MIGRATIONWIZ USER AGREEMENT

PLEASE READ THIS MIGRATIONWIZ USER AGREEMENT CAREFULLY BEFORE ACCESSING OR USING THE MIGRATIONWIZ SERVICE OFFERING AS DESCRIBED AND DEFINED BELOW. BY CHECKING A CHECKBOX INDICATING YOUR ASSENT, REGISTERING FOR A BITTITAN ACCOUNT, OR ACCESSING OR USING THE MIGRATIONWIZ SERVICE OFFERING, YOU AND ANY LEGAL ENTITY YOU REPRESENT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS DESCRIBED IN THIS MIGRATIONWIZ USER AGREEMENT AND ALL TERMS AND DOCUMENTS INCORPORATED BY REFERENCE ("**Agreement**"). IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, DO NOT USE THE MIGRATIONWIZ SERVICE OFFERING.

This Agreement is made and entered into by and between BitTitan, Inc. ("**BitTitan**"), a company headquartered at 1120 112th Ave NE, #300, Bellevue, WA 98004, and you. If you represent a legal entity that will be using any MigrationWiz Service Offering then you are entering this Agreement on behalf of yourself and the legal entity (collectively "**Customer**") and you represent and warrant that you are at least 18 years of age and have the authority to bind the legal entity to this Agreement. This Agreement applies to Customer's access to, and use of, the MigrationWiz Service Offering and incorporates by reference any documents referenced herein. This Agreement is effective as of the earlier of the date Customer registers for a BitTitan Account or purchases a Service License (the "**Effective Date**"). If Customer has entered into an offline version of this Agreement for use of the MigrationWiz Service Offering (an "**Offline Agreement**"), then the terms of this Agreement do not apply to Customer and the terms of the Offline Agreement apply to Customer's access to, and use of, the MigrationWiz Service Offering. This Agreement does not alter in any way the terms of any other agreement Customer may have with BitTitan for products or services other than the MigrationWiz Service Offering.

1. DEFINITIONS

Unless otherwise defined in this Agreement, words used in this Agreement with their initial letters capitalized will have the following meanings:

"**Authorized Users**" means any individual authorized by Customer to access and use Customer's BitTitan Account in accordance with Section 2.7 below.

"**BitTitan Account**" means the account for which Customer has registered on a Services Site for the purposes of accessing and using the MigrationWiz Service Offering.

"**BitTitan Materials**" means all BitTitan intellectual property, including but not limited to BitTitan marks, BitTitan Software, and Documentation.

"**BitTitan Software**" means any software made available by BitTitan to be used in conjunction with a MigrationWiz Service Offering, which may include device management agents.

"**Client**" means a person or entity to which Customer provides services using a MigrationWiz Service Offering.

"**Configuration Data**" means the configuration and access credential information of a BitTitan Account, including Messaging Application Program Interface data, usernames, passwords, e-mail address, or other similar content and data uploaded to a BitTitan Account to be used in conjunction with a MigrationWiz Service Offering.

"**Data**" means any content, libraries, documents, folders, files, usernames, passwords, directories, account information or other data, materials, Configuration Data or information pertaining to Customer, a Client, any employee, independent contractor, agent, or consultant of Customer or a Client, or other person associated with data to be collected or processed by an Authorized User through use of a MigrationWiz Service Offering, but excluding BitTitan Materials.

"**De-Identified Data**" means any Data that has been anonymized, de-identified or aggregated, such that identifying any particular Customer, Client, data subject, or individual from such Data is not possible.

"**Documentation**" means the online documentation, policies, FAQs, security procedures, or other reference materials relating to access to, or use of, MigrationWiz Service Offering made available to Customer, Client and/or the Authorized Users.

"**Intellectual Property Right**" means any patent, copyright, trademark, trade secret, trade dress, mask work, moral right, right of attribution or integrity, right to privacy, personality or publicity or other proprietary or intellectual property right.

"**MigrationWiz Service Offering**" means the products and services described in the MigrationWiz Service Specific Terms and available to purchase, access and use through a BitTitan Account, including any BitTitan Software made available.

"**MigrationWiz Shopping Cart**" means the Service Site from which a Customer may purchase the MigrationWiz Service Offering.

"**Policies**" means the Acceptable Use Policy (defined below), the Privacy Policy (defined below), the Service Specific Terms (defined below), and any other policy incorporated by reference in this Agreement. Policies do not include whitepapers, marketing materials, community blogs or support boards, security commentary or other such materials on or referenced on any Services Site.

"**Service License**" means the license to use a particular MigrationWiz Service Offering described in the Service Specific Terms for each MigrationWiz Service Offering.

"**Services Site**" means the Web sites found at www.bittitan.com and other related or successor sites controlled by BitTitan.

