

## Utopia Systems End User License Agreement

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1. **Legally binding agreement.** By ordering and/or using any service offered or provided by Utopia Systems, including, without limitation, the services described in any signed service order(s), the individual or company identified as the “Client” accepts and agrees to, and intends to be legally bound by, these Terms of Service (which include all service orders signed by Client and all policies available on the Utopia Systems website ([www.utopiasystems.com](http://www.utopiasystems.com)), including, without limitation, Utopia Systems’ Acceptable Use Policy. Utopia Systems may change its Terms of Service and/or any policies from time to time upon notice to Client that an updated version is available on the website. Continued use of any service thereafter constitutes Client’s legally binding agreement with such update.
2. **Description of services.** Utopia Systems will provide Client with access to and use of the services set forth on the service order(s), as such services are described on the Utopia Systems website from time to time.
3. **Charges.** Client will pay all charges for services set forth from time to time on the service order(s). All charges shall be paid as invoiced by Utopia Systems, without setoff or deduction. In addition to any other rights or remedies, Utopia Systems may charge and collect a late charge and administrative fee on any unpaid amount due equal to one and one-half percent (1 and 1/2 %) of such amount for each month or partial month. All charges for services are exclusive of all taxes and similar fees now in force or enacted in the future imposed on the transaction and/or the delivery of services, all of which Client will be responsible for and will pay in full (except for taxes based on Utopia Systems’ net income). Client will be responsible for any credit card or other payment processing fees imposed on Utopia Systems with respect to any Client payments. Client will be liable for all costs and expenses (including reasonable attorney fees) incurred by Utopia Systems in connection with collecting any charges or enforcing its rights under these Terms of Service.
4. **Billing arrangements**
  - 4.1 **Credit card required.** Unless otherwise approved by Utopia Systems, Client will provide Utopia Systems with valid credit card information and pay the charges for services by such credit card. Utopia Systems will charge Client’s credit card in advance of service provisioning for one-time charges and advance payments and in advance of each month for recurring charges. Utopia Systems will issue payment receipts promptly after payment of such charges.
  - 4.2 **No credit card required.** For Clients approved by Utopia Systems, Utopia Systems will invoice approximately thirty (30) days in advance of service provisioning for one-time charges and advance payments and in advance of each month for recurring charges. Payment is due, and Client will pay such invoices, in full within thirty (30) days of the invoice date.
5. **Renewal and termination of service.** Service will continue, and will automatically renew on a 12-month or monthly basis, as applicable, until terminated as provided below.
  - 5.1 **Non-renewal.** Either party may terminate service by notifying the other party in writing at least thirty (30) days prior to the end of the then-current 12-month period, for year-to-year Clients, or month, for month-to-month Clients. In the case of trials, notifications provided by Utopia Systems through the service indicating the remaining number of days in the trial will constitute such notice of termination, and Utopia Systems may terminate a trial account if Client does not first log on within thirty (30) days after registration.
  - 5.2 **Service interruption.** Client may terminate service immediately upon notice to Utopia Systems within five (5) days following the end of a calendar month in the event that Utopia Systems fails to provide the service at the Uptime Plan Service Availability percentage set forth in the service order for three (3) consecutive calendar months (computed and subject to the exceptions as set forth in Section 8.4 below). **TERMINATION OF SERVICE AS PROVIDED IN THIS SECTION 5.2 AND ANY APPLICABLE SERVICE LEVEL CREDITS UNDER SECTION 8.4 ARE CLIENT’S SOLE AND EXCLUSIVE REMEDIES FOR ANY INABILITY TO USE THE SERVICES (OR ANY PART THEREOF), PERFORMANCE PROBLEM, DATA LOSS OR INACCURACY, OR OTHER SERVICE OUTAGE, UNAVAILABILITY OR DOWNTIME.**

