

TITUS® SOFTWARE AS A SERVICE AGREEMENT – CLOUD SERVICES 1.0

IMPORTANT: BEFORE EXECUTING THIS AGREEMENT OR THE ACCOMPANYING PURCHASE ORDER IN WRITING, PLEASE READ THIS SOFTWARE AS A SERVICE AGREEMENT CAREFULLY. BY EXECUTING THIS AGREEMENT OR THE ACCOMPANYING PURCHASE ORDER, YOU AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN. THIS AGREEMENT IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND TITUS WITH RESPECT TO YOUR USE OF THE SERVICES. IF YOU ARE AN AGENT OR EMPLOYEE OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT (I) YOU HAVE THE AUTHORITY TO ACCEPT THIS AGREEMENT AND TO BIND SUCH ENTITY, AND (II) THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS DULY AUTHORIZED TO ACCEPT THIS AGREEMENT ON BEHALF OF SUCH ENTITY AND TO BIND SUCH ENTITY, AND (III) SUCH ENTITY HAS FULL POWER, CORPORATE OR OTHERWISE, TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT, DO NOT PURCHASE THESE SERVICES.

1. Definitions. In this Agreement:

- 1.1 **“Agreement”** means this TITUS® Software as a Service Agreement;
- 1.2 **“Initial Term”** has the meaning as set out in Section 4.1;
- 1.3 **“Renewal Term”** has the meaning as set out in Section 4.1;
- 1.4 **“Services”** means the use of the Software on a service basis as set out in this Agreement;
- 1.5 **“Software”** means the TITUS software specified at the top of this Agreement, including any Software Documentation provided as part of the Services;
- 1.6 **“Software Documentation”** means the Software user manual as well as any other materials, whether printed, online or electronic, made available by TITUS as part of the Services;
- 1.7 **“Term”** has the meaning as set out in Section 4.1;
- 1.8 **“TITUS”** means TITUS Inc.;
- 1.9 **“User”** or **“Users”** means your employees authorized by you or on your behalf to use the Services; and
- 1.10 **“you”** or **“your”** means the Ordering Activity.

2. Grant of Rights.

- 2.1 **Services.** During the Term TITUS will provide the Services for your internal business use subject to this Agreement and solely for use by the number of Users for which you have paid the applicable fees. Users may use the Services solely for such purposes and you are responsible for the Users’ compliance with this Agreement. TITUS has no delivery obligation under this Agreement and will not provide copies of the Software to you as part of the Services. You agree that this Agreement does not grant you any license to use the Software in excess of the scope and/or duration of the Services. Upon the expiration or termination of this Agreement, your right to access or use the Services shall end. No other rights in or to the Software are granted to you. TITUS may make changes to the Services from time to time without notice.

3. Restrictions.

- 3.1 You shall not reverse engineer, disassemble, reverse translate, decompile or in any other manner decode the Software except to the extent that the foregoing restriction is expressly prohibited by applicable law notwithstanding a contractual obligation to the contrary. You shall not distribute, lease, rent, share, or otherwise provide access to the Services to any third party. You shall not create any software or services that provide similar functionality or that are competitive with the Software or the Services. You acknowledge that the Services contain TITUS confidential information and know-how and You shall not use such confidential information or know-how except to the extent necessary to exercise the rights granted to you under Section 2 of this Agreement. For greater certainty, you shall not disclose any performance, benchmarking, or feature-related information about the Software or Services. You further agree not to disclose, transfer or otherwise provide to any third party any portion of the Software or Services or confidential information or know-how. You will comply with all applicable laws and regulations in connection with your use of the Services. TITUS recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.
- 3.2 The rights granted to you under this Agreement are also subject to the following conditions: (i) the rights of any User cannot be shared or used by more than one individual; (ii) except as expressly provided herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or other means; and (iii) you agree to keep your means of access (username and password) to the Services confidential and you will make every reasonable effort to prevent unauthorized third parties from accessing the Services. You will promptly notify TITUS of any unauthorized use of, or access to, the Services.
- 3.3 You agree not to use or permit the Services to be used, including by uploading, emailing, posting, publishing or otherwise transmitting any material, for any purpose that may: (i) menace or harass any person or cause damage or injury to any person or property; (ii) involve the publication of any material that is false, defamatory, harassing or obscene; (iii) violate privacy rights, (iv) constituted unsolicited bulk e-mail, “junk mail,” “spam,” or chain letters, (v)

constitute an infringement of intellectual property rights or other proprietary rights, or (vi) otherwise violate applicable laws, ordinances or regulations.

3.4 No customer data will be stored through the use of services.

4. Term and Termination.

4.1 **Term.** Services provided under this Agreement shall be provided for the initial period for which you have subscribed for the Services, and if no period is specified, for one (1) year, unless earlier terminated in accordance with the terms of this Agreement (the "**Initial Term**"). Upon expiration or termination of the Agreement, all rights to access or use the Services shall end.