"**Standard Support**" means the support provided by BitTitan via email during normal business hours in response to a support request submitted at help.bittitan.com at no additional charge.

"**Third Party Service Provider**" means a third party engaged by BitTitan to provide (i) development, hosting, or maintenance services with respect to any Services Site or MigrationWiz Service Offering, or (ii) other cloud service Offering (which may include cloud service Offering made available by BitTitan under this Agreement as part of the MigrationWiz Service Offering).

2. **SERVICE**
   2.1. <u>**Grant of License.**</u> Subject to the terms and conditions of this Agreement and any limitations in the Documentation, Customer is hereby granted a term-limited, worldwide, non-exclusive, non-transferable, non-assignable revocable license to use the MigrationWiz Service Offering during the period commencing on the date that the related Service License is purchased and ending on the earlier of Customer's use of the Service License or twelve (12) months from the date of purchase.

2.2. <u>Acceptable Use.</u> Customer shall not at any time, directly or indirectly (i) copy or modify, or create derivative works based on any MigrationWiz Service Offering or the Documentation; (ii) publish, frame or mirror any part or content of any MigrationWiz Service Offering or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of any MigrationWiz Service Offering, in whole or in part; (iv) access any MigrationWiz Service Offering in order to develop a competitive product or service; (v) use any MigrationWiz Service Offering in violation of any applicable rule, law or regulation; (vi) transmit or store any data, or send or upload any material, that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code; (vii) interfere with or disrupt the integrity or performance of any MigrationWiz Service Offering or any content contained therein; (vii) use any MigrationWiz Service Offering for any mission or life-critical purposes, including the storage, processing, transfer, analysis, communication or migration of any data which, if lost or corrupted, could endanger the health or safety of any person; or (ix) use any MigrationWiz Service Offering in ways that may be harmful to others or to BitTitan's reputation, including the use of any portion of a MigrationWiz Service Offering as a destination linked from any unsolicited bulk messages or unsolicited commercial messages.

2.3. <u>BitTitan Account Terms of Use.</u> Customer represents and warrants that Customer and its Authorized Users will: (i) provide accurate, truthful, current and complete information when creating a BitTitan Account; (ii) maintain and promptly update its BitTitan Account information; (iii) use commercially reasonable efforts to maintain the security of its BitTitan Account by employing security best practices, including, without limitation, not sharing Customer password(s) with others and restricting access to its BitTitan Account, computers or mobile devices; (iv) promptly notify BitTitan if Customer discovers or otherwise suspects any security breach related to its BitTitan Account; and (v) take responsibility for all activities that occur under its BitTitan Account and accept all risks of unauthorized access.

2.4. <u>Service Specific Terms.</u> The [Service Specific Terms](#) apply to Customer's access to, and use of, each MigrationWiz Service Offering. The Service Specific Terms supplement this Agreement and are incorporated herein by this reference. In case of any discrepancy between this Agreement and the Service Specific Terms, the Service Specific Terms shall prevail.

2.5. <u>Use for Benefit of Clients.</u> Subject to Customer's compliance with the terms of this Agreement, Customer may use the MigrationWiz Service Offering for the benefit of a Client in connection with services provided by Customer to the Client ("**Downstream Services**").

2.5.1. Downstream Services may only be provided pursuant to a binding agreement between Customer and Client, which agreement contains terms and conditions as least as protective of BitTitan and BitTitan's MigrationWiz Service Offering and other intellectual property as the terms of this Agreement.

2.5.2. Customer will not make or provide any representation or warranty inconsistent with the representations and warranties set forth in this Agreement.

2.5.3. Customer will disclose to Client that Customer is using a MigrationWiz Service Offering in connection with any Downstream Services or the use, collection, disclosure, or other processing of Data.

2.5.4. Customer will provide any notice, obtain any consent, and manage any opt-in or opt-out list required under any law or regulation applicable to Customer, Client or BitTitan related

to the use of any MigrationWiz Service Offering or the use, collection, disclosure, or other processing of Data.

2.5.5. Customer will be solely responsible for any Downstream Services provided to Customer's Client and BitTitan will have no responsibility or liability in connection therewith. Customer will defend, indemnify and hold harmless BitTitan from and against any third-party claims, suits, actions, proceedings, damages, losses, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) arising out of, or related to, use of any MigrationWiz Service Offering by or for any Client, any claim asserted by Customer's Client, or any Downstream Services.

2.6. **Not for Resale.** Notwithstanding the right to use a MigrationWiz Service Offering for the benefit of Clients, Customer may not rent, lease, lend, sell, resell, license, sublicense or distribute any MigrationWiz Service Offering or Service License or otherwise permit any third party to directly access or use any MigrationWiz Service Offering. Customer will not offer, market, promote, represent, or characterize its services in any manner inconsistent with the preceding sentence.

