

TERMS OF SERVICE between Atiba Hosting, LLC (“we” or “Atiba”) and the customer who orders Atiba services (“you” or “Customer”).

THE AGREEMENT. Your use of the Atiba services (the “Atiba”) is governed by these Terms of Service, the Acceptable Use Policy, and the terms of your Order. When we use the term “Agreement” in any of the Order, Terms of Service, or Acceptable Use Policy we are referring collectively to all of them. The individual who submits an Order does so on behalf of a company or other legal entity and warrants and represents that he or she is not a consumer. The individual further warrants and represents that he or she has authority to bind that company or legal entity to the Agreement.

1. DEFINED TERMS.

Some words used in the Agreement have particular meanings:

“Acceptable Use Policy” or “AUP” means the Acceptable Use Policy that is described in the Country Specific Terms as of the date you submit the Order.

“Affiliate” means any and all legal entities which now or hereafter the ultimate parent of a party to this Agreement controls. For the purpose of this definition, “control” shall mean an entity, directly or indirectly, holding more than fifty per cent (50%) of the issued share capital, or more than fifty percent (50%) of the voting power at general meetings, or which has the power to appoint and to dismiss a majority of the directors or otherwise to direct the activities of such legal entity.

“API” means application programming interface.

“Business Day” or “Business Hour” means 8:00 a.m. – 5:00 p.m. Monday to Friday, excluding public holidays in the location where the Services are hosted, as per the Order.

“Confidential Information” means all information disclosed by one of us to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential, including: (i) unpublished prices and other terms of service, audit and security reports, product development plans, non-public information of the parties relating to their business activities or financial affairs, data center designs (including non-graphic information you may observe on a tour of a data center), server configuration designs, and other proprietary information or technology, and (ii) information that is marked or otherwise conspicuously designated as confidential. Information that is developed by one of us on our own, without reference to the other’s Confidential Information, or that becomes available to one of us other than through breach of the Agreement or applicable law, shall not be “Confidential Information” of the other party.

“Customer Data” means all data, records, files, input materials, reports, forms and other such items that are received, stored, or transmitted using the Services.

“Hosted System” means a combination of hardware, software and networking elements that comprise an information technology system.

“Order” means: (i) the online order that you submit or accept for the Services, (ii) any other written order (either in electronic or paper form) provided to you by Atiba for signature that describes the type or types of services you are purchasing, and that is signed by you, either manually or electronically, and (iii) your use or provisioning of the Services through Atiba or through an API.

“Personally Identifiable Information” or “PII” means a combination of any information that identifies an individual with that individual’s sensitive and non-public financial, health or other data or attribute, such as a combination of the individual’s name, address, or phone number with the individual’s national insurance or social security number or other government issued number, financial account number, date of birth, address, biometric data, or mother’s maiden name.

“Services” means the software and services described in the Order.

“Support” means (i) Atiba employees with training and experience relative to the Services will be available ‘live’ by telephone, chat and ticket during Business Hours, and (ii) any additional level of support offered by Atiba applicable to the specific Services ordered by you.

2. ATIBA’S OBLIGATIONS.

Atiba’s obligations to begin providing to you the Services and Support described in your Order is contingent both upon your satisfaction of Atiba’s credit approval criteria, if applicable, and these Terms of Service.

3. YOUR OBLIGATIONS.

You agree to do each of the following: (i) comply with applicable law and the Acceptable Use Policy, (ii) pay when due the fees for the Services, (iii) use reasonable security precautions in connection with your use of the Services, (iv) cooperate with Atiba’s reasonable investigation of outages, security problems, and any suspected breach of the Agreement, (v) keep your billing contact and other account information up to date, and (vi) immediately notify Atiba of any unauthorized use of your account or any other breach of security. In the event of a dispute between us regarding the interpretation of applicable law or the AUP, Atiba’s reasonable determination shall control. If there is a dispute with respect to any portion of an invoice, you shall pay the undisputed portion of the fees promptly and provide written details specifying the basis of any dispute. Each of us agrees to work together to promptly resolve any disputes.

