

# Intrepid Services Agreement

## Terms and Conditions

### 1. DEFINITIONS

In this Agreement, capitalized terms shall have the meanings described on the Order Form or as set out below and in the text of the Agreement:

“**Customer Data**” means the customer-specific data, including personal data, available to the Customer through the Service. Customer data is further defined as Generic and Unique.

“**Generic Customer Data**” means information not personal or specific to operations including amount of traffic, usage patterns, and aggregate amounts of unique data.

“**Unique Customer Data**” means all other information that is not generic, including personal information, specific details of operations, locations, photographs, written communications, recordings, and biometric data.

“**Confidential Information**” means all information disclosed by one party to the other party that is identified in writing as “confidential” or “proprietary” (or, in the case of oral disclosures, is summarized in writing and delivered to the receiving party within 30 days).

“**Devices**” means all hardware devices of Customer utilizing the Service, whether provided by Intrepid or from any other third party.

“**Initial Term**” means the period commencing on the Effective Date and ending on the last day of the Service Period.

“**Service**” means the online, web-based, and mobile access business application services, including content and associated offline components as well as support and training made available by Intrepid to Customer.

“**Service Period**” means the period beginning on the Effective Date and continuing for the period set forth on the Order Form.

“**User**” means any of the Customer’s employees, representatives, consultants, contractors or agents utilizing the Service, with each such person or party who is authorized to use the Service to be supplied with a user identification and/or password by Customer (or by Intrepid at Customer’s request).

### 2. SERVICES

2.1 Subject to the terms and conditions of this Agreement and payment of all applicable fees and charges, Intrepid grants Customer a non-exclusive, non-transferable, revocable, limited right and license during the Term to use the Service for Customer’s internal, in-house business use only within the United States of America. Intrepid reserves all rights in the Service not expressly granted herein.

2.2 Intrepid reserves the right to perform maintenance of the Service as needed and, except in the event of emergency maintenance, will use commercially reasonable efforts to provide prior notice to Customer of any Service unavailability and the reasons therefore.

2.3 A user account is required to access the Service, which may be used only by authorized Users. User accounts are non-transferable to other organizations or agencies but can be transferred to users in other departments within the purchasing organization or agency. User accounts shall not be shared or utilized by Users in non-purchasing organizations or agencies. Notwithstanding the foregoing, Customer shall make available for audit a list of all Users within five (3) business days when requested by Intrepid.

2.4 Customer is responsible for any and all activities that occur under Customer’s User accounts, including without limitation any loss or damage that results from such use or misuse. Customer shall: (a) report to Intrepid immediately any unauthorized use of any password or account or any other known or suspected breach of security; (b) report to Intrepid immediately any copying or distribution of any content contained in, or accessible through, the Service that is known or suspected by Customer or its Users, and Customer shall take all necessary steps to stop or terminate such conduct; and (c) ensure that use of the Service shall at all times comply with the terms of this Agreement.

2.5 At all times during the Term of this Agreement, Customer will conduct its business and/or operations, and cause its Users to be, in compliance with all federal, state, provincial, local or similar statutes, laws, ordinances, regulations, rules, codes, orders, conventions or rules of law (including common law) and governmental orders (collectively, “Laws”), applicable to Customer and Customer’s business and/or operations, including, but not limited to any such Laws with respect to the use of the Service in Customer’s business and/or operations.

2.6 Customer warrants that it is legally entitled to allow Intrepid to monitor the Customer account and each User in the account to process for Generic Customer Data in order to provide improvements to Intrepid products or resolve product defects.

2.7 Customer acknowledges and agrees that Intrepid shall not be responsible for providing internet access or any equipment or services necessary to utilize internet access by Customer or any User.

### 3. LIMITATIONS AND RESTRICTIONS

3.1 Except as expressly set forth herein, Customer shall not (nor shall it permit others to) (a) copy, market, license, sublicense, sell, resell, transfer, assign, reproduce, distribute or otherwise make available to any third party the Service, (b) modify, adapt or make derivative works based upon the software or intellectual property used in the Service; (c) retransmit or link the Service (including “framing” or “mirroring” any content contained in, or accessible from the Service) to any other server, wireless or Internet-based device. Customer shall ensure and be responsible for all of its Users’ compliance with the terms of this Agreement.

