

Terms of Service

NTREPID SUBSCRIPTION SERVICES

LAST UPDATED: January 18, 2021, v1.8

Ntrepid, LLC, a Florida limited liability company, with its principle place of business at 12801 Worldgate Drive, Suite 800, Herndon, VA 20170 ("**Ntrepid**"), and the the Ordering Activity under GSA Schedule contracts ("**Customer**") named in the Order (as defined below) have entered into an agreement for Ntrepid to provide the Services (as defined below) and agree that the Order placed via Ntrepid's Authorized GSA Reseller, Ntrepid quote, the following terms and conditions (these "**Terms of Service**"), and to the extent applicable, any Data Protection Addendum annexed and attached hereto, constitute the exclusive and binding agreement between them (the "**Agreement**"); provided that nothing in the Order shall alter or modify these Terms of Service or any annex hereto unless an authorized Ntrepid representative has agreed in writing to such alterations or modifications.

1. DEFINITIONS.

Capitalized terms used in these Terms of Service and not otherwise defined shall have the following meanings:

"Authorized GSA Reseller" means Carahsoft, Inc. under their applicable GSA Schedule Contract.

"Bandwidth" means the monthly average rate of data transfer measured in Megabits per second (Mbps) that is used by Customer as a result of making Requests.

"Customer Data" means data that Customer stores in an Ntrepid shared environment in connection with the Services. Customer Data is distinguished from Personal Data as defined herein.

"Data Protection Addendum" means to the extent applicable, an agreement annexed hereto between Ntrepid and Customer that establishes the circumstances under which Ntrepid, as a Service Provider, may Process Personal Data of Customer in accordance with applicable data privacy and data protection laws. For purposes of the preceding sentence, the terms "Process," "Service Provider," and "Applicable Law" shall have the meaning set forth in the Data Protection Addendum.

"Documentation" means any user documentation provided to Customer by Ntrepid in connection with its provision of the Services describing the functionality of the Services, including all replacements, updates, additions and changes thereto from time to time made by Ntrepid.

“License Fee” means the fee paid by Customer to access and use the Services pursuant to the Order, the GSA Schedule Contract and these Terms of Service.

“Ntrepid Intellectual Property” means the Software and Ntrepid’s patents, patent applications, trade secrets, copyrights, trademarks, technology, inventions, methodologies, know-how and proprietary or confidential information.

“Open Source Software” means the open source software incorporated into the Software and referenced in [Section 8](#).

“Order” means the contract, purchase order or other binding agreement entered into between Ntrepid and Customer via Ntrepid’s Authorized GSA Reseller that specifies the Services to be provided by Ntrepid, the applicable fees, license term and conditions and limitations on Customer’s use of those Services and shall include any Ntrepid quote to the extent accepted by Customer or otherwise incorporated into a binding agreement between Ntrepid and Customer.

“Personal Data” means, in general, any information relating, directly or indirectly, to an identified or identifiable natural person that Ntrepid obtains or has access to in order to provide the Services and that is subject to applicable data privacy and data protection laws.

“Request” means a single [HTTP or HTTPS] request by Customer for information from a URL over the Internet through the Services.

“Services” means the subscription-based services specified in the Order to be provided by Ntrepid to Customer, which could include, but is not limited to: GeoSites, Mapper, Nfusion, Nfusion Essentials, P310, Switchboard, Switchboard SE, and Timestream.

“Software” means the software, including any client and server software and any Open Source Software incorporated therein, that Ntrepid uses to provide the Services and all modifications, improvements, replacements, enhancements, additions, corrections, upgrades, customizations and other changes thereto.

“Subscribers” means individuals whom Customer has authorized to access and use the Services, or in the case of the “Mapper” service means the number of computers (to include desktops and virtual machines) authorized to access and use the “Mapper” service in the form of a Subscriber-Based license or Bandwidth-Based license as described herein.

“Third Party Applications” means optional applications and/or application program interfaces (APIs) that are provided by an organization other than Ntrepid which are installed and used at the Customer’s sole and independent discretion and which Ntrepid makes available in connection with the Services.

2. SERVICES PROVIDED UNDER LICENSE.

The Services are delivered pursuant to the license granted in [Section 4](#) on the terms, conditions and limitations set forth in the Order and subject to these Terms of Service and to the extent applicable, any Data Protection Addendum annexed hereto. Customer agrees

that its purchase of the Services is not contingent on the incorporation into the Services any future functionality or features or dependent on any oral or written public comments or representations made by Ntrepid regarding future functionality or features. Customer acknowledges that the Services are constantly evolving, the form, nature and features of the Services may change from time to time without prior notice, and any changes to the Services are subject to these Terms of Service. In the event that Ntrepid discontinues a Service or materially diminishes functionality or features of a Service that Customer has contracted for, Customer shall be entitled to a pro rata refund for any License Fee paid in advance and not used.

3. CUSTOMER OBLIGATIONS.

Customer shall at all times provide and maintain in good working order its own Internet access and all network and telecommunications equipment, hardware, software, devices and other materials and equipment necessary to access and use the Services, other than the hardware and software used by Ntrepid to provide the Services. Customer is responsible for the use of the Services, including, without limitation: (a) designating and managing the administrators of the Services; and (b) authorizing and managing Subscribers accessing and using the Services. Customer shall implement and maintain security policies and procedures to maintain the security and integrity of Customer's computing and telecommunications environment no less robust than industry standards for similar businesses in Customer's industry. Customer and its Subscribers are, and shall be, fully responsible for, and shall take all reasonable steps necessary in order to, establish and implement any and all measures needed to limit the control and/or access to the Services, including limiting access to passwords used to access the Services, and Ntrepid shall have no liability to Customer or any third party for Customer's failure to prevent any unauthorized access or use of the Services.