2.7. **Authorized Users.** Customer may only permit its employees, independent contractors, and agents to access or use Customer's BitTitan Account. Customer is responsible for any access to, or use of, the MigrationWiz Service Offering by Authorized Users. Further, Customer will ensure that all Authorized Users' use of a BitTitan Account and MigrationWiz Service Offering complies with Customer's obligations under this Agreement (including, without limitation, compliance with the Policies). The acts or omissions of any of Customer's Authorized Users in connection with this Agreement shall be considered Customer's acts or omissions.

2.8. **Support**. Basic support for all MigrationWiz Service Offering shall be provided in accordance with BitTitan's Support policies as described in BitTitan's support website.

2.9. **BitTitan Software**. In addition to any other rights granted in this Agreement, BitTitan grants Customer and its Authorized Users a non-exclusive, non-sublicensable, non-transferable license for the duration of the Agreement to install and use the BitTitan Software that BitTitan makes available for installation on Customer devices in object code form only on each Authorized User's assigned work machines as necessary in relation to the MigrationWiz Service Offering. Any BitTitan Software that updates, supplements, or replaces a prior version of the BitTitan Software described in the previous sentence shall be governed by this Agreement, unless separate license terms accompany such update, supplement, or replacement. If such separate terms conflict with this Agreement, then such terms will govern, unless specified otherwise. Notwithstanding anything to the contrary in the Agreement, BitTitan is not responsible for, among other things, any loss or corruption of data or damage to Customer's or Client's systems that may occur from Customer's use of the BitTitan Software.

2.10. **Third-Party Services.** The MigrationWiz Service Offering may be offered in conjunction with or used with products, services, or content provided by third parties ("**Third-Party Services**"). Customer shall be solely responsible and liable to obtain any such Third-Party Services. BitTitan does not control or endorse any Third-Party Services and shall have no responsibility or liability for any Third-Party Services.

3. FEES AND PAYMENTS TERMS

3.1. **Fees.** Except for MigrationWiz Service Offering purchased by Customer through BitTitan authorized distributors or resellers, Customer will pay BitTitan the fees, compensation, and other

amounts for each MigrationWiz Service Offering as set forth in the MigrationWiz Shopping Cart or as set forth in a written quote, purchase order or other writing, to which the parties have mutually agreed ("Fees") in advance of Customer's use of the MigrationWiz Service Offering. All Fees will be paid in U.S. dollars, unless otherwise mutually agreed by the parties. BitTitan may modify the Fees at any time upon notice to Customer, which notice shall be communicated either through a posting on the applicable Service Site, through the applicable MigrationWiz Service Offering or by email. If Customer does not accept a modification in Fees, Customer need not purchase additional MigrationWiz Service Offering. To the fullest extent permitted by applicable law, BitTitan reserves the right to refuse or cancel purchases or attempted purchases at any time in its sole discretion.

3.2. **Invoicing and Payment Terms.** MigrationWiz Service Offering purchased by Customer using the MigrationWiz Shopping Cart will be paid by credit card. MigrationWiz Service Offering otherwise purchased by Customer by accepting a quote or by submitting an order which has been accepted by BitTitan will be paid by credit card or other payment method preapproved by BitTitan. If Customer is paying by credit card or other electronic payment method, Customer authorizes BitTitan, or its designated payment processor, to charge the Fees and to process and store payment information and other related personal information for the purpose of charging the Fees. If the credit card or other electronic payment method cannot be verified, is invalid, or is otherwise not acceptable, Customer's access to, and use of, the MigrationWiz Service Offering may be suspended or terminated without notice. After a successful payment, Customer will receive an electronic billing statement confirming the successful purchase of a Service License(s) from BitTitan. Nothing in this Agreement obligates BitTitan to extend credit to any party.

3.3. **Taxes.** Fees do not include any sales, use, gross receipts, value added, or other taxes, customs, duties, fees, or other charges assessed or imposed by any governmental authority ("**Taxes**"). Customer is responsible for any Taxes applicable to Customer's purchase of MigrationWiz Service Offering, other than taxes measured by BitTitan's net income. Unless Customer provides a timely and valid tax exemption certificate to BitTitan, Customer will pay Taxes charged at the time of purchase using the MigrationWiz Shopping Cart or included on an invoice issued by BitTitan for any MigrationWiz Service Offering. Customer will pay Fees without reduction for Taxes, unless Customer is required by law to withhold any Taxes from its payment to BitTitan, in which case, Customer must provide BitTitan with an official tax receipt or other appropriate documentation to support such withholding. Notwithstanding the foregoing sentence, if, under applicable tax laws and regulations, MigrationWiz Service Offering are subject to value added tax ("**VAT**") and Customer is required to withhold local VAT from amounts payable to BitTitan, the amount payable by Customer for MigrationWiz Service Offering will be increased (i.e., grossed up) by the amount of the applicable VAT and the grossed up amount will be regarded as a VAT inclusive price such that the net amount payable to BitTitan equals the amount as would otherwise be payable to BitTitan. Customer will defend, indemnify, and hold harmless BitTitan from and against any claim related to Customer's tax obligations or Customer's failure to collect or remit any applicable taxes.

