



# **CITRIX FLOW DOWN TERMS**

## BACKGROUND

The Supplier is providing Services to its customers which include the licensed Citrix Hosted Desktop (“Citrix Services”) as further described in the Statement of Work. Use of such Citrix Services by the Customer is governed by the terms set out below.

## 1. DEFINITIONS

**"Affiliate"** means any entity that controls, is under common control with, or is controlled by Citrix, where "control" means the ownership, direct or indirect, of a majority of an entity's stock entitled to vote for the election of directors.

**"Agreement"** means this Agreement including the Program Guide, the Citrix Terms of Service and the Service Descriptions.

**"Citrix"** means Citrix Systems Incorporated or any of their Affiliates.

**"Citrix Terms of Service"** means the additional terms and conditions that govern the use of SaaS as set forth at <https://www.citrix.com/buy/licensing/agreements.html>. This Agreement shall govern any conflicting terms as may be contained in the Citrix Terms of Service and the Service Descriptions as defined therein. The Customer shall be considered the Customer as is defined under the Citrix Terms of Service for both purposes of their use and their Employee's use of the SaaS offering. Notwithstanding the foregoing, all Customer Content, as is defined under the Citrix Terms of Service, will be owned by the Customer.

**"Citrix Trademarks"** means all names, marks, logos, designs, trade dress and other brand designation used by Citrix or its Affiliates in connection with the Products or Support Services.

**"Confidential Information"** means any information disclosed by a Party (the "Disclosing Party") to the other Party (the "Receiving Party"), which (a) if in written, graphic, machine-readable or other tangible form, is marked as "Confidential" or "Proprietary"; (b) if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential; (c) is specifically deemed to be confidential by the terms of this Agreement; or (d) which under the circumstances is to be reasonably treated as confidential or proprietary. For the purpose of this Agreement such Confidential Information shall include information relating to Citrix's business, strategy, customers, partners, technology, Products and Support Services.

**"Client Products"** means software distributed in object code form that allows a computer to access and utilize the Server Products made accessible through the Services.

**"Services"** means the hosted services offered to the Customer by the Supplier whereby allowing such Customer to access the functionality of the Products on a monthly basis.

**"Documentation"** means the user documentation which the Supplier or Citrix, or Citrix Affiliates, generally distributes for, and/or with, the applicable Product.

**“Employee”** shall mean any (i) internal employee (including contractors) or (ii) third parties of the Customer that use the Service solely in order to fulfil their own internal needs (and not for resale, marketing, or leasing).

**“Effective Date”** shall mean the date that Customer agrees to accept the terms and conditions of this Agreement, which shall be the date that the applicable Statement of Work is entered into between Supplier and Customer.

**“Master Services Agreement”** means the Master Services Agreement entered into between Supplier and the Customer under which the Statement of Work and this Agreement is incorporated.

**“Open Source Software”** means third party software incorporated into a Product which is obtained and/or distributed by Citrix under an open source licensing model (e.g., the GNU General Public License).

**“Price List”** means the price list detailed in the Statement of Work.

**“Products”** means, separately or collectively, any Server Products, SaaS and/or Documentation as are offered under Citrix Service Provider Program and as is listed in the Program Guide. Product availability is subject to the Citrix product lifecycle policy on [www.citrix.com](http://www.citrix.com).

**“Program Guide”** means the latest version of the Citrix Service Provider Program documentation, as modified by Citrix from time to time. Modifications to the Program Guide shall become effective thirty (30) days following notice of such changes. A current version of the Program Guide is located at [www.citrix.com](http://www.citrix.com). The Program Guide is an integral part of this Agreement and is hereby incorporated by reference.

**“SaaS”** means the generally available Citrix software-as-a-service, including any components provided with them, and Updates, all as further described in the Service Descriptions, subject to the terms of this Agreement and the additional Citrix Terms of Service applicable to the SaaS being purchased. Citrix may update the SaaS with Updates at any time in its sole discretion, and all SaaS set forth in the Service Descriptions may not be available to all customers.

