



## General Terms and Conditions

### 1. APPLICATION OF THESE TERMS AND CONDITIONS

Unless specifically excluded or modified in writing acknowledged or signed by both Tivitri, Inc. ("Tivitri") and you, these General Terms and Conditions apply to all aspects of the parties' agreement, including any quotes, statements of work, sales orders, purchase orders, and invoices (collectively referred to as the "Agreement").

### 2. LIMITED WARRANTY AND DISCLAIMERS

A. Subject to the limitations and disclaimers set forth below (including, specifically, the limitations relating to liability and remedies set forth in Section 6, below), Tivitri warrants its services in providing installation, technical support, and configuration services to you under the Agreement for a period of thirty (30) days after installation and delivery of the Products (as defined below).

B. Tivitri does not manufacture or control the hardware, licensed software, documentation, supplies, accessories, data hosting, and other products offered (the "Products"). Tivitri does not provide any warranties with respect to the Products. However, the Products may be covered by a manufacturer's limited warranty. Tivitri passes through to you, without modification, limitation, or enlargement, all such limited warranties relating to the Products purchased by you pursuant to the Agreement. The failure of the Products to meet your expectations will not affect your obligations to Tivitri and any claim that you have with respect to the Products and any remedies for such claim will be against the manufacturer of such Product.

C. DISCLAIMER AND EXCLUSION OF WARRANTY. EXCEPT AS SPECIFIED IN CLAUSE 2A and 2B, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE. The disclaimers and exclusions of warranties set forth in this Agreement to not apply to the extent such disclaimers and exclusions are prohibited by applicable law.

D. The warranty provided in Section 2A, above, does not cover repair for damages or malfunctions, or performance characteristics caused by: (i) use of equipment or software with the Product which are not provided by Tivitri; (ii) your failure to follow Tivitri's installation, operation or maintenance instructions (and/or those of the manufacturer of the Product), including your failure to permit Tivitri timely access to your Product; (iii) failure or malfunction of equipment or software not serviced by Tivitri; (iv) actions of persons other than Tivitri personnel; or (v) force majeure conditions as stated in Section 5. Tivitri does not warrant uninterrupted or error free operation of the Product. In addition, Tivitri is not obligated to provide warranty services if you modify the Product.

E. Although Products are designed to be reasonably secure, Tivitri makes no express or implied warranty that Products are immune from or prevent fraudulent intrusion, unauthorized use or disclosure or loss of proprietary information. Certain software features, when enabled, could be improperly used in violation of privacy laws. By ordering Products with these features, or separately ordering such features, you assume all responsibility for assuring their proper and lawful use.

### 3. SHIPMENT, TITLE, AND RISK OF LOSS

Tivitri will coordinate with the manufacturer regarding the shipment of the Products to you. You will pay all shipping and handling charges unless otherwise specified in writing signed by both parties. Title and risk of loss for the Products shall pass to you upon transfer of the Products to the carrier. Shipping and delivery dates are estimates only and cannot be guaranteed.

### 4. PAYMENT AND SECURITY INTEREST

A. Terms of payment are within Tivitri's sole discretion. Invoices are due and payable within the time stated on your invoice. Without waiving any of our other rights or remedies, Tivitri may refuse additional order and suspend any services until all overdue amounts are paid in full. Warranty or other claims against the manufacturer of the Product will not suspend or terminate your payment obligations to Tivitri. If you do not make payment of any invoice when due, Tivitri may suspend your access to any software or services provided to you by or through Tivitri.

B. Tivitri or its assignee shall have a purchase money security interest in the Products to secure payment of the purchase price and any charges for services until they are paid in full. You agree to execute and deliver all documents requested by Tivitri to protect and maintain Tivitri's security interests. You appoint Tivitri as your agent to sign and file a financing statement to perfect Tivitri's security interest.

### 5. FORCE MAJEURE

Tivitri shall have no liability for delays, failure in performance or damages due to: fire, explosion, power failures, pest damage, lightning or power surges, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, performance or availability of communications services or network facilities, unauthorized use of the Products, or other causes beyond Tivitri's control whether or not similar to the foregoing.

### 6. EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY

A. THE ENTIRE LIABILITY OF TIVITRI AND ITS AFFILIATES AND SUBCONTRACTORS, (AND THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES OF ALL OF THEM) AND YOUR EXCLUSIVE REMEDIES FOR ANY DAMAGES CAUSED BY ANY PRODUCT DEFECT OR FAILURE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY WORK OR SERVICE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE: (1) FOR FAILURE OF PRODUCTS DURING THE WARRANTY PERIOD, REMEDIES OF REPAIR OR REPLACEMENT, AT THE OPTION OF THE WARRANTOR; (2) FOR TIVITRI'S FAILURE TO PERFORM ANY SERVICE OBLIGATIONS, YOUR SOLE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT OR ANY ORDER HEREUNDER WITHOUT INCURRING CANCELLATION CHARGES IF TIVITRI FAILS TO CORRECT SUCH FAILURE WITHIN THIRTY (30) DAYS OF RECEIPT OF YOUR WRITTEN NOTICE; (3) FOR DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY OR FOR