- 5.3 **Breach and default by Client.** Utopia Systems may, in its sole discretion, elect to terminate service upon and after (a) Client's failure to make timely payment in full of any charges, (b) any breach or noncompliance by Client or any of its users (as described in Section 10 below) of any of the provisions of these Terms of Service (including any of the policies); (c) Client's failure to continue to function as a going concern or to operate in the ordinary course of business, or if Client commits an act of bankruptcy within the meaning of the federal bankruptcy laws, or if bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings will be instituted by or against Client; and (d) Client's or any of its users' use of the service in any manner that, in Utopia Systems's reasonable discretion, could adversely affect Utopia Systems's public image, goodwill, reputation or contractual relations (including its agreements for facilities or services), or could subject it to liability, or could threaten or put at risk Utopia Systems's or its third-party provider's network(s).
6. **Suspension of service.** Upon and after the occurrence of any of the events set forth in Section 5.3 above, Utopia Systems may, in its sole discretion, immediately or at any time thereafter, suspend the provision of all or any portion of the services to Client, including, without limitation, by terminating Client's passwords, account and/or access to or use of the services (including client data as described in Section 7 below). Utopia Systems may impose such requirements and/or fees for reinstatement or reconnection of service as Utopia Systems may determine in its discretion, including, without limitation, requiring a security deposit or that Client pay with a credit card. Client's obligation to pay all charges will remain in effect until termination of all services. Notwithstanding the termination of service, Client will remain obligated (and, for credit card Clients, Utopia Systems may charge Client's credit card) for any outstanding invoices or amounts due and for all charges for services rendered but not billed prior to termination.
7. **Access to data.** Utopia Systems will not permit Client to access or remove any data (including, without limitation, any stored or archived email or other data inputted by Client or any of its users in the course of utilizing the service) at any time unless and until all charges and other sums owing hereunder have been paid in full. In the event that Client terminates service under Section 5.1 or Section 5.2 (and all charges and sums have been paid in full), Utopia Systems will make available to Client a file of the client data within 30 days after Client's written request. In the event that Utopia Systems terminates service under Section 5.3, Utopia Systems will have no obligation to maintain or forward any Client data. In any event, Utopia Systems will have no obligation to retain any Client data for more than thirty (30) days after termination of service, and Utopia Systems may delete any/all Client data anytime thereafter.
8. **Technical service matters.**
- 8.1 **Security and passwords.** Utopia Systems will provide service security solely by providing Client with access to the service through a combination of user names and passwords. Client is responsible for any and all use of, and activities and transactions conducted through or that occur under, Client's user accounts and/or passwords, whether or not authorized by Client.
- 8.2 **Client data and data backup.** All Client data, whether posted by Client, its users or third parties through the use of Client passwords, will (as between Utopia Systems and Client) be the sole property of Client, unless specifically notified by Utopia Systems in advance. Client will have sole responsibility and liability for all aspects of the Client data, including, without limitation, its accuracy, quality, integrity, legality, reliability, appropriateness, privacy, security and copyright. Utopia Systems will not be responsible or liable for any such matters (and Client acknowledges that Utopia Systems will exercise no control whatsoever over the Client data) or, without limitation, deletion, correction, destruction, damage, loss or failure to store any Client data. Utopia Systems will backup data solely by making daily backup copies of all Client data stored on the Utopia Systems equipment and delivering such copies daily to a secured storage area (and by rotating such copies weekly). Such data backup constitutes Utopia Systems' sole redundant service capability (i.e., the ability to provide services in the event of a disaster that causes Utopia Systems' physical or system facilities to become inoperative). CLIENT WILL MAKE BACKUP COPIES OF ALL CLIENT DATA, NOTWITHSTANDING UTOPIA SYSTEMS'S BACKUP SERVICE DESCRIBED IN THIS SECTION 8.2.
- 8.3 **Client support (Help Desk).** Utopia Systems will provide technical support to Client through the Utopia Systems website or pursuant to the contact information and hours of availability posted on the website

([www.utopiasystems.com/support/default.asp](http://www.utopiasystems.com/support/default.asp)) and in accordance with the response guidelines set forth below. All requests for support or additional services must be made by either of the two (2) Client technical contacts designated by Client in writing from time to time. Utopia Systems will provide assistance only at the request of persons Utopia Systems reasonably believes to be authorized Client representatives. For issues other than Priority 1 Issues, there may be a charge of \$75.00 per incident if support is required after hours. After hours support is considered anytime between 8 p.m. and 8 a.m. ET seven days a week.