**“Service Descriptions”** means the overview and other terms applicable to SaaS, as amended from time to time, as found at <https://www.citrix.com/buy/licensing/saas-service-descriptions.html>.

**“Server Products”** means any software program which is distributed in object code form, as available under the Citrix Service Provider Program and listed in the Program Guide that enables the Services.

**“Statement of Work”** means the services specification entered into between Supplier and the Customer into which this Agreement is incorporated.

“Supplier” means Atlas Cloud Limited incorporated and registered in England and Wales with company number 07297347 whose registered office is at Generator Studios, Trafalgar Street, Newcastle Upon Tyne, England, NE1 2LA.

## **2. GRANT OF LICENSE**

### **2.1 Right to Distribute**

Subject to the terms of this Agreement and during its term, Supplier (on behalf of Citrix) grants to Customer a limited, non-exclusive, worldwide, non-transferable, terminable license to access the Services.

### **2.2 Restrictions**

ALL RIGHTS IN THE PRODUCT NOT EXPRESSLY GRANTED ARE RESERVED BY CITRIX. Citrix owns and retains all title, and ownership of the intellectual property rights in and to the Product, including any adaptations, modifications, translations, derivative works or copies. Neither the Customer (including Employees and/or contractors) are permitted to (i) attempt to decompile, disassemble, reverse engineer or otherwise attempt to discern the source code of the Products and/or the Services; (ii) sell, resell, rent, lease, or distribute the Products and/or the Services; (iii) remove, obscure, or obfuscate any copyright, trademark or other proprietary notice, label or marking on the Products or the Services; or (iv) modify, translate or sublicense the Products or Services or any portion thereof.

The Customer hereby agrees, that to the extent that any applicable mandatory laws (such as, for example, national laws implementing EC Directive 2009/24/EC on the Legal Protection of Computer Programs) give the Customer the right to perform any of the aforementioned activities without the consent of the Supplier or Citrix to gain certain information about the Products, before the Customer exercises any such rights, the Customer shall first request such information from the Supplier in writing detailing the purpose for which the Customer needs the information. Only if and after the Supplier, at its sole discretion, partly or completely denies the Customer’s request, shall the Customer exercise Customer’s statutory rights.

## **3. USE OF SERVICES AND CITRIX EULA**

3.1 This Agreement, the Statement of Work, the Master Services Agreement and the Citrix Terms of Service will cover the Customer’s use of the Services, including use of any SaaS offering.

3.2 The Customer’s usage of the Client Products shall be subject to the applicable Citrix End User License Agreement accompanying such Products, directly between Citrix and the Customer.

3.3 All usage of the Products by Employees shall be subject to the terms of this Agreement. The Customer is primarily liable to the Supplier for any breaches of this Agreement by its Employees.

## 4. PAYMENT

4.1 The Customer must pay the Supplier, for all Products accessed during the month, based on the Price List.

## 5. SUPPORT

5.1 Support Services for the Products may be provided by Atlas Cloud in accordance with the terms of this Agreement and the Program Guide.

## 6. INDEMNIFICATION

### 6.1 Indemnity Obligations by the Supplier

#### a) Defence or Settlement of Claims

In the event of any claim, suit or proceeding brought against the Customer is based on an allegation that a Product (excluding Open Source Software) infringes upon any patent, copyright or trade secret of any third party (“**Infringement Claim**”), the Supplier shall indemnify and defend, or at its option, settle such Infringement Claim, and shall pay all costs (including attorney’s fees) associated with the defence of such Infringement Claim, and all damages finally awarded or settlements undertaken by the Supplier in resolution of such Infringement Claim, provided the Customer: (1) promptly notifies the Supplier in writing of the Customer’s notification or discovery of an Infringement Claim such that the Supplier is not prejudiced by any delay in such notification; (2) give the Supplier sole control over the defence or settlement of the Infringement Claim; and (3) provide reasonable assistance in the defence of the same.