3.2 To the extent that access to any software or other intellectual property is provided to Customer by Intrepid, Customer agrees that it will use such software and intellectual property solely for Customer’s own internal processing operations under this Agreement, and that Customer will not directly or indirectly disassemble, reverse engineer, or decompile, modify, create derivative works based upon, or translate the Services, or any software or intellectual property included therein, or transfer or otherwise grant any rights in or access to such software or intellectual property in any form to any other party. Customer shall promptly report to Intrepid any actual or suspected violation of this Section 3.2 and shall take all further steps reasonably requested by Intrepid to prevent or remedy any such violation.

### 4. PROPERTY RIGHTS

Customer shall remain the sole and exclusive owner of Unique Customer Data. Unique Customer Data may be monitored or evaluated in an emergency situation or only with permission or at the request of the customer for purposes such as assisting in customer operations, performing customer-specific analysis, or improving Intrepid’s products. Customer explicitly grants Intrepid the right to monitor network traffic that includes Unique Customer Data for the purpose of optimizing the Service’s performance. Intrepid is and shall remain the sole and exclusive owner of the Service and all documentation or other property provided by Intrepid during the Term of this Agreement, including any intellectual property developed, originated, or prepared on behalf of or in conjunction with Customer. This Agreement does not grant to Customer any shared development rights. Customer shall not reproduce in whole or in part (except as permitted under this Agreement), modify, merge, or incorporate any form or portion of the Service with other program material, create derivative work from the Service, reverse engineer, de-compile, or disassemble all or any portion of the Service, and/or disclose, sell, sublicense, or otherwise transfer or make available all or any portion of the Service to any third party without the prior written consent of Intrepid.

### 5. WARRANTIES, REMEDIES, LIMITATIONS OF LIABILITY, AND INDEMNIFICATIONS

5.1 Intrepid warrants to Customer that the Service will be provided in a professional and workmanlike manner. As Customer’s exclusive remedy for breach of the foregoing warranty, Intrepid shall, at its option, repair or replace the nonconforming elements of the Service. Intrepid shall have no obligation hereunder if software or other intellectual property used in the Service, or hardware utilizing the Service, is modified, altered, merged or subjected to misuse, neglect, accident or improper use by Customer or any third party.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICE IS PROVIDED “AS IS” AND INTREPID, ITS SUPPLIERS AND VENDORS EXCLUDE ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. INTREPID AND ITS SUPPLIERS AND VENDORS SPECIFICALLY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES OF DESIGN, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THAT THE SERVICE OR DEVICES WILL MEET ALL OF CUSTOMER’S REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, VIRUS FREE, OR ERROR-FREE. NOR DOES INTREPID (OR ITS VENDORS OR SUPPLIERS) MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR THAT ALL ERRORS IN THE SERVICE WILL BE CORRECTED.

5.2 INTREPID, ITS VENDORS AND SUPPLIERS ENTIRE LIABILITY FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT, WARRANTY, OR IN TORT (INCLUDING NEGLIGENCE) FOR ALL CLAIMS RELATING TO THIS AGREEMENT AND ITS PERFORMANCE, SHALL BE LIMITED IN THE AGGREGATE TO THE LESSER OF THE FEES PAID BY CUSTOMER FOR THE SERVICES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM OR \$25,000.

5.3 IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY LOST PROFITS, LOST REVENUE, INDIRECT, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES EVEN IF SUCH PARTY HAS BEEN ADVISED OF, OR COULD HAVE REASONABLY FORESEEN, THE POSSIBILITY OF SUCH DAMAGES.

5.4 Customer acknowledges that the limitations of liability and disclaimers of warranty set forth in this Agreement are independent of any remedies hereunder and apply regardless of whether any remedy fails its essential purpose. Customer acknowledges that the pricing for the Service and other fees and charges has been set in reliance on the disclaimers of warranty and limitations and exclusions of liability set forth in this Agreement and that the same form an essential basis of the bargain between the parties.

5.5 Intrepid shall indemnify Customer from and against any third party liabilities, losses, damages, claims, suits, and expenses, including reasonable legal expenses, of whatever kind and nature (“Losses”), imposed upon, incurred by or asserted against Customer relating to or arising out of any third party claim brought against Customer alleging that the Service used as contemplated by this Agreement violates any proprietary rights of such third party. This Section 5.5 states Intrepid’s entire obligations regarding infringement of a third party’s intellectual property rights with respect to the use of the Service.

