

# SKYTREE SCIENTIFIC, INC.

# Terms of Service

Version No. 1

Effective Date: June 30<sup>th</sup>, 2025

These Terms of Service ("**Terms**") are entered into by and between **Skytree Scientific, Inc.**, ("**Skytree**", "**Company**," **we**", "**us**" or "**our**") and **you**, who is either (a) a Customer (as defined below) or (b) an Authorized User (as defined below) (Customers and Authorized Users may be referred to herein as **you**" or "**your**"), and governs your access to and use of the Skytree Service.

PLEASE READ THESE TERMS CAREFULLY. THIS IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND US. BY SUBSCRIBING TO, ACCESSING OR USING THE SERVICE, YOU CONFIRM THAT (1) YOU HAVE READ THESE TERMS, (2) YOU ACCEPT THE TERMS OF THE AGREEMENT, AND (3) YOU READ, UNDERSTOOD AND ACCEPT OUR PRIVACY POLICY (["Privacy Policy"](#)). CLICKING ON THE "I ACCEPT" BUTTON (OR OTHER ACCEPTANCE ACTION) INDICATES THAT YOU ACCEPT AND INTEND TO BE BOUND BY THIS AGREEMENT, AND CONSENT TO ENTER INTO THIS AGREEMENT IN ELECTRONIC FORM. IF YOU DO NOT ACCEPT THIS AGREEMENT, YOU ARE NOT AUTHORIZED TO, AND SHOULD NOT, REGISTER FOR OR USE THE SERVICE. These Terms with your Subscription Agreement if you are a Customer, constitute the "**Agreement**." Certain features of the Service may be subject to additional guidelines, terms, or rules that will be posted on the Service in connection with such features. All such additional terms, guidelines, and rules are incorporated by reference into this Agreement. Notwithstanding the foregoing, in the event that Skytree and Customer have executed a separate written agreement for use of the Service by Customer, such written agreement shall control in the event of any conflict.

THESE TERMS REQUIRE THE USE OF ARBITRATION (SECTION 12) ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE. PLEASE REVIEW THESE TERMS CAREFULLY

We may modify these terms from time to time, in which case we will post a new version on our website(s) ("**Site**") and/or through the Service, and update the "**Effective Date**" above. Changes to these terms are effective when posted. Your continued use of the Service following posting of any changes constitutes your acceptance of such

changes, and if you do not agree with these changes, you must immediately stop using the Service.

## 1. Definitions

### **“Account Information”**

means information made available by a Customer or Customer User through the Service which may include Customer information (name, telephone number, email address, physical address) and Customer Data.

### **“Applicable Laws”**

means all laws, ordinances, rules, regulations, orders, licenses, permits, judgments, decisions or other requirements of any governmental authority in any territory that has jurisdiction over a party, whether those laws are currently in effect or later come into effect during the term of this Agreement.

### **“Customer”**

means an individual or legally recognized entity that has entered into a Subscription Agreement pursuant to which you may be provided with access to the Service. Subscription Agreements may be entered into electronically or in writing signed by each of the parties.

### **“Customer Effective Date”**

means the effective date of the Subscription Agreement.

### **“Customer User”**

means you, if you are an employee or consultant or third party service provider of a Customer and (i) are authorized by Customer to access and/or use the Service for Customer's business purposes in accordance with the Subscription Agreement; and (ii) for whom a password-protected account for use of the Service has been created by or on behalf of Customer.

### **“Customer Data”**

means all non-public raw data in its original form as provided by Customer or the Customer User for use on the Service as described hereunder.

### **“Customer Materials”**

means all information, data, content and other materials (including Customer Data), in any form or medium, that is transmitted or otherwise provided by or on behalf of Customer or you through the Service or to us in connection with Customer's use of the Service, but excluding, for clarity, Derived Data and any other of our intellectual property.

### **“Customer Reports”**

Means all results, assessments, and reports generated with Customer Data through the Service for Customer's use.

### **“Data”**

means collectively, Customer Data, Derived Data and Company Data. “Derived Data” means any data insights, data models, or data sets that are

derived from (i) any Customer Materials; or (ii) Customer's or a Customer User's use of the Service. Derived Data will not include information that is able to identify the Customer User, Customer or specific bills and/or clients of Customer.

**"Service"**

means our proprietary platform of AI lightning risk calculation as more particularly described or identified in the Service Documentation and includes all technical assistance and customer service provided by us in connection with the Service.

**"Service Documentation"**

Means Company's standard manuals, FAQs, and other technical and functional documentation provided to Customer for use of the Service.

**"Subscription Agreement"**

Means the subscription agreement, order form or other customer agreement pursuant to which a Customer purchases the right to use the Service, whether a signed agreement or online form and which sets out the terms of Customer's purchase of the Service, including Subscription Period, Usage Limits (if any) and other incorporates these Terms of Service.

**"Subscription Period"**

means the term of Customer's subscription to the Service, pursuant to the terms of the Subscription Agreement.