4.2 **Suspension and Termination.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Titus 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. In the event that TITUS terminates the Agreement under this provision, you must pay all amounts which have accrued prior to such termination, as well as all sums remaining unpaid for the Services ordered under this Agreement, including any taxes and expenses, within thirty (30) days of the termination date. In the event that TITUS terminates the Agreement, you must pay all amounts remaining unpaid for the Services, including related taxes and expenses, within thirty (30) days of the termination date.

4.3 **Trial Use.** Any Services made available for trial purposes are provided to you on an "as is" basis and without any warranty of any kind from TITUS.

4.4 **Survival.** The provisions in Section 5 (Payment Terms), Section 6 (General Disclaimer), Section 7 (Disclaimer of Implied Warranties), Section 8 (Limitation of Liability), Section 10 (Ownership), Section 14 (Miscellaneous) and any other provisions which by their nature are intended to remain in force beyond the Term shall survive expiration or termination of this Agreement.

5. **Payment Terms.** You agree to pay for the Services in accordance with TITUS' GSA Schedule prices for the Services. All fees for Services are not subject to any reduction or set-off. Titus shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

6. **General Disclaimer.** TITUS warrants that these services shall be provided in a workmanlike manner. TITUS DOES NOT GUARANTEE THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT TITUS WILL CORRECT ALL SERVICE ERRORS. YOU ACKNOWLEDGE THAT TITUS DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. TITUS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

7. **DISCLAIMER OF IMPLIED WARRANTIES.** TO THE EXTENT NOT PROHIBITED BY LAW, THERE ARE NO IMPLIED REPRESENTATIONS, IMPLIED WARRANTIES OR IMPLIED CONDITIONS OF ANY KIND, INCLUDING FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS OTHERWISE EXPLICITLY PROVIDED IN THIS AGREEMENT, THE ENTIRE RISK OF THE USE OF THE SOFTWARE SHALL BE BORNE BY YOU. **THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.**

General Business

8. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL TITUS OR ANY OF ITS AFFILIATES, LICENSORS, SUBCONTRACTORS, RESELLERS OR DISTRIBUTORS HAVE ANY LIABILITY TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, RELIANCE, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFIT, LOSS OF OR DAMAGE TO DATA OR OTHER COMMERCIAL OR ECONOMIC LOSS, WHETHER ARISING IN CONTRACT, EQUITY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER THEORY OF LIABILITY, EVEN IF TITUS (INCLUDING ITS AFFILIATES, LICENSORS, SUBCONTRACTORS, RESELLERS AND DISTRIBUTORS) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR THEY ARE FORESEEABLE. IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF TITUS (INCLUDING ITS AFFILIATES, LICENSORS, SUBCONTRACTORS, RESELLERS AND DISTRIBUTORS) TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY DAMAGES ARISING FROM THIS AGREEMENT, RELATED TO THE SERVICES OR SOFTWARE, OR RELATED TO ANY OTHER SERVICES PROVIDED TO YOU BY TITUS (INCLUDING ITS AFFILIATES, LICENSORS, SUBCONTRACTORS, RESELLERS AND DISTRIBUTORS) WHETHER ARISING IN CONTRACT, EQUITY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER THEORY OF LIABILITY, EVEN IF TITUS (INCLUDING ITS AFFILIATES, LICENSORS, SUBCONTRACTORS, RESELLERS AND DISTRIBUTORS) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR THEY ARE FORESEEABLE, EXCEED THE FEES PAID BY YOU FOR THE SERVICES IN THE THREE (3) MONTHS PRIOR TO THE DATE OF THE CLAIM. TITUS (INCLUDING ITS AFFILIATES, LICENSORS, SUBCONTRACTORS, RESELLERS AND DISTRIBUTORS) SHALL NOT BE RESPONSIBLE FOR CLAIMS BY A THIRD PARTY. THE LIMITATIONS IN THIS SECTION SHALL APPLY WHETHER OR NOT THE ALLEGED BREACH OR DEFAULT IS A BREACH OF A FUNDAMENTAL CONDITION OR TERM OR FUNDAMENTAL BREACH. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THESE LIMITATIONS MAY NOT APPLY TO YOU.

THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

THE DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT. YOU ACKNOWLEDGE THAT BUT FOR THE DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY, NEITHER TITUS NOR ANY OF ITS LICENSORS WOULD GRANT THE RIGHTS GRANTED IN THIS AGREEMENT.