| Issue      | Description  | Response Guidelines   |
|------------|--|---|
| Priority 1 | <p><i>Complete System Failure</i> – Most critical and highest priority, characterized by the following:</p> <ul style="list-style-type: none"> <li>• Issues that keep Client from operating its business</li> <li>• Have a large detrimental impact on the business</li> <li>• No alternative work around exists</li> <li>• Examples include total failure or inoperability of critical Hardware or Supported Applications</li> </ul>                              | <ul style="list-style-type: none"> <li>• 1 hour initial response from initial contact</li> <li>• Technical support staff will work continuously until the issue is resolved</li> <li>• Account Management is notified of issue within 15 minutes of confirming issue</li> <li>• Follow-up calls made every 2 hours by Account Management until issue is resolved</li> </ul> |
| Priority 2 | <p><i>Inoperable Business Function</i> – Negative impact on a large business function or a substantial number of system users, characterized by the following:</p> <ul style="list-style-type: none"> <li>• Temporary work-around is a reasonable option</li> </ul>  | <ul style="list-style-type: none"> <li>• 2 hour initial response from initial contact</li> <li>• Utopia Systems will endeavor to resolve these issues within 2 business days</li> <li>• Issue is escalated to Account Management within 4 hours</li> <li>• Account Management will update Client on status once/day</li> </ul>  |
| Priority 3 | <p><i>Business Function Limitation</i> – Narrow functional limitations and situations that do not currently impair the Client's business activities, characterized by the following:</p> <ul style="list-style-type: none"> <li>• Narrow functional focus</li> <li>• Impaired function is used daily</li> <li>• Issue adversely affects business performance</li> <li>• Temporary work-around is available</li> <li>• Impacts a subset of the user-base</li> </ul> | <ul style="list-style-type: none"> <li>• 24 hour initial response from initial contact</li> <li>• Utopia Systems will endeavor to respond as soon as commercially reasonable</li> </ul>   |

8.4 **Service Level Credits.** Client shall be entitled to credit based on the circumstances below equal to the following for the impacted Service:

1. **Technical Support.** In the event Utopia Systems fails to respond in the manner set forth in Section 8.3 to an issue described in such Section identified by Client in accordance with these Terms of Service, Client shall be entitled to a credit equal to 1/30 of the monthly recurring charges for the affected services for each hour (or fraction thereof) after the required response by which Utopia Systems fails to respond (up to a maximum credit of the entire monthly recurring charge), so long as Client shall have notified Utopia Systems' Help Desk in writing of the purported failure to respond within two hours of the failure.

2. System Availability. In the event that System Availability (as defined below) (subject to the exceptions below) for both (a) the current term year through the date of computation and (b) the month of computation is less than the percentage applicable to the Availability Tier below for the Uptime Plan set forth on the service order, Client shall be entitled to a credit equal to the applicable credit percentage set forth below of the monthly recurring charges for the affected services (exclusive of re-billed circuit charges, if any). “System Availability” means the percentage of time over the applicable period (i.e., the current term year or month) during which the service is available for online access by Client, as monitored and determined by Utopia Systems.

| <b>Uptime Plan Definitions*</b>   |
|---|
| Basic plan (99.5% Service Availability, less than 3.45 hours of unavailability per month)<br>Tier 1 – Less than 99.5%<br>Tier 2 – Less than 99%<br>Tier 3 – Less than 95%                 |
| Standard plan (99.9% Service Availability, less than .744 hours of unavailability per month)<br>Tier 1 – Less than 99.9 %<br>Tier 2 – Less than 99.5%<br>Tier 3 – Less than 99%           |
| Premium plan (99.99% Service Availability, less than 0.072 hours of unavailability per month)<br>Tier 1 – Less than 99.99 to 99.9%<br>Tier 2 – 99.8% to 99.5%<br>Tier 3 – Less than 99.5% |

\* Does not include planned our announced unavailability for maintenance or other procedures.

| <b>Availability Tier</b> | <b>Credit Percentage</b> |
|--------------------------|--------------------------|
| 1                        | 5%                       |
| 2                        | 10%                      |
| 3                        | 20%                      |

3. Exceptions. Client shall not be entitled to service level credit with respect to circumstances (and such circumstances shall not be included in the computation of System Availability) arising out of (i) any equipment, software or infrastructure, including that of Client, not managed or operated by Utopia Systems, (ii) *force majeure*, (iii) acts or omissions of any person or entity other than Utopia Systems, including any management or configuration changes made by Client or other changes made by Client to its systems, services or servers (including any made available to Client by Utopia Systems), (iv) scheduled system downtime (as provided below) and (v) performance degradation during the batch window (as described below). System Availability (and credit based thereon) applies only to supporting the current release of software applications. Client shall not be entitled to service level credit in the event Client has breached these Terms of Service or has violated any of Utopia Systems’ policies.

