of all payments, together with any applicable taxes; and (iv) any chargebacks or reversals of any payments. You will indemnify and defend us against any claim or demand stemming from or regarding any of the obligations detailed in the preceding sentence.

19.2.5. Compliance. You represent, warrant, and covenant to us that at all times Your Content and any End User Data, and all of your and the End User's activities involving the same have been, and will in the future be, in fully compliance with all applicable laws, regulations, and code, including without limitation, the Dodd-Frank Act, HIPAA, and the HITECH Act.

19.2.6. Disclaimer. IN ADDITION TO THE DISCLAIMERS IN THE AGREEMENT, WE HEREBY DISCLAIM ANY DUTIES OF A BAILEE OR WAREHOUSEMAN, AND YOU HEREBY WAIVE ALL RIGHTS AND REMEDIES OF A BAILOR (WHETHER ARISING UNDER COMMON LAW OR STATUTE), RELATED TO OR ARISING OUT OF ANY POSSESSION, STORAGE OR SHIPMENT OF YOUR CONTENT OR END USER DATA BY US OR OUR AFFILIATES OR ANY OF OUR OR THEIR CONTRACTORS OR AGENTS. YOU ARE SOLELY RESPONSIBLE FOR APPLYING APPROPRIATE SECURITY MEASURES TO YOUR CONTENT AND ANY END USER DATA, INCLUDING ENCRYPTING SENSITIVE CONTENT.

19.3. Virtual Desktop. The following terms apply to the Virtual Desktop Service:

19.3.1. License Restrictions. Each subscription of the Virtual Desktop Service includes a non-exclusive terminable license for no more than 1 concurrent user to access the desktop environment that is provided on a virtual machine with the subscription (the "Virtual Desktop"). A separate Virtual Desktop is provided for each subscription of the Virtual Desktop Service. You may have multiple subscriptions for this Service associated with your Account, in which case, we will provide a separate Virtual Desktop for each subscription.

19.3.2. Your Equipment. You may only use the Virtual Desktop Service on computer equipment owned or controlled by you.

19.3.3. Use Restrictions. You may only use the Virtual Desktop Service for personal or office productivity. Virtual Desktop Service is not meant to accept inbound network connections, be used as server Instances, or serve web traffic or your network traffic. You may not reconfigure the inbound network connections of the Virtual Desktop.

19.3.4. Software. We may provide you with the option of running Software (including an operating system) on a Virtual Desktop. You may use such Software and/or operating system only within the Virtual Desktop Service and subject to the terms of this Agreement. You have no other rights under this Agreement to run the Software or operating system outside of the Virtual Desktop without a separate license to do so. You agree to secure the rights necessary to install and run all Software (including the operating system) that is installed on the Virtual Desktop associated with your subscription. You are responsible for patching, configuring and maintaining any Software or operating system that is installed within or on the Virtual Desktop associated with your subscription. You may not modify or tamper with, or attempt to modify or tamper with any Software that we pre-load on the Virtual Desktop (including the operating system running on the Virtual Desktop), except as permitted by us in writing. As part of regular operation of the Virtual Desktop Service, the Virtual Desktop may be updated with latest operating system and Software patches.

19.3.5. Domain and SSL. As between you and us, you are responsible to procure, renew, and maintain all necessary rights to use any domain name or Secure Sockets Layer (SSL) certificate that you or an End User use in conjunction with the Hosted Servers Service. You are also responsible for the security, property configuration, and maintenance of any website, application, and/or SSL certificate that you or an End User use in conjunction with the Hosted Servers Service. You

are responsible for any third party requests for the disclosure of your SSL certificates.

19.3.6. Compliance. You represent, warrant, and covenant to us that at all times Your Content and any End User Data, and all of your and the End User's activities involving the same have been, and will in the future be, in fully compliance with all applicable laws, regulations, and code, including without limitation, the Dodd-Frank Act, HIPAA, and the HITECH Act.

19.3.7. Disclaimer. IN ADDITION TO THE DISCLAIMERS IN THE AGREEMENT, WE HEREBY DISCLAIM ANY DUTIES OF A BAILEE OR WAREHOUSEMAN, AND YOU HEREBY WAIVE ALL RIGHTS AND REMEDIES OF A BAILOR (WHETHER ARISING UNDER COMMON LAW OR STATUTE), RELATED TO OR ARISING OUT OF ANY POSSESSION, STORAGE OR SHIPMENT OF YOUR CONTENT OR END USER DATA BY US OR OUR AFFILIATES OR ANY OF OUR OR THEIR CONTRACTORS OR AGENTS. YOU ARE SOLELY RESPONSIBLE FOR APPLYING APPROPRIATE SECURITY MEASURES TO YOUR CONTENT AND ANY END USER DATA, INCLUDING ENCRYPTING SENSITIVE CONTENT.

19.4. Voice over Internet Service ("VoIP"). The following terms apply to the VoIP Services:

19.4.1. VoIP Service is an optional voice based unified communications service operating over the Internet/data services subscribed to under this Agreement. All VoIP Services provided by us operate over an underlying carrier, Level 3 Communications, Inc. ("Level 3"), and VoIP Innovations, Inc., and utilize Microsoft Lync software.