Customer Data Security: In addition to the foregoing obligations, you acknowledge that you are solely responsible for taking steps to maintain appropriate security, protection and backup of Customer Data. Atiba makes no other representation regarding the security of Customer Data. Customer is solely responsible for determining the suitability of the Services in light of the type of Customer Data used with the Services.

4. TERM.

The initial term for each Order begins on the date we make the Services available for your use and continues for the period stated in the Order. If no period is stated in the Order, then the initial term shall be one (1) month. Upon expiration of the initial term, the Order will automatically renew for successive renewal terms of one (1) month each, unless and until one of us gives the other a written notice of non-renewal prior to the expiration of the initial term, or then-current renewal term, as applicable. You must give effective notice of non-renewal fourteen (14) days prior to your intended termination period. Please note, it may take up to fourteen (14) days for Atiba to process the notice of termination. During such time you will not have access to the Services. Atiba may, but shall not be required to, maintain the data that you have stored on the Atiba system for the fourteen (14) day period at no additional fee to you. For avoidance of doubt these Terms of Service shall continue to apply during such period.

5. FEES.

Atiba will charge you fees in accordance with your Order. Unless you have made other arrangements, Atiba will charge your credit card without invoice. Unless otherwise agreed in the Order, your billing cycle will be monthly, beginning on the date that Atiba first makes the Services available to you. You affirmatively agree that Atiba may suspend all Services (including services provided pursuant to any unrelated Order or other agreement we may have with you) if our charges to your credit card are rejected for any reason. This suspension of Services is permitted, even if the suspension of such Services impacts the operation of your business. Atiba may charge interest on overdue amounts at 1.5% per month (or the maximum legal rate if it is less than 1.5%). If any amount is overdue by more than thirty (30) days, and Atiba brings a legal action to collect, or engages a collection agency, you must also pay Atiba's reasonable costs of collection, including legal fees and court costs. Each of us agrees to work together to promptly resolve any disputes. Charges that are not disputed within sixty (60) days of the date charged are conclusively deemed accurate. You authorize Atiba to obtain a credit report at any time during the term of the Agreement.

6. TAXES ON SERVICES.

If Atiba is required by law to collect taxes on the provision of the Services, you must pay Atiba the amount of the tax that is due or provide Atiba with satisfactory evidence of your exemption from the tax. You must provide Atiba with accurate factual information to help Atiba determine if any tax is due with respect to the provision of the Services.

7. FEE INCREASES.

For those Services provided on a month-to-month term, we may increase fees at any time on thirty (30) days' advance written notice. If your Order contains Services with a specified term longer than one (1) month, then we may increase your fees effective as of the first day of the renewal term that begins thirty (30) days from the day of our written notice of a fee increase. In addition, if during the initial term or renewal term there is an increase in the price index over the price index reported for the month in which you agreed your Order, we may increase your fees at any time during the term by the same percentage as the increase in the price index provided that we may not increase your fees pursuant to this sentence more often than once per twelve (12) months, and we must give you at least thirty (30) days' advance written notice of the increase. For the purposes of this section 9, "price index" means the price index stated in the Country Specific Terms.

8. SUSPENSION.

8.1 We may suspend the Services without liability if:

8.1.1 we reasonably believe that the Services are being used (or have been or will be used) in breach of the Agreement;

8.1.2 we discover that you are, or are affiliated in any manner with, a person who has used similar services abusively in the past;

8.1.3 you don't cooperate with our reasonable investigation of any suspected violation of the Agreement;

8.1.4 we reasonably believe that the Services have been accessed or manipulated by a third party without your consent;

8.1.5 we reasonably believe that suspension of the Services is necessary to protect our network or our customers;

8.1.6 a payment for Services is overdue;

8.1.7 we are required by law or a regulatory or government body to suspend your Services; or

8.1.8 there is another event for which we reasonably believe that the suspension of Services is necessary to protect the Atiba network or our other customers.