9. **Support Services.** Support services may be purchased separately and provided under this Agreement.
10. **Ownership.** TITUS is a trademark or a registered trademark of TITUS Inc. All TITUS product names and logos are trademarks or registered trademarks of TITUS Inc. All right, title, and interest (including all intellectual property rights) in, to, and under the Services and Software (including all copies thereof) shall remain with TITUS and its licensors. TITUS shall retain all ownership and intellectual property rights in anything developed and delivered under this Agreement.
11. **Export.** The Services are subject to United States and Canadian export control laws and regulations. These laws include restrictions on destinations, end users and end use. You acknowledge that such export control laws govern your use of the Services (including technical data) and any Services provided under this Agreement, and you agree that you must comply with all United States and Canadian export laws and regulations (including "deemed export" and "deemed re-export" regulations) that apply to the Services. You further agree that no data, information, software program and/or materials resulting from the Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.
12. **Privacy Policy.** In performing the Services, you will comply with applicable law. You agree to provide any notices and obtain any consents related to your use of the Services and TITUS' provision of the Services, including those related to the collection, use, processing, transfer and disclosure of personal information.
13. **High-Risk Activities:** The Services are not fault-tolerant and are not designed or intended for use in or in conjunction with on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, or direct life support machines. TITUS, its affiliates, licensors, subcontractors, resellers and distributors specifically disclaim any express or implied representations, warranties or conditions for such uses.
14. **Miscellaneous.**
- 14.1 **Independent Contractors.** TITUS is an independent contractor and nothing in this Agreement shall be construed as to create any form of partnership, joint venture, or agency relationship between the parties hereto. Each party will be responsible for paying their own employees, including related taxes, insurance and other amount required by law to be deducted.

- 14.2 **Publicity.** You agree that TITUS may include your name in a list of TITUS customers, online or in promotion materials. TITUS acknowledges that the ability to use this Agreement in advertising is limited by GSAR 552.203-71.
- 14.3 **Entire Agreement.** This Agreement, the underlying GSA Schedule, GSA Schedule Pricelist and Purchase Order(s), together with the TITUS Privacy Policy, represents the entire agreement between you and TITUS with respect to the Services and the Software, and supersedes any other agreements or discussions, oral or written, and except as expressly set out in this Agreement may not be changed except by a written agreement executed by you and TITUS or an authorized representative of TITUS.
- 14.4 **Severability.** If any provision of this Agreement is found to be unenforceable or illegal, the remaining provisions will remain effective and such decision shall not affect the validity or enforceability of such offending provisions under other circumstances and such provisions shall be replaced with terms consistent with the purpose and intent of this Agreement only to the extent necessary to make them enforceable under such circumstances.
- 14.5 **Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).
- 14.6 **Audit.** TITUS has the right to audit your use of the Services for compliance with this Agreement. You agree to maintain complete and accurate records of your use of the Services, to make such information available to TITUS upon request, and to otherwise cooperate with TITUS' audit. Such audit will be conducted during normal business hours, shall not unreasonably interfere with normal business operation, and shall take place no more than once (1) per calendar year upon reasonable notice to you of not less than ten (10) days. Such audit shall be subject to applicable Governments Security requirements. At the conclusion of such audit, TITUS may provide you with written notification and invoice for any fees applicable to your use of the Services in excess of your rights granted hereunder and you agree to pay such amounts within thirty (30) days of receiving such notice from TITUS.
- 14.7 **Assignment.** You may not assign this Agreement or give or transfer the Services, whether voluntarily, by operation of law, or otherwise, to another individual or entity without TITUS' prior written consent.
- 14.8 **Waiver.** The failure by TITUS to claim a breach of any term of this Agreement shall not constitute a waiver of such breach or the right of TITUS to enforce any subsequent breach of such term. All waivers must be in writing.
- 14.9 **Notices.** Unless specified otherwise herein: (a) all notices must be in writing and addressed to the attention of the other party's legal department and primary point of contact; and (b) notice will be deemed given: (i) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by email without verification of receipt; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or email.
- 14.10 **Governing Law.** This Agreement shall be governed by the Federal Laws of the United States. No choice of laws rules of any jurisdiction shall apply to this Agreement.

Third Party Software: You acknowledge that the Software may include, or may be provided with certain third party software products ("**Third Party Software**"). All Third Party Software is subject to end user license agreements and/or other license terms and conditions specific to each third party software supplier, as such agreements or terms may be amended from time to time (the "**Third Party License Terms**").

Listing of Third Party Software:

Nuget CommonServiceLocator 1.0.0

Microsoft ASP.NET Web API 2.2 5.2.3, Microsoft Software License Terms - Microsoft.Net Library

Microsoft.Web.Infrastructure 1.0.0, Microsoft Software License Terms – Microsoft ASP.NET View Controller 3 Tools Update

Microsoft.Web.Infrastructure 1.0.0, Microsoft Software License Terms – Microsoft Software License Terms - Microsoft ASP.NET Web Pages

Microsoft.Web.Infrastructure 1.0.0, Microsoft Software License Terms – Microsoft Package Manager for .NET

Microsoft ASP.NET Web Optimization 1.1.3 – Microsoft Software License Terms – Microsoft .NET Library

Webgrease 1.5.2 - Microsoft Software License Terms - Microsoft MSN Webgrease