



Purchase & Subscription Agreement

BILLING INFORMATION					
Date:		Referred by:			
Name/Subscriber:					
Company:					
Address:					
City:		State:	Zip Code:	Country:	
Phone:		Fax:			
Email:					
SHIPPING INFORMATION (NO PO BOXES) <input type="checkbox"/> Check if same as billing					
Contact:					
Address:					
City:		State:	Zip Code:	Country:	
DESCRIPTION			QTY	PRICE	TOTAL
ZYTO Compass System 2.0				\$399.00 USD	
Network Marketing Company:					
Notes: Monthly subscription of \$39.95 applies			Subtotal		
			Shipping		
			Sales Tax (UT)		
			Total		
SHIPPING INSTRUCTIONS					
<input type="checkbox"/> Ground <input type="checkbox"/> 2 Day <input type="checkbox"/> 3 Day <input type="checkbox"/> Overnight <input type="checkbox"/> Other:					
CREDIT CARD					
<input type="checkbox"/> Visa <input type="checkbox"/> Master Card <input type="checkbox"/> American Express <input type="checkbox"/> Discover					
Card Number:		Expiration Date:		Security Code:	
Billing Address:					
City:		State:	Zip Code:	Country:	
By signing below, Subscriber acknowledges that Subscriber has read and agrees to the Terms & Conditions & User Agreement attached to this Purchase & Subscription Agreement, which are incorporated herein by this reference and are included in this agreement. By signing below, Subscriber authorizes ZYTO to process credit card payment for initial setup fee and monthly subscription fees.					
Signature					
Subscriber's Signature:				Date:	

TERMS & CONDITIONS & USER AGREEMENT

Monthly Subscription. Unless otherwise agreed by the Parties (such as a prepaid yearly subscription of \$399.50), a monthly license subscription fee of \$39.95 will be automatically renewed each month on approximately the purchase anniversary date unless ZYTO is notified prior to the end of the previous subscription period. This monthly subscription price is subject to change on 20-days' notice. Subscriber may obtain additional Compass licenses for an additional monthly fee of \$39.95 per additional system. Subscriber may put their monthly (but not their yearly) subscription on hold at any time. An administration fee of \$150.00 will be charged to transfer the license or change the product library in the system. Subscriber agrees to provide ZYTO a credit or debit card to be processed each month. Subscriber agrees to maintain updated and valid credit card information with ZYTO through the period of this Agreement. If a monthly subscription charge is declined by Subscriber's bank card provider, ZYTO may immediately suspend Subscriber's software license and disable the ZYTO software subscription.

Warranties. As part of the subscription service, the ZYTO Hand Cradle is warranted to conform to the advertised specifications for a period of 1 year from the date of shipment. ZYTO shall, at its own expense and as its sole obligation and Subscriber's exclusive remedy for any breach of the foregoing warranty, repair, or replace any defective component, part, or system returned (return authorization required) to ZYTO within the applicable warranty period. This warranty does not apply to any damage resulting from misuse, abuse, or neglect. THE FOREGOING WRITTEN WARRANTIES ARE IN LIEU OF ANY OTHER WARRANTY WHATSOEVER. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ZYTO EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE, ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY OF NONINFRINGEMENT OR TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, IN EACH CASE WITH RESPECT TO ALL SERVICES, EQUIPMENT, AND PRODUCTS FURNISHED HEREUNDER.

Subscription Price Adjustments. The current monthly subscription fee is valid until the end of the calendar year in which this Agreement is entered into. Unless prepaid by Subscriber, in subsequent calendar years, Subscriber understands that ZYTO may increase the monthly subscription fee. ZYTO agrees to provide 20-days' notice to Subscriber prior to any price increase becoming effective.

Delivery. Delivery shall be made F.O.B. (EXW under INCOTERMS 2000) ZYTO in Lindon, Utah, USA, (or as otherwise determined by ZYTO from time to time), with shipping charges to be paid by Subscriber. Subscriber understands that he/she will be responsible for (if applicable) all shipping fees, duties, taxes, port handling fees, and other customs charges.

Title. Title to hardware furnished under this Agreement shall pass to Subscriber upon receipt by ZYTO of full payment.

Limitations on Use. Subscriber agrees to not use any ZYTO hardware or software purchased pursuant to this Agreement to diagnose, treat, or cure any disease or medical condition. Subscriber acknowledges that learning to use and market the equipment correctly and legally is the responsibility of the Subscriber, and that ZYTO is not responsible for Subscriber's ability/inability to master the necessary skills to utilize and market ZYTO decision-support technology. Subscriber agrees to not market ZYTO products for any off-label use or purposes and use ZYTO products only as set forth by ZYTO.

Indemnification. Subscriber agrees to indemnify, defend, and hold ZYTO and its officers, directors, employees, agents, affiliates, and representatives (collectively "Affiliates") harmless from and against any and all losses, damages, costs, liabilities, claims, actions, and expenses (including, without limitation, attorneys' fees, litigation costs, court costs, and amounts paid in investigation, defense, or settlement of any of the foregoing, whether incurred at the arbitration, trial, appellate, or administrative levels) (collectively, "Damages"), (whether or not arising out of third-party claims and whether arising in contract, tort, or otherwise) arising out of or related to (i) Subscriber's possession, use, marketing, or resale of the equipment or any other goods delivered by ZYTO to Subscriber hereunder; (ii) the use of any services, including but not limited to software, provided by ZYTO; or (iii) Subscriber's breach of any term of this Agreement.