**"Company Data"**

means any data generated or calculated through the Service including without limitation, information and insights generated from, derived from, appended, extrapolated from, modified, altered, transformed, compiled or otherwise adapted or enhanced from any Customer Data by us in accordance with this Agreement. Company Data includes Derived Data.

## 2. Scope of Rights and Restrictions

1. **Services.** Subject to payment of the applicable Service Fees and other compliance with this Agreement, we hereby grant you the revocable, non-exclusive, limited, non-transferable right to access and use the Service, via our hosted platform for business purposes solely in strict accordance with this Agreement. If you are a Customer User, then your use of the Service is also subject to the relevant Customer's compliance with the terms of the Subscription Agreement, and you may use the Service solely (i) for the associated Customer's own internal business purposes, and (ii) for the term of such Customer's Subscription Period.

2. **Feedback.** We welcome feedback, comments and suggestions for improvements to the Service ("**Feedback**"). To the extent you provide Feedback, you assign all right, title and interest in and to such Feedback to us. If for any reason this assignment is not valid, then you grant to us an irrevocable, transferable and sub- licensable (through multiple tiers), worldwide, perpetual, fully-paid, royalty-free license, to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any lawful purpose.
3. **Restrictions.** You agree not to use, or allow others to use, the Service except as otherwise expressly allowed in this Agreement including without limitation, in Section 2.3. Without limiting the foregoing, you expressly agree not to do the following with respect to the Service (i) reverse engineer, decompile, disassemble, re-engineer or otherwise create or attempt to create or permit, allow, or assist others to create the source code of the Service or its structural framework, (ii) sublicense, subcontract, translate or sell any rights to the Service, (iii) use any robot, spider, site search or retrieval mechanism or other manual or automatic device or process to retrieve, index, data mine, or in any way reproduce or circumvent the navigational structure or presentation of the Service, (iv) harvest or collect information about or from other users of the Service (v) probe, scan or test the vulnerability of the Service, nor breach the security or authentication measures on the Service or take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Service (vi) modify or create derivative works of the Service, (vii) attempt to gain unauthorized access to the Service or its related systems or networks, (viii) use the Service in whole or in part for any illegal or other purpose except as expressly provided under this Agreement (including without limitation allowing any distribution or sublicense of the Service or other access to the Service by any person or entity that is not an Customer User, or processing Data using the Service on behalf of third parties or any affiliated entities), (ix) collect or upload any personally identifiable information from or to the Service, except as authorized by the relevant subject to whom such personally identifiable information pertains, or (x) facilitate or encourage any violations of this Section 2.5. You further expressly agree (a) to take all reasonable precautions to prevent unauthorized or improper use of the Service, (b) to not interfere with or disrupt the integrity or performance of the Service (c) to not attempt to gain unauthorized access to the Service or its related systems or networks, (d) to not create Internet "links" to the Service or "frame" or "mirror" any content therein; and (e) that your access to the Service will not be used in connection with the development of any product or service that is in competition with the services provided by the Service, nor will you assist or facilitate any third party in any such use.

4. Except as otherwise provided including in Section 2.3, neither the Service nor any Company Data (except for any publicly available information), transmitted to you in connection herewith can be forwarded or distributed to any other person and may not be reproduced in any manner whatsoever outside of the Service. Any forwarding, distribution or reproduction of the Service or Company Data in whole or in part outside of the Service is unauthorized. The Service, including Company Data, is being provided on a confidential basis and may not be reproduced in whole or in part, or transmitted to third parties outside the Service without our express written consent. The Service is our sole property.
5. **Fees and Expenses.** You shall pay Company all applicable fees associated with the Service and any support fees as set forth in the Subscription Agreement, and in accordance with the terms set forth therein. Unless otherwise set forth on the Subscription, all fees are based on purchase, and not actual usage, and payments are non-refundable and, unless otherwise agreed, shall be made in United States dollars. Past-due payments will be subject to late payment charges of the lesser of: (a) one and one-half percent (1 ½ %) per month, or (b) the maximum rate allowed by law. The fees and rates under this Agreement are subject to change by Company on an annual basis upon at least sixty (60) days written notice, which notice may given by posting the updated fees and rates on the Service. You shall be responsible for all applicable taxes, however designated, incurred in connection with this Agreement, including but not limited to state and local privilege, excise, sales, VAT, and use taxes and any taxes or amounts in lieu thereof paid or payable by Company, but excluding taxes based upon the net income of Company.
6. If you are paying by credit card or online payment processor, you will provide accurate, complete and current credit card or other information. You hereby authorize Company to charge such credit card or payment account for the Service in accordance with the Subscription Agreement, including throughout the Subscription Period, in accordance with the payment terms set forth on the Subscription Agreement. If Company has agreed to invoice you for the Service, you agree that all invoices are due and payable on a Net 30 basis. If you believe that any invoice or charge is incorrect, you must notify Company in writing within ninety (90) days of the applicable invoice or charge. If a payment becomes ten (10) business days or more overdue (including by reason of your failure to provide or maintain accurate credit card or other payment information or refusal of payment by your payment processor), Company reserves the right to suspend the provision of the Service without liability to you, until payment is made in full. If any payment becomes thirty (30) days or more overdue, Company may terminate this Agreement upon notice to you.