3.4. **Invoice Disputes and Refunds.** Any invoice disputes must be submitted within thirty (30) days of Customer's receipt of an invoice or payment due date, whichever is soonest. If the parties determine that certain billing inaccuracies which resulted in Customer overpaying for the MigrationWiz Service Offering are attributable to BitTitan, BitTitan will not issue a corrected

invoice, but will instead issue a credit memo specifying the incorrect amount in the affected invoice. If the disputed invoice has not yet been paid, BitTitan will apply the credit memo amount to the disputed invoice and Customer will be responsible for paying the resulting net balance due on that invoice. Except as otherwise provided in this Agreement, all purchases are final, and no refunds or credits will be issued by BitTitan.

3.5. **Delinquent Payments; Suspension.** BitTitan may charge, and, if charged, Customer will pay interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) from the payment due date until paid in full. Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by BitTitan in collecting such delinquent amounts. If Customer is late on payment, BitTitan may, in addition to any other rights or remedies, suspend the MigrationWiz Service Offering or terminate the Agreement for Cause under Section 6.3, regardless of whether the MigrationWiz Service Offering has been used or not.

3.6. **Payment Obligations.** Customer is obligated to pay all applicable Fees without any requirement for BitTitan to, among other things, provide a purchase order number on a BitTitan's invoice (or otherwise), or format an invoice in any particular manner.

4. **PROPRIETARY RIGHTS**

4.1. **Reservation of Rights.** As between BitTitan and Customer, the MigrationWiz Service Offering, all BitTitan Materials, and all Intellectual Property Rights in any of the foregoing, are and will remain the sole property of BitTitan, and no rights are granted to Customer with respect to the MigrationWiz Service Offering, or the intellectual property rights therein, other than the limited rights and licenses specified in this Agreement. Customer will not access or use the MigrationWiz Service Offering or BitTitan Materials, except as expressly permitted by this Agreement. There are no implied licenses and BitTitan reserves all rights not expressly granted to Customer in this Agreement.

4.2. **Feedback.** Customer grants BitTitan a royalty-free, worldwide, transferable, irrevocable, perpetual license to use or incorporate into the MigrationWiz Service Offering or Service Sites any suggestions, enhancement requests, recommendations or other feedback provided by Customer, relating to the MigrationWiz Service Offering or Service Sites.

5. **DATA**

5.1. As between BitTitan and Customer, Customer retains all right, title, and interest in and to any Data. Except as otherwise provided in this Section 5, BitTitan obtains no rights under this Agreement from Customer to the Data, including any related Intellectual Property Rights.

5.2. Customer hereby grants to BitTitan the right to access and use the Data and access Customer's BitTitan Account to perform its obligations under this Agreement, including the right to share the Data with any sub-processors and the ongoing right to use and disclose any De-Identified Data both during and after the Term, in order to, among other things, improve the MigrationWiz Service Offering. Customer is solely responsible for any (i) Data submitted or contributed to the MigrationWiz Service Offering and (ii) obtaining any necessary consents and providing all required notices in connection with any processing, use, collection, disclosure and/or transfers of the Data.

5.3. To the extent any Data includes personal data received from the European Union ("**EU Data**"), Customer will be the Data Controller of such EU Data and BitTitan will act solely as a Data Processor. BitTitan will only use EU Data as specified in Section 5.2 and as otherwise authorized

under this Agreement. To the extent required by applicable law, any transfer of Data to a country outside of the EU will be governed by the standard contractual clauses annexed to the EU Commission Decision 2010/87/EU of 5 February 2010 for the Transfer of Personal Data to Processors established in Third Countries under the Directive 95/46/EC, or any successor standard contractual clauses that may be adopted pursuant to an EU Commission decision.

5.4. **Protection of Data.** BitTitan will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Data. BitTitan will not (a) modify Data, (b) disclose Data except as compelled by law in accordance with Section 6.3 or as expressly permitted in writing by Customer, or (c) access Data, except as authorized by this Agreement, to prevent or address service or technical problems, or, at Customer's request, in connection with customer support matters.

5.5. **Privacy Policy.** BitTitan uses, collects, discloses, and otherwise processes Data as described in BitTitan's Privacy Policy. Customer consents to Data being transferred to, and processed in, the United States or any other country in which BitTitan operates.