#### b) Infringement Remedies

Following notice of an Infringement Claim, or if the Supplier believes such a claim is likely, the Supplier may at its sole expense and option: (i) procure for the Customer the right to continue to market, use and have others use, the alleged infringing Product; (ii) replace or modify the Product to make it non-infringing; or if neither of the foregoing is possible or commercially practicable, (iii) terminate the license or subscription, as applicable, to the alleged infringing Product (and/or this Agreement if no other Products are being used or are desired), and refund

the pro-rata portion of any prepaid unused sums, as applicable to the alleged infringing Product.

c) Limitation

The Supplier assumes no liability for any Infringement Claims or allegations of infringement based on: (i) the Customer's use of any Product after notice that the Customer should cease use of such Product due to an Infringement Claim; (ii) any modification of the Product by the Customer or at the Customer's direction; or (iii) the Customer's combination of the Product with non-the Supplier hardware, software, services, data or other content or materials if such Infringement Claim would have been avoided by the use of the Product alone.

d) Entire Liability

THE FOREGOING STATES THE CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT CLAIM.

## 6.2 Indemnity Obligations by the Customer

a) Notification of Unauthorised Use

The Customer shall promptly notify the Supplier in writing upon the Customer's discovery of any unauthorized use of the Products and/or Services or of any infringement of a Citrix or Supplier patent, copyright, trademark or other intellectual property rights with respect thereto. The Supplier shall have the sole and exclusive right to bring an infringement action or proceeding against a third party, and, in the event that the Supplier brings such an action or proceeding, the Customer shall cooperate and provide full information and assistance to the Supplier and the Supplier's counsel in connection with any such action or proceeding.

## 7. LIMITED WARRANTY AND DISCLAIMER

### 7.1 Product Warranty (not including SaaS)

The Supplier warrants that, for a period of ninety (90) days from the date of delivery of the Products to the Customer, the Products will perform substantially in accordance with the Products' Documentation and included with the Products. The Supplier's entire liability and the Customer's exclusive remedy under this warranty (which is subject to the Customer returning the Products to the Supplier) will be, at the sole option of the Supplier and subject to applicable law, (1) to replace the Products or (2) terminate the Product licenses that do not conform to this warranty and terminate this Agreement if no other Products are being licensed by the Customer and to provide a pro-rata refund of any

prepaid fees from the period of non-conformance through the end of the remaining term, as applicable.

## 7.2 SaaS Warranty

The Supplier warrants that the SaaS, including without limitation any components delivered with SaaS, will materially conform to the Service Description. The Supplier does not represent or warrant that (i) the use of such services will be timely, uninterrupted or error free, or operate in combination with any other hardware, software, system or data, (ii) such services will meet the Customer's requirements or expectations, or (iii) all errors or defects will be corrected. The Supplier's 's entire liability and the Customer's exclusive remedy under this warranty will be, at the Supplier's sole option and subject to applicable law to provide conforming SaaS services, including replacement components as required, or to terminate the non-conforming SaaS, and provide a pro-rata refund of any prepaid fees from the period of non-conformance through the end of the remaining term.

## 7.3 Support Services Warranty

Citrix will provide the Support Services subject to the terms of the Program Guide, in a professional and workmanlike manner, but Citrix cannot guarantee that every question or problem raised by the Customer will be resolved or resolved in a certain amount of time. Citrix's and its supplier's entire liability and the Customer's exclusive remedy under this warranty is re-performance of the Support Services.

7.4 SUBJECT TO THE FOLLOWING AND TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE ABOVE LIMITED WARRANTIES FOR PRODUCTS AND SUPPORT SERVICES, THE SUPPLIER MAKES AND THE CUSTOMER RECEIVES NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND THE SUPPLIER SPECIFICALLY DISCLAIMS WITH RESPECT TO PRODUCTS, SUBSCRIPTIONS, AND SUPPORT SERVICES ANY CONDITIONS OF QUALITY, AVAILABILITY, RELIABILITY, SECURITY, LACK OF VIRUSES, BUGS, OR ERRORS, AND ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE PRODUCTS AND SERVICES ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR DISTRIBUTION WITH ANY EQUIPMENT THE FAILURE OF WHICH COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. THE CUSTOMER ASSUMES THE



RESPONSIBILITY FOR THE SELECTION OF THE PRODUCTS AND HARDWARE TO ACHIEVE THE CUSTOMER'S INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE PRODUCTS AND HARDWARE. THE SERVICE DESCRIPTIONS MAY CONTAIN ADDITIONAL LIMITED WARRANTIES AND/OR WARRANTY DISCLAIMERS APPLICABLE TO INDIVIDUAL SAAS OFFERING. INDEMNITY OBLIGATIONS BY THE SUPPLIER.