4. LICENSE GRANT AND RESTRICTIONS.

4.1 License Grant to use the Services.

Subject to the terms, conditions and limitations set forth in the Order and these Terms of Service, Ntrepid hereby grants to Customer, during the Term (as defined in [Section 12.1](#)), a personal, non-exclusive, non-transferable, non-sublicensable, revocable, limited license to access and use: (a) the Services and (b) any Ntrepid Intellectual Property incorporated into the Services or made available to Customer by Ntrepid in connection with the Services to the extent necessary to use the Services in the manner contemplated by the Order and these Terms of Service (the "**License**").

4.2 Subscriber-Based Licenses.

(a) Unless [Section 4.2\(b\)](#) below applies, if the Order specifies a maximum number of Subscribers who may access and use the Services but does not limit the number of Subscribers who may access and use the Services at the same time ("**Concurrent Subscribers**"), Customer shall not authorize more individuals to access and use the Services than the number of Subscribers, which are specified in the Order and for which Customer

has paid the applicable License Fee. Permitting more individuals than that number of Subscribers to use or access the Services at any time shall constitute a breach of these

Terms of Service and Ntrepid will send Customer an invoice for the amount exceeded. If the Customer exceeds the use amount stated in the Order, both parties will work together to either prevent such overages in the future or will execute a new agreement in writing that encompasses the then current or required number of Subscribers. If Concurrent Subscribers or the Nfusion Desktop Annual Subscription Service are specified in the Order, Customer may permit an unlimited number of individuals to access and use the Services; provided, however, that in no event may Customer authorize more individuals to access and use the Services at the same time than the number of Concurrent Subscribers or Nfusion Desktops that are specified in the Order and for which Customer has paid the applicable License Fee, without purchasing a license for additional Concurrent Subscribers or Nfusion Desktops.

(b) If the Order specifies a maximum number of Subscribers who may access and use the “Mapper” service, Customer shall not authorize more computers to include desktops and virtual machines to access the Services than specified in the Order and for which Customer has paid the applicable License Fee. Permitting more computers than that number of Subscribers to use or access the Services at any time shall constitute a breach of these Terms of Service and Ntrepid will send Customer an invoice for the amount exceeded. If the Customer exceeds the use amount, both parties will work together to either prevent such overages in the future or will execute a new agreement in writing that encompasses the then current or required number of Subscribers.

4.3 Bandwidth-Based Licenses.

If the Services consist of Ntrepid’s “Mapper” service hosted in Ntrepid’s shared environment, then Customer shall be allocated a maximum amount of three (3) Mbps of Bandwidth per License for making Requests. In the event Customer reaches the three (3) Mbps Bandwidth per License threshold, Customer’s further use of the Services under such License shall be throttled so as not to exceed this Bandwidth limitation but Ntrepid will not cease, or otherwise disrupt, the delivery of Services. Customer may increase the amount of Bandwidth by paying the applicable License Fee for each additional Bandwidth-Based License of three (3) Mbps. If the Services consist of Ntrepid’s “Mapper” service deployed in a dedicated environment, then Ntrepid will not impose a maximum amount of Bandwidth per License that Customer may use in making Requests and the terms and conditions of [Section 4.2\(b\)](#) above for Subscriber-Based Licenses shall apply.

4.4 Phone Number-Based Licenses.

If the Order specifies the Switchboard or Switchboard SE service, then a maximum number of telephone numbers are made available for Customer’s use during a specific period of use of the Services, and Customer shall not attempt to provision additional telephone numbers in excess of the number of telephone numbers, which are specified in the Order and for which Customer has paid the applicable License Fee, during that period. Exceeding that number of telephone numbers during that period shall constitute a breach of these Terms of Service, and Ntrepid will send Customer an invoice for the amount exceeded. If the Customer exceeds the use amount, both parties will work together to either prevent such overages in the future or will execute a new agreement in writing that encompasses

the then current or required number of Subscribers.

4.5 Additional Licenses.

Customer may, at any time and from time to time, increase the number of Subscribers, Concurrent Subscribers, and/or the amount of Bandwidth by paying in advance a License Fee for additional Subscribers, Concurrent Subscribers, or Bandwidth. The term of any such additional Licenses may be pro-rated so that all Licenses for pre-existing and newly-acquired Subscribers, Concurrent Subscribers, and Bandwidth are conterminous. The term of Licenses for additional Subscribers, Concurrent Subscribers, or Bandwidth generally will expire twelve (12) months after grant, and Customer must use all pre-existing and newly-acquired Licenses prior to the expiration of such term. Ntrepid will endeavor to notify Customer if Customer is approaching or has reached or exceeded the amount of Bandwidth for which Customer has paid the applicable License Fee; however, Ntrepid's failure to give such notice shall not affect Ntrepid's rights or Customer's obligations hereunder.