19.4.2. Use of Service and Equipment – Acceptable Use Policy and Prohibition on Resale.

19.4.2.1. If you have subscribed to our VoIP Service, you are not to resell or transfer the VoIP Service or any VoIP enabled-equipment and computing resources that you use with the VoIP Services (the "VoIP Equipment") to any other person for any purpose, without our prior express written permission.

19.4.2.2. You agree not to use our VoIP Service for High Risk Activities, auto-dialing, continuous or extensive call forwarding, fax broadcasting or fax blasting. We reserve the right to immediately terminate or modify the VoIP Service, if we determine, in our sole discretion, that Customer is using the VoIP Service for any of the aforementioned activities.

19.4.2.3. We reserve the right to terminate any of your subscriptions for VoIP Service or bill for any usage that exceeds 5,000 minutes of use per line or channel, per month on any VoIP Service provided.

19.4.2.4. You acknowledge that we utilize Level 3 and VoIP Innovations as our underlying carrier and Microsoft Lync software and agree to abide by any Acceptable Use Policies, or similar policies, placed upon customers of Level 3, VoIP Innovations, or Microsoft Lync, as published on the respective Level 3, VoIP Innovations, and Microsoft websites.

19.4.3. Lawful Use of Service and Equipment. You agree to use the VoIP Service and VoIP Equipment only for lawful purposes. Without limitation, you agree not to use the VoIP Service or VoIP Equipment for transmitting or receiving any communication or material of any kind which in our sole judgment the transmission, receipt or possession of such communication or material: (i) would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law, or (ii) encourages conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law (the uses described in clauses (i) and (ii) above are collectively referred to as "Prohibited Uses"). We reserve the right to terminate your use of the VoIP Service immediately and without advance notice if we have proof that you are using the VoIP Service or VoIP Equipment for a Prohibited Use. Upon any such termination, you shall continue to be responsible for the full month's Service Fees, including without limitation unbilled charges, plus an applicable Early Termination Fee, all of which immediately become due and payable and may at our discretion be immediately charged to your Account. You are liable for any and all use of the VoIP Service and/or VoIP Equipment by yourself and by any person making use of the VoIP Service or VoIP Equipment provided to you and agree to indemnify and hold us harmless against any and all liability for any such use. If we have proof that you have used the VoIP Service or VoIP Equipment for a Prohibited Use, we may forward the objectionable material, as well as your communications with us and your personally identifiable information to the appropriate authorities for investigation and prosecution and you hereby consent to such forwarding.

19.4.4. Use of Service and Equipment by Customers Outside the United States. While we permit use of the VoIP Service within the United States and several other countries to place and receive calls to and from other countries, we do not presently support the use of VoIP Services located in all countries. If you remove the VoIP Equipment to a country other than where you initiated VoIP Service and use the VoIP Service from there, you do so at your sole risk, including the risk that such activity violates local laws in the country where you do so. You are liable for any and all charges, fees, fines, Taxes, regulatory charges or penalties resulting from use of the VoIP Service and/or VoIP Equipment by yourself or any person making use of the VoIP Service or VoIP Equipment provided to you and agree to indemnify and hold us harmless against any and all liability for any such use. Should the removal the VoIP Equipment from the United States violate any export control law or regulation, you will be solely liable for such violation and agree to indemnify and hold us harmless against any and all liability for such violation. We do not guarantee that the VoIP Service or VoIP Equipment will operate outside the United States. We do not provide 9-1-1 service outside the United States.

19.4.5. Loss of Service Due to Power Failure or Internet Service Outage or Termination or Suspension or Termination by onTop. You acknowledge and understand that the VoIP Service does not function in the event of power failure. You also acknowledge and understand that the VoIP Service requires a fully functional broadband connection to the Internet (which may not be provided by us) and that, accordingly, in the event of an outage of, or termination of service with or by your Internet service provider ("ISP") and/or broadband provider, the VoIP Service will not function, but that you will continue to be billed for the Service Fees for the VoIP Service unless and until you terminate the VoIP Service in accordance with this

Agreement. Should there be an interruption in the power supply or ISP outage, the VoIP Service will not function until power is restored or the ISP outage is cured. A power failure or disruption may require the Customer to reset or reconfigure equipment prior to utilizing the VoIP Service. Power disruptions or failures, or ISP outages will also prevent dialing to emergency service numbers including the 9-1-1 calling feature. Should we suspend or terminate your VoIP Service, the VoIP Service will not function until such time as we restore your VoIP Service (which may require payment of all invoices and reconnection fees owed by you and/or cure of any breach by you of this Agreement).

**19.4.5.1. Quality of Services ("QoS") Exclusions for Non onTop provided Internet Bandwidth or Networking Equipment.** In the event that Customer chooses to provide their own Internet connection (an Internet connection not supplied by us), or networking equipment (including, but not limited to routers, switches and gateways), we shall not be responsible for voice quality, otherwise known as Quality of Service or QOS, on our VoIP Services. We are not responsible for the speed or quality of any Internet connection that is being provided by a service provider other than us. We are not responsible for the configuration, security, or management of any network or telephone equipment that was not provided by us. Any service disruptions that result from such a Customer provided Internet connection, or networking equipment, as well as restoration of said Internet connection, or networking equipment, are the sole responsibility of the Customer. Our SLAs (and any applicable customer service response times or repair mean time) shall be void in situations where service interruptions, quality issues or outages are the result of Customer provided Internet connection.