7.5 For some jurisdictions in the Asia Pacific Region (excluding Japan), the applicable law does not allow for the exclusion of implied warranties or statutory guarantees (including under the Australian Consumer Law). Nothing in this Agreement excludes, restricts or modifies the application of a statutory guarantee or implied warranty or any associated rights or entitlement to remedies. To the full extent permitted by law in each jurisdiction, the liability of the Supplier for any breach of any warranties, statutory guarantees, conditions or undertakings which cannot be excluded, restricted or modified is limited to:

- a) in the case of goods, at the Supplier's option:
  - (i) the replacement of the goods or supply of equivalent goods;
  - (ii) the repair of such goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of services, at the Supplier's option:
  - (i) the supply of the services again; or
  - (ii) the payment of the cost of having the services supplied again, or otherwise as permitted under applicable legislation.

## **8. LIMITATION OF LIABILITY**

TO THE EXTENT PERMITTED BY APPLICABLE LAW AND WITHOUT LIMITATION TO THE STATUTORY GUARANTEES OR WARRANTIES, CONDITIONS OR UNDERTAKINGS WHICH CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED, THE CUSTOMER AGREES THAT THE SUPPLIER SHALL NOT BE LIABLE FOR ANY LOSS OF DATA OR PRIVACY, LOSS OF INCOME, LOSS OF OPPORTUNITY OR PROFITS, COST OF RECOVERY, LOSS ARISING

FROM THE USE OF THE PRODUCTS OR SERVICES, OR DAMAGE ARISING FROM THE CUSTOMER'S PARTICIPATION IN HOSTING OR USE OF THIRD PARTY PRODUCTS OR HARDWARE OR ANY OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; OR THE USE OF THE PRODUCTS OR SERVICES, REFERENCE MATERIALS, OR ACCOMPANYING DOCUMENTATION; OR THE CUSTOMER'S EXPORTATION, RE-EXPORTATION, OR IMPORTATION OF THE PRODUCTS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF THE SUPPLIER, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE LIABILITY OF THE SUPPLIER, EXCEED THE AMOUNT PAID IN THE PRECEDING TWELVE (12) MONTHS FOR THE PRODUCTS, AND/OR SERVICES AT ISSUE. THE CUSTOMER ACKNOWLEDGES THAT THE LICENSE, SUBSCRIPTION OR SERVICES FEES REFLECTS THIS ALLOCATION OF RISK. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO THE CUSTOMER.

## **9. CONFIDENTIALITY**

9.1 The Receiving Party shall treat as confidential all of the Disclosing Party's Confidential Information and shall use the same degree of care that it exercises with respect to its own information of like importance, but in no event less than reasonable care. The Receiving Party shall only use the Disclosing Party's Confidential Information for the purpose for which it was provided under this Agreement.

9.2 Confidential Information may be disclosed only to employees and consultants of the Receiving Party who have a need to know such Confidential Information for purposes expressly permitted under this Agreement and so long as such employees and/or consultants are legally bound by substantially similar confidentiality obligations as set forth in this Agreement. Receiving Party is responsible for breaches of this Agreement by persons to whom it discloses Confidential Information received hereunder. The term of confidentiality shall be three (3) years from the initial date of disclosure.