4.6 Software.

If required to access and use the Services in the manner contemplated by the Order and these Terms of Service, Customer may download and install the client portion of the Software on the computers that Customer has provided to the Subscribers for access to and use of the Services. Depending upon the terms of the Order, Customer may either: (a) install the server portion of the Software on servers furnished by Customer; (b) install the server portion of the Software on servers made available to Customer by Ntrepid; or (c) access the server portion of the Software hosted by Ntrepid in a shared environment provided by Ntrepid.

4.7 Customer Data Retention.

(a) If the Services include Ntrepid's "Nfusion", "Nfusion Essentials", "P310", "Switchboard", or "Switchboard SE" service hosted in Ntrepid's shared environment, Customer Data, including Personal Data, may be retained during the Term of the License unless otherwise agreed with Customer and specified in the Order. Ntrepid may delete or destroy all copies of Customer Data and Personal Data during the Term of such License or following the termination or expiration of such License after making such Customer Data and Personal Data available to Customer for thirty (30) days for export or download in a format specified by Ntrepid. If Customer does not exercise its right to submit a request for Customer Data or Personal Data within this thirty (30) day period, Ntrepid will delete or destroy all copies of Customer Data and Personal Data stored in Ntrepid's shared environment. Notwithstanding the foregoing, Ntrepid may retain such Customer Data, including Personal Data, if any applicable contractual requirement prohibits its deletion or destruction if Ntrepid is required to retain such data under applicable law, or if retention of the data is necessary for Ntrepid's defense against or pursuit of legal claims.

(b) Customer acknowledges and understands the rights afforded to Customer in this [Section 4.7](#) and Ntrepid will have no further obligation to notify Customer of these rights unless required by applicable law.

4.8 Limitation on Users.

The License granted herein does not authorize, and Customer shall not permit, use of the Services by or for persons subject to U.S. economic sanctions administered by the U.S. Department of The Treasury, Office of Foreign Assets Control ("**OFAC**"), including persons located in, and governments and representatives of, embargoed and sanctioned countries and persons listed as Specially Designated Nationals by OFAC. The Software and the Services are subject to U.S. export control laws, including the Arms Export Control Act and the associated International Traffic in Arms Regulations ("**ITAR**") and the *Export Administration Act and the associated Export Administration Regulations ("**EAR**")*, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to ensure that all Subscribers within Customer's organization or otherwise permitted by Customer are authorized under the applicable export approval and/or authorized under the ITAR to access and use such services prior to permitting their access.

4.9 Restrictions.

- (a) Customer agrees that neither Customer nor its employees, contractors, representatives and/or agents shall:
- (i) copy, distribute, alter, change, modify, adapt, translate, reverse engineer, decompile, disassemble or make derivative works of any Software;
 - (ii) use the Services or any Ntrepid Intellectual Property to create any product or Services that competes with the Services or any component of the Services;
 - (iii) allow any third party to benefit from or access the Services or Ntrepid Intellectual Property on a "service bureau," hosted application, or other basis;
 - (iv) use the Services for the purpose of violating, or in a manner that violates, any foreign, federal, state or local law or regulation;
 - (v) export or re-export the Services or any Software in violation of any applicable export control laws of the U.S. or other jurisdictions;
 - (vi) use the Services in a manner that infringes or violates any intellectual property rights, publicity, privacy, confidentiality, contractual or other rights;
 - (vii) use the Services to transmit information that is defamatory, offensive, misleading, false, harmful to minors, or obscene;
 - (viii) transmit any viruses or programming routines intended to damage, surreptitiously intercept, or expropriate any system, data or personal information;
 - (ix) disrupt the use of the networks over which the Services is provided;
 - (x) modify, destroy or disable any software or hardware used to provide the Services;
 - (xi) share individual logins and passwords for the Services in an attempt to permit a greater number of individuals to access and use the Services than the number of Subscribers for which Customer has paid the applicable license fee; or
 - (xii) use the "Mapper" service to connect more desktops or virtual machines than for the number of Subscribers for which the Customer has paid the applicable License Fee.

- (b) IF THE SERVICES INCLUDE NTREPID'S TIMESTREAM SERVICE, THEN THE FOLLOWING PROVISIONS APPLY:
- (i) SUBSCRIBER AND CUSTOMER HEREBY ACKNOWLEDGE AND AGREE THAT THE SERVICE IS NOT DESIGNED TO COMPLY WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT, AS AMENDED, AND ITS IMPLEMENTING REGULATIONS ("HIPAA").
 - (ii) SUBSCRIBER AND CUSTOMER AGREE NOT TO USE THE SERVICE TO CREATE, RECEIVE, TRANSMIT, MAINTAIN, USE, DISCLOSE, OR OTHERWISE CAUSE THE SERVICE TO HANDLE PROTECTED HEALTH INFORMATION ("PHI") AS DEFINED UNDER HIPAA.
 - (iii) SUBSCRIBER AND CUSTOMER RETAIN FULL RESPONSIBILITY TO ENSURE THAT THE SERVICE IS ONLY APPLIED TO USE-CASE SCENARIOS WHERE THE SERVICE DOES PROVIDE THE NECESSARY LEVEL OF SECURITY AND PRIVACY PROTECTIONS.
 - (iv) CUSTOMER'S AND CUSTOMER'S AGREEMENT TO THIS PROVISION IS A MATERIAL CONDITION OF NTREPID'S WILLINGNESS TO MAKE THE SERVICE AVAILABLE.