6. **TERM; SUSPENSION; TERMINATION**

6.1. **Term.** This Agreement commences on the Effective Date and continues until terminated as described in Section 6.2.

6.2. **Termination.** Either party may terminate this Agreement at any time by providing written notice to the other specifying the termination date. BitTitan's notice pursuant to the preceding sentence may be provided through a MigrationWiz Service Offering. If BitTitan is unable to provide written notice through a MigrationWiz Service Offering, then BitTitan will use commercially reasonable efforts to provide Customer with written notice of termination through other means including by email or through a Service Site, but termination will be effective regardless of whether Customer has received notice effective as of the time that BitTitan permanently shuts off access to Customer's BitTitan Account.

6.3. **Suspension.** BitTitan reserves the right, without notice and in its sole discretion, to temporarily suspend Customer's right to access Customer's BitTitan Account or use MigrationWiz Service Offering, if BitTitan determines that Customer or any of Customer's Authorized Users have failed to comply with any applicable BitTitan Policies or have used the Services Sites or MigrationWiz Service Offering in a way that (i) poses a security risk to the Services Sites or MigrationWiz Service Offering or any third party, (ii) may adversely impact the MigrationWiz Service Offering or the systems or user materials of other BitTitan customers, (iii) may subject any affiliates of BitTitan, or any third party to liability, or (iv) may be fraudulent (collectively, "**Unauthorized Activity**") or if Customer has any overdue balances payable to BitTitan. Customer acknowledges that, if Customer's access to, or use of, the MigrationWiz Service Offering is suspended or terminated, Customer may no longer have access to the Configuration Data through the MigrationWiz Service Offering.

6.4. **Other Suspension.** Without limiting Section 6.3 above or any of its other rights in this Agreement, BitTitan may suspend, modify or terminate a MigrationWiz Service Offering if (i) BitTitan's agreement with any applicable Third Party Service Provider is terminated or expires, or (ii) if there is a current or future governmental, quasi-governmental, regulatory or other legal requirement or obligation that: (1) subjects or may subject BitTitan or its subcontractors to any regulation or requirement not generally applicable to businesses operating there, (2) presents or may present

a hardship for BitTitan or its subcontractors to continue operating the MigrationWiz Service Offering, and/or (3) causes BitTitan to believe these terms conflict with any such requirement or obligation.

6.5. **Effects of Termination.** In the event of any termination, Customer's rights under this Agreement will immediately cease. If BitTitan terminates this Agreement for Customer's breach of this Agreement including any Unauthorized Activity (collectively, "**Cause**"), or if Customer terminates the Agreement, Customer will not be eligible for any refund. If BitTitan terminates this Agreement other than for Cause, BitTitan will refund any Fees that have been paid by Customer directly to BitTitan, not any third party, for any portion of any Service License that has not been consumed prior to such termination. If a Service License was purchased or otherwise acquired from an authorized distributor or reseller of BitTitan, then, if BitTitan terminates this Agreement other than for Cause, Customer's sole remedy shall be to contact the authorized distributor or reseller to request a refund. BitTitan shall have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer may incur as a result of a suspension or termination as described in this Section 6 of this Agreement.

6.6. **Survival.** The respective rights and obligations of the parties under Sections 4, 5, 7, 8, 9, 10, and 11.11, shall survive any termination or expiration of this Agreement.

7. **CONFIDENTIALITY**

7.1. If the parties have entered into a separate nondisclosure or confidentiality agreement prior to the Effective Date of this Agreement, the terms and conditions of such agreement shall apply to each party's Confidential Information (defined below) and the term or disclosure period of such agreement will continue for three (3) years after the termination date of this Agreement. If the parties have not entered into a separate nondisclosure or confidentiality agreement, this Section 7 shall apply to each party's Confidential Information. "**Confidential Information**" will mean all information disclosed orally or in writing by one party to the other party that is identified as confidential or whose confidential nature is reasonably apparent. Confidential Information of BitTitan shall include, but is not limited to, product architecture, product research and development plans, non-public financial data, and roadmaps, whether marked as confidential or not. The receiving party may use the Confidential Information that it receives from the disclosing party solely for the purpose of performing activities contemplated under this Agreement. Confidential Information shall not include information which: (i) is or becomes a part of the public domain through no fault of the receiving party; (ii) was in the receiving party's lawful possession prior to the disclosure; (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure or any breach of confidence; (iv) is independently developed by the receiving party; or (v) De-Identified Data.