8.2 We will give you advance notice of a suspension under this clause of at least twelve (12) Business Hours unless we determine in our reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect Atiba or its other customers from imminent and significant operational, legal, or security risk. If the suspension was based on your breach of your obligations under the Agreement, then we may continue to charge you the fees for the Services during the suspension, and may charge you a reasonable reinstatement fee (at our discretion) upon reinstatement of the Services. If your Services are compromised, then you must address the vulnerability prior to Atiba placing the Services back in service or, at your request, we may be able to perform this work for you at our standard hourly rates as a Supplementary Service.

9. TERMINATION FOR CONVENIENCE.

You may terminate the Agreement for convenience at any time on thirty (30) days' advance written notice. If you terminate the Agreement for convenience, in addition to other amounts you may owe, you must pay an early termination fee equal to any minimum monthly financial commitment you have made for the remaining portion of the then-current term.

10. TERMINATION FOR BREACH.

10.1 You may terminate the Agreement on written notice for breach if we:

10.1.1 materially fail to provide the Services as agreed and do not remedy that failure within ten (10) days of your written notice describing the failure;

10.1.2 materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within thirty (30) days of your written notice describing the failure.

10.2 We may terminate the Agreement on written notice for breach if:

10.2.1 we discover that the information you provided for the purpose of establishing the Services is materially inaccurate or incomplete;

10.2.2 you did not have the legal right or authority to enter into the Agreement on behalf of the person represented to be the customer;

10.2.3 your payment of any invoiced amount is overdue and you do not pay the overdue amount within four (4) Business Days of our written notice;

10.2.4 you have made payment arrangements via credit card or other third party, and the third party refuses to honor our charges;

10.2.5 you fail to comply with any other obligation stated in the Agreement and do not remedy the failure within thirty (30) days of our written notice to you describing the failure;

10.2.6 you breach the AUP more than once even if you remedy each breach;

10.2.7 a credit report indicates that you no longer meet our reasonable credit criteria, provided that we will give you a reasonable opportunity to migrate your environment out of Atiba in an orderly fashion before we terminate on these grounds;

10.2.8 you use the Services in violation of the AUP and fail to remedy the violation within ten (10) days of our written notice; or

10.2.9 your agreement for any other Atiba service is terminated for breach of the acceptable use policy applicable to that service.

10.3 Either of us may terminate the Agreement if the other is unable to pay its debts or enters into liquidation or ceases for any reason to carry on business or takes or suffers any action which means that it may be unable to pay its debts.

11. ACCESS TO DATA.

11.1 You will not have access to your data stored on the Services during a suspension or following termination.

11.2 You have the option to create a snapshot backup of your servers, however it is your responsibility to initiate the snapshot backup and test your backup to determine the quality and success of your backups. You will be charged for your use of backup services as listed in your Order.

11.3 We do not have knowledge of the data you store within the Atiba system, including the quantity, value or use of the data. You are therefore responsible to take all reasonable steps to mitigate the risks inherent in the provision of the Services, including data loss. Although the Service may be used as a backup service, you agree that you will maintain at least one (1) additional current copy of your programs and data stored on the Atiba system somewhere other than on the Atiba system. If you utilize Atiba backup services, you are responsible for performing and testing restores as well as testing your systems and monitoring the integrity and actual delivery of your data.

12. ACCESS TO YOUR CUSTOMER DATA OR USE OF THE SERVICES.

12.1 Atiba is not responsible to you for unauthorized access to your data or the unauthorized use of the Services unless the unauthorized access or use results from Atiba's failure to meet its security obligations stated in the Agreement. You are responsible for the use of the Services by any employee of yours, any person to whom you have given access to the Services, and any person who gains access to your data or the Services as a result of your failure to use reasonable security precautions, even if such use was not authorized by you.

12.2 Atiba agrees that it will not use or disclose Customer Data, except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights under the Agreement, or as may be required by law. Atiba agrees not to disclose the Customer Data to any third person except as follows:

12.2.1 to a law enforcement or government agency if requested or if either of us believes, in good faith, that the other's conduct may violate applicable criminal law;

12.2.2 as required by law; or

12.2.3 in response to a court order or other compulsory legal process, provided that each of us agrees to give the other written notice of at least seven (7) days prior to disclosing Customer Data under this subsection (or prompt notice in advance of disclosure, if seven (7) days' advance notice is not reasonably feasible), unless the law forbids such notice.

