

## ITENSIL SERVICE TERMS AND CONDITIONS

(Attach as EXHIBIT A to purchase order)

- 1. Itensil Service.** These Itensil Terms and Conditions govern the use of the Service ordered by Subscriber, as identified in the Order Form and described in one or more Order Forms. The term “Service” means the Itensil Knowledge App, the use of which allows subscribers to develop and enhance business processes and methodologies.
- 2. Order Forms.** An “Order Form” or “Order” is Itensil’s standard Service order form which is signed by Subscriber that identifies 1.) The number of Subscriber’s authorized end users of the Service, “Subscriptions” which are ordered by Subscriber, 2.) The price to be paid by the Subscriber, 3.) The term of the Order (“Term”) and any other provisions as determined by Itensil. The Order Form will include a link to the Service Description or its URL. The Order Form and these Itensil Service Terms and Conditions will constitute and may be referred to below as the “Agreement”.
- 3. Subscriber Account.**

  - a. Upon acceptance of Subscriber’s Order Itensil will establish an “Account” pursuant to which only the number of Subscriber’s authorized end users indicated in the Order may access and use the Service. Use of the Service by authorized end users is subject to the assignment of passwords by either Itensil or the Subscriber, as Itensil may determine. Passwords may not be shared or used by more than one individual but may be reassigned from time to time to new end users who are replacing former end users who have terminated employment or otherwise changed job status or function and no longer use the Service.
  - b. Subscriber’s rights hereunder are expressly limited to only a right to use the Service and any related content or intellectual property of Itensil. Subscriber shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit the content in any way; (ii) modify or make derivative works based upon the Service or the content; (iii) create Internet "links" to the Service or "frame" or "mirror" any content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. Subscriber may use the Service only for its internal business purposes.
- 4. Changes to Service.** Itensil may, at its sole discretion, modify, enhance and/or expand the Service from time to time.
- 5. Fee Adjustments.** Itensil may, upon at least thirty (30) days prior written notice and effective at the end of the then-current (Initial or Renewal) Term (defined below), adjust the fees paid by Subscriber for the Service, provided that Subscriber shall have the option, within fifteen (15) days of receiving such notice from Itensil, to either (i) modify the number of end users having access to the Service by an amended Order Form, or (ii) terminate this Agreement upon written notice, either of which will become effective at the beginning of the next Renewal Term. All pricing terms are confidential, and Subscriber agrees not to disclose them to any third party.
- 6. Itensil Training and Support.** Training and Support, if any, provided by Itensil is specified in the Service Description attached to the Order or otherwise provided at an internet URL.
- 7. Payment.** Invoices for the Service are due in advance in accordance with the Payment Terms set forth on the Order Form. Itensil reserves the right to charge interest at the lower of 1.5% or the highest rate permitted by law on any payment not received when due, and Itensil may suspend the Service, if Subscriber’s payment of fees is ten (10) or more business days delinquent. Additionally, Itensil is entitled to recover any reasonable sums expended in connection with the collection of sums not paid when due, including reasonable attorneys’ fees. Itensil's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Itensil's income.

**8. Data Storage and Bandwidth.** Itensil may, in its sole discretion, limit the number of end users who access the Service. Itensil shall only limit access in the event that the number of Subscriber's end users exceeds reasonable requirements for the storage of Subscriber's data or the bandwidth necessary to provide the Service.

**9. Use of Subscriber Name.** Subscriber agrees that Itensil may use Subscriber's name and logo to identify Subscriber as a customer of Itensil on Itensil's website, and as a part of a general list of Itensil customers for use and reference in Itensil corporate, promotional and marketing materials. Subscriber agrees that Itensil may issue a press release identifying Subscriber as a Itensil customer and describing Subscriber's intended utilization, and the benefits that Subscriber expects to receive, from use of the Service. The content of any press release identifying Subscriber as a customer of Itensil will be subject to Subscriber's prior approval, which will not be unreasonably withheld.