### **9.3 Confidential Exclusions**

This Agreement imposes no obligation of confidentiality upon Receiving Party with respect to any information that: (a) was rightfully in Receiving Party's possession before receipt from the Disclosing Party; (b) is or becomes a matter of public

knowledge through no fault of the Receiving Party; (c) is rightfully received by the Receiving Party from a third party without a duty of confidentiality; (d) is disclosed by the Disclosing Party to a third party without a duty of confidentiality; (e) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information; (f) is disclosed by Receiving Party with the Disclosing Party's prior written approval; and (g) is uploaded to, processed, used with or archived in the Customer's Citrix SaaS account(s), by the Customer (such information will be considered Customer Content as described under the Citrix Terms of Service) and shall never be deemed Confidential Information. If the Receiving Party is confronted with legal action to disclose Confidential Information received under this Agreement, unless prohibited by applicable law, the Receiving Party shall promptly notify the Disclosing Party, and reasonably assist the Disclosing Party in obtaining a protective order to prevent or limit the requested disclosure.

#### 9.4 Consent to Use Data

You agree that the Supplier or Citrix may collect and use data and related information, including, but not limited to, technical information about devices, systems, related software, services, or peripherals associated with the Customer's use of the Products and services provided under this Agreement. Data collected may be used for purposes of facilitating the provision of software updates, license authentication, support, analytics and other purposes consistent with the then current Citrix Privacy Policy or the Supplier Privacy Policy found at <https://www.atlascloud.co.uk/privacy-policy/> and at <http://www.citrix.com/about/legal/privacy.html>. The Customer shall provide Employees with all information or notices the Customer is required by applicable privacy and data protection laws to provide and, if necessary, obtain the consent of or provide choices to such Employees as required. By using the Products and services provided for under this Agreement, the Customer agrees to the Citrix Privacy Policy and the Supplier Privacy Policy, and use of the Usage Collection Tools (including requirements as specified herein), which Citrix uses to facilitate the provision of the Products and services as provided for under this Agreement.

## 10. TERMINATION

### 10.1 Termination of Breach

The Supplier may terminate this Agreement if the Customer violates any term of this Agreement and fail to cure the violation within twenty five (25) days after receipt of written notice from the Supplier identifying the violation. The Customer agrees and

acknowledges that the Customer's material breach of this Agreement shall cause the Supplier irreparable harm for which monetary damages alone would be inadequate and that, to the extent permitted by applicable law, the Supplier shall be entitled to injunctive relief without the need for posting a bond.

## 10.2 Return of Materials

The Customer shall not represent that the Customer has any right to market, distribute or sell the Services, nor use any Citrix Trademark. All embodiments of Citrix Trademarks, trade names, patents, copyrights, designs, drawings, formulas or other data, photographs, samples, literature, and sales aids of every kind shall remain the property of Citrix. Within thirty (30) days after the termination or expiration of this Agreement, the Customer shall destroy all such items in the Customer's possession. The Customer shall not make or retain any copies of any confidential items or information that may have been entrusted to the Customer.

## 10.3 Consequences of Termination

Upon termination or expiration of this Agreement, all licenses, subscription, and Services subject to this Agreement shall immediately terminate. The Customer must promptly cease use of such licenses, subscriptions, and Services and destroy all associated Products and copies thereof. Upon the destruction of the materials as required by this Agreement, the Customer shall provide a letter of destruction signed by an authorized officer of the Customer verifying such destruction. In the event of termination by either party in accordance with any of the provisions of this Agreement, neither party shall be liable to the other, because of such termination, for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases or commitments in connection with the business or goodwill of Citrix or the Supplier. Termination shall not, however, relieve either party of obligations incurred or committed to prior to the termination.

# 11. GENERAL

## 11.1 U.S. Government and Customers

If the Customer is a U.S. Government agency, the Customer it is not eligible to participate under this Agreement.