12.3 Customer Data is and at all times shall remain the exclusive property of Customer and will remain in the exclusive care, custody, and control of Customer.

13. PROMISES WE DO NOT MAKE.

13.1 We do not promise that the Services will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy, Customer Data, Confidential Information, and property. Atiba has no obligation to provide security other than as stated in this Agreement. We disclaim any and all warranties not expressly stated in the Agreement to the maximum extent permitted by law including the implied warranties relating to satisfactory quality and fitness for a particular purpose. You are solely responsible for the suitability of the Service chosen, including the suitability as it relates to your Customer Data. The Services are provided AS IS. Any services that we are not contractually obligated to provide but that we may perform for you at your request and without additional charge is provided AS IS.

13.2 You are solely responsible for determining the suitability of the Services for your use in light of any applicable regulations such as data, privacy laws and regulations.

14. EXPORT MATTERS.

You represent and warrant that you are not located in or a national of any country that is embargoed or highly restricted under export regulations or are otherwise a person to whom Atiba is legally prohibited to provide the Services. You represent and warrant and undertake that you will not possess, use, import, export or resell (and shall not permit the possession, use, importation, exportation, or resale of) the Services or any information or technical data provided by Atiba to you under this Agreement in any manner which would cause Atiba or its Affiliates to breach any applicable export control laws, rules, or regulations of any jurisdiction (including without limitation those under US law). Without limitation, you represent and warrant and undertake that you will not use the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D:4 and D:3 as set forth in Supplement No. 1 to Part 740 of the United States Export Administration Regulations; illegal gambling, terrorism, narcotics, trafficking, or arms trafficking; nor will you provide or facilitate administrative access to or permit use of the Services by any persons (including any natural person, government or private entity or other form of body corporate) that is located in or is a national of any country that is embargoed or highly restricted under applicable export laws, rules or regulations, including but not limited to United States export regulations.

15. CONFIDENTIAL INFORMATION.

15.1 Each of us agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights under the Agreement, or as may be required by law. Each of us agrees not to disclose the other's Confidential Information to any third person except as follows:

15.1.1 to each of our respective service providers, agents, and representatives, provided that such service providers, agents, or representatives agree to confidentiality measures that are at least as stringent as those stated in these Terms of Service;

15.1.2 to a law enforcement or government agency if requested or if either of us believes, in good faith, that the other's conduct may violate applicable criminal law;

15.1.3 as required by law; or

15.1.4 in response to a court order or other compulsory legal process, provided that each of us agrees to give the other written notice of at least seven (7) days prior to disclosing Confidential Information under this subsection (or prompt notice in advance of disclosure, if seven (7) days' advance notice is not reasonably feasible), unless the law forbids such notice.

16. LIMITATION ON DAMAGES.

16.1 The maximum aggregate liability of Atiba for direct loss or damages whether in tort (including, without limitation, negligence), contract or otherwise in connection with the Services shall not exceed the greater of (i) the amount of fees you paid for the Services for the six (6) months prior to the occurrence of the event giving rise to the claim, or (ii) Five Hundred Dollars (\$500.00).

16.2 Atiba shall not be liable to you for:

16.2.1.1 any indirect, special, incidental or consequential loss or damages of any kind;

16.2.1.2 any loss of profit;

16.2.1.3 any loss of business;

16.2.1.4 any loss of data;

16.2.1.5 any anticipated savings or revenue; or

16.2.1.6 any loss that could have been avoided by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages.

16.3 Nothing in this Agreement limits or excludes either party's liability for any loss or damages resulting from:

16.3.1 death or personal injury caused by its negligence; and

16.3.2 any fraud or fraudulent misrepresentation.