**10. Customer Responsibilities.**

- a. **Account Number/Password.** Subscriber is responsible for all uses of the Service. Subscriber is also responsible for maintaining the confidentiality of Subscriber's Account number and passwords and agrees to immediately notify Itensil of any unauthorized use of Subscriber's Account of which Subscriber becomes aware.
- b. **Content of Communications or Use of Subscriber's Account.** Subscriber agrees that Subscriber is solely responsible for the content of all visual, written or audible communications using the Service and/or Subscriber's Account. Subscriber agrees that Subscriber will not use the Service to send unsolicited email outside Subscriber's company or organization in violation of applicable law. Subscriber further agrees not to use the Service to communicate any message or material that is harassing, libelous, threatening, obscene, would violate the intellectual property rights of any party or is otherwise unlawful, that would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable law or regulation. Subscriber agrees to indemnify, defend and hold harmless Itensil from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys' fees) arising from Subscriber's violation of this Section 11.

**11. Professional Services.**

- a. Subscriber may request Itensil's services ("Professional Services") in the application of Itensil's Service to Subscriber's methodologies or processes ("Work"). The terms governing the Professional Services will be those set forth in this Section 11.
- b. The parties will develop a mutually agreeable statement of work ("Statement of Work") describing the deliverables in such detail as Itensil may require ("Deliverables") and including such terms as Itensil may determine. Itensil will, thereafter, provide a proposal describing the performance of the Work to Subscriber. Upon acceptance of Itensil's proposal by Subscriber and the parties execution of the Statement of Work, Itensil will commence the Work and exercise reasonable efforts complete the same on the schedule set forth in the Statement of Work. Only the Statement of Work will describe the parties obligations under this Section 11 and Itensil proposal will not be construed to be included in the Statement of Work unless expressly so stated.
- c. Nothing in this Section 11 or any proposal or Statement of Work grants Subscriber any right or license in or to Itensil's software or product.
- d. Subscriber will have full right, title and interest in and to the Deliverables provided that Itensil shall have a royalty-free, non-exclusive, transferable, worldwide license to use, modify, and reproduce the Deliverables (provided Subscriber's proprietary information which has been identified to Itensil is protected).
- e. Nothing in the Statement of Work precludes Itensil from using General Knowledge, where "General Knowledge" means ideas, concepts, know-how, or techniques related to Subscriber's proprietary information or services that are retained in the unaided memories of Itensil's employees or consultants who have access to proprietary information. Itensil's memory is unaided if Itensil has not: (a) intentionally memorized the information for the purpose of retaining and subsequently using or disclosing it, or (b) made concurrent reference to a written embodiment of proprietary information. General Knowledge does not include Subscriber's trade secrets that

- have been identified to Itensil as such. Subscriber understands that Itensil may develop or receive information similar to Subscriber's proprietary information or the Deliverables.
- f. Itensil may, in its sole and reasonable discretion, subcontract some or all the performance of its obligations under the terms of this Section 12 to qualified subcontractors. Subscriber agrees that this Agreement is between Subscriber and Itensil and creates no obligations to Subscriber on the part of Itensil subcontractors. Subscriber expressly relinquishes any rights as a third party beneficiary to any agreements between Itensil and Itensil's subcontractors and waives any and all rights or claims against any such third party. Itensil may also assign its obligations under the Statement of Work in whole or in part to a qualified subcontractor.
  - g. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT ITENSIL PROVIDES THESE PROFESSIONAL SERVICES 'AS IS', AT SUBSCRIBER'S SOLE RISK AND SUBJECT TO ALL DISCLAIMERS OF WARRANTY SET FORTH IN THIS AGREEMENT OR ELSEWHERE. THE DESCRIPTIONS OF PROFESSIONAL SERVICES IN THE STATEMENT OF WORK (PARTICULARLY THE OVERVIEW OF OBJECTIVES , IF ANY) ARE FOR DESCRIPTIVE PURPOSES ONLY AND ARE NOT INTENDED TO PROVIDE ANY GUARANTEE OF PERFORMANCE OR ANY ANTICIPATED OUTCOME ASSOCIATED WITH THE PROFESSIONAL SERVICES OR ANY DELIVERABLE.