a. Scheduled System Downtime

(i) *Maintenance Weekends*: As Utopia Systems determines to be necessary, Utopia Systems may schedule system downtime on a Saturday and Sunday of each month between Saturday 8 a.m. until Sunday 11 p.m. Eastern Time. Utopia Systems will provide Client with no less than 2 days advance notice of such maintenance weekends unless unexpected maintenance is required.

(ii) *Scheduled On-line Downtime*: Utopia Systems may schedule system downtime during the period of Online Availability either with the prior notice to and approval of Client or after providing reasonable advance notice to Client including the reason for scheduling downtime during business hours, such as to apply a security related software patch.

(iii) *Security Updates*: Security updates made available by Microsoft may be critical in nature and may warrant immediate application. In the event that system downtime is required to apply such updates or patches, prior to doing so Utopia Systems will advise Client of such updates and suggest an appropriate time window to apply such updates or patches.

b. *Batch Window*. "Batch window" means the daily period from 7 p.m. to 7 a.m. Eastern Time, in which after hours batch processing will be performed pursuant to a schedule reasonably tailored to Client's business requirements. Batch processing examples are mass importing an exporting of data such as database, email and website data that would incur a significant load on the server or services. Client may request to modify its batch window, in which event Utopia Systems may change its System Availability guarantee above and service level credits.

c. *Credit Terms*. Service level credits to which Client is entitled shall be credited to the next monthly recurring charge payment due. In order to be eligible for service level credit, Client shall request credit in writing within 72 hours after Client becomes aware of the event purported to give rise to the credit.

THE SERVICE LEVEL CREDITS SET FORTH IN THESE TERMS OF SERVICE AND CLIENT'S RIGHT OF TERMINATION UNDER SECTION 5.2 SHALL BE CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY SYSTEM AVAILABILITY ISSUE, OUTAGE OR ANY UTOPIA SYSTEMS FAILURE TO MEET THE ABOVE DESCRIBED SERVICE LEVELS.

9. **Utopia Systems ownership**. These Terms of Service, and the provision/receipt of services, do not convey any rights of ownership to Client in or related to any service, Utopia Systems technology (including, without limitation, software, hardware, products, processes, algorithms, user interfaces, know-how, documentation, techniques, designs and other tangible or intangible technical material or information) or intellectual property rights of Utopia Systems (all of which remain with Utopia Systems). The Utopia Systems name, the Utopia Systems logo, and the product names associated with the service are trademarks of Utopia Systems or third parties, and no right or license is granted to Client to use them. Utopia Systems will have the right to fully exploit any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client or any other party relating to the service.

#### 10. **Client responsibilities**

- Client will use the services solely for Client's own internal business purposes, which may include the use of the service by Client's users (i.e., employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by Client (or by Utopia Systems at Client's request) (provided that, no person or entity other than Client will have rights under the Terms of Service or rights to the service from Utopia Systems).
- Client will operate its business and use, and will ensure that its users use, the services and Utopia Systems technology at all times in compliance with (i) the Terms of Service and policies (and Client will pass such policies to its users in its contracts with them), and (ii) all applicable local, state, federal and international laws, regulations, and conventions, including, without limitation, those related to data privacy, international communications, licensing requirements and the importation/exportation of technical or personal data (Utopia Systems and its licensors make no representation that the service is appropriate or available for use in other locations).
- Client will not, and will ensure that its users will not (and will not permit or assist any other person or entity to) (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise make available to any third party the service or the information, documents, software, products and services contained or made available to Client in the course of using the service (and Client, for itself and its users, grants to Utopia Systems the non-exclusive, worldwide, right to use, copy, store, transmit and display Client data to the extent necessary to provide the service to Client and/or its users), (ii) modify, decompile, reverse engineer or make derivative works based upon Utopia Systems technology or the content (as described above), (iii) commercially exploit the service or the content in any way other than as expressly permitted under these Terms of Service, (iv) create Internet "links" to the service or "frame" or "mirror" any content contained in, or accessible from, the service on any other server, wireless or Internet-based device, (v) impersonate another Utopia Systems user or provide false information