By accepting an integrated line with no QoS, Customer agrees that their only remedy to solve any quality issues that are related to a non QoS data circuit, is to purchase a dedicated voice circuit, or to upgrade to a Multiprotocol Label Switching (MPLS) enabled circuit. Customer also agrees to waive their right to terminate VoIP Service unless one of these options is elected, or be responsible for the applicable Early Termination Fees, if any, assessed on the VoIP Service.

**19.4.6. Tampering with the Equipment or Service** You agree not to change the electronic serial number or equipment identifier of any of the VoIP Equipment, or to perform a factory reset of the VoIP Equipment, without our express written permission in each instance, which we may deny in our sole discretion. We reserve the right to terminate your VoIP Service should you tamper with the VoIP Equipment, in which case you shall be responsible for: (i) the full Service Fees to the end of the current month, including without limitation unbilled charges; (ii) an Early Termination Fee, if applicable, and (iii) the cost of all tampered VoIP Equipment, all of which immediately become due and payable. You agree not to hack or disrupt the VoIP Service or to make any use of the VoIP Service that is inconsistent with its intended purpose, or to attempt to do so.

**19.4.7. Theft of Service.** You agree to notify us immediately, in writing if the VoIP Equipment is stolen or if you become aware at any time that your VoIP Service is being stolen or fraudulently used. When you call or write, you must provide your Account name (and applicable telephone number) and a detailed description of the

circumstances of the VoIP Equipment theft or fraudulent use of VoIP Service. Failure to do so may result in the termination of your VoIP Service and additional charges to you. Until such time as we receive proper notice of the theft or fraudulent use, you will be liable for all use of the VoIP Service using VoIP Equipment stolen from you and any and all fraudulent use of the VoIP Service.

19.4.8. Equipment Purchase. All VoIP Equipment and other hardware, such as telephones, firewalls and terminal adapters must be certified for our network. We may sell or lease hardware, such as telephones, firewalls and terminal adapters to the Customer, but such sale or lease is governed by a separate equipment purchase agreement.

19.4.9. Local Number Portability.

19.4.9.1. At the present time, we do not have the capability to engage in local number portability to allow a new customer to transfer an existing telephone numbers in to our VoIP Service. This number portability service may be possible in the future.

19.4.9.2. Number Transfer on Service Termination. Upon termination of the VoIP Service, we will release a telephone number provided to you, or when such service becomes available, that was ported in from a previous service provider to us by you for the sole purpose of using them in conjunction with our VoIP Service, to your new service provider, if such new service provider is able to accept such telephone number, and provided that: (i) your Account has been terminated; (ii) your Account is current including payment for all Service Fees, disconnect fees, and Early Termination Fees, if any; and (iii) you request the transfer upon terminating your Account.

19.4.10. Service Distinction. You acknowledge and understand that the VoIP Service is not a telephone service. Important distinctions (some, but not necessarily all, of which are described in this Agreement) exist between telephone service and the enhanced VoIP Service offering provided by us. The VoIP Service is subject to different regulatory treatment than telephone service. This treatment may limit or otherwise affect your rights of redress before Federal, State or other telecommunications regulatory agencies.

19.4.11. Ownership and Risk of Loss. You shall be deemed the owner of the VoIP Equipment, and bear all risk of loss of, theft of, casualty to or damage to the VoIP Equipment, from the time it is received by you until the time (if any and if only if applicable for rented VoIP Equipment) when it is returned by you and we accept the return.

19.4.12. No 0+ Calling; May Not Support x11 Calling. Our VoIP Service does not support 0+ calling (including without limitation collect, third party billing or calling card calling). Our VoIP Service may not support 311, 411, 511 and/or other x11 (other than 9-1-1 which is provided for elsewhere in this Agreement) services in one or more (or all) service areas.

19.4.13. Directory Listings. Where we have the ability to order Directory Listings for your telephone numbers, you are responsible to provide accurate information for

those listings. We act as an intermediary in providing Directory Listing information to the Directory Listing databases, however, we have no control over how quickly a Directory Assistance service or Local Exchange Carrier (LEC) picks up your listings or whether they will be picked up by certain LECs. Customer shall not use the Directory Listing services for any illegal purposes or violate the rules or regulations of the Regional Bell Operating Companies, LEC, and Directory Listings shall be used for the sole purpose of listing a legitimate business/individual with accurate and true information.

#### 19.4.14. EMERGENCY SERVICES- 9-1-1 DIALING

19.4.14.1. Non-Availability of Traditional 9-1-1 or E9-1-1 Dialing Service. You acknowledge and understand that the VoIP Service does NOT support traditional 9-1-1 or E9-1-1 access to emergency services. We do offer a limited 9-1-1-type service available, only on certified equipment as described below. You acknowledge and understand that 9-1-1-type dialing is NOT automatic, that you must separately take affirmative steps, as described in this Agreement, to activate such 9-1-1-type dialing capabilities and that such 9-1-1-type dialing is different in a number of important ways (some, but not necessarily all, of which are described in this Agreement) from traditional 9-1-1 service. VoIP Service is not to be used as a primary means to contact emergency services.