4.10 Intellectual Property Rights.

Ntrepid reserves all rights not expressly granted to Customer under the Order and these Terms of Service. Without limiting the generality of the foregoing, Ntrepid retains and reserves sole and exclusive worldwide rights, title, ownership and interest in and to the Services and all Ntrepid Intellectual Property. All patents, copyrights, trademarks, trade secrets and other Ntrepid Intellectual Property and rights therein are and shall remain sole and exclusive property of Ntrepid.

4.11 License to Use Feedback.

Customer grants to Ntrepid a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Subscribers relating to the operation of the Services.

4.12 United States Federal Government End Use Provisions.

Ntrepid provides the Services for ultimate United States federal government end use solely in accordance with the terms and conditions set forth in the Order and these Terms of Service. If the federal government has a need for rights not granted under these Terms of Service, it must negotiate with Ntrepid to determine if there are acceptable terms for granting those rights, and mutually acceptable language specifically granting those rights must be included in the Order. To the extent that any of these Terms of Service are inconsistent with federal law, such term shall not apply to any federal government end user accessing and using the Services.

5. EQUIPMENT.

In the event that Customer is going to install the server portion of the Software on a server at Customer's facility and needs to acquire additional equipment, or Customer requires equipment in order to use and access the Services, and in consideration of the payment of the Appliance Fee set forth in the Order (the "**Appliance Fee**"), Ntrepid agrees to provide the equipment listed in the Order (the "**Equipment**") to Customer for inclusion in Customer's network so that Customer can access and use the Services. Customer agrees to furnish adequate space at Customer's facilities for installation of the Equipment and to provide sufficient and appropriate power, heating, cooling, lighting, and security. Title to the Equipment shall transfer to Customer upon the later of delivery of the Equipment to Customer's facilities or Ntrepid's receipt of the Appliance Fee. Risk of loss of the Equipment shall transfer to Customer upon delivery of the Equipment to Customer's facilities. Unless otherwise set forth in the Order, Customer shall be responsible for installing the Equipment, connecting the Equipment to Customer's network and maintaining the Equipment in good operating condition.

6. INITIAL DEPLOYMENT AT CUSTOMER'S FACILITY.

6.1 Scope of Ntrepid's Deployment Services.

In the event that Customer is going to install the server portion of the Software on a server at Customer's facility and in consideration of the payment of the initial deployment fee set forth in the Order if applicable, Ntrepid will make Ntrepid personnel available, at a mutually agreed-upon dates and times, to: (a) assist in installation of server portion of the Software on the Customer-furnished server at Customer's facility if the Order provides that the server portion of the Software will be installed on a Customer-furnished server and configuring the server portion of the Software; (b) provide on-line or in-person training for Customer's initial server Software administrator(s), and (iii) provide other initial deployment service described in the Order.

6.2 Travel Expenses. Unless explicitly stated otherwise in the Order, the initial deployment fee does not cover travel expenses of the Ntrepid personnel who will assist with the initial deployment of the Software. Customer shall be responsible for all reasonable travel expenses of such Ntrepid personnel in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, which expenses shall be paid by Customer within thirty (30) calendar days after receipt of an invoice therefor accompanied by supporting receipts. Customer shall only be liable for such travel expenses as approved by Customer and funded under the applicable ordering document.

7. SUPPORT AND MAINTENANCE.

7.1 Disruption of Services.

Ntrepid will provide support for any disruption of Services via telephone or e-mail, as determined by Ntrepid. Customer will report any suspected disruption in the Services to Ntrepid's Network Operations Center ("**NOC**") through the online ticketing system, by email or by telephone, and Ntrepid will log all such reports into a central tracking database. Ntrepid will use commercially reasonable efforts to respond to support requests and correct any performance issues with the Services as soon as reasonably practicable. Ntrepid will not be responsible for providing support if any issue with performance of the Services is caused by: (i) malfunction of Customer's equipment or access to the Internet, (ii) abnormal use or (iii) any other cause not directly attributable to Ntrepid. To the extent that the source of such disruption is within the exclusive control of Ntrepid, Ntrepid will remedy the disruption within one business day of determining its source. If the source of the disruption is not within the exclusive control of Ntrepid, Ntrepid will notify Customer and attempt to identify the likely source of the disruption, if and to the extent Ntrepid is able to identify the likely source, and will cooperate with attempts by the responsible third party to resolve the source of the disruption as soon as possible. Customer shall cooperate with Ntrepid as reasonably requested to the extent necessary to provide said support services.

7.2 Maintenance.

(a) Maintenance of the Services, including system and software updates and upgrades, normally will be performed by Ntrepid during regularly scheduled maintenance windows. Customer administrators will be notified at least twenty-four (24) hours in advance of any regularly scheduled maintenance. Ntrepid reserves the right to perform unscheduled emergency maintenance without advance notice to address critical system issues or major security updates. During maintenance users may not be able to access the Services.

(b) If the Services include Ntrepid's "Nfusion", "Nfusion Essentials", "P310", "Switchboard", or "Switchboard SE" service and Customer wishes to continue to be eligible for maintenance, Customer must remain current with the software updates and at all times be not less than (2) two maintenance software versions behind the current maintenance version, where in version 1.12, for example, 12 is the maintenance version.