Prohibition on Reverse Engineering, Decompilation, and Disassembly. Subscriber agrees that they will not at any time or in any circumstance reverse engineer, decompile, or disassemble the ZYTO software or hardware.

Copyright. Subscriber agrees that all interest and title in all intellectual property, broadly defined, associated with the ZYTO hardware and software (broadly defined), and any copies thereof, are solely the property of ZYTO. All title and intellectual property rights in and to all content which may be accessed through use of ZYTO hardware and software is the sole property of ZYTO. This Agreement grants Subscriber no rights to use such content outside the normal and typical operation of the ZYTO system. All rights not expressly granted are reserved by and for the sole benefit of ZYTO.

Disclaimer/Limitation of Liability. IN NO EVENT SHALL ZYTO BE LIABLE TO ANYONE FOR SPECIAL, COLLATERAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF ZYTO'S PRODUCTS, WHETHER IN AN ACTION BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF ZYTO OR ANY OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUCH EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COSTS OF REMOVAL AND REINSTALLATION OF ITEMS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF USE, AND INTERRUPTION OF BUSINESS. EXCEPT FOR PERSONAL INJURY CAUSED BY ZYTO'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE ENTIRE LIABILITY OF ZYTO AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUPPLIERS FOR ANY DAMAGE OR EXPENSE FROM ANY CAUSE WHATSOEVER WILL IN NO EVENT EXCEED THE PRICE ACTUALLY PAID FOR THE PARTICULAR GOODS INVOLVED. Subscriber agrees that any cause of action they might assert against ZYTO must be commenced within one (1) year from the date the cause of action accrued. Subscriber will not pursue any claims against ZYTO for any liability ZYTO may have to Subscriber until Subscriber first makes claims against their insurance provider(s) and such insurance provider(s) finally resolve(s) such claims.

Return Policy. Subscriber acknowledges that there is a NO RETURN POLICY AND ALL SALES ARE FINAL. Subscriber further acknowledges that any warranty issues will be handled according to the terms of this Agreement.

Collection Fees. Should collection become necessary, Subscriber hereby expressly agrees to pay all actual costs of collection plus an additional collection of 35% of the amount outstanding, whether or not the account is turned to an outside collection agency. Subscriber further agrees to pay all court costs and attorney's fees should legal action become necessary.

Transfer and Assignment of ZYTO System. Subscriber may transfer the ZYTO hardware and their rights in the ZYTO software license to a third party under the following terms and conditions: (i) the new subscriber agrees by signature to the then-current terms and conditions as set forth in a transfer and subscription agreement; (ii) the new subscriber must register with ZYTO, including providing initial and ongoing payment arrangements; (iii) warranty will transfer to the third-party subscriber only if the transfer occurs within the initial 1-year warranty term after the original sale by ZYTO to the initial purchaser and the warranty will be in effect only until the 1-year anniversary of the original sale; and, (iv) at the time the license is transferred, an administration fee of \$150.00 to be transferred is paid to ZYTO.

Interruption of Service and Excusable Delays. In the event of a delay in the performance of any obligation of ZYTO due to any causes other than the gross negligence of ZYTO, the deliveries and performance required of ZYTO under this Agreement shall be extended by a period of time no greater than the time lost because of any such delay, and ZYTO shall make every effort to minimize the delay. Such causes include, but are not limited to, acts of God or of the public enemy, acts of the government, acts of Subscriber, fires, floods, epidemics, quarantine restrictions, freight embargoes, trade or technology transfer restrictions, unforeseen circumstances, failure of electronic and/or computer systems, malicious computer hacking activity, unusually severe weather, and defaults or mistakes of subcontractors or vendors.

Dispute Resolution. All claims and disputes arising under or relating to this Agreement shall be resolved exclusively by final and binding arbitration in the state of Utah and the arbitrator shall apply Utah law consistent with the Federal Arbitration Act and the contractual limitations set forth herein. There shall be no authority for any claims to be litigated or arbitrated on a class or representative basis and Subscriber agrees to waive all rights to such class or representative proceedings. No judge or arbitrator may consolidate or join the claims of other persons or parties who may be similarly situated. An award of arbitration may be confirmed in a court of competent jurisdiction. The prevailing party in any dispute regarding this Agreement, or otherwise between the parties, agrees to pay all reasonable costs and fees, including attorney's fees and all arbiter's fees, associated with the dispute.

Compliance with Laws. Each party agrees to comply with all laws, rules, and regulations applicable to the performance of its obligations under this Agreement. Subscriber specifically agrees to only use, market, and advertise the ZYTO system in accordance with all applicable local, state, and federal laws, rules, and regulations, including but not limited to refraining from any claims to diagnose, treat, or cure any disease or medical condition.

Limitations on Software Installation. ZYTO grants Subscriber only one (1) license per system purchased. Subscriber may install the software on no more than two (2) computers at any time, and Subscriber agrees that they will activate and use the license on only one (1) computer at any given time. Subscriber is required to sync software at least every thirty (30) days, at which time the installation database is encrypted and backed up to a secured server and the applicable ZYTO software is updated, if updates are available. **Software is not Mac compatible.**

Miscellaneous. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. Time is of the essence with respect to this Agreement. No waiver by either party of any breach or default hereunder is a waiver of any preceding or subsequent breach or default. The failure of either party to exercise any of its rights under this Agreement shall not be deemed a waiver or forfeiture of such rights or any other rights provided hereunder. The section headings used herein are for convenience only and shall be of no legal force or effect. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect the enforceability of any other provisions contained in this Agreement, and the remaining portions of this Agreement shall continue in full force and effect.

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