16.4 In no event shall Atiba be liable for any claims by the Customer related to any failure of the Customer's website, in part or entirety, to be deemed compliant with any website accessibility requirements under the then current version of the Americans with Disabilities Act. Further, Customer agrees to indemnify Atiba from any and all claims made by any third-party related to any website accessibility requirements of the Customer's website, whether in part or entirety, under the Americans with Disabilities Act. Such indemnity shall operate to the same force and effect as established elsewhere in this Agreement.

Atiba shall only possess responsibility and potential liability for a claim by the Customer regarding website accessibility under the Americans with Disabilities Act, if Atiba has been hired for the specific purpose of providing consultative services to the Customer for this specific scope of work. The Customer shall ensure that the scope of work entered into between the Customer and Atiba precisely specifies all expectations of Atiba regarding the nature of any and all website accessibility services expected to be performed by Atiba related to Customer's website, either in part or entirety. If there is not a specific scope of work for website accessibility under the Americans with Disabilities Act signed by Atiba and Customer, then Atiba shall, as stated above, bear no liability or responsibility related to any claim, by any person, related to website accessibility.

17. INDEMNIFICATION.

17.1 If we, our Affiliates, or any of our or their respective employees, agents, or suppliers (the "Indemnitees") are faced with a legal claim by a third party arising out of your actual or alleged negligence, breach of law, failure to meet the security obligations required by the Agreement, breach of the AUP, breach of your agreement with your customers or end users, or breach of Section 16 (Export Matters) of these Terms of Service, then you will pay the cost of defending the claim (including reasonable legal fees) and any damages award, fine, or other amount that is imposed on the Indemnitees as a result of the claim. Your obligations under this clause include claims arising

out of the acts or omissions of your employees or agents, any other person to whom you have given access to the Services, and any person who gains access to the Services as a result of your failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by you. You must also pay reasonable legal fees and other expenses we incur in connection with any dispute between persons having a conflicting claim to control your account with Atiba, or any claim by your customer or end user arising from an actual or alleged breach of your obligations to them.

17.2 We will choose legal counsel to defend the claim, provided that these decisions must be reasonable and must be promptly communicated to you. You must comply with our reasonable requests for assistance and cooperation in the defense of the claim. We may not settle the claim without your consent, although such consent may not be unreasonably withheld, delayed or conditioned.

You must pay reasonable legal fees and expenses due under this clause as we incur them.

18. WHO MAY USE THE SERVICES.

You may not resell the Services. Atiba will provide support only to you, not to your customers, subsidiaries or Affiliates. There are no third party beneficiaries to the Agreement, meaning that your customers, subsidiaries, Affiliates, and other third parties do not have any rights against either of us under the Agreement.

19. CHANGES TO THE ACCEPTABLE USE POLICY.

19.1 We may change the Acceptable Use Policy to reflect changes in law, regulation or accepted industry practice. If we make a change to the AUP we will publish a revised version of the AUP at the relevant URL. The revised AUP will become effective as to you on the first to occur of:

- 19.1.1 the first day of a renewal term for the Agreement that begins at least thirty (30) days after the time that the revised AUP has been posted;
- 19.1.2 your execution of a new or additional Order for your account that incorporates the revised AUP by reference; or
- 19.1.3 thirty (30) days following our written notice to you of the revision to the AUP.

19.2 If your compliance with the revised AUP would adversely affect your use of the Services, and you give a written notice of your objection no later than thirty (30) days following the date that the revised AUP would otherwise have become effective as to you, we will not enforce the revision as to you until sixty (60) days following the date the revision would otherwise have become effective as to you, and you will continue to be subject to the prior version. During the sixty (60) day period, you may elect to terminate the Agreement on these grounds by giving written notice. We will not charge you an early termination fee for a termination on these grounds. If you do not elect to terminate during the sixty (60) day period, then the revised AUP will become effective as to you as of the end of the sixty (60) day period. If you terminate your Services under this Subsection, we may decide to waive that change as to you and keep your Agreement in place for the remainder of the term.

20. DATA PROTECTION.

20.1 You agree to comply with the law relating to data protection.

You agree that Atiba may give its Affiliates and subcontractors access to personal data which you store through your use of the Services. For example, we may provide an Affiliate with access to the Services so that the Affiliate may provide support to you during our off business hours. Such Affiliate or subcontractor may be located outside of the country in which your Customer Data is hosted.