5.6 Customer shall indemnify Intrepid, its suppliers and vendors from and against any and all Losses imposed upon, incurred by, or asserted against Intrepid relating to or arising out of a claim alleging that Intrepid’s authorized use of the Customer Data violates the proprietary rights of, or has caused harm to, any third party (including, without limitation, any User).

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5.7 In addition to, and without limiting, any and all obligations of Customer set forth herein, Customer hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature to all persons, and to all property, real or personal, caused by, resulting from or associated with the use by Customer, or any of Customer's employees, representatives or agents (whether a User or not), of the Service and agrees to indemnify, defend, and hold harmless Intrepid, its suppliers and vendors from and against any and all Losses or injury to persons or to property caused directly or indirectly by Customer or any of Customer's employees, representatives or agents (whether a User or not), Customer's property or equipment, or any and all persons acting on Customer's behalf or under Customer's supervision or control, whether direct or indirect.

5.8 In consideration of the obligations of Intrepid hereunder, Customer acknowledges that the use of the Service by Customer is voluntary and may involve known and unknown risks that could result in physical injury (including death) and/or property damage. Customer, on behalf of itself and its employees, representatives and agents, (the "Customer Parties") hereby releases, remises, requites, satisfies and forever discharges Intrepid, its suppliers and vendors and their respective heirs, personal representatives, successors and assigns from any and all Losses whatsoever, in law, in equity or in arbitration that the Customer Parties have, had or may have (through all stages of settlement and litigation, including all appeals and all collection proceedings) arising out of or resulting from the Customer Parties' voluntary use of the Service.

5.9 The indemnity obligations set forth in this Section 5 are contingent upon (a) the indemnified party giving prompt written notice of any indemnified claim, (b) the indemnified party allowing the indemnifying party the sole control of the defense and related settlement negotiations for such claim; and (c) the indemnified party providing reasonable assistance and cooperating in the defense and settlement negotiations as requested by the indemnifying party and at the indemnifying party's expense.

## 6. CONFIDENTIALITY AND DATA PROTECTION

By virtue of this Agreement, each party may have access to the Confidential Information of the other party. The parties expressly acknowledge that the Customer Data shall be governed by Sections 2.7 and 4 and shall not constitute Confidential Information. Each party agrees to keep confidential all Confidential Information disclosed to it by the other party or a third party, and to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information). This Section 6 shall not apply to anything that: (i) is or becomes (through no improper action or inaction by the receiving party) generally available to the public, or (ii) was in the recipient's possession or known by it, without restriction, prior to receipt from the disclosing party, or (iii) was rightfully disclosed to the receiving party by a third party, or (iv) is required to be disclosed by a subpoena, request for documents, or other validly issued judicial or administrative process, provided that the party so required to disclose it promptly notifies the other party of the receipt of process and permits the other party a reasonable opportunity to respond to such process; or (v) is necessary to be disclosed by a party in order to meet its obligations under this Agreement. If a party wishes to rely on one of these exclusions it shall give prompt written notice to the other party detailing the relevant information and the reason for disclosure.

## 7. TERM AND TERMINATION

7.1 This Agreement shall commence on the Effective Date and shall remain in effect through the Initial Term unless earlier terminated as set forth below.

Either party may terminate this Agreement upon notice to the other party if the other party materially breaches this Agreement and such breach is not remedied within 30 days of such notice, except for breaches relating to non-payment for which such cure period shall only be 5 business days.

Either party may terminate this Agreement immediately upon notice if the other party becomes subject to any proceeding under any statute of any governing authority relating to insolvency or the rights of creditors that is not dismissed within 60 days, or the equivalent occurs in any jurisdiction.

Upon termination of this Agreement for any reason, all accrued rights to payment shall become due, all licenses shall immediately terminate and each party shall promptly return (or, if requested by the other party, destroy) all Confidential Information of the other party in its possession. Upon termination, Intrepid may immediately terminate Customer's access to the Service without notice and within 30 days thereafter delete Customer's Data and any related data.

7.2 Sections 1, 2.4, 2.5, 2.6, 3, 4, 5, 6, 7, 8, and 9 shall survive the termination or expiration of this Agreement in accordance with their terms.

## 8. EXPORT

If, at the time or times of Intrepid's performance hereunder, a validated export license or other export authorization is required for Intrepid or its agents to lawfully export the goods, source code, or technical data from the United States of America or such other country of origin, then the issuance of such license or authorization to Intrepid or its agents in accordance with the rules and regulations of the applicable country(ies) shall constitute a condition precedent to Intrepid's performance of its obligations hereunder. Customer agrees to comply with all applicable export laws and regulations of the United States of America or such other country of origin. Specifically, but without limitation, customer agrees that it will not resell or re-export Intrepid products, source code, or technical data in any form without obtaining appropriate export or re-export licenses from the respective governmental authority of the United States of America, other country of origin, or country of export or re-export. Violation of this provision shall constitute cause for termination of this Agreement by Intrepid without liability to customer.

## 9. MISCELLANEOUS

9.1 Neither party shall be liable for any delay or failure in performing any of its obligations under this Agreement if such delay or failure is caused by circumstances outside the reasonable control of the party concerned. The Service may be subject to limitations, unavailability, delays, and other problems inherent in the use of the internet, mobile telephone networks and electronic communications. Intrepid is not responsible for any delays, delivery failures, or any loss or damage resulting from the same. Notwithstanding the foregoing, nothing herein shall relieve Customer of its obligations to pay monies due and owing to Intrepid hereunder.

9.2 Intrepid may reference Customer's status as a user of the Service on Intrepid's website, in marketing materials and in sale presentations.

9.3 The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

9.4 Customer may not assign or transfer any of its rights or obligations under this Agreement in whole or in part without Intrepid's prior written consent. Intrepid may freely assign, transfer, and sub-contract this Agreement and any or all of its obligations herein.

9.5 This Agreement shall not be amended or modified except in a writing executed by the duly authorized representatives of Intrepid and Customer.

9.6 If any provision of this Agreement is held to be invalid or unenforceable, the parties or any applicable tribunal shall substitute an enforceable provision that preserves the original intent and economic positions of the parties and the remaining provisions of this Agreement will remain in full force and effect.

9.7 All notices that are required to be given under this Agreement shall be in writing and sent to the addresses of the parties set out on the Order Form or to such other address as a party may designate by notice to the other party and shall be effective (a) on the date of delivery if sent by recorded delivery; (b) on the business day following the date of transmission of a fax as evidenced by a successful transmission report; or (c) immediately if delivered personally to the relevant address.

9.8 This Agreement forms the entire understanding of the parties in respect of the matters dealt within it and supersedes all previous agreements, understandings, proposals, and negotiations between them.

9.9 This Agreement shall be governed by the laws of the State of Florida, without regard to its conflicts of laws principles. Any suit, action, or proceeding with respect to this Agreement shall be brought in the courts of Orange County, Florida or in the U.S. District Court for the Middle District of Florida, and the parties hereby accept the exclusive jurisdiction of those courts for the purpose of any suit, action, or proceeding.

9.10 The parties acknowledge that they are familiar with transactions of this nature, and agree that the fact one of the parties may have drafted or structured any provision of this Agreement shall not be considered in construing the particular provision either in favor of, or against, such party.

9.11 The parties hereto are independent contractors and this Agreement does not create a joint venture or partnership, and neither party has the authority to bind the other party to any third party.

9.12 This Agreement may be executed in any number of counterparts, each of which, when taken together, shall be an original.

# Intrepid Services Agreement

Document	Exhibit A	Response Times
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## I. Intrepid Service

### 1. Response Times

Intrepid shall use its commercially reasonable efforts to respond to all written requests for assistance in accordance with the following response times:

	Time to Respond	
Type of Problem	During Normal Business Hours	Outside Normal Business Hours
<i>Level 1 – Service unavailable or data cannot be collected from &gt; 20% of the Users</i>	Within 24 hours Call Intrepid Support Hotline Phone Number or Email: <a href="mailto:support@intrepid-networks.com">support@intrepid-networks.com</a>	Within 24 hours Call Intrepid Support Hotline Phone Number or Email: <a href="mailto:support@intrepid-networks.com">support@intrepid-networks.com</a>
<i>Level 2 – Part of the functionality of the Service is unavailable or data cannot be collected from &lt;= 5% to 20% of the Users</i>	By 6PM EST of the following 2 business days Email: <a href="mailto:support@intrepid-networks.com">support@intrepid-networks.com</a>	By 6PM EST of the following 2 business days Email: <a href="mailto:support@intrepid-networks.com">support@intrepid-networks.com</a>
<i>Level 3 – All other issues</i>	Within 5 business days Email: <a href="mailto:support@intrepid-networks.com">support@intrepid-networks.com</a>	Within 5 business days Email: <a href="mailto:support@intrepid-networks.com">support@intrepid-networks.com</a>