7.3 Support.

(a) If the Services include Ntrepid's "Nfusion Essentials" service or "Timestream" Service, support tickets may be submitted via the Ntrepid contacts site accessible at <https://ntrepidcorp.com/contact/>. Tickets submitted through the Ntrepid contacts site will be responded to within twenty-four (24) hours upon receipt. Ntrepid will use commercially reasonable efforts to respond to support requests and correct any performance issues within the Nfusion Essentials or Timestream services as soon as reasonably practicable.

(b) If the Services include Ntrepid’s “Mapper”, “Nfusion”, “P310”, “Switchboard”, or “Switchboard SE” service, an Ntrepid account manager will be assigned to Customer as a primary point of contact for all support requests. The account manager will coordinate the fulfillment of support requests submitted by Customer through Ntrepid’s ticketing system and will provide Customer with updates on the status of these requests. The account manager will also serve as a direct line of escalation for urgent requests. The account manager will be available via phone and email during standard business hours, 8:00 A.M. – 5:00 P.M. Eastern Standard Time, Monday through Friday, and will respond to all Customer requests within one (1) business day. In the event that the primary account manager is unavailable, Ntrepid will inform Customer and assign a back-up account manager on a temporary basis. In addition, Customer may contact the NOC as set forth in [Section 7.1](#).

8. OPEN SOURCE SOFTWARE.

The authors or copyright holders of the Open Source Software contained in the Software have made such Open Source Software available “as is” without warranties of any kind and have granted Ntrepid permission to deal in the Open Source Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies thereof. The Open Source Software contained in the Software changes from time to time. For all Services, a list of the Open Source Software contained in the Software is set forth in the Documentation.

9. SECURITY AND CONFIDENTIALITY

9.1 Security.

For any Services provided in an Ntrepid shared environment, Ntrepid will undertake commercially reasonable efforts to implement reasonable administrative, physical, and technical safeguards to protect Customer Data against unauthorized disclosure. Ntrepid makes no representations or warranties whatsoever that such safeguards will in fact prevent against the unauthorized access, acquisition, use, or disclosure of Customer Data or that such safeguards are sufficient for Customer’s particular security needs.

9.2 Confidential Information.

(a) Definition of Confidential Information. For the purposes hereof, “**Confidential Information**” means all information disclosed by either Party to the other Party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

(b) Use, Disclosure, and Protection.

Each Party agrees: (i) not to use any Confidential Information of the other Party for any purpose outside the scope of this Agreement; and (ii) to protect and hold in confidence the Confidential Information of the other Party against unauthorized use or disclosure in the same manner as such Party protects its own similar proprietary information, but in no event shall such Party use less than reasonable care to protect the other Party’s Confidential Information from unauthorized use or disclosure. Notwithstanding the foregoing or any provision to the contrary in the Agreement, unless and to the extent that any relevant limitations are imposed by the terms of a Data Protection Addendum as agreed to between the parties in relation to these Terms of Service, Ntrepid is authorized by Customer to enhance the Services by to: (y) using Customer’s Confidential Information (which may include Customer Data) for analytics purposes and appropriate management and administration functions ancillary to providing the Services; and (z) disclosing Customer’s Confidential Information to vendors, subcontractors, and professional advisers (such as legal counsel), provided such third parties agree to maintain the confidentiality of such Confidential Information consistent with this Agreement.

(c) Exclusions.

This [Section 9.2](#) imposes no obligation upon the Parties with respect to Confidential Information which either Party can establish by legally sufficient evidence: (i) was in its possession without an obligation of confidentiality prior to being acquired or received from the other Party; (ii) is or becomes generally known to the public without violation of this [Section 9.2](#); (iii) is obtained in good faith from a third party having the right to disclose it without an obligation of confidentiality or (iv) is developed by it without use of the other Party’s Confidential Information. A Party’s disclosure of the other Party’s Confidential Information shall not be considered a violation of obligations under this [Section 9.2](#) to the extent such disclosure is required pursuant to any law or valid court order, provided that, unless prohibited by law, such Party has given notice to the other Party of the required disclosure so as to afford the other Party a reasonable opportunity to obtain a protective order and provides such reasonable assistance as the other Party may reasonably request. Ntrepid recognizes that federal agencies are subject to the Freedom of Information Act (FOIA), 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by Ntrepid. Notwithstanding FOIA requirements, the federal government shall make every effort to otherwise comply with the requirements of this Section 9.2.

9.3 Personal Data.

To the extent that Customer provides or otherwise makes available to Ntrepid any Personal Data, including but not limited to Personal Data regarding Customer's employees, Customer hereby represents and warrants that Customer has complied with all applicable data privacy and data protection laws relevant to the processing and transfer of such data to Ntrepid in

the United States, including having secured all necessary consents and authorizations to provide such Personal Data to Ntrepid and for Ntrepid to use or disclose such Personal Data consistent to third parties consistent with this Agreement.

The parties agree that in providing the Services, to the extent that Ntrepid Processes Personal Data, it is doing so on behalf of Customer, pursuant to any Customer's instructions, and in accordance with applicable data privacy and data protection laws. To the extent that Personal Data is subject to the California Consumer Privacy Act, the European Union General Data Protection Regulation, or other data protection legislation imposing similar contractual obligations, Ntrepid agrees to process such Personal Data in accordance with any Data Protection Addendum as annexed hereto. For purposes of this section, the term "Processes" or "Process" shall have the meaning set forth in the Data Protection Addendum.