21. NOTICES.

Your routine communications regarding the Services, including any notice of non-renewal, should be sent to Atiba. You should send it by first-class post to:

Atiba Hosting, LLC
1310 Clinton Street
Suite 200
Nashville, TN 37203

Atiba's routine communications regarding the Services and legal notices will be sent to the individual(s) you designate as your contact(s) on your account either by electronic mail, first class post, or overnight courier. Notices are deemed received as of the time delivered, or if that time does not fall within a Business Day, as defined above, as of the beginning of the first Business Day following the time delivered. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day.

22. NO HIGH RISK USE.

You may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, you may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or medical support devices.

23. OWNERSHIP OF INTELLECTUAL PROPERTY.

Each of us retains all right, title and interest in and to our respective trade secrets, inventions, copyrights, and other intellectual property. Any intellectual property developed by Atiba during the performance of the Services shall belong to Atiba unless we have agreed with you in advance in writing that you shall have an interest in the intellectual property.

24. OWNERSHIP OF OTHER PROPERTY.

You do not acquire any ownership interest in or right to possess the Hosted System, and you have no right of physical access to the Hosted System. We do not acquire any ownership interest in or right to the information you transmit to or from or store on your Atiba servers or other devices or media.

25. INTELLECTUAL PROPERTY INFRINGEMENT.

If Atiba or any of its customers is faced with a credible claim that the Services infringe the intellectual property rights of a third party, and Atiba is not reasonably able to obtain the right to use the infringing element or modify the Services such that they do not infringe, then Atiba may terminate the Services on reasonable notice of at least ninety (90) days, and will not have any liability on account of such termination except to refund amounts paid for Services not used as of the time of termination.

26. IP ADDRESSES.

Upon expiration or termination of the Agreement, you must discontinue use of the Services and relinquish use of the IP addresses and server names assigned to you by Atiba in connection with Services, including pointing the DNS for your domain name(s) away from Atiba Services. You agree that Atiba may, as it determines necessary, make modifications to DNS records and zones on Atiba managed or operated DNS servers and services.

27. SERVICES MANAGEMENT AGENT.

You agree that you will not interfere with any services management software agent(s) that Atiba installs on your Services. Atiba agrees that its agents will use only a minimal amount of computing resources, and will not interfere with your use of the Services. Atiba will use the agents to track system information so that it can more efficiently manage various service issues. Your Services will become “Unsupported” as described in Section 40 (Unsupported Configuration Elements or Services) below if you disable or interfere with our services management software agent(s). You agree that Atiba may access your Services to reinstall services management software agents if you disable them or interfere with their performance.

28. ASSIGNMENT/SUBCONTRACTORS.

Neither party may assign the Agreement without the prior written consent of the other party except that Atiba may assign the Agreement to an Affiliate with sufficient financial standing in order to meet its obligations under this Agreement or as part of a bona fide corporate reorganization or a sale of its business. Atiba may use third party service providers to perform all or any part of the Services, but Atiba remains responsible to you under this Agreement for Services performed by its third party service providers to the same extent as if Atiba performed the Services itself.

29. PUBLICITY.

You agree that we may publicly disclose that we are providing Services to you and may use your name and logo to identify you as our customer in promotional materials, including press releases. We will not use your name or logo in a manner that suggests an endorsement or affiliation.

30. FORCE MAJEURE.

Neither of us will be in breach of the Agreement if the failure to perform the obligation is due to an event beyond our control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.

31. GOVERNING LAW AND JURISDICTION.

This Agreement shall be controlled by the law of the State of Tennessee. Any disputes regarding this Agreement, or any matters related to this Agreement, shall be brought in the relevant courts, whether federal or state, of Davidson County, Tennessee.