to gain access to or use the service, (vi) alter, remove or obscure, and will prevent third parties from altering, removing or obscuring, any trademark, copyright or other proprietary or restricted rights notices, or any associated disclaimers, that may appear in or through use of the service or Utopia Systems technology, or (vii) use any services (or engage in any activity on or through the Utopia Systems website), in a manner which, in the reasonable discretion of Utopia Systems, is not in accordance with the policies or the generally accepted rules of Internet practices, conduct and etiquette, as reasonably interpreted by Utopia Systems, or for any purpose other than that for which it is intended, or in violation of any law or regulation or in aid of any unlawful, inappropriate or improper act (including, without limitation, transmission of copyrighted material, material legally judged to be threatening or obscene or material protected by trade secret, trade mark or service mark) (Utopia Systems reserves the right to monitor Client's and its users' use of the services).

- Client will (i) notify Utopia Systems immediately of any lost, stolen or unauthorized use of any password or account or any other known or suspected breach of security, (ii) report to Utopia Systems immediately, and use reasonable efforts to stop immediately, any copying or distribution of Utopia Systems' content that is known or suspected by Client or its users, and (iii) provide all information reasonably required by Utopia Systems for billing, contact and technical service purposes, including, without limitation, valid credit card information, and maintain the accuracy of such information by promptly notifying Utopia Systems of any changes.
- Without limiting any other liability of Client, Client will be liable for the manner in which the services may be used by any of its users or third parties through the use of Client passwords and for any breach or violation of these Terms and Conditions (including any policies) by any of its users or third parties through the use of Client passwords.

11. **Indemnification by Client.** Client will indemnify, defend and hold harmless Utopia Systems and its directors, officers and employees from and against any and all losses, claims, obligations, liabilities, actions, suits, proceedings, demands, judgments, payments, costs and expenses (including court costs, amounts paid in settlement, judgments, and reasonable attorney fees and other expenses), and damages of any kind, nature or description whatsoever ("Damages") arising out of (i) any misrepresentation, breach of covenant or warranty or other breach or violation of these Terms of Service or any of the policies by Client and/or any of its users or third parties through the use of Client passwords, (ii) use of the services by Client and/or any of its users or such third parties, and (iii) any other act or omission of Client, its affiliates or any of their owners, officers, representatives, employees or users or such third parties (including, without limitation, Damages relating to Client data, infringement and third party claims, Client provided items and personal injury or damage to property).

12. **No warranty by Utopia Systems**

- UTOPIA SYSTEMS DISCLAIMS ANY AND ALL WARRANTIES RELATING TO THE SERVICES, UTOPIA SYSTEMS TECHNOLOGY AND INTELLECTUAL PROPERTY OR ANY OTHER MATTER, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR TRADE PRACTICE.
- WITHOUT LIMITING THE FOREGOING, UTOPIA SYSTEMS DOES NOT WARRANT THAT THE SERVICES WILL MEET ANY OF CLIENT'S EXPECTATIONS, WILL OPERATE IN ALL OF THE COMBINATIONS SELECTED BY CLIENT FOR ITS USE, OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE.
- In the event that any claim, suit or proceeding is brought against Client based on an allegation that an aspect of the service owned by Utopia Systems (excluding, without limitation, products and services provided by third parties even if incorporated into the service and any claim arising out any act or omission of Client, any User or third party) infringes any issued U.S. patent or copyright, Utopia Systems may, at its sole option and expense, either: (i) procure for Client the right to continue using the Service, (ii) replace an individual component of the service with a product or service, regardless of manufacturer, performing the same or similar function as the infringing aspect of the service, or modify the same so that it becomes non-infringing; or (iii) if neither of the foregoing alternatives is reasonably available, immediately terminate service (and Utopia Systems' obligations and Client's rights under these Terms of Service with regard to such service) and refund to Client the charges paid by Client for the service for the 3 month

period immediately preceding the occurrence of the event on which the claim is based. THIS WILL BE CLIENT'S ONLY REMEDY, AND UTOPIA SYSTEMS' ONLY OBLIGATION TO CLIENT, SHOULD A THIRD PARTY ALLEGE THAT THE SERVICE INFRINGES ANY ISSUED U.S. PATENT OR COPYRIGHT.