9.4 Obligations upon Termination or Expiration of the License.

(a) Customer Obligations. To the extent applicable, upon termination or expiration of the License, Customer shall cease using Ntrepid's Confidential Information and, within thirty (30) calendar days following termination of the License, shall promptly destroy or cause to be destroyed all copies of Ntrepid's Confidential Information in Customer's possession and, upon Ntrepid's request, certify in writing such destruction.

(b) Ntrepid Obligations. Following termination or expiration of the License, Ntrepid will delete or destroy Customer Data, including Personal Data, as provided in [Section 4.7](#) above.

10. PAYMENT TERMS.

After Ntrepid's receipt of the Order and upon delivery of the Services in the Order, or if a license key is required to enable the Services, upon delivery, by email to Customer's assigned administrator, of the license key, Ntrepid or its Authorized GSA Reseller as applicable shall invoice Customer, and Customer shall pay Ntrepid or its Authorized GSA Reseller as applicable, the fees and expenses set forth in the Order. Thereafter Ntrepid shall invoice from time to time other fees and expenses described in these Terms of Service. Except as otherwise provided in the Order, all such fees and expenses shall be due and payable in United States dollars by Customer within thirty (30) calendar days of the receipt date of the invoice. In the event of late payment by Customer, Ntrepid may in its sole discretion charge interest at the rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and thereafter at the rate applicable for each six-month period as fixed by the Secretary of the Treasury until Customer pays the full amount due.

11. EVENTS BEYOND NTREPID'S CONTROL.

In accordance with FAR 52.212-4(f) and notwithstanding anything to the contrary contained in the Order or these Terms of Service, Ntrepid shall not be liable for any Services disruption, Services delays, or any other event caused by Customer or its employees', contractors' or agents' negligence, lack of cooperation or failure to comply with the Order or these Terms of Service or factors outside of Ntrepid's control, including but not limited to, any problems with Customer's own network infrastructure or other hardware or software, failure of Customer's telecommunication equipment, or telephone service, electrical outage, Customer's failure to perform necessary maintenance, failure of Customer to maintain the communications link with Ntrepid, or insufficient bandwidth in the communications link provided by Customer. Without limiting the generality of the foregoing, Ntrepid shall not be held responsible for any internet accessibility issues beyond the control of Ntrepid including but not limited to service outages affecting Customer.

12. TERM AND TERMINATION.

12.1 Term.

Subject to Ntrepid's receipt of the applicable License Fee set forth in the Order, the term of the License granted to Customer in [Section 4](#) (the "Term") shall commence on the start date specified in the Order and shall continue until the end date specified in the Order, unless earlier terminated as provided in these Terms of Service or renewed for additional one-year terms upon payment of the then applicable annual License Fee. Ntrepid will notify Customer in writing prior to the end of the initial and each renewal term at which time Customer may choose whether to renew the License.

12.2 Events of Termination.

Customer may terminate the License at any time by providing written notice to Ntrepid and destroying all copies of the Software and Documentation. When the Customer is an instrumentality of the U.S. Government, recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Ntrepid shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer subject to the right of Ntrepid to appeal the decision as provided in 41 U.S.C. Chapter 71.

12.3 Effect of Termination or Expiration.

Upon termination or expiration of the Term for any reason, all licenses granted hereunder automatically will terminate, Customer shall cease using the Services and any Ntrepid Intellectual Property, Ntrepid may immediately disable and discontinue Customer's access to and use of the Services without additional notice to Customer, and Customer shall return to Ntrepid or destroy any copies of the Software and Documentation (in printed or electronic format) relating to the Services. Termination of the License shall not relieve

Customer of its obligations to pay any amounts then due Ntrepid and shall not entitle Customer to a refund of any fees or other amounts paid in connection with the Agreement for Services rendered prior to the termination date. Any termination shall not release a party from liability for a breach by that

party of its obligations under the Agreement prior to or in connection with such termination.

12.4 Survival.

The following provisions of these Terms of Service and the rights and obligations expressed therein shall survive any termination or expiration of Term: (i) [Section 1](#) and any other definitions provided elsewhere in these Terms of Service; and (ii) Sections [4.9](#), [4.10](#), [9](#), [12.3](#), [12.4](#), [14](#), [15](#), [16](#), [17](#), and [18](#).

13. INDEMNIFICATION.

13.1 Indemnification by Ntrepid.

Ntrepid will have the right to intervene to defend Customer against any claim, demand, suit or proceeding (a “**Claim**”) made or brought against Customer by a third party alleging that the Software, excluding Open Source Software, purchased and used by Customer in accordance with these Terms of Service infringes or misappropriates such third party’s intellectual property rights and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a court-approved settlement of, such Claim, provided Customer: (a) promptly gives Ntrepid written notice of such Claim, (b) gives Ntrepid sole control of the defense and settlement of such Claim (except that Ntrepid may not settle any such Claim unless it unconditionally releases Customer of all liability), and (c) gives Ntrepid all reasonable assistance, at Ntrepid’s expense. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute at 28 U.S.C. §516. If Ntrepid receives information about an infringement or misappropriation claim relating to the Software, Ntrepid may in its discretion and at no cost to Customer: (i) modify the Software so that it no longer infringes or misappropriates; (ii) obtain a license for Customer’s continued use of the Services in accordance with these Terms of Service; or (iii) terminate License for the Services upon 30 calendar days’ written notice and refund to Customer any prepaid License fees covering the remainder of the Term of the terminated License. The above defense and indemnification obligations do not apply to the extent such Claim arises from Customer Data, Customer’s breach of these Terms of Service, or Customer’s use of Third Party Applications.