## 11.2 Anti-Bribery

- a) The Customer agrees to comply with all applicable laws, statues, regulations and codes relating to anti-bribery and anticorruption including but not limited to the US Foreign Corrupt Practices Act of 1977 and the UK Bribery Act of 2010.
- b) The Customer agrees that the Customer and the Customer's owners, directors, officers, Employees, agents, partners and vendors have not and will not directly or indirectly pay, offer, promise to pay, or authorize the payment of, any money or anything of value to any person to improperly obtain, retain, or direct business or secure an improper advantage in connection with Citrix products or services. The Customer also agrees to implement adequate procedures to prevent a breach of this clause. Should the Customer become aware of a breach or potential breach of this clause, the Customer shall immediately notify the Supplier and promptly take action against those involved.
- c) The Customer certifies that none of the Customer's owners, directors, officers, employees, agents, or partners have been convicted of or pleaded guilty to bribery, fraud or related charges.
- d) In the event that the Supplier has reason to believe that a breach of this clause has occurred or may occur, the Supplier may at its discretion, and without liability to the Customer, do any or all of the following; terminate this Agreement immediately and/or withhold delivery of any goods or services until it receives confirmation to its satisfaction that no breach has occurred or will occur. The Customer shall indemnify and hold the Supplier harmless against any and all related claims, losses or damages.
- e) The Customer agrees to keep accurate books, accounts, and records related to this Agreement and to allow the Supplier, or its independent audit firm, reasonable access to these to verify compliance with this clause.

## 11.3 No Partnership

Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture, franchise or agency relationship between the Customer and the Supplier. The Customer does not have the right to make any additional representations, commitments, or warranties binding on the Supplier.

## 11.4 Trademarks

As applicable to all such uses of Citrix trademarks, the Customer warrants that the Customer has reviewed and will adhere to Citrix's Trademark & Copyright Guidelines, which are located at <http://www.citrix.com/about/legal/brand-guidelines.html> and

incorporated herein by reference. In particular, unless expressly authorized under the terms of this Section and in this Agreement, the Customer agrees that the Customer shall not use, register or apply for registration of any trademark, service mark, business name, company/trade name, domain name or social media account name or handle which is comprised of or incorporates in whole or in part any mark or name belonging to Citrix, or is otherwise confusingly similar to a mark or name belonging to Citrix. In the event of any breach of this provision, the Customer agrees that the Customer will do all things necessary to affect the transfer of any such same or similar trademark, service mark, business name, company/trade name, domain name or social media account name or handle to Citrix, including but not limited to executing assignment documentation. Citrix shall have the right to make reasonable updates to the Trademark & Copyright Guidelines from time to time. Except as expressly granted herein, no license regarding the use of Citrix's copyrights, patents, trademarks, service marks or company/trade names is granted or will be implied.

#### **11.5 Force Majeure**

Except for the Customer's payment obligations for provided Products and Services, non performance of either party shall be excused to the extent performance is rendered impossible by force majeure, but only for so long as such condition exists.

#### **11.6 Severability**

If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, the remaining provisions will nevertheless remain in full force and effect. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision. The waiver by a party of a breach of any provision of this Agreement by the party will not operate or be interpreted as a waiver of any other or subsequent breach. All waivers must be in writing.

#### **11.7 Amendments**

Except as specifically stated in this Agreement, no modification or amendment to this Agreement shall be effective unless in writing and signed by a duly authorized representative of each party.

#### **11.8 Third Party Beneficiaries**

The parties agree that, apart from Citrix and any Citrix Affiliate, there are no intended third-party beneficiaries under this Agreement with respect to but not limited to all Products (including SaaS) and all services provided hereunder.

#### **11.9 Assignment**

Neither this Agreement nor any of the rights or obligations of either party arising under this Agreement may be assigned or transferred, by operation of law or otherwise, without the prior written consent of the other party (such consent not to be unreasonably withheld) unless assigned to a successor in interest, or pursuant to a merger, corporate reorganization, or a sale or transfer of all or substantially all of the party's assets. In addition, the Supplier may assign, novate or otherwise transfer, without the Customer's approval, its rights or obligations arising out of or under this Agreement to any third party acquiring part of the business of the Supplier. The Customer must do all things, include execute all documents, reasonably required by the Supplier to give effect to such assignment, novation or transfer. Subject to this restriction, this Agreement will be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

#### **11.10 Whole Agreement**

Except as for the materials expressly referenced in this Agreement, this Agreement, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written Agreements. In the event of a conflict between the terms of this Agreement and any referenced materials, including but not limited to the Program Guide, the terms of the referenced materials will control. The headings used in this Agreement are intended for convenience only and shall not supersede or modify any provisions.

#### **11.11 Choice of Law**

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

#### **11.12 Jurisdiction**

The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).