32. SOME AGREEMENT MECHANICS.

32.1 Changes to the Terms on Website. These Terms of Service may have been incorporated in your Order by reference to a page on the Atiba website. Although we may from time to time revise the Terms of Service posted on that page, those revisions will not be effective as to an Order that

we accepted prior to the date we posted the revision, and your Order will continue to be governed by the Terms of Service posted on the effective date of the Order. However, any amended Terms of Service will become effective the earlier of either your acceptance of the amended Terms of Service, your continued use of the Services after notice of the amended Terms of Service, or thirty days after the date Atiba posts such amended Terms of Service on the Atiba website. In addition, if over time you sign multiple Orders for a single account, then the Terms of Service incorporated into the latest Order posted on the effective date of the latest Order will govern the entire account. Atiba may accept or reject any Order you submit in its sole discretion. Atiba's provisioning of the Services described in an Order shall be Atiba's acceptance of the Order.

32.2 Modifications. An Order may be amended by a formal written agreement signed by both parties, or by an exchange of correspondence, including electronic mail, which includes the express consent of an authorized individual for each of us. Any such correspondence that adds or modifies Services in connection with an account established by an Order shall be deemed to be an amendment to that Order, notwithstanding the fact that the correspondence does not expressly refer to the Order.

Other than as stated herein, the Agreement may be modified only by a formal document signed by both parties.

32.3 The Agreement constitutes the complete and exclusive agreement between the parties regarding the subject matter and supersedes and replaces any prior understanding or communication, written or oral. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of Atiba which is not set out in the Agreement.

32.4 Order of Precedence. If there is a conflict between the terms of any of the documents that comprise the Agreement, the documents will govern in the following order: Order, Terms of Service, and the Acceptable Use Policy. Each of us may enforce each of our respective rights under the Agreement even if we have waived the right or failed to enforce the same or other rights in the past. The captions in the Agreement are for convenience only and are not part of the Agreement. The use of the word "including" in the Agreement shall be read to mean "including without limitation." All provisions that by their nature are intended to survive expiration or termination of the Agreement shall survive expiration or termination of the Agreement.

32.5 No Waiver. Each party may enforce its respective rights under the Agreement even if it has waived the right or failed to enforce the same or other rights in the past.

32.6 Unenforceable Provisions. If any part of the Agreement is found unenforceable by a court, the rest of the Agreement will nonetheless continue in effect, and the unenforceable part shall be reformed to the extent possible to make it enforceable but still consistent with the business and financial objectives of the parties underlying the Agreement.

32.7 No Partnership. The relationship between the parties is that of independent contractors and not business partners. Neither party is the agent for the other, and neither party has the right to bind the other to any agreement with a third party.

32.8 Changes Not Made Known. If you have made any change to the Agreement documents that you did not bring to our attention in a way that is reasonably calculated to put us on notice of the change, the change shall not become part of the Agreement.

This Agreement is the complete and exclusive agreement between you and Atiba regarding its subject matter and supersedes and replaces any prior agreement, understanding, or communication, written or oral.

33. UNSUPPORTED CONFIGURATION ELEMENTS OR SERVICES.

If you ask us to implement a configuration element (hardware or software) or cloud-related service in a manner that is not customary at Atiba, or that is in “end of life” or “end of support” status we may designate the element or service as “unsupported”, “non-standard”, “best efforts”, “reasonable endeavours”, “one-off”, “EOL”, “End of Support”, or with like term (referred to in this Section as an “Unsupported Service”). Atiba makes no representation or warranty whatsoever regarding the Unsupported Service, and you agree that Atiba shall not be liable to you for any loss or damage arising from the provision of the Unsupported Service. Guarantees shall not apply to the Unsupported Service, or to any other aspect of the Services that is adversely affected by the Unsupported Service. You acknowledge that Unsupported Services may not interoperate with Atiba’s other services, such as backup or monitoring.

34. DOMAIN NAME REGISTRATION SERVICES.

If you register, renew or transfer a domain name through Atiba, Atiba will submit the request to its domain name services provider (the “Registrar”) on your behalf. Atiba’s sole responsibility is to submit the request to the Registrar. Atiba is not responsible for any errors, omissions or failures of the Registrar. Your use of domain name services is subject to the Registrar’s applicable legal terms and conditions. You are responsible for closing any account with any prior reseller of or registrar for the requested domain name, and you are responsible for responding to any enquiries sent to you by the Registrar.