7.2. Each party agrees to (i) hold the other's Confidential Information in confidence using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care), and (ii) not use or disclose such Confidential Information other than in connection with the performance of its obligations hereunder or as otherwise authorized by this Agreement. Notwithstanding the foregoing, either party may disclose any of the other party's Confidential Information to its employees, independent contractors, agents, or consultants that have a need to know such Confidential Information in connection with such party's performance under this Agreement if such employees, independent

contractors, agents, or consultants have agreed to be bound by confidentiality obligations similar to those in this Section 7.

7.3. The receiving party may disclose the disclosing party's Confidential Information as required by law or court order provided: (a)to the extent legally permissible, the receiving promptly notifies the disclosing party in writing of the requirement for disclosure; and (b) discloses only as much of the Confidential Information as is required. Subject to the terms of this Agreement, upon the written request of the disclosing party, the receiving party will either return (if technically feasible to do so) or destroy the Confidential Information and, upon the written request of the disclosing party, will certify such destruction. Notwithstanding the foregoing and provided that such information is protected in accordance with the terms of this Agreement, the receiving party may continue to maintain copies of Confidential Information: (i) that are a part of its data backup system, which will be destroyed in accordance with the receiving party's data retention policies; or (ii) as required to comply with applicable law, which will be destroyed when such obligation is met.

7.4. The parties acknowledge that a violation by the receiving party of its obligations with respect to Confidential Information may cause irreparable harm to the disclosing party for which a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, the disclosing party will be entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation of any or all of the provisions.

8. WARRANTIES

8.1. <u>Customer Warranties.</u> Customer represents and warrants that (i) it will comply with all applicable laws and regulations applicable to its use of the MigrationWiz Service Offering;; (ii) it has obtained all necessary consents, rights and permissions with respect to the Data necessary to collect and process the Data using the BitTitan Services Offering; and (iii) collecting, storing, transferring, and processing the Data using the MigrationWiz Service Offering will not infringe, misappropriate or violate any Intellectual Property Rights of a third party, violate any law or regulation or fail to comply with any privacy policy or notice.

8.2. <u>Mutual Warranties.</u> Each party represents and warrants that it (i) has full corporate power and authority to enter into the Agreement; and (ii) the use or provision of the BitTitan Services Offering will not violate any agreement or obligation between a party and a third party.

8.3. <u>Disclaimer of Warranties</u>. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE MIGRATIONWIZ SERVICE OFFERING AND THE SERVICE SITES, INCLUDING THE INFORMATION, CONTENT AND MATERIALS CONTAINED THEREIN, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BITTITAN DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, TITLE AND NON-INFRINGEMENT AS TO THE MIGRATIONWIZ SERVICE OFFERING AND THE SERVICES SITES, INCLUDING THE INFORMATION, CONTENT AND MATERIALS CONTAINED THEREIN. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BITTITAN DOES NOT REPRESENT OR WARRANT THAT THE MIGRATIONWIZ SERVICE OFFERING OR THE SERVICES SITES, INCLUDING THE INFORMATION, CONTENT AND MATERIALS CONTAINED THEREIN, ARE ACCURATE, COMPLETE, RELIABLE, CURRENT OR ERROR-FREE. BITTITAN DOES NOT

REPRESENT OR WARRANT THAT THE MIGRATIONWIZ SERVICE OFFERING OR SERVICES SITES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. CUSTOMER IS SOLELY RESPONSIBLE FOR ENSURING (I) THAT ANY DATA HAS BEEN PROPERLY BACKEDUP PRIOR TO USING ANY MIGRATIONWIZ SERVICE OFFERING, AND (II) THAT ANY DATA MIGRATED THROUGH THE MIGRATIONWIZ SERVICE OFFERING HAS BEEN ACCURATELY REPRODUCED AT THE NEW DESTINATION.