13.2 Exclusive Remedy.

This [Section 13](#) states Ntrepid’s sole liability to Customer, and Customer’s exclusive remedy against Ntrepid, for any type of Claim described in this [Section 13](#).

13.3 Reserved.

14. RESERVED.

15. LIMITED WARRANTY.

NTREPID WARRANTS THAT THE SERVICES WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF DELIVERY OF THE ORDER, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE DOCUMENTATION ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING WARRANTY, CUSTOMER ACKNOWLEDGES THAT NTREPID IS MAKING THE SERVICES AVAILABLE "AS IS." ACCORDINGLY NTREPID DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR FREE OR SECURE; NTREPID MAKES NO WARRANTIES WHATSOEVER, EXPRESS, IMPLIED OR STATUTORY, WHETHER ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES; AND NTREPID EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

16. LIMITATIONS OF LIABILITY.

In no event shall Ntrepid be liable to Customer for any indirect, special, punitive, exemplary, incidental or consequential damages (including, but not limited to, lost profits, loss of business opportunity, loss or corruption of data, or equipment down-time) of any kind or

nature whatsoever, regardless of the legal theory under which such damages are sought (including, but not limited to, contract, warranty, tort or strict liability) arising out of or in connection with the Agreement or Customer's access and use, or inability to access and use, the Services, even if Ntrepid had been advised of the possibility of such damages or even if such damages were reasonably foreseeable. Notwithstanding anything to the contrary in the Agreement, under no circumstances shall Ntrepid's total aggregate and cumulative liability exceed one-half of the License Fee paid to Ntrepid for the Services. The foregoing limitation of liability shall not apply to: (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by federal law.

17. CUSTOMER USE OF THIRD PARTY APPLICATIONS.

At Customer's option, Ntrepid may allow and, in some cases, facilitate Customer use of Third Party Applications in connection with the Services. Customer's collection, use, and storage of information and data through Third Party Applications will be subject to the terms, conditions, and privacy policies that are independently determined by the third party organization providing such Third Party Applications. For example, terms and conditions may include, but are not limited to, third party policies on the collection, use, and retention of log data. Customer is encouraged to review the privacy policies and other applicable terms and conditions of the Third Party Applications before deciding whether to install and use such applications in connection with the Services. In the event Customer uses Third Party Applications, Customer agrees to take reasonable precautions to ensure that the installation and use of such applications is fully compliant with applicable laws and does not compromise or otherwise disrupt in any way the functionality, features, and policies of the Services provided by Ntrepid. Ntrepid has no control and assumes no responsibility over the content, privacy policies, functionality, or features of Third Party Applications. To the extent permitted under applicable laws and federal rules, Ntrepid disclaims any liability for loss or damage that may arise from Customer use of or reliance on Third Party Applications. The inclusion of Third Party Applications in connection with the Services does not imply any endorsement by Ntrepid.

18. MISCELLANEOUS PROVISIONS.

18.1 Notices.

Any notice, request, consent, demand, offer or other communication required or permitted to be given or made under the Agreement shall be in writing and either delivered personally or sent by e-mail, facsimile, overnight courier, regular mail or certified mail, postage prepaid and, in all cases, addressed and sent to the respective parties at an address as a party may specify in writing from time to time. The foregoing communications shall be deemed given: (a) if delivered personally or by overnight courier, upon delivery as evidenced by delivery records; (b) if by e-mail or facsimile transmission, upon successful delivery of the transmission as evidenced by transmission records; or (c) if sent by regular mail or certified mail, postage prepaid, five (5) calendar days after the date of mailing.

18.2 Relationship of Parties.

The Parties are independent contractors and will have no power to bind the other Party or to create any obligation or responsibility on behalf of the other Party or in the other Party. The Agreement shall not be construed as creating any partnership, joint venture, agency, or any other form of legal association that would impose liability upon one Party for the act or failure to act of the other Party.

18.3 Assignment.

Neither Party shall, without the prior written consent of the other Party which shall not be unreasonably withheld, assign or transfer the Agreement or any rights arising from the Agreement. Any attempt to assign or transfer the Agreement without first obtaining such written consent shall be void and of no force and effect. Notwithstanding the foregoing, Ntrepid may assign the Agreement by merger, reorganization, consolidation, or sale of all or substantially all its assets in accordance with the provisions set forth at FAR 42.1204. Nothing in the Agreement shall be deemed to create any right or benefit in any person not a party hereto.

18.4 Headings.

The section and subsection headings used in these Terms of Service are for reference and convenience only and shall not be used in the interpretation of the Agreement. Reference in these Terms of Service to a particular numbered or lettered "Section" shall be deemed to be a reference to that numbered or lettered section or subsection of these Terms of Service and all numbered or lettered subsections within the referenced section or subsection.

18.5 No Waiver.

No delay or omission by either Party to exercise any right or power with respect to any of the terms, provisions or conditions of the Agreement will impair any right or power or be construed to be a waiver thereof. A waiver by either Party of any of the terms, provisions or conditions of the Agreement will not be construed to be a waiver of any other term, provision or condition of the Agreement. No waiver of any rights of a Party under the Agreement will be effective unless set forth in a writing signed by such Party.

18.6 Severability.

If any provision of the Agreement is held by a court of competent jurisdiction to be unlawful, invalid, or unenforceable under applicable law, then such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

18.7 Force Majeure.

Excusable delays shall be governed and permitted to the extent authorized by FAR 52.212-4(f).

18.8 Governing Law.

Except as set forth in [Section 4.12](#), the Agreement shall be governed by the federal laws of the United States without regard to the choice of law principles thereof or the United Nations Convention on the International Sale of Goods.

18.9 Entire Agreement.

This Agreement, including the Customer's selections on the Order, the Customer's contract or purchase order issued to Ntrepid, and to the extent applicable, any Data Protection Addendum annexed hereto, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, concerning this subject matter.

Annex A, Terms of Service - Ntrepid Subscription Services

NTREPID DATA PROTECTION ADDENDUM - CALIFORNIA CONSUMER PRIVACY ACT

Ntrepid, LLC, a Florida limited liability company, ("**Ntrepid**") and the party ("**Customer**") named in the Order enter into this Data Protection Addendum ("**Addendum**") as annexed to the Terms of Service. The purpose of this Addendum is to establish when Ntrepid, as a Service Provider, may process the Personal Data of Customer in accordance with the provisions of the California Consumer Privacy Act ("**CCPA**"). The terms "**CCPA**," "**Order**," "**process**," and "**Service Provider**" shall have the meaning set forth below.

1. DEFINITIONS

"**CCPA**" means the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 *et seq.*, and any regulations and guidance that may be periodically issued pursuant to CCPA.

"**Applicable Law**" means all applicable U.S. federal, state, and local laws relating to the privacy or security of Personal Data, including, without limitation, the CCPA.

"**Order**" means the contract, purchase order or other binding agreement entered into between Ntrepid and Customer that specifies the Services to be provided by Ntrepid, the applicable fees, license term and conditions and limitations on Customer's use of those Services and shall include any Ntrepid quote to the extent accepted by Customer or otherwise incorporated into a binding agreement between Ntrepid and Customer.

"**Personal Data**" means, in general, any information relating, directly or indirectly, to an identified or identifiable natural person that Ntrepid obtains or has access to in order to provide the Services and that is subject to Applicable Law.

"**Process**" or "**Processing**" means any operation or set of operations that are performed on Personal Data or on sets of Personal Data, whether or not by automated means. The definition of Processing shall include, but shall not be limited to "processing" as such term is defined under CCPA.

"**Service Provider**" means a service provider as defined by § 1798.140(v) of the CCPA.

"**Services**" means the subscription-based services specified in the Order to be provided by Ntrepid to Customer.

Any other terms that are not defined herein shall have the meaning provided under the Terms of Service, the Order, or Applicable Law.

2. PROCESSING OF PERSONAL DATA.

- 2.1 Service Provider Obligations. Ntrepid will Process Personal Data for purposes of performing the Services in a manner that is reasonably necessary and proportionate to achieve the purpose of the Processing. Without limiting the generality of the foregoing, Ntrepid, as a Service Provider, will not:
- (a) sell Personal Data;
 - (b) retain, use, or disclose Personal Data for any purpose other than for the specific purpose of providing the Services in the Service Agreement or as otherwise permitted by Applicable Law; or
 - (c) retain, use, or disclose Personal Data outside of the direct business relationship between Ntrepid and Customer unless permitted by Applicable Law.
- 2.2. Individual Requests for Personal Data. Ntrepid will reasonably assist Customer to honor or otherwise respond to requests from individuals as necessary under Applicable Law. In the event Ntrepid receives any requests relating to Personal Data directly from an individual in connection with the Order, Ntrepid will direct the individual to contact Customer, promptly notify Customer of the request, and reasonably assist Customer with the response to such request.
- 2.3. Data Privacy Controls. As required by Applicable Law, Ntrepid will maintain reasonable administrative, technical, physical, and organizational safeguards to protect the security, confidentiality, integrity, and availability of Personal Data.
- 2.4. Customer Representations. Customer represents that it has all necessary consents and authorizations to disclose or otherwise make the Personal Data available to Ntrepid in connection with the Services.

3. TERM AND TERMINATION.

This Addendum shall be co-terminous with the Order, except that either Party may terminate this Addendum and an Order for cause in the event that the other Party materially breaches this Addendum and may submit a contract dispute in accordance with the Contract Disputes Act.

4. CONFLICTS; ORDER OF PRECEDENCE.

In the event of a conflict regarding the privacy or security of Personal Data as between a provision in this Addendum and the Terms of Service , an Order, or any other agreement between the Parties, this Addendum shall control. Notwithstanding the foregoing, in the event that another provision in effect between Ntrepid and Customer provides greater protection to Personal Data than provided herein, such other provision shall control.

5. SURVIVAL.

This Addendum and all provisions herein shall survive so long as, and to the extent that, Ntrepid maintains any Personal Data.

6. MODIFICATION.

In the event of a change in Applicable Law, Ntrepid and Customer agree to negotiate in good faith a reasonable and appropriate amendment to this Addendum.