19.4.14.2. 9-1-1 Dialing Requires Registration. You acknowledge and understand that 9-1-1 dialing does not function unless you have successfully registered your phone location by designating the correct physical address of each phone by means of a signed customer order form. You acknowledge and understand that you cannot dial 9-1-1 from your VoIP Service line(s) unless and until you have received a confirming email.

19.4.14.3. Failure to Designate the Correct Physical Address When Activating 9-1-1 Dialing. Failure to provide the current and correct physical address and location of your certified VoIP Equipment will result in any 9-1-1 communications you may make being routed to the incorrect local emergency service provider. This must be the actual physical street address where you are located, not a post office box, mail drop or similar address.

19.4.14.4. Requires Re-Activation if You Change Your Number or Add or Port New Numbers. You acknowledge and understand that 9-1-1 dialing does not function if you change your phone number or (for such newly added or ported numbers) if you add or port new numbers to your Account, unless and until you have successfully registered the new location with us by means of a signed order form, and until such later date that such activation has been confirmed to you through a confirming email. Although you may have activated 9-1-1 dialing with your former onTop phone number, you must separately register for 9-1-1 dialing for any changed or newly added or ported number.

19.4.14.5. Requires Re-Activation if You Move or Change Location. You acknowledge and understand that 9-1-1 dialing does not function properly or at all if you move or otherwise change the physical location of your VoIP



Equipment to a different street address, unless and until you have successfully registered the new location with us by means of a signed order form, and until such later date that such activation has been confirmed to you through a confirming email. 9-1-1 dialing must be re-activated although you may have activated 9-1-1 dialing using your former address, and you must separately activate 9-1-1 dialing for any new physical address. Failure to provide the current and correct physical address and location of your VoIP Equipment will result in any 9-1-1 dialing you may make being routed to the incorrect local emergency service provider.

19.4.14.6. 9-1-1 Emergency Services Database Entries. Each telephone phone number you have as part of our VoIP Service are listed in the 9-1-1 Telecom Database along with the number's service address. This identifies to emergency service personnel the originating location of calls made to 9-1-1. The service address listed in the database for each telephone number will be the one provided by us, THIS MAY NOT BE your place of business. As with any IP telephony service, our VoIP Service allows for phones and telephone phone numbers to be easily moved from location to location. By accepting this Agreement, you agree and acknowledge that the VoIP Equipment and telephone numbers associated with your Account MAY NOT BE your designated operation of business. In no way do we warrant the operability or functionality of emergency 9-1-1 calling from ANY phone and shall not be liable for any damages arising from the use thereof. It is your responsibility to ensure that any and all users of your VoIP Equipment and telephone numbers are aware of and understand the operation and limitation of 9-1-1 emergency calling from these VoIP Equipment and telephone numbers.

IT IS YOUR RESPONSIBILITY TO INFORM AND COMMUNICATE TO YOUR EMPLOYEES AND GUESTS THAT EMERGENCY RESPONSE OPERATORS MAY NOT AUTOMATICALLY GET YOUR CORRECT ADDRESS WHEN THEY DIAL 9-1-1. YOU MAY ALLOW YOUR SUBSIDIARIES AND AFFILIATED COMPANIES TO USE THE ONTOP VOIP SERVICE, IF YOU WISH, BUT YOU ARE RESPONSIBLE FOR USE OF THE VOIP SERVICE BY ANY THIRD PARTY TO THE SAME EXTENT AS IF YOU WERE USING THE VOIP SERVICE YOURSELF. THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT, MEANING THAT THIRD PARTIES DO NOT HAVE ANY RIGHTS AGAINST EITHER OF US UNDER THIS AGREEMENT. THEREFORE, YOU ARE RESPONSIBLE TO INFORM YOUR EMPLOYEES AND ANY THIRD PARTIES AND CONFIRM THEY ABIDE BY ALL LEGAL, FIRE, AND/OR BUILDING CODES IN THEIR LOCALE REGARDING COMPLIANCE IN THIS MATTER. IN NO WAY DO WE WARRANT THE OPERABILITY OR FUNCTIONALITY OF EMERGENCY 9-1-1 CALLING FROM ANY PHONE AND SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM THE USE THEREOF. IT IS YOUR RESPONSIBILITY TO ENSURE THAT ANY AND ALL USERS OF PHONES / NUMBERS ASSOCIATED WITH THE VOIP SERVICE ARE AWARE OF AND UNDERSTAND THE OPERATION AND LIMITATION OF 9-1-1 EMERGENCY CALLING FROM THESE PHONES / NUMBERS.

19.4.14.7. Location Capabilities. If 9-1-1 location capabilities are available, you acknowledge and understand that 9-1-1-type dialing is NOT automatic. When

you dial 9-1-1, your call is routed from our network to our third-party 9-1-1 service provider, to the Public Safety Answering Point (PSAP) or local emergency service personnel designated for the address that you provided to be associated with telephone number for the VoIP Service. You acknowledge and understand that when you dial 9-1-1 utilizing our VoIP Service it is intended that you will be routed to the general telephone number for the PSAP or local emergency service provider and may not be routed to the 9-1-1 dispatcher(s) who are specifically designated to receive incoming 9-1-1 calls using traditional 9-1-1 dialing. We rely on a third-party for the forwarding of information underlying such routing, and accordingly we disclaim any and all liability or responsibility in the event such information or routing is incorrect. As described herein, this 9-1-1-type dialing currently is NOT the same as traditional 9-1-1 or E9-1-1 dialing, and at this time, does not necessarily include all of the capabilities of traditional 9-1-1 dialing. Neither we nor our officers or employees may be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to 9-1-1 dialing. You agree to indemnify and hold us harmless from any claim or action arising out of misroutes of 9-1-1 calls, including but not limited to your failure to follow correct activation procedures for 9-1-1 calling or your provision to us of incorrect information in connection therewith.

19.4.14.8. Automated Number Identification. With VoIP E9-1-1 services it may or may not be possible for the PSAP and the local emergency personnel to identify your phone number when you dial 9-1-1. Our third-party 9-1-1 system is configured, in most instances, to send the automated number identification information; however, one or more telephone companies, not us, route the traffic to the PSAP and the PSAP itself must be able to receive the information and pass it along properly, and PSAPs are not yet always technically capable of doing so. You acknowledge and understand that PSAP and emergency personnel may or may not be able to identify your phone number in order to call you back if the call is unable to be completed, is dropped or disconnected, or if you are unable to speak to tell them your phone number and/or if the Service is not operational for any reason, including without limitation those listed elsewhere in this Agreement.

19.4.14.9. Automated Location Identification. It may not be possible to transmit identification of the address that you have listed to the PSAP and local emergency personnel for your area when you dial 9-1-1. You acknowledge and understand that you will need to state the nature of your emergency promptly and clearly, including your location, as PSAP and emergency personnel will NOT have this information in some cases. You acknowledge and understand that PSAP and emergency personnel will not be able to find your location if the call is unable to be completed, is dropped or disconnected, if you are unable to speak to tell them your location and/or if the VoIP Service is not operational for any reason, including without limitation those listed elsewhere in this Agreement.

19.4.14.10. Power Failure or Disruption. You acknowledge and understand that 9-1-1 dialing does not function in the event of a power failure or disruption. Should there be an interruption in the power supply, the VoIP Service and 9-1-1 dialing will not function until power is restored. A power

failure or disruption may require the Customer to reset or reconfigure equipment prior to utilizing the VoIP Service or 9-1-1 dialing.

19.4.14.11. Broadband Service / ISP Outage or Termination / Suspension or Termination by onTop. You acknowledge and understand that service outages or suspension or termination of service by your broadband provider and/or ISP will prevent ALL VoIP Service including 9-1-1 dialing.

19.4.14.12. Service Outage Due to Suspension of Your Account. You acknowledge and understand that service outages due to suspension of your Account as a result of billing issues will prevent ALL VoIP Service, including 9-1-1 dialing.

19.4.14.13. Other Service Outages. You acknowledge and understand that if there is a service outage for ANY reason, such outage will prevent ALL VoIP Service, including 9-1-1 dialing. Such outages may occur for a variety of reasons, including, but not limited to those reasons described elsewhere in this Agreement.

19.4.14.14. Limitation of Liability and Indemnification. You acknowledge and understand that our liability is limited for any VoIP Service outage and/or inability to dial 9-1-1 from your line or to access emergency service personnel, as set forth in this Agreement. You agree to defend, indemnify, and hold harmless us, our officers, directors, employees, affiliates and agents and any other service provider who furnishes services to Customer in connection with this Agreement or the VoIP Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees) by, or on behalf of, Customer or any third party or user of Customer's VoIP Service relating to the absence, failure or outage of the VoIP Service, including 9-1-1 dialing and/or inability of Customer or any third person or party or user of Customer's VoIP Service to be able to dial 9-1-1 or to access emergency service personnel.

19.4.14.15. Possibility of Network Congestion and/or Reduced Speed for Routing or Answering 9-1-1. Due to the technical constraints on the manner in which it is possible to provide the 9-1-1 dialing feature for our VoIP Service, at this time you acknowledge and understand that there is a greater possibility of network congestion and/or reduced speed in the routing of a 9-1-1 communication made utilizing your VoIP Equipment as compared to traditional 9-1-1 dialing over traditional public telephone networks. You acknowledge and understand that 9-1-1 dialing over our VoIP Service will be routed to the general telephone number for the local emergency service provider (which may not be answered outside business hours), and will not be routed to the 9-1-1 dispatcher(s) who are specifically designated to receive incoming 9-1-1 calls at such local provider's facilities when such calls are routed using traditional 9-1-1 dialing. You acknowledge and understand that there may be a greater possibility that the general telephone number for the local emergency service provider will produce a busy signal or will take longer to answer, as compared to those 9-1-1 calls routed to the 9-1-1 dispatcher(s) who are specifically designated to receive incoming 9-1-1 calls using traditional 9-1-1 dialing. You acknowledge and accept that we rely on third

parties for the forwarding of information underlying such routing, and accordingly we disclaim any and all liability or responsibility in the event such information or routing is incorrect. We or our officers or employees, may not be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to 9-1-1 dialing.

19.4.14.16. Alternative 9-1-1 Arrangements. You acknowledge that we do not offer primary line or lifeline services. You should always have an alternative means of accessing traditional E9-1-1 services.

19.4.15. Taxes. You are responsible for, and shall pay, any Taxes that arise from or as a result of your subscription or use or payment for the VoIP Service or VoIP Equipment. Such amounts are in addition to payment for the VoIP Service or VoIP Equipment and will be billed to you as set forth in this Agreement.

19.4.16. Privacy. Our VoIP Service utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. We are not liable for any lack of privacy which may be experienced with regard to the VoIP Service. Customer authorizes us to monitor and record calls you make to us concerning your Account or the Services and you consent to our contacting you from time to time. In the event that we receive any complaints regarding a Customer's use of the VoIP Service, we shall not be required to determine the validity of such complaints received, or of information obtained, before taking action pursuant to this Agreement.

19.4.17. Optional Services.

19.4.17.1. Call Recording. We offer a service that records voice calls. If you select this option in your Services, it is your responsibility to insure that you are complying with Federal and state statutes governing the use of electronic recording equipment. We are not responsible for, and you agree to indemnify us, in the event of your misinterpretation, lack of understanding or lack of knowledge regarding the legality of your use of the recording services. It is your responsibility to acquaint yourself with the proper knowledge for the legal use of this recording service.

19.4.17.2. International Service. We provide the ability to enable international calling. International calling provides customers with an ability to make telephone calls to any telephone number around the world. Customers who authorize international calling through us must accept the risk and cost that unauthorized use of the service may occur.

Please be advised that calls to international locations entail significantly higher usage rates than calls to domestic locations. You are responsible for the use of the VoIP Service, including the cost of any international calls made, by any employee of yours, any person to whom you have given access to the VoIP Service, and any person who gains access to your data, Account, or to the VoIP Service as a result of your failure to use reasonable security precautions, even if such use was not authorized by you. By signing this Agreement you acknowledge this responsibility.

19.4.17.2.1. Enable International Calling. If you prefer to enable international calling, you may activate your international calling service by notifying our customer support team in writing through regular mail, fax, or email.

Notification:

onTop Technology Corp.  
11445 E. Via Linda, Suite 2-348  
Scottsdale, Arizona 85259

19.4.17.2.2. Disable International Calling. If you wish to disable the international calling at a later date, you may cancel the international calling service by notifying our customer support team in writing through regular mail, fax, or email. We will then confirm international service cancellation or activation to you in writing.

19.4.18. WARRANTY and LIABILITY LIMITATIONS / INDEMNIFICATION SPECIFIC TO VOIP SERVICE. In addition to any other warranties and limitations of liability stated or implied elsewhere in this Agreement, we shall not be liable for any delay or failure to provide the VoIP Service, including 9-1-1 dialing, at any time or from time to time, or any interruption or degradation of voice quality that is caused by any of the following: (i) act or omission of an underlying carrier, service provider, vendor or other third party; (ii) equipment, network or facility failure; (iii) equipment, network or facility upgrade or modification; (iv) force majeure events such as (but not limited to) acts of God; strikes; fire; war; riot; government actions; (v) equipment, network or facility shortage; (vi) equipment or facility relocation; (vii) service, equipment, network or facility failure caused by the loss of power to Customer; (viii) outage of Customer's ISP or broadband service provider; (ix) act or omission of Customer or any person using the VoIP Service or VoIP Equipment provided to Customer; or (x) any other cause that is beyond our control, including, but without limitation a failure of or defect in any VoIP Equipment, the failure of an incoming or outgoing communication, the inability of communications (including, but without limitation 9-1-1 dialing) to be connected or completed, or degradation of voice quality.

19.5. Hosted Email Exchange. The following terms apply to the Hosted Email Exchange Service:

19.5.1. Email Scan. All email you send or attempt to send using our Hosted Email Exchange Service, together with the Content of Your Email (collectively, "Your Email"), are subject to the terms of this Agreement and the Acceptable Use Policy. At our election, we (or our third-party providers) may scan Your Email as we deem reasonably necessary to prevent and/or block "spam" e-mails, viruses, spyware, and other harmful or unauthorized items from being sent over our Hosted Email Exchange Service.

19.5.2. Delivery. Your Emails may be blocked, delayed or prevented from being delivered by destination email servers and other reasons outside of our control. Your payment obligations for Service Fees continue regardless of whether delivery of Your Emails is prevented, delayed or blocked.

19.5.3. Compliance. You are solely responsible for ensuring that Your Emails comply with the Federal CAN-SPAM Act. We are not the “sender” as defined in the Federal CAN-SPAM Act. You will not use the Hosted Email Exchange Service in connection with an open mail relay, including, without limitation, an open mail relay in the form of an SMTP server, unrestricted web form, or otherwise. If any of the recipients of Your Email are in countries other than the United States, you are solely responsible for ensuring that Your Emails comply with applicable laws of those countries regarding electronic messaging. You represent and warrant to us that you are aware of and have reviewed all applicable laws, regulations, and code regarding electronic messaging in each jurisdiction to which the recipients of Your Email reside or are domiciled and that Your Email fully comply with the same.

19.5.4. Limitations. We may throttle, suspend or terminate your access to the Hosted Email Exchange Service, or block or decline to send any of Your Email, if we determine in our sole discretion that: (i) our scan of Your Email reveals abusive or low quality email (such as “spam”); (ii) Your Email bounces back to us or we receive abuse complaints (including complaints from third parties) in connection with Your Email; (iii) the source or ReturnPath email address you have provided us for “address bounces” or complaints is not successfully receiving email; (iv) your use of our Hosted Email Exchange Service does not comply with the terms of this Agreement or the Acceptable Use Policy; or (v) Your Emails include an attachment in a format that we do not support.

19.6. Hosted Email Security. The following terms apply to the Hosted Email Security Service:

19.6.1. Using Cerberus+ Software. In conjunction with the Services, you may be allowed to use certain software (including related documentation) developed and owned by SpamExperts or its licensors (collectively, the “Cerberus+ Software”). If you choose to use the Cerberus+ Software, SpamExperts or its licensors require that you agree to additional terms and conditions within their licensing agreements. Execution of this Master Service agreement acknowledges your acceptance.

19.6.2. Email Scan. As part of the Hosted Email Security Service, you authorize us to scan (via Software) all email messages that are sent to the email addresses associated with your subscription.

19.6.3. Delivery. Emails which we can scan as part of the Hosted Email Security Service may be blocked, delayed or prevented from being delivered by the Service.

19.7. Hosted Monitoring. The following terms apply to the Hosted Monitoring Service:

19.7.1. Using Panorama9 Software. In conjunction with the Services, you may be allowed to use certain software (including related documentation) developed and owned by Panorama9, Inc. or its licensors (collectively, the “Panorama9 Software”). If you choose to use the Panorama9 Software, you must agree to and comply with all additional terms, if any, required by Panorama and/or its licensors. Execution of this Master Service agreement acknowledges your acceptance.

19.7.2. Using LogicMonitor Software. In conjunction with the Services, you may be allowed to use certain software (including related documentation) developed and

owned by LogicMonitor, Inc. or its licensors (collectively, the “LogicMonitor Software”). If you choose to use the LogicMonitor Software, you must agree to and comply with all additional terms, if any, required by LogicMonitor and/or its licensors. Execution of this Master Service agreement acknowledges your acceptance.

19.8. Online Backups: The following terms apply to the Online Backups Service:

19.8.1. Compliance. You represent, warrant, and covenant to us that at all times Your Content and any End User Data, and all of your and the End User’s activities involving the same have been, and will in the future be, in fully compliance with all applicable laws, regulations, and code, including without limitation, the Dodd-Frank Act, HIPAA, and the HITECH Act.

19.8.2. Disclaimer. IN ADDITION TO THE DISCLAIMERS IN THE AGREEMENT, WE HEREBY DISCLAIM ANY DUTIES OF A BAILEE OR WAREHOUSEMAN, AND YOU HEREBY WAIVE ALL RIGHTS AND REMEDIES OF A BAILOR (WHETHER ARISING UNDER COMMON LAW OR STATUTE), RELATED TO OR ARISING OUT OF ANY POSSESSION, STORAGE OR SHIPMENT OF YOUR CONTENT OR END USER DATA BY US OR OUR AFFILIATES OR ANY OF OUR OR THEIR CONTRACTORS OR AGENTS. YOU ARE SOLELY RESPONSIBLE FOR APPLYING APPROPRIATE SECURITY MEASURES TO YOUR CONTENT AND ANY END USER DATA, INCLUDING ENCRYPTING SENSITIVE CONTENT.

19.9. Disaster Recovery as a Service: The following terms apply to the Disaster Recovery as a Service (DraaS):

19.9.1. Compliance. You represent, warrant, and covenant to us that at all times Your Content and any End User Data, and all of your and the End User’s activities involving the same have been, and will in the future be, in fully compliance with all applicable laws, regulations, and code, including without limitation, the Dodd-Frank Act, HIPAA, and the HITECH Act.

19.9.2. Disclaimer. IN ADDITION TO THE DISCLAIMERS IN THE AGREEMENT, WE HEREBY DISCLAIM ANY DUTIES OF A BAILEE OR WAREHOUSEMAN, AND YOU HEREBY WAIVE ALL RIGHTS AND REMEDIES OF A BAILOR (WHETHER ARISING UNDER COMMON LAW OR STATUTE), RELATED TO OR ARISING OUT OF ANY POSSESSION, STORAGE OR SHIPMENT OF YOUR CONTENT OR END USER DATA BY US OR OUR AFFILIATES OR ANY OF OUR OR THEIR CONTRACTORS OR AGENTS. YOU ARE SOLELY RESPONSIBLE FOR APPLYING APPROPRIATE SECURITY MEASURES TO YOUR CONTENT AND ANY END USER DATA, INCLUDING ENCRYPTING SENSITIVE CONTENT.

20. Definitions.

Any reference in this agreement to “day” will be a calendar day.

The words “include” and “including” mean “including but not limited to”.

“Acceptable Use Policy” means the policy, as it may be updated by us from time to time, currently available at <http://www.ontopcorp.com/legal/AUP.pdf>, or an alternate site we identify.

“Account” means an account with us for the use of one or more of the Service, subject to terms of this Agreement, as may be applicable.

“Affiliate” means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. “Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.

“API” means an application program interface.

“Application” or “Applications” means any web, mobile, or other application(s) that are created using the Services or for the Services, including any source code written by us, you, or an End User to be used with the Services, or hosted in an Instance.

“Confidential Information” means all nonpublic information disclosed to you (or any of your Affiliates) by us, our Affiliates, business partners or our or their respective employees, contractors or agents that is designated as confidential or would normally under the circumstances be considered confidential information. Confidential Information includes: (i) nonpublic information relating to our or our Affiliate’s technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (ii) third-party information that we are obligated to keep confidential; and (iii) the nature, content and existence of any discussions or negotiations between you and us or our Affiliates. Confidential Information does not include information that: (a) you can show by documentation that you already knew prior to our disclosure; (b) you can show by documentation that becomes public through no fault of Customer; (c) you can show by documentation was independently developed by you, or that was lawfully given to you by a third party who did not acquire or disclose the same by wrong or tortious act.

“Content” means, unless the context requires otherwise, Software (including machine images), APIs, code, software libraries, command line tools, other related technology, data, text, audio, video, images and/or other content.

“End User” means any individual or entity permit by you to: (i) access or use Your Content and/or your Project, if any; or (ii) otherwise access or use a Service or a Project under your Account. The term “End User” does not include individuals or entities when they are accessing or using the Services, Content, or any Project under their own Account, rather than your Account.

“End User Data” means Content provided, transmitted, or displayed via the Services by or for an End User or by you (or your Affiliate) regarding or for an End User.

“HITECH Act” means the Health Information Technology for Economic and Clinical Health Act as it may be amended from time to time, and any regulations issued thereunder.

“High Risk Activities” means uses such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.



“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 as it may be amended from time to time, and any regulations issued thereunder.

“Instance” means a virtual machine instance which runs on the Services.

“Intellectual Property Rights” means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

“Legal Process” means a request for disclosure of data made pursuant to law, governmental regulation, court order, subpoena, warrant, governmental regulatory or agency request, or other valid legal authority, legal procedure, or similar process.

“Order Form” refers to a form which identifies you as the customer for our services and may include details regarding your subscription for Services and certain terms and conditions regarding such subscriptions.

“Policies” means the Acceptable Use Policy, the Site Terms, the Service Specific Terms, all restrictions described in the Services and on the Site, and any other policy or terms referenced in or incorporated into this Agreement. Policies does not include whitepapers or other marketing materials that may be referenced on the Site.

“Privacy Policy” means the privacy policy, as may be updated by us from time to time, currently referenced at: <http://www.ontopcorp.com/legal/Privacy-Policy.pdf>, or an alternate site we identify.

“Project” means a grouping of computing, storage, and/or API resources for you, and via which you may use the Services.

“Security Concern” means any item, code, content, or use or access of the Services which could result in: (i) unauthorized access to the Services, Your Content, a Project, or End User Data, (ii) a security risk to the Services or any third party, (iii) subjecting us, our affiliates, our customers, or any third party to liability, or (iv) a disruption of: (a) the Services, (b) use and or access of the Services by us, our customers, you, End Users, or third parties, (c) our network or servers used to provide the Services.

“Service” or “Services” means one or more service(s) provided to you by us under this Agreement, which may include without limitation one or more of the services identified at <http://www.ontopcorp.com/services> (as may be updated by us from time to time), or an alternate site we identify. Service do not include Third Party Content.

“Service Fees” means the applicable fees for Service(s) and any applicable Taxes.

“Service Level Agreement” or “SLA” means the commitments we make regarding the delivery or performance of certain Services, as detailed in the service level agreements, as they may be updated by us from time to time. The SLAs we currently offer with respect to the Services are located at Section 18.

“Service Specific Terms” means the additional terms and condition that govern one or more Services. The Service Specific Terms are located at Section 19.

“Site” means <http://www.ontopcorp.com> and any successor or related site designated by us.

“Site Terms” means the terms of use, as may be updated by us from time to time, located at <http://www.ontopcorp.com/legal/site-terms.pdf>, or an alternate site we identify.

“Software” means any downloadable tools, software development kits or other such proprietary computer software.

“Start Date” means the date which may be stated on an Order Form to indicate the date when the Customer first intends to begin using or accessing the Services.

“Suggestions” means all suggested improvements to or feedback regarding any of the Service that you provide to us.

“Taxes” means any federal, state, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes (other than our income tax), fees, duties, or charges now in force or enacted in the future, that arise from or as a result of your subscription or use or payment for the Services.

“Technical Documentation” means the developer guides, getting started guides, user guides, quick reference guides, and other technical and operations manuals and specifications for the Services that we may provide and/or update from time to time.

“Term” means the term of this Agreement, which will begin on the Effective Date and continue until the Agreement is terminated as set forth in this Agreement.

“Third Party Content” means Content made available to you by any third party for or in conjunction with the Services.

“Your Content” means Content you or any End User (i) install or run on the Services; (ii) cause to interface with the Services, and/or (c) upload to the Services under your Account or otherwise transfer, process, use or store in connection with your Account.