35. MAIL SERVICES.

35.1 Access. You may access your Mail Services via an Atiba-provided API. Atiba may modify its APIs at any time, or may transition to new APIs.

35.2 Management of the Service. Atiba will provision your initial mail environment, but you are otherwise responsible for managing your mail service, including adding mailboxes, adding wireless or other service components, adding storage capacity, managing settings, and configuring spam filters.

35.3 Filtering. Atiba will provide email filtering services designed to filter spam, phishing scams, and email infected with viruses. Atiba recommends that you employ additional security measures, such as a desktop virus scanner and firewall, on computers that are connected to the Internet. Atiba will use commercially reasonable efforts to deliver your email messages. Third party filtering services may from time to time prevent successful delivery of your messages. You acknowledge that the technological limitations of the filtering service will likely result in the capture of some legitimate email and the failure to capture some unwanted email, including email infected with viruses. You hereby release Atiba and its employees, agents, Affiliates, and third party suppliers from any liability for damages arising from the failure of Atiba’s filtering services to capture unwanted email or from the capture of legitimate email, or from a failure of your email to reach its intended recipient as a result of a filtering service used by the recipient or the recipient’s email service provider.

35.4 Memory Limitations. Mail that exceeds the storage limit when received may be permanently lost. You may adjust the storage capacity of your individual mailboxes via contacting Atiba, and it is your obligation to monitor and adjust the storage capacity of individual mailboxes

as needed. An individual email message that exceeds the per-message size limit of 50 MB (including attachments) may also be permanently lost.

35.5 Content Privacy. Your email messages and other items sent or received via the mail service will include: (i) the content of the communication (“content”), and (ii) certain information that is created by the systems and networks that are used to create and transmit the message (the “message routing data”). The content includes things like the text of email messages and attached media files, and is generally the information that could be communicated using some media other than email (like a letter, telephone call, CD, DVD, etc.) The message routing data includes information such as server hostnames, IP addresses, timestamps, mail queue file identifiers, and spam filtering information, and is generally information that would not exist but for the fact that the communication was made via email. The content of your items is your Confidential Information and is subject to the restrictions on use and disclosure described in these Terms of Service. However, you agree that we may view and use the message routing data for our general business purposes, including maintaining and improving security, improving our services, and developing products. In addition, you agree that we may disclose message routing data to third parties in aggregate statistical form, provided that we do not include any information that could be used to identify you.

35.6 Mail Relays. You agree that you will not send bulk or commercial e-mail to more than five-thousand (5,000) users per day, at a rate of two-hundred and fifty (250) messages every twenty minutes.

36. Dispute Resolution.

- 36.1 It is the objective of the parties to establish procedures to facilitate the informal and inexpensive resolution of any and all disputes by mutual cooperation and without resort to litigation. To accomplish this objective, the parties agree to follow the procedures set forth below if a dispute arises:
- 36.2 If a dispute arises from or relates to this contract or the breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the dispute by and through mediation. The parties agree that they are not permitted to submit the dispute to arbitration or to file a civil action without completing mediation. Any unresolved controversy or claim arising from or relating to this contract or breach thereof shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. If all parties to the dispute agree, a mediator involved in the parties’ mediation may be asked to serve as the arbitrator
- 36.3 Within 14 days after the commencement of arbitration, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within 10 days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. The arbitrators will be selected from a panel of persons having experience with and knowledge of electronic computers and the computer business, and at least one of the arbitrators selected will be an attorney.
- 36.4 The place of arbitration shall be Nashville, Tennessee.
- 36.5 This agreement shall be governed by and interpreted in accordance with the laws of the State of Tennessee.

- 36.6 Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).
- 36.7 The arbitrators will have no authority to award punitive, consequential or other damages not measured by the prevailing party's actual damages. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees.
- 36.8 Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.
- 36.9 The requirements of filing a notice of claim with respect to the dispute submitted to mediation shall be suspended until the conclusion of the mediation or arbitration process, as the case may be.