7. **Account; Security Obligations.** In connection with your registration for use of the Service, you will be required to provide certain Account Information. You are fully responsible for all activity that occurs under your account. You expressly agree to ensure the confidentiality and security of your account ID, password, and access to the Service. If any administrative account ID or password is stolen or otherwise compromised, you agree to immediately change the password and inform us of the compromise. You acknowledge that the responsibility for all Customer Data, Account Information, text, information, messages and other material submitted by you or otherwise on your behalf to the Service lies solely with you. You (and if you are a Customer User, the corresponding Customer) are solely responsible for the integrity and quality of Customer Data, and for maintaining an appropriate backup thereof. We may change the authorization method for access to the Service if we determine in our sole discretion that there are circumstances justifying such changes. We are not responsible for loss of any Customer Data, Account Information, Reports or other information or data in transmission or improper transmission by or on behalf of you or Customer.
8. **Equipment.** As between us and you, you are responsible for obtaining and maintaining all computer hardware, software, communications and office equipment needed to access and use the Service, and for paying any associated third-party access expenses.

### 3. Availability and Support

1. **Availability.** We will use commercially reasonable efforts to maintain availability of the Service 24 hours a day, 7 days per week, subject to planned maintenance, Force Majeure Events and other terms of this Agreement. We will use reasonable efforts to schedule planned maintenance affecting the availability of the Service at non-peak times. We will use commercially reasonable efforts to notify you as soon as reasonably practical of any unplanned downtime of the Service and resolve the issue as soon as practical.
2. **Technical Support.** We will use commercially reasonable efforts to provide technical support to Customer Users for the Service. Technical support may, at our sole discretion, include in-product, internet, chat, email and/or telephone.

### 4. Suspension of Access

1. You agree and acknowledge that we may immediately suspend your access and if you are a Customer User, the Customer's access to the Service at any time,

without notice to you and without liability. If you are a Customer User, if your access is suspended by us, you agree that your sole recourse, if any, shall be to contact the applicable Customer. You agree and acknowledge that we have no obligation to retain any Data or Account Information unless otherwise agreed to in the Subscription Agreement. If you are a Customer User, you also agree and acknowledge that Data may be irretrievably deleted including without limitation, if the applicable Customer's subscription is terminated. Without limiting the foregoing, we may immediately suspend your access to the Service at any time, without notice and without liability (i) if we suspect or receive notice that the Service or the use thereof actually or allegedly infringes or violates any third party's rights or violates any Applicable Laws or (ii) if we determine, in our sole discretion, that any improper activity or potential damage may impact the Service (or any other of our products or services).

## 5. Term and Termination

1. **Term.** The term of this Agreement will commence on the Customer Effective Date and continue through the Subscription Period unless and otherwise terminated in accordance with this Section 5.
2. **Termination.** We may terminate this Agreement immediately and without notice to you if (i) we determine, in our sole discretion, that you have breached any of the terms of this Agreement, or (ii) Customer's subscription is terminated at any time in accordance with the terms of this Agreement, or (iii) the Customer's Subscription Period expires.
3. **Effect of Termination.** Upon termination of this Agreement, your right to access or use the Service (including any Data or Account Information) shall immediately cease and we will have no obligation to maintain, deliver or provide access to any Data. Sections 6 (Ownership), 7 (Confidentiality), 8 (Disclaimers), 10 (Indemnification and Liability), 11 (General) and 12 (Legal Disputes) will survive expiration or termination of this Agreement. Expiration or termination of this Agreement shall immediately terminate all subscriptions and access rights granted to you and as applicable any other party herein.

## 6. Data Ownership

1. **Reservation of Rights.** All rights not expressly granted to you herein are expressly reserved by us. We will retain ownership of the Service, including without limitation, all related software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible



or intangible technical material or information, and all copyrights, patents, trademarks, trade secrets, know-how, databases, and other intellectual property rights (whether registered or unregistered) relating to or embodied in the Service and any updates, improvements, modifications or enhancements (including error corrections) thereto, and all derivative works thereof. You will have no right, title, or interest in or to the same except the rights expressly granted to you in Section 2.1. Nothing in this Agreement will be deemed to grant, by implication, estoppel, or otherwise, a license under any of our or our licensors' existing or future rights in or to the Service except as expressly granted in Section 2.1. Our trade names, trademarks, service marks, titles, and logos, and any goodwill appurtenant thereto, shall be owned exclusively by us and shall inure solely to our benefit.

2. **Data.** As between us and Customer, Customer will retain ownership to all Customer Materials including Customer Data. Without limiting the terms of the Subscription Order, if you provide us with any Customer Data or Account Information, you hereby grant us a limited, non-exclusive license to use, copy, distribute and display Customer Data for purposes of (i) providing the Service to you (and if you are a Customer User, to the corresponding Customer in accordance with the terms of the Subscription Agreement), and (ii) use the Customer Data (including any Account Information) to generate Company Data. Company shall be the sole and exclusive owner of all Company Data and Derived Data and may use or otