

Tabitop Terms of Use

Effective June 23, 2014

Tabitop's Customer Terms of Use Agreement (the "Agreement") contains the terms and conditions that govern your access to and use of the Subscription(s) and Service Offering(s) as defined below ("Services") and is an agreement between Tabitop, LLC ("Tabitop," "we," "us," or "our") and you or the entity you represent ("you"). This Agreement takes effect when you click an "I Accept" button, "Create Account" button, or check box presented with these terms or, if earlier, when you use any of the Services (the "Effective Date"). You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity. Please see the Definitions Section for definitions of certain capitalized terms used in this Agreement.

The following Service Terms apply only to the specific Services to which the Service Terms relate. In the event of a conflict between the terms of these Service Terms and the terms of this Agreement or other agreement with us governing your use of our Services (the "Agreement"), the terms and conditions of these Service Terms apply, but only to the extent of such conflict. Capitalized terms used herein but not defined herein shall have the meanings set forth in the Agreement.

Use: You may only use the Services to store, retrieve, query, serve, and execute Your Content that is owned, licensed or lawfully obtained by you. As used in these Service Terms, "Your Content" includes any "Company Content". As part of the Services, you may be allowed to use certain software (including related documentation) provided by us or third party licensors. This software is neither sold nor distributed to you and you may use it solely as part of the Services. You may not transfer it outside the Services without specific authorization to do so. "Your Content" shall also refer to "Your Desktop" or your customized virtual desktop PC created as part of your Tabitop Subscription.

Compliance: You must comply with the current technical documentation applicable to the Services (including the applicable user guides) as posted by us and updated by us from time to time on the Tabitop Site.

You will provide information or other materials related to Your Content (including copies of any third-party applications) as reasonably requested by us to verify your

compliance with the Agreement. We may monitor the external interfaces (e.g., ports) of Your Content to verify your compliance with the Agreement. You will not block or interfere with our monitoring, but you may use encryption technology or firewalls to help keep Your Content confidential. You will reasonably cooperate with us to identify the source of any problem with the Services that we reasonably believe may be attributable to Your Content or any end user materials that you control.

Violation: If we reasonably believe any of Your Content violates the law, infringes or misappropriates the rights of any third party or otherwise violates a material term of the Agreement (including the documentation, the Service Terms, or the Acceptable Use Policy (“Prohibited Content”), we will notify you of the Prohibited Content and may request that such content be removed from the Services or access to it be disabled. If you do not remove or disable access to the Prohibited Content within 2 business days of our notice, we may remove or disable access to the Prohibited Content or suspend the Services to the extent we are not able to remove or disable access to the Prohibited Content. Notwithstanding the foregoing, we may remove or disable access to any Prohibited Content without prior notice in connection with illegal content, where the content may disrupt or threaten the Services, pursuant to the Digital Millennium Copyright Act or as required to comply with law or any judicial, regulatory or other governmental order or request. In the event that we remove content without prior notice, we will provide prompt notice to you unless prohibited by law.

From time to time, we may offer free or discounted pricing programs covering certain usage of the Services (each, a “Special Pricing Program”). We may stop accepting new sign-ups or discontinue a Special Pricing Program at any time. Standard charges will apply after a Special Pricing Program ends or if you exceed the limitations by the Special Pricing Program. You must comply with any additional terms, restrictions, or limitations (e.g., limitations on the total amount of usage) for the Special Pricing Program as described in the offer terms for the Special Pricing Program or on the pricing page for the eligible Service(s). You may not access or use the Services in a way intended to avoid any additional terms, restrictions, or limitations (e.g., establishing multiple Tabitop accounts in order to receive additional benefits under a Special Pricing Program), and we may immediately terminate your account if you do so. Any data stored or instances provided as part of a Special Pricing Program must be actively used.

If we make multiple discounts or pricing options for a Service available to you at one

time, you will only be eligible to receive one discount or pricing option, and will not be entitled to cumulative discounting and pricing options.

You will ensure that all information you provide to us via the Tabitop Site (for instance, information provided in connection with your registration for the Services, requests for increased usage limits, etc.) is accurate, complete and not misleading.

From time to time, we may apply upgrades, patches, bug fixes or other maintenance to the Service Offerings (“Maintenance”). We agree to use reasonable efforts to provide you with prior notice of any scheduled Maintenance (except for emergency Maintenance) and you agree to use reasonable efforts to comply with any Maintenance requirements that we notify you about.

Use of the Services

Access: You may access and use the Services in accordance with this Agreement. Service Level Agreements may apply to certain Service Offerings. You will adhere to all laws, rules, and regulations applicable to your use of the Services, including the Service Terms, the Acceptable Use Policy and the other Policies as defined in the Definitions Section.

Tabitop Account: To access the Services, you must create a Tabitop account associated with a valid e-mail address. Unless explicitly permitted by the Service Terms, you may only create one account per email address. You are responsible for all activities that occur under your account, regardless of whether the activities are undertaken by you, your employees or a third party (including your contractors or agents) and, except to the extent caused by our breach of this Agreement, we and our affiliates are not responsible for unauthorized access to your account. You will contact us immediately if you believe an unauthorized third party may be using your account or if your account information is lost or stolen. You may terminate your account and this Agreement at any time in accordance with the Term; Termination Section of this Agreement.

Third Party Content: Third Party Content, such as software applications provided by third parties, may be made available directly to you by other companies or individuals under separate terms and conditions, including separate fees and charges. Because we may not have tested or screened the Third Party Content, your use of any Third Party Content is at your sole risk.

Tabitop Virtual Desktops

Software: You are responsible for maintaining licenses and adhering to the license terms of any software you run.

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, Microsoft and its licensors require that you agree to these additional terms and conditions:

- The Microsoft Software is neither sold nor distributed to you and you may use it solely in conjunction with the Services.
- You may not transfer or use the Microsoft Software outside the Services.
- You may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Microsoft Software.
- You may not reverse engineer, decompile or disassemble the Microsoft Software, except to the extent expressly permitted by applicable law.
- Microsoft disclaims, to the extent permitted by applicable law, all warranties by Microsoft and any liability by Microsoft or its suppliers for any damages, whether direct, indirect, or consequential, arising from the Services.
- Microsoft is not responsible for providing any support in connection with the Services. Do not contact Microsoft for support.
- You are not granted any right to use the Microsoft Software in any application controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, weaponry systems, or any similar scenario (collectively, “High Risk Use”). Microsoft and its suppliers disclaim any express or implied warranty of fitness for High Risk Use. High Risk Use does not include utilization of the Microsoft Software for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.

Tabitop Service Terms

We will provide “Support” in accordance with commercially reasonable efforts to (a) respond within the “Response Times” set forth as generally with 24-48 business hours for all properly submitted cases from authorized individuals, and (b) work towards the identification and resolution of the problems submitted. When submitting a case, you may designate the severity level of a problem; provided that, we reserve the right to reclassify the severity level in our reasonable opinion. All Response Times are measured from the point when a case has been properly submitted by an authorized individual to us. Cases may be submitted as specified in the Guidelines. We do not represent, warrant or guarantee that (i) we will always be able to resolve a case fully, (ii) you will no longer experience a problem, (iii) we will provide a bug fix, patch or other workaround in connection with the identified problem, or (iv) any support or advice will result in any performance efficiency or improvement. You are solely responsible for the implementation and results of any suggestions or advice received.

Changes to Terms of Use

Changes to the Services: We may change, discontinue, or deprecate any of the Services (including the Service Offerings as a whole) or change or remove features or functionality of the Services from time to time. We will notify you of any material change to or discontinuation of the Services.

Changes to the APIs: We may change, discontinue or deprecate any APIs for the Services from time to time but will use commercially reasonable efforts to continue supporting the previous version of any API changed, discontinued, or deprecated for 12 months after the change, discontinuation, or deprecation (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) is needed to comply with the law or requests of governmental entities).

Changes to the Service Level Agreements: We may change, discontinue or add Service Level Agreements from time to time.

Security and Data Privacy

Tabitop Security: Without limiting the Disclaimer Section or your obligations under the Your Responsibilities section, we will implement reasonable and appropriate

measures designed to help you secure Your Tabitop Virtual Desktop PC Instance (“Desktop”) against accidental or unlawful loss, access or disclosure.

Data Privacy: We participate in the safe harbor programs described in the Tabitop Privacy Policy. You consent to our collection, use and disclosure of information associated with the Services in accordance with our Privacy Policy, and to the processing of Your Content in, and the transfer of Your Content into, the Tabitop Cloud Infrastructure (“Infrastructure”). For complete security and data privacy features, please refer to the Tabitop Security Policy currently referenced at <http://www.tabitop.com/legal/>.

Your Responsibilities:

Your Desktop: You are solely responsible for the development, content, operation, maintenance, and use of Your Desktop. For example, you are solely responsible for:

- (a) the technical operation of Your Desktop, including ensuring that calls you make to any Service are compatible with then-current APIs for that Service;
- (b) compliance of Your Desktop with the Acceptable Use Policy, the other Policies, and the law;
- (c) any claims relating to the use of Your Desktop; and
- (d) properly handling and processing notices sent to you (or any of your affiliates) by any person claiming that Your Desktop(s) violate such person’s rights, including notices pursuant to the Digital Millennium Copyright Act.

Other Security and Backup: You are responsible for properly configuring and using the Services and Your Desktop, and taking your own steps to maintain appropriate security, protection and backup of Your Desktop, which may include the use of encryption technology to protect Your Desktop and its content from unauthorized access and routine archiving Your Desktop. Tabitop log-in credentials generated by the Services are for your internal use only and you may not sell, transfer or sublicense them to any other entity or person, except that you may disclose your private credentials to your agents and subcontractors performing work on your behalf.

Service Subscriptions, Fees, and Payment

Service Subscription Fees: We charge a subscription fee that is based on pre-payment of various usage components as follows:

Tabitop Desktop Subscription pricing:

- Tabitop Starter Subscription: 1-month @ \$3.99 or 1-year @ \$39.99
- Tabitop Starter Plus: 1-month @ \$9.99 or 1-year @ \$99.99
- Tabitop Pro: 1-month @ \$24.99 or 1-year @ \$249.99
- Tabitop ProPlus: 1-month @ \$39.99 or 1-year @ \$399.99

In-App purchase options also include:

- 300 Additional Minutes Usage - \$0.99
- 1 GB Additional Bandwidth download - \$0.99
- 1 Million Additional I/O requests - \$0.99

All of Tabitop Services with a monthly or annual subscription will automatically renew until cancelled, and up to five (5) Desktop Subscriptions are allowed per Subscription Type, per user account.

Tabitop's included Subscription monthly features include the following:

- Tabitop Starter: 20 Hours Usage, 1GB Download Bandwidth, 1 Million I/O Requests, Total HD space: 35GB (approx. 10GB usable Storage) – Windows 7 Experience Option
- Tabitop Starter Plus: 40 Hours Usage, 3GB Download Bandwidth, 2 Million I/O Requests, Total HD space: 45GB (approx. 20GB usable Storage) – Windows 7 Experience Option
- Tabitop Pro: 100Hours Usage, 12GB Download Bandwidth, 4 Million I/O Requests, Total HD space: 60GB (approx. 35GB Usable Storage) – Windows 7 & 8 Experience Option
- Tabitop ProPlus: 160 Hours Usage, 20GB Download Bandwidth, 6 Million I/O

Requests, Total HD space: 75GB (approx. 50GB Usable Storage) – Windows 7 & 8 Experience Option

Subscription Licensing: Windows 7 & 8 Experience are licensed through Windows Server 2008 R2 and Windows Server 2012 licensing respectively.

Automatic-Renewal Feature: Your subscription will be charged to your iTunes or Tabitop account at confirmation of purchase and will automatically renew unless auto-renew is turned off at least 24-hours before the end of your current period. Your iTunes or Tabitop account will automatically be charged at the same price for renewal, as stated above, within 24-hours prior to the end of the current period.

Calculation of Usage: Tabitop's Subscription time tracking usage is tallied by rounding up to the nearest minute used with each active "On" Desktop session and automatically charges a minimum of 30 minutes for each "On" or "Restart" event per Desktop. For example, if you turn "On" Your Desktop and leave it "On" for 15 minutes then turn it "Off", your usage will be rounded up to 30 total minutes of usage. However if you used the same Desktop for 42 minutes after an "On" event, then your usage would be for 42 minutes since the 30-minute minimum per "On" or "Restart" event was met. If You purchase additional one-time In-app purchases for either 1) minutes, 2) bandwidth, and/or 3) I/O requests, those one-time purchase usage metrics are used prior to use of any included subscription consumable usage.

Each subscription's consumable usage such as 1) included Minutes used, 2) Bandwidth, and 3) I/O Requests shall expire each month, whether used or unused, and shall not carry over or be made available in any subsequent month(s).

Additionally, every 10 minutes, we will update any non-calculated usage metrics and display them in the Tabitop Dashboard area. Since these results are calculated every 10 minutes, your desktop may not reflect an exactly accurate metric usage until at maximum of 10 minutes in arrears.

Bill Frequency: Although Your Subscription shall automatically renew monthly or annually, We may bill you more frequently for fees accrued if we suspect that your account is fraudulent or at risk of non-payment. You will pay us the applicable fees and charges for use of the Services as described on the Tabitop Site using one of the payment methods we support. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding. Fees and charges for any new Service or new feature of a Service will be effective

when we post updated fees and charges on the Tabitop Site unless we expressly state otherwise in a notice. We may increase or add new fees and charges for any existing Services by giving you at least 30 days' advance notice. We may charge you interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments.

Taxes: All fees and charges payable by you are exclusive of applicable taxes and duties, including VAT and applicable sales tax. You will provide us any information we reasonably request to determine whether we are obligated to collect VAT from you, including your VAT identification number. If you are legally entitled to an exemption from any sales, use, or similar transaction tax, you are responsible for providing us with legally-sufficient tax exemption certificates for each taxing jurisdiction. We will apply the tax exemption certificates to charges under your account occurring after the date we receive the tax exemption certificates. If any deduction or withholding is required by law, you will notify us and will pay us any additional amounts necessary to ensure that the net amount that we receive, after any deduction and withholding, equals the amount we would have received if no deduction or withholding had been required. Additionally, You will provide us with documentation showing that the withheld and deducted amounts have been paid to the relevant taxing authority.

Temporary Suspension

Terms of Suspension: We may suspend your or any End User's right to access or use any portion or all of the Services immediately upon notice to you if we determine:

- (a) Your's or an End User's use of or registration for the Services (i) poses a security risk to the Services or any third party, (ii) may adversely impact the Services or the systems or Content of any other Tabitop customer/user, (iii) may subject us, our affiliates, or any third party to liability, or (iv) may be fraudulent;
- (b) You are, or any End User is, in breach of this Agreement, including if you are delinquent on your payment obligations for more than seven (7) days; or
- (c) 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.

Effect of Suspension: If we suspend your right to access or use any portion or all of the Services or You're Desktop:

- (a) You remain responsible for all fees and charges you have incurred through the date of suspension;
- (b) You remain responsible for any applicable fees and charges for any Services to which you continue to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension;
- (c) You will not be entitled to any service credits for any period of suspension; and
- (d) We will not erase any of Your Content as a result of your suspension, except as specified elsewhere in this Agreement.

Our right to suspend your's or any End User's right to access or use the Services are in addition to our right to terminate this Agreement pursuant to Term and Termination Section.

Term; Termination

Term: The term of this Agreement will commence on the Effective Date and will remain in effect until terminated by You or Us in accordance with the terms set forth below.

Termination:

- (a) Termination for Convenience. You may terminate this Agreement for any reason by:
 - (i) providing us notice and
 - (ii) closing your account for all Services for which we provide an account closing mechanism. We may terminate this Agreement for any reason by providing you 30 days advance notice.
 - (iii) managing your subscriptions via the iTunes App Store and Google

Play Store respectively.

(b) Termination for Cause.

(i) By Either Party. Either party may terminate this Agreement for cause upon 30 days advance notice to the other party if there is any material default or breach of this Agreement by the other party, unless the defaulting party has cured the material default or breach within the 30 day notice period.

(ii) By Us. We may also terminate this Agreement immediately upon notice to you (A) for cause, if any act or omission by you or any End User results in a suspension described above, (B) if our relationship with a third party partner who provides software or other technology we use to provide the Services expires, terminates or requires us to change the way we provide the software or other technology as part of the Services, (c) if we believe providing the Services could create a substantial economic or technical burden or material security risk for us, (D) in order to comply with the law or requests of governmental entities, or (E) if we determine use of the Services by you or any End Users or our provision of any of the Services to you or any End Users has become impractical or unfeasible for any legal or regulatory reason.

Effect of Termination.

(a) Generally. Upon any termination of this Agreement:

(i) all your rights under this Agreement immediately terminate;

(ii) You remain responsible for all fees and charges you have incurred through the date of termination, including fees and charges for in-process tasks completed after the date of termination;

(iii) You will immediately return or, if instructed by us, destroy all Tabitop Content in your possession; and

(iv) Sections Your Responsibility, Fees and Payment, term; Termination, Proprietary Right (except the license granted to you in Section Service Offerings License), Indemnification, Disclaimers, Limitations of Liability, Miscellaneous, and Definitions Sections will continue to apply in

accordance with their terms.

(b) Post-Termination Assistance: Unless we terminate your use of the Service Offerings pursuant to above, during the seven (7) days following termination:

(i) We will not erase any of Your Content as a result of the termination;

(ii) You may retrieve Your Content from the Services only if you have paid any charges for any post-termination use of the Service Offerings and all other amounts due; and

(iii) We will provide you with the same post-termination data retrieval assistance that we generally make available to all customers.

Upon termination or non-renewal of your subscription, usage and access to your Tabitop Desktop shall be terminated, AND after 7 days from the subscription end date, your Tabitop Desktop and all its contents, data, and files shall be erased and non-recoverable.

Any additional post-termination assistance from us is subject to mutual agreement by you and us.

Proprietary Rights

Your Desktop: As between you and us, you or your licensors own all right, title, and interest in and to Your Desktop. Except as provided in this Section, we obtain no rights under this Agreement from you or your licensors to Your Desktop and its Content, including any related intellectual property rights. You consent to our use of Your Desktop to provide the Services to you. We may disclose Your Content to provide the Services to you or any End Users or to comply with any request of a governmental or regulatory body (including subpoenas or court orders).

Your Submissions: Your Submissions will be governed by the terms of the Apache Software License, unless you specify one of our other supported licenses at the time you submit Your Submission.

Adequate Rights. You represent and warrant to us that: (a) you or your licensors own all right, title, and interest in and to Your Content and Your Submissions; (b) you have all rights in Your Content and Your Submissions necessary to grant the rights contemplated by this Agreement; and (c) none of Your Content, Your Submissions or

End Users' use of Your Content, Your Submissions or the Services Offerings will violate the Acceptable Use Policy.

Service License. As between You and Us, We or our affiliates or licensors own and reserve all right, title, and interest in and to the Services. We grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to do the following during the Term: (i) access and use the Services solely in accordance with this Agreement; and (ii) copy and use the Desktop Subscriptions solely in connection with your permitted use of the Services. Except as provided in this Section, you obtain no rights under this Agreement from us or our licensors to the Services, including any related intellectual property rights. Some Tabitop Content may be provided to you under a separate license, such as the Apache Software License or other open source license. In the event of a conflict between this Agreement and any separate license, the separate license will prevail with respect to that Tabitop's Content.

License Restrictions: Neither You nor any End User may use the Service Offerings in any manner or for any purpose other than as expressly permitted by this Agreement. Neither you nor any End User may, or may attempt to, (a) modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Services (except to the extent software included in the Services are provided to you under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the Services or apply any other process or procedure to derive the source code of any software included in the Services, (c) access or use the Services in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the Services. All licenses granted to you in this Agreement are conditional on your continued compliance this Agreement, and will immediately and automatically terminate if you do not comply with any term or condition of this Agreement. During and after the Term, you will not assert, nor will you authorize, assist, or encourage any third party to assert, against us or any of our affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Service Offerings you have used. You may only use the Tabitop Marks in accordance with the Trademark Use Guidelines.

Suggestions: If you provide any suggestions to us or our affiliates, we will own all right, title, and interest in and to the suggestions, even if you have designated the suggestions as confidential. We and our affiliates will be entitled to use the

suggestions without restriction. You hereby irrevocably assign to us all right, title, and interest in and to the suggestions and agree to provide us any assistance we may require to document, perfect, and maintain our rights in the suggestions.

Indemnification

Indemnities: You will defend, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning: (a) your or any End Users' use of the Services (including any activities under your Tabitop account and use by your employees and personnel); (b) breach of this Agreement or violation of applicable law by you or any End User; (c) Your Desktop or the combination of Your Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Your Content or by the use, development, design, production, advertising or marketing of Your Content; or (d) a dispute between you and any End User. If we or our affiliates are obligated to respond to a third party subpoena or other compulsory legal order or process described above, you will also reimburse us for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to the third party subpoena or other compulsory legal order or process at our then-current hourly rates.

Process: We will promptly notify you of any claim subject to the Section above, but our failure to promptly notify you will only affect your obligations under the above Section to the extent that our failure prejudices your ability to defend the claim. You may: (a) use counsel of your own choosing (subject to our written consent) to defend against any claim; and (b) settle the claim as you deem appropriate, provided that you obtain our prior written consent before entering into any settlement. We may also assume control of the defense and settlement of the claim at any time.

Disclaimers

THE SERVICES ARE PROVIDED "AS IS." WE AND OUR AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OFFERINGS OR THE THIRD PARTY CONTENT, INCLUDING ANY WARRANTY THAT THE SERVICE OFFERINGS

OR THIRD PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT OR THE THIRD PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

Limitations of Liability

WE AND OUR AFFILIATES OR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICE OFFERINGS, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SLAS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (c) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM.

Modifications to the Agreement

We may modify this Agreement (including any Policies) at any time by posting a revised version on the Tabitop Site or by otherwise notifying you in accordance with

the below Section. The modified terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the Services after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the Tabitop Site regularly for modifications to this Agreement. We last modified this Agreement on the date listed at the beginning of this Agreement.

Miscellaneous

Confidentiality and Publicity. You may use Tabitop's Confidential information only in connection with your use of the Services as permitted under this Agreement. You will not disclose Tabitop Confidential Information during the Term or at any time during the 5 year period following the end of the Term. You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Tabitop Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature. You will not issue any press release or make any other public communication with respect to this Agreement or your use of the Services. You will not misrepresent or embellish the relationship between us and you (including by expressing or implying that we support, sponsor, endorse, or contribute to you or your business endeavors), or express or imply any relationship or affiliation between us and you or any other person or entity except as expressly permitted by this Agreement.

Force Majeure: We and our affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

Independent Contractors; Non-Exclusive Rights: We and You are independent contractors, and neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. Both parties reserve the right (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services, concepts, systems, or techniques developed or contemplated by the other party and (b) to assist third party developers or systems integrators who may offer products or services which compete with the other party's products or services.

No Third Party Beneficiaries: This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.

Import and Export Compliance. In connection with this Agreement, each party will comply with all 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 Assets Control. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the Service Offerings, including your transfer and processing of Your Content, the provision of Your Desktop, and the TabiTop region in which any of the foregoing occur.

Notice:

(a) **To You.** We may provide any notice to you under this Agreement by: (i) posting a notice on the Tabitop Site; or (ii) sending a message to the email address then associated with your account. Notices we provide by posting on the Tabitop Site will be effective upon posting and notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email.

(b) **To Us.** To give us notice under this Agreement, you must contact Tabitop as follows: (i) by email at support@tabitop.com. Notices provided by email delivery will be effective immediately

(c) **Language.** All communications and notices to be made or given pursuant to this Agreement must be in the English language.

Assignment: You will not assign this Agreement, or delegate or sublicense any of your rights under this Agreement, without our prior written consent. Any assignment or transfer in violation of this Section will be void. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

No Waivers: The failure by us to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce

such provision at a later time. All waivers by us must be in writing to be effective.

