

iiTOPs SUBSCRIPTION LICENSE AGREEMENT

RECITALS

WHEREAS, Licensor is the owner of all right, title, and interest to its iiTOPS.com subscription based interactive business software platform; and

WHEREAS, Licensee wishes to obtain a license to access and use the iiTOPS.com interactive business software platform;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, Licensor and Licensee agree as follows:

1. **License**

1.1. Licensor hereby grants to Licensee, who accepts the same, a nonexclusive license to access and use the iiTOPS.com subscription based business software platform (“Software”) under the terms and conditions hereunder.

2. **Scope of License**

2.1. The Software provided hereunder is licensed and not sold to Licensee. Licensor reserves all other rights, title and interest in the Software.

2.2. The Software contains copyrighted material, trade secrets, and other proprietary material of Licensor. Licensee agrees not to decompile, reverse engineer, disassemble all or any part of the Software, or to copy, modify, lease, loan, publish or redistribute the Software in whole or in part, without the express written permission of the Licensor, and to use the Software only as expressly permitted in this agreement.

3. **Payments and Records**

3.1. Unless otherwise provided for in any appendix attached hereto or any appendix that may be added from time to time upon mutual consent of the parties, Licensee agrees to the fees and services as described in the iiTOPS Subscription Proposal.

3.2. Licensor shall submit to Licensee on a monthly basis an invoice for the monthly subscription and transaction fees applicable. Payment terms shall be ten (10) days from the date of invoice, paid in US Dollars. If payment is not received by the due date, service may be interrupted.

3.3. Late fees and finance charges may be applicable.

4. **Licensor Support Services**

4.1. Licensor during its normal business hours agrees to provide email technical support and assistance related to use of the Software. Telephone support will be provided at the option of Licensor.

4.2. Licensor further agrees to provide on-line web-cast training presentations to Licensee at no charge. Onsite training can be arranged at the Licensee’s expense.

5. Licensee Obligations

5.1. Licensee shall maintain computer hardware at its own expense capable of supporting the Software and for establishing and maintaining its own internet connection.

5.2. Upon execution of this Agreement, Licensee agrees to provide exclusively to Licensor the administrative functions and business information necessary to maintain flow and accuracy of its data and correspondence, such as acknowledgements, proofs, and certificates of title. Licensee further agrees to, (i) direct its respective vendors to Licensor designated for use with the Software and provide key administrative functions required by the Software, including, special fax numbers, email address or other method of data exchange applicable and made available to the Licensee by the vendors, and (ii) provide to Licensor its manufacturer's product descriptions, product numbers or other designations in order to initialize and set up the Software interface. Licensor acknowledges that the information provided by Licensee shall remain the exclusive property of Licensee.

5.4. All taxes, fees and other governmental charges of any kind including withholding taxes (except United States taxes based on the gross revenues or net income of Licensor) which are levied, assessed, or otherwise imposed by or under the authority of any government or any political subdivision thereof on products sold by Licensee shall be borne by Licensee and shall not be considered a part of, deducted from, or offset against any fee payable by Licensee to Licensor hereunder.

6. Confidentiality

6.1. "Confidential Information" shall mean all information related to the business of the other party, and its subsidiaries, affiliated companies, or customers that may be obtained by the receiving party from any source as a result of this Agreement including, but not limited to, information relating to the pricing, methods, processes, data, lists, programs, research, developments, code, customer information, Software documentation or related information of the disclosing party. Licensor specifically acknowledges that Licensee's business and customer data and related information provided hereunder are Confidential Information of Licensee.

Confidential information shall not include any information that: (i) became known to the receiving party prior to the disclosing party's disclosure of such information; (ii) was part of the public knowledge or literature, not as a result of any action or inaction of the receiving party; (iii) was subsequently disclosed to the receiving party from a source other than the disclosing party without an obligation of confidentiality to the disclosing party; (iv) was independently developed by the receiving party without access to disclosing party's Confidential Information; or (v) as required to be disclosed pursuant to a court order in any legal proceeding or its equivalent.

The rights and obligations of this Agreement shall be confidential to the parties and neither party may disclose any information concerning the contents hereof except as necessary to enforce its rights hereunder.

Each party agrees not to use the Confidential Information disclosed to it by the other party for its own use or for any purpose except to carry out the intent of this Agreement and to take reasonable security precautions, at least as great as the precautions each takes to protect its own Confidential Information, to maintain the confidentiality of the Confidential Information and prevent its disclosure to any third party person or firm without the prior written consent of the disclosing party. Confidential Information will be disclosed to only those of its employees or consultants as are necessary to perform the limited intent of this Agreement, provided, however, that any such consultants have appropriate agreements which are sufficient to enable each party to comply with all the provisions of this Agreement and which require that all third party confidential information be kept in confidence. All agreements with consultants must be in writing. Each party agrees to notify the others in writing of any misuse or misappropriation of such Confidential Information of the other that may come to its attention.

Both parties further agree that all confidentiality commitments hereunder shall survive termination of this

Agreement for any reason.

7. Ownership

7.1. Licensee acknowledges and agrees that Licensor is the sole owner of all right, title and interest in the Software, including all copyrights, know-how, trade secrets, patents and other proprietary rights, and all proprietary, trademark or copyright markings thereon throughout the world. Licensee shall not do anything or commit any act, which might prejudice or adversely affect the validity of such ownership or markings by Licensor.

8. Representations and Warranties

8.1. Licensor represents and warrants that the Software application will be substantially free from defects in design and workmanship during the term of this Agreement.