13. **Client's exclusive remedy.** EXCEPT FOR UTOPIA SYSTEMS' OBLIGATIONS UNDER SECTION 12 AND THE SERVICE LEVEL CREDITS HEREUNDER, CLIENT'S SOLE REMEDY UNDER THESE TERMS OF SERVICE OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, ANY ARISING OUT OF ANY ACT OR OMISSION OF UTOPIA SYSTEMS) WILL BE TERMINATION OF THIS AGREEMENT.
14. **Limitations of Utopia Systems's liability**
  - 14.1 **No consequential damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, RELIANCE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, LOST REVENUE, LOST PROFITS, LOSS OF GOODWILL, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OR INACCURACY OF DATA, OR INTERRUPTION, INACCURACY OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORESEEABILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.
  - 14.2 **Liability exclusions.** IN NO EVENT WILL UTOPIA SYSTEMS BE LIABLE TO CLIENT, ITS USERS OR ANY OTHER PERSON OR ENTITY FOR DAMAGES ARISING IN ANY MANNER OUT OF (I) ANY USE OF THE SERVICES (OR ANY INABILITY TO USE, DOWNTIME, DATA INACCURACY OR LOSS, NONPERFORMANCE, OR FAILURE OF THE SERVICE) OR (II) ANY ACT OR OMISSION OF ANY PERSON OR ENTITY (INCLUDING, WITHOUT LIMITATION, UNAUTHORIZED ACCESS TO THE SERVICE OR CLIENT DATA).
  - 14.3 **Liability maximum.** IN THE EVENT UTOPIA SYSTEMS WILL BE LIABLE TO CLIENT NOTWITHSTANDING THE LIMITATIONS AND EXCLUSIVE REMEDIES HEREIN, UTOPIA SYSTEMS'S LIABILITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BY STATUTE OR OTHERWISE) WILL NOT EXCEED, IN THE AGGREGATE, THE LAST 12 MONTHS OF THE MONTHLY RECURRING FEES ACTUALLY PAID TO UTOPIA SYSTEMS.
  - 14.4 **Survival.** THE PARTIES ACKNOWLEDGE THAT UTOPIA SYSTEMS HAS SET ITS PRICES AND AGREED TO PROVIDE THE SERVICES IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THEY FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THESE TERMS OF SERVICE WILL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY (AND THE SEVERABILITY OF SUCH PROVISIONS) AND WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF LIMITED REMEDY.
15. **Miscellaneous provisions.** These Terms of Service will be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to its principles of conflicts of laws. Utopia Systems and Client each hereby submits (and waives the right to contest on any grounds) to the exclusive, personal jurisdiction of either the Federal District Court for the District of Delaware, the Court of Common Pleas of New Castle County, Delaware or any municipal or local court located in such county for all claims, disputes or controversies involving such parties and relating to the services or these Terms of Service; provided, however, nothing herein will prevent Utopia Systems from asserting a claim for indemnification or any other claim hereunder in connection with a third party action in the same jurisdiction where a third party action has been brought. No terms or information set forth on any document (other than a registration/order form accepted by Utopia Systems) will add to or vary these Terms of Service. If any provision of these Terms of Service is held by a court of competent jurisdiction to be invalid or unenforceable, such provision(s) will be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. Except for the payment of charges by Client, neither party will be liable for any failure to perform, or any delay in performing its obligations under this Agreement to the extent such failure or delay is caused by or results from an event beyond such party's reasonable control, including, without limitation, acts of God, acts of war and

terrorism, accidents, fires, floods, unusual weather conditions, strikes, labor disputes, governmental actions and telecommunications failures. No joint venture, partnership, employment, or agency relationship exists between Client and Utopia Systems as a result of the provision/receipt of the service or these Terms of Service. The failure of Utopia Systems to enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision. These Terms of Service (together with any applicable registration/order forms and the policies) comprises the entire agreement between Client and Utopia Systems and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, regarding the subject matter hereof. Client may not assign its rights to the service without Utopia Systems's prior written consent (which shall not be unreasonably withheld). Utopia Systems may give legal notice by means of a general notice on the service or electronic or other mail to Client's address on record in Utopia Systems account information. Sections 3 and 11 through and including 15 will survive the termination or expiration of service and/or these Terms of Service.