9. **INDEMNITIES**
   9.1. **BitTitan Indemnities.** BitTitan will defend, indemnify and hold harmless Customer from and against any third-party claims, suits, actions, proceedings, damages, losses, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) to the extent arising solely from an allegation that a MigrationWiz Service Offering infringes or misappropriates the Intellectual Property Rights of such third party (any such claim, an "IP Dispute"). BitTitan's obligations under this paragraph will only apply to the extent that: (a) Customer promptly notifies BitTitan in writing of the IP Dispute; (b) BitTitan has sole control of the defense and all related settlement negotiations relating to the IP Dispute; provided, however, any settlement requiring Customer to admit liability, pay money, or take (or refrain from taking) any action, will require Customer's prior written consent, not to be unreasonably withheld, conditioned, or delayed; and (c) Customer provides BitTitan with the assistance, information and authority reasonably necessary to perform the above. In no event will BitTitan have any obligation or liability under this paragraph for any IP Dispute if the IP Dispute or action is caused by, or results from: (i) Customer's unauthorized use of the MigrationWiz Service Offering; (ii) combination, operation or use of the MigrationWiz Service Offering with software or other materials not supplied by BitTitan; (iii) any alteration or modification of the MigrationWiz Service Offering by anyone other than BitTitan; or (iv) Customer's continued use of the MigrationWiz Service offering after being notified of the IP Dispute (or possibility thereof) or continued use of the unmodified MigrationWiz Service Offering after being provided with modifications that would have avoided the alleged infringement.
   9.2. **Remedy for Infringement.** If BitTitan reasonably believes that any MigrationWiz Service Offering might infringe a third party's Intellectual Property Rights, then BitTitan may, at its sole option and expense: (i) procure the right for Customer to continue using the MigrationWiz Service Offering; (ii) modify the MigrationWiz Service Offering to make it non-infringing without materially reducing its functionality; or (iii) replace the MigrationWiz Service Offering with a non-infringing, functionally equivalent alternative. Notwithstanding the foregoing, if BitTitan determines, in its sole discretion, that none of the options in the preceding sentence are commercially reasonable, then BitTitan may suspend or terminate the impacted MigrationWiz Service Offering as described in Section 6 of this Agreement. Without affecting either party's termination rights, Section 9.1 (BitTitan Indemnities) and this Section 9.2 (Remedy for indemnification) set forth Customer's sole and exclusive remedy under this Agreement for any infringement, violation, or misappropriation of any third-party Intellectual Property Right related to any MigrationWiz Service Offering.
   9.3. **Customer Indemnities.** Customer will defend, indemnify and hold harmless BitTitan from and against any third party claims, suits, actions, proceedings, damages, losses, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) arising out of, or related to:

(i) unauthorized use of any Services Site or MigrationWiz Service Offering by Customer or any Authorized User; (ii) violation of any terms of this Agreement by Customer or any Authorized User; (iii) violation or non-compliance with applicable law related to Customer's access or use of the MigrationWiz Service Offering; or (iv) any alleged or actual infringement, violation, or misappropriation of any Intellectual Property Right by Customer or any Authorized User related to any Data. Customer will provide BitTitan prompt written notice of any assistance Customer may reasonably request to help Customer defend any claim against which BitTitan is to be indemnified under this Agreement. Customer will pay or reimburse all the costs and expenses reasonably incurred by BitTitan in connection with any such assistance. Customer will not have any right to settle any such claim without BitTitan's written consent, if such settlement contains a stipulation to or admission or acknowledgement of, any wrongdoing (whether in contract, tort or otherwise) on the part of BitTitan or otherwise requires BitTitan to take or refrain from taking any material actions (such as the payment of fees). BitTitan will have the right to approve the counsel Customer selects for the defense of any such claim, which approval will not be unreasonably withheld. Further, BitTitan may, at its option and expense, participate in or assume control of the defense and settlement of any such claim at any time by providing Customer with written notice.

10. **LIMITATION OF LIABILITY**
   10.1. NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT: (I) EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; (II) ANY LIABILITY WHICH CANNOT BE EXCLUDED BY LAW; OR (III) EITHER PARTY'S OBLIGATIONS RELATED TO IP DISPUTES.
   10.2. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL BITTITAN BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SIMILAR DAMAGES OF ANY KIND, OR FOR DAMAGES FOR LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY MIGRATIONWIZ SERVICE OFFERING.
   10.3. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF BITTITAN, WHETHER IN CONTRACT, WARRANTY, TORT OR OTHER THEORY, ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE ACTUAL AMOUNTS PAID TO BITTITAN BY CUSTOMER, IF ANY, DURING THE 30-DAY PERIOD PRIOR TO THE DATE OF THE EVENT GIVING RISE TO LIABILITY.
   10.4. CUSTOMER ACKNOWLEDGES AND AGREES THAT BITTITAN WILL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, LIABILITIES, SUITS, PROCEEDINGS, COSTS, AND EXPENSES INCLUDING REASONABLE LEGAL EXPENSES AND FEES ARISING OUT OF, RESULTING FROM OR RELATING TO: (1) THE UNAUTHORIZED OR UNLAWFUL USE OF THE MIGRATIONWIZ SERVICE OFFERING BY CUSTOMER OR CUSTOMER'S AUTHORIZED USERS; OR (2) LOSS OF DATA SENT, STORED, OR RECEIVED WHILE USING MIGRATIONWIZ SERVICE OFFERING.

11. **GENERAL PROVISIONS**

   11.1. **Export Compliance.** Customer acknowledges, understands, and agrees to comply with U.S. export laws and regulations and the export laws of other countries that relate to any and all products, software, technology (which includes technical data and/or services that are the subject of this Agreement. Compliance includes but is not limited to, obtaining appropriate export authorizations, and abiding by such authorizations. Customer will not export, re-export, transmit or otherwise transfer any such product, software, technology and/or services contrary to U.S. export laws and regulations and other countries. Customer's obligations under this Section 11.1 will survive the expiration or termination of this Agreement.