BODILY INJURY OR DEATH TO ANY PERSON FOR WHICH TIVITRI'S SOLE NEGLIGENCE WAS THE PROXIMATE CAUSE, YOUR RIGHT TO PROVEN DAMAGES TO PROPERTY OR PERSON NOT TO EXCEED TIVITRI'S APPLICABLE INSURANCE LIMITS; AND (4) FOR CLAIMS OTHER THAN SET FORTH ABOVE, TIVITRI'S LIABILITY SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE PRODUCT OR SERVICE GIVING RISE TO THE LIABILITY OR \$100,000 WHICHEVER IS LESS.

B. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, TIVITRI SHALL NOT BE LIABLE FOR: (1) INDIRECT OR INCIDENTAL DAMAGES; (2) SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO: LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND, LOST, CORRUPTED, MISDIRECTED OR MISAPPROPRIATED DATA; (3) CHARGES (INCLUDING OVERAGES) FOR TELECOMMUNICATION SERVICES OR FACILITIES USED BY YOU IN CONNECTION WITH YOUR USE OF THE PRODUCTS. TIVITRI SHALL NOT BE LIABLE FOR THE TYPES OF DAMAGES ENUMERATED ABOVE WHETHER OR NOT TIVITRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS PARAGRAPH SHALL SURVIVE THE FAILURE OF ANY EXCLUSIVE REMEDY.

### 7. MANUFACTURER TERMS AND CONDITIONS

You agree to comply with all standard form of terms and conditions which the manufacturer of the Products requires end-users of their goods, software, or services to accept as a condition of sale and use of the Products in question.

### 8. CUSTOMER DATA AND PRIVACY

A. You recognize and agree that hosting data online involves risks of unauthorized disclosure or exposure and that in accessing and using any Products that include online hosting or other data services, you assume such risks. Tivitri offers no representation, warranty, or guarantee such data will not be exposed or disclosed through errors, or the actions of third parties.

B. Tivitri shall have no responsibility or liability for the accuracy of data uploaded to the Products by you. You agree that all personal data will be used or processed in accordance with applicable law and will indemnify Tivitri for any claims related to such use.

C. Unless requested by you for support purposes, Tivitri does not access your data. Use of any Products that include hosting or other data services will be subject to the applicable manufacturer's privacy policy.

### 9. ASSIGNMENT

Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. However, Tivitri may assign this Agreement to a present or future affiliate, subsidiary, successor or distributor or may assign its right to receive payment without your consent.

### 10. SUBCONTRACTING

Tivitri may subcontract work to be performed under this Agreement but shall retain responsibility for the work.

### 11. CANCELLATION/TERMINATION

If you fail to perform any material term or condition of this Agreement (e.g., fail to pay any charge when due) and such failure continues for thirty (30) days after receipt of written notice, you shall be in default and Tivitri may terminate this Agreement and exercise any available rights. Upon such termination by Tivitri, you shall be liable for cancellation and/or termination charges and any other applicable charges.

### 12. RETURNS/REFUNDS

Tivitri will use its best efforts to facilitate returns of and refunds for Products where and to the extent that the manufacturer of the Products accepts returns and provides refunds. However, Tivitri will NOT provide a refund or accept Product returns unless the manufacturer of the Products has authorized the return and refund, in which case, Tivitri will accept the return and pass along to you all of the refund authorized and provided by the manufacturer of the Products.

### 13. DISPUTES/ATTORNEYS' FEES

A. Any controversy or claim, whether based on contract, tort, strict liability, fraud, misrepresentation, or any other legal theory, related directly or indirectly to this Agreement ("Dispute") shall be resolved solely in accordance with the terms of this Section 13.

B. If a Dispute arises, the parties will endeavor to resolve the Dispute through good faith negotiation within fifteen (15) days of notification of the Dispute. If the Dispute cannot be settled through good faith negotiation, Tivitri and you will submit the Dispute to non-binding mediation conducted by a mutually acceptable mediator within thirty (30) days of notification of the Dispute. Each party shall bear its own expenses but those related to the compensation of the mediator shall be borne equally. The parties, their representatives, other participants and the mediator (and arbitrator, if any) shall hold the existence, content and result of mediation in confidence. If the Dispute is not resolved through mediation, claims may be brought in a state or federal court of competent jurisdiction.

C. Any Dispute you have against Tivitri with respect to this Agreement must be brought in accordance with this Section 12 within sixty (60) days after the cause of action arises.

D. In any action brought to enforce any provision of the Agreement between you and Tivitri, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs.

### 14. COMPLIANCE WITH LAWS / NO RESALE OR EXPORT

A. You agree to comply with all applicable laws with respect to your use of the Products or Tivitri's services.

B. You represent and warrant that you are buying Products for your own use only and not for resale or export. You further represent and warrant that all purchases are intended for final delivery to locations in within the U.S. or Canada.