Severability: If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

Governing Law; Venue: The laws of the State of Utah, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between you and us. Any dispute relating in any way to the Services or this Agreement where a party seeks aggregate relief of \$7,500 or more will be adjudicated in any state or federal court in Salt Lake County, Utah. You consent to exclusive jurisdiction and venue in those courts. 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. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

Entire Agreement: This Agreement includes the Policies and is the entire agreement between you and us regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the subject matter of this Agreement. Notwithstanding any other agreement between you and us, the security and data privacy provisions in the Privacy Section of this Agreement contain our and our affiliates' entire obligation regarding the security, privacy and confidentiality of Your Content. We will not be bound by, and specifically object to, any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by you in any order, receipt, acceptance, confirmation, correspondence or other document. If the terms of this document are inconsistent with the terms contained in any Policy, the terms contained in this document will control, except that the Service Terms will control over this document. If we provide a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

Definitions

“Acceptable Use Policy” means the policy currently available at <http://www.tabitop.com/legal/>, as it may be updated by us from time to time.

“API” means an application program interface.

“Tabitop Confidential Information” means all nonpublic information disclosed by us, our affiliates, business partners or our or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Tabitop Confidential Information includes: (a) nonpublic information relating to our or our affiliates or business partners’ technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that we are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between you and us or our affiliates. Tabitop Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to you at the time of your receipt from us; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by you without reference to the Tabitop Confidential Information.

“Tabitop Content” means Content we or any of its affiliates make available in connection with the Services or on the Tabitop Site to allow access to and use of the Services, including Tabitop Desktops.

“Tabitop Marks” means any trademarks, service marks, service or trade names, logos, and other designations of Tabitop and its affiliates that we may make available to you in connection with this Agreement.

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

“Content” means software (including virtual machine images and instances), data, text, audio, video, images or other content.

“Documentation” means the user guides, getting started guides, quick reference

guides, and other technical and operations manuals and specifications for the Services.

“End User” means any individual or entity that directly or indirectly through another user: (a) accesses or uses Your Content; or (b) otherwise accesses or uses the Service Offerings under your account. The term “End User” does not include individuals or entities when they are accessing or using the Services or any Content under their own Tabitop account, rather than your account.

“Policies” means the Acceptable Use Policy, Privacy Policy, the Security Policy, the Site Terms, the Service Terms, the Trademark Use Guidelines, all restrictions described in the Tabitop Content and on the Tabitop Site, and any other policy or terms referenced in or incorporated into this Agreement. Policies does not include whitepapers or other marketing materials referenced on the Tabitop Site.

“Privacy Policy” means the privacy policy currently referenced at <http://www.tabitop.com/legal/> as it may be updated by us from time to time. [No page currently exists for this URL]

“Service” means each of the Subscription services, whether paid or free, made available by us or our affiliates, including those web services described in the Service Terms.

“Service Level Agreement” means all service level agreements that we offer with respect to the Services and post on the Tabitop Site, as they may be updated by us from time to time.

“Services” or “Service Offerings” means the Services (including associated APIs), the Tabitop Content, Subscriptions, Applications (paid or free), Desktops, and any other product or service provided by us under this Agreement. Service Offerings do not include Third Party Content.

“Service Terms” means the rights and restrictions for particular Services.

“Site Terms” means the terms of use found in this Agreement.

“Subscription” means a type of Service of Desktop offering you sign-up for which typically has a monthly or annual recurring charge.

“Suggestions” means all suggested improvements to the Service Offerings that you provide to us.

“Term” means the term of this Agreement.

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

“Trademark Use Guidelines” means the guidelines and license located at <http://www.tabitop.com/legal> as they may be updated by us from time to time.

“Your Content” means Content you or any End User (a) run on the Services, (b) cause to interface with the Services, or (c) upload to the Services under your account or otherwise transfer, process, use or store in connection with your account.

“Your Submissions” means Content that you post or otherwise submit to developer forums, sample code repositories, public data repositories, or similar community-focused areas of the Tabitop Site or the Service.