   11.2. **Subcontractors.** BitTitan may use subcontractors to provide the MigrationWiz Service Offering. Any such subcontractors will be permitted to use the Data only to deliver the MigrationWiz Service Offering for which BitTitan has obtained such subcontractor. BitTitan will remain responsible for its subcontractors' compliance with BitTitan's obligations in this Agreement.

   11.3. **Force Majeure.** If the performance of any part of this Agreement by either party is prevented, hindered, delayed, or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, pandemics, or epidemics, acts of God or any other causes beyond the control of either party, that party will be excused from such to the extent that it is prevented, hindered or delayed by such causes. This Section 11.3 will not apply to any payment obligation of a party.

   11.4. **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.

   11.5. **Notices.** Except as otherwise specified in this Agreement, all notices, permissions, and approvals hereunder will be in writing and delivered to the address provided by the party to be notified and will be deemed to have been given upon: (i) personal delivery; (ii) the second business day after overnight delivery; (iii) the second business day after sending by confirmed facsimile; or (iv) the first business day after sending by email. Notwithstanding anything to the contrary in this Agreement, all notices to BitTitan shall also be sent to legal@bittitan.com.

   11.6. **Modification.** Neither this Agreement nor any provisions hereof will be modified, discharged, or terminated except by an instrument in writing signed by the party against whom any waiver, change, discharge, or termination is sought. Notwithstanding the foregoing and anything else to the contrary in this Agreement, BitTitan may change or modify any of the terms and conditions contained in this Agreement or any Policy or any guideline of any Service Site or MigrationWiz Service Offering at any time and in its sole discretion on a prospective basis. BitTitan will provide Customer with notice if any such modification is made. Such notice may take the form of an email from BitTitan describing the modification, providing notice through the Services Site or applicable MigrationWiz Service Offering, or updating the date at the top of this Agreement or the applicable Policies or guidelines. Customer's continued use of the Services Sites or applicable MigrationWiz Service Offering will constitute Customer's acceptance of such modifications. If Customer does not agree to modifications to this Agreement, Policies, or guidelines, Customer should immediately suspend its use of the Services Sites and MigrationWiz Service Offering.

11.7. <u>Communications.</u> BitTitan may, from time to time, use electronic communications for various purposes, including but not limited to promoting new or existing products and services to Customer and individuals within Customer's organization.

11.8. <u>Distributor/Reseller.</u> If Customer has purchased the MigrationWiz Service Offering via a distributor or reseller, additional terms and conditions may apply, which may take precedence over this Agreement. Customer is solely responsible for contacting the distributor or reseller, from whom they purchased the MigrationWiz Service Offering, to determine if they are subject to any additional terms and conditions. Notwithstanding the foregoing, this Agreement shall govern Customer's BitTitan Account and use of the Services Site.

11.9. <u>Assignment.</u> Customer may not assign, sublicense, or transfer this Agreement, the MigrationWiz Service Offering, or any rights or obligations hereunder without prior written consent of BitTitan. Any such purported assignment, sublicense, or transfer shall be null and void. BitTitan may terminate this Agreement or, at its sole option and discretion suspend the BitTitan Services Offering in the event of any such attempted assignment, sublicense, or transfer upon written notice to Customer.

11.10. <u>Waiver</u>. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

11.11. <u>Severability.</u> If any term, clause, or provision of this Agreement will be deemed unlawful, void or for any reason unenforceable, then that term, clause or provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provisions.

11.12. <u>Governing Law & Venue</u>. This Agreement shall be governed by, and will be construed under, the laws of the State of Washington, without regard to its choice of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply. Each party consents to the exclusive jurisdiction of the state and federal courts located in King County, Washington to adjudicate any dispute arising out of or relating to this Agreement, and any such dispute must be commenced or filed by Customer within one year of arising, otherwise, it is permanently barred. This does not affect Customer's statutory rights.

11.13. <u>Third Party Beneficiaries</u>. No provision of this Agreement will confer upon any person other than the parties hereto any rights or remedies hereunder.

11.14. <u>Entire Agreement.</u> This Agreement together with all documents and terms referenced herein, and all restrictions described on any Services Site, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, supersedes all prior or contemporaneous proposals, communications, and understandings, express or implied, oral or written. In the event of any conflict between this Agreement and any Policy or other restrictions or terms, the applicable Policy or other restrictions or terms will control. All additional and conflicting terms and conditions presented with a purchase order, work order or in any communication (collectively, "PO") are hereby rejected and will be deemed null and void to the extent that they recite any terms other than price and quantity specified. In the event of a conflict between the terms of any PO and a provision herein, the terms of this Agreement will control.