**12. Term and Termination.**

- a. **Term of Orders.** The "Initial Term" of an Order will be as set forth on the Order Form, commencing on the date the Service is available for use by Subscriber. Each "Renewal Term" will automatically begin at the end of the preceding (Initial or Renewal) Term and continue for the period set forth on the Order Form.
- b. **Termination of Orders.** Either party may terminate any Order at the end of any (Initial or Renewal) Term by providing the other party written notice of termination at least 30 days prior to the end of such term.
- c. **Termination for Breach.** Each party may terminate any Order(s) by written notice to the other party if the other party is in material breach of its obligations under this Agreement and such breach is not cured within fifteen (15) days after written notice thereof from the terminating party. Itensil's right to terminate Subscriber's Orders shall extend to all Subscriber's Orders for the breach of the provisions of any single Order.
- d. **Surviving Provisions.** The following provisions will survive the expiration or termination of this Agreement: Sections 5 and any payment provisions set forth in the Order Form (as to amounts due and owing as of the Agreement's expiration or termination date) 7, 11(g), 14, 15, and 17.

**13. Security and Privacy.** Itensil's security and privacy statements may be found on Itensil's website at [www.itensil.com](http://www.itensil.com). Please consult them to learn Itensil's current practices with respect to Subscriber's information. Itensil reserves the right to modify its privacy and security policies in its reasonable discretion from time to time.

**14. Limited Warranty.** SUBSCRIBER UNDERSTANDS AND AGREES THAT THE SERVICE (INCLUDING ANY ITENSIL SOFTWARE) ARE PROVIDED "AS IS" AND "AS AVAILABLE." ITENSIL EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. ITENSIL MAKES NO WARRANTY OR REPRESENTATION REGARDING THE SERVICE, ANY INFORMATION, MATERIALS, GOODS OR SERVICE OBTAINED THROUGH THE SERVICE, OR THAT THE SERVICE WILL MEET ANY SUBSCRIBER REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. USE OF THE SERVICE IS AT SUBSCRIBER'S SOLE RISK. SUBSCRIBER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO SUBSCRIBER RESULTING FROM THE USE OF SUCH SERVICE. Because some states and jurisdictions do not allow limitations on implied warranties, the above limitation may not apply to Subscriber. In that event, such warranties are limited to the minimum warranty period allowed by the applicable law.

**15. Limitation of Liability.**

- a. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL

- ITENSIL ITS SUPPLIERS OR AFFILIATES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, PROCUREMENT OF SUBSTITUTE GOODS AND/OR SERVICE, OR ANY OTHER PECUNIARY LOSS) INCLUDING BUT NOT LIMITED TO CLAIMS ARISING OUT OF, OR RESULTING FROM THE USE OF OR INABILITY TO USE THE SERVICE, (INCLUDING ANY ITENSIL SOFTWARE), AND INCLUDING ANY THIRD PARTY SOFTWARE USED IN CONJUNCTION WITH THE ITENSIL SERVICE, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ITENSIL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, ITENSIL'S MAXIMUM CUMULATIVE LIABILITY AND SUBSCRIBER'S EXCLUSIVE REMEDY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY SUBSCRIBER FOR THE SUBSCRIPTION SERVICE FEES IN THE PREVIOUS 12 MONTHS EVEN IF ANY REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.
- b. WITH REGARD TO THE PROFESSIONAL SERVICES TO BE PERFORMED BY ITENSIL PURSUANT TO SECTION 11, ABOVE, ITENSIL SHALL NOT BE LIABLE TO SUBSCRIBER, OR TO ANYONE WHO MAY CLAIM ANY RIGHT DUE TO ANY RELATIONSHIP WITH THE SUBSCRIBER, FOR ANY ACTS OR OMISSIONS IN THE PERFORMANCE OF THE PROFESSIONAL SERVICES ON THE PART OF ITENSIL OR ON THE PART OF THE AGENTS OR EMPLOYEES OF ITENSIL, EXCEPT WHEN SAID ACTS OR OMISSIONS ARE DUE TO ITENSIL'S WILLFUL MISCONDUCT. SUBSCRIBER SHALL INDEMNIFY AND HOLD ITENSIL FREE AND HARMLESS FROM ANY OBLIGATIONS, COSTS, CLAIMS, JUDGMENTS, ATTORNEYS' FEES, AND ATTACHMENTS ARISING FROM OR GROWING OUT OF THE PROFESSIONAL SERVICES RENDERED TO THE SUBSCRIBER PURSUANT TO THE TERMS OF SECTION 12, ABOVE, OR IN ANY WAY CONNECTED WITH THE RENDERING OF THE PROFESSIONAL SERVICES, EXCEPT WHEN THE SAME SHALL ARISE DUE TO THE WILLFUL MISCONDUCT OF ITENSIL AND ITENSIL IS ADJUDGED TO BE GUILTY OF WILLFUL MISCONDUCT BY A COURT OF COMPETENT JURISDICTION.
  - c. Because some states and jurisdictions do not allow limitation of liability in certain instances, portions of the above limitation may not apply to Subscriber.

**16. Internet Delays.** ITENSIL'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ITENSIL IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**17. General**

- a. **Assignment.** Neither party may assign or delegate their respective obligations under this Agreement either in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign their rights and obligations under this Agreement as the result of a merger, consolidation, acquisition or the sale of all or substantially all of the assets of the assigning party and Itensil may assign its rights and delegate its obligations in whole or in part to an affiliate, provided that either party may terminate this agreement upon 10 days notice, if the assignee can be reasonably considered a competitor of the non-assigning party.
- b. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California as applied to agreements entered into and to be performed entirely within California between California residents. The parties hereby submit to the jurisdiction of, and waive any venue objections against state and federal courts in Santa Clara County, California in any litigation arising out of the Agreement.
- c. **Interpretation and Conflicting Terms.** This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. This Agreement, including all Attachments, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous

- understandings or agreements, written or oral, regarding such subject matter. To the extent that any provision of this Agreement and any Order Form conflict, the terms of the Order Form shall control. However, Itensil and Subscriber shall not be bound by terms additional to or different from those in this Agreement that appear in Subscriber's or Itensil's acknowledgements, purchase orders, quotations, prior understandings, or in any other communications between the parties, unless such terms are expressly agreed to by amendment to this Agreement, and are executed by both Subscriber and Itensil.
- d. **Force Majeure.** Except for Subscriber's obligation to pay for the Service rendered, neither party will be responsible for failure of performance due to causes beyond its control. Such causes include (without limitation) accidents, acts of God, labor disputes, actions of any government agency, shortage of materials, acts of terrorism, or the stability or availability of the Internet or a portion thereof.
  - e. **Waivers.** The waiver of any one breach, default or right granted under this Agreement will not constitute the waiver of any subsequent breach, default or right granted. Any provision of this Agreement held to be illegal or unenforceable will be deemed amended to conform to applicable laws or regulations, or if it cannot be so amended without materially altering the intention of the parties, it will be stricken and the remainder of this Agreement will continue in full force and effect.
  - f. **U.S. Export Law.** Subscriber acknowledges that the Service is subject to U.S. export control laws and regulations. Subscriber represents that it is not a citizen of an embargoed country or prohibited end user under applicable U.S. export and anti-terrorism laws, regulations and lists. Subscriber will not use, export or allow a third party to use or export the Service in any manner that would violate applicable law, including but not limited to applicable export control laws and regulations.
  - g. **U.S. Government Restricted Rights.** If the Service is used or accessed by or on behalf of the United States government, such use or access is subject to the following provision. The Service and any related documentation are deemed "commercial computer software" and "commercial computer software documentation," respectively, within the meaning of the applicable civilian and military Federal acquisition regulations and any supplement thereto. If the user of the Service is an agency, department, employee, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Service, including technical data, manuals or other accompanying documentation, is restricted by the terms, conditions and covenants contained in the Itensil Terms of Service. In accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies, use of the Service is further restricted by the Itensil Terms of Service.