8.2. Licensee represents and warrants to Licensor that it has the full power and authority to enter into and to perform this Agreement, and knows of no contract, agreement, promise, undertaking or other fact or circumstance which would prevent the full execution and performance of this Agreement by Licensee.

8.3. Licensee represents and warrants to Licensor that any images provided do not infringe on the intellectual property right of any third party and that Licensee has obtained the necessary permission and rights to use such images.

8.4. EXCEPT FOR THE WARRANTY STATED HEREIN, LICENSOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSOR MAKES NO WARRANTY OR REPRESENTATION THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR OR ANY OF ITS EMPLOYEES, REPRESENTATIVES, OR AGENTS SHALL CREATE ANY WARRANTY IN ADDITION TO THOSE GIVEN HEREIN.

9. Limitation of Liability

9.1. UNDER NO CIRCUMSTANCES SHALL LICENSOR BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OR INABILITY TO USE THE SOFTWARE OR RELATED DOCUMENTATION UNDER ANY THEORY, INCLUDING CONTRACT, TORT, OR NEGLIGENCE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2. IN NO EVENT SHALL LICENSOR'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE) EXCEED THE AMOUNT PAID BY YOU FOR THE SPECIFIC LICENSE OF THE SOFTWARE AND RELATED DOCUMENTATION TO WHICH THE LIABILITY IS RELATED.

10. Indemnification

10.1. Licensee shall indemnify, defend and hold harmless Licensor, its subsidiaries and affiliates from and against any and all claims, demands, losses, liabilities, costs, expenses, or damages (including reasonable attorneys' fees and related costs) based upon, arising out of, or resulting from, (i) any claim that the image(s) of Licensee furnished hereunder constitute an infringement of any United States or other validly held patent, trademark, copyright or other intellectual property rights, (ii) any breach by Licensee in its performance of this Agreement, or (iii) any breach by Licensee of any representation or warranty made by it herein.

10.2. Licensor shall indemnify, defend and hold harmless Licensee, its subsidiaries and affiliates from and against any and all claims, demands, losses, liabilities, costs, expenses, or damages (including reasonable attorneys' fees and related costs) based upon, arising out of, or resulting from, (i) any claim that the image(s) of Licensor furnished hereunder constitute an infringement of any United States or other validly held patent, trademark, copyright or other intellectual property rights, (ii) any breach by Licensor in its performance of this Agreement, or (iii) any breach by Licensor of any representation or warranty made by it herein.

fees and related costs) based upon, arising out of, or resulting from, (i) any breach by Licensor in its performance of this Agreement, or (ii) any breach by Licensor of any representation or warranty made by it herein.

11. **Term and Termination**

11.1. This Agreement shall commence as of the date set forth above and unless provided for in any appendix attached hereto or referenced herein, shall be for the term identified in the iiTOPS Subscription Proposal. This Agreement also may be terminated as follows:

- a. For Convenience. Either party may terminate this Agreement for convenience and without cause upon thirty (30) days written notice to the other party.
- b. Insolvency. In the event that either party be adjudged insolvent or bankrupt, or upon the institution of any proceedings by or against it seeking relief, reorganization or arrangement under any laws relating to bankruptcy or insolvency, or upon any assignment for the benefit of creditors, or upon the appointment of a receiver, liquidator or trustee of any of its property or assets, or upon the liquidation, dissolution or winding up of its business, then and in any such events this Agreement may forthwith be terminated or canceled by the other party upon giving written notice thereof, and upon the giving of such notice this Agreement shall terminate forthwith.

11.2 Upon termination or expiration of this Agreement, Licensee agrees to destroy all copies of the Software and related documentation in its possession or control. Licensor agrees to return all Licensee owned documentation and further agrees not to use such documentation after termination.

11.3 This Agreement may also be extended upon mutual consent of the parties.

12. **Export Restrictions**

12.1. Licensee represents and warrants that neither the Software nor any other technical data received from Licensor, nor the direct product thereof, will be exported outside the United States except as authorized and as permitted by the laws and regulations of the United States. If the Software has been rightfully obtained by Licensee outside of the United States, Licensee agrees that it will not re-export the Software nor any other technical data received from Licensor, nor the direct product thereof, except as permitted by the laws and regulations of the United States and the laws and regulations of the jurisdiction in which Licensee obtained the Software.

13. **Entire Agreement**

13.1. This license constitutes the entire agreement between the parties with respect to the use of the Software and related documentation and supersedes all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No amendment to or modification of this license will be binding unless in writing and signed by an authorized officer of Licensor.

14. **No Waiver**

14.1 The failure of either party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions.

15. **Independent Contractor**

15.1 Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between Licensor and Licensee. Neither party shall have the power to control the activities and operations of the other and their status is, and at all times will continue to be, that of independent contractor with respect to each other.

16. **Assignment**

16.1. Neither party shall assign or transfer this Agreement, in whole or in part, or any interest arising under this Agreement, or subcontract or delegate any work to be performed hereunder to any third party other than a wholly-owned subsidiary of such party or to an affiliate thereof wholly-owned by such party's one hundred percent (100%) parent, without the prior written consent of the other party. Subject to the provisions of this Section, this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties.

17. **Applicable Law**

17.1. This license shall be governed by and construed in accordance with the laws of the United States and the State of California, except for its conflict of laws principles. If for any reason a court of competent jurisdiction finds any provision of this license, or portion thereof, to be unenforceable, that provision of the license shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this License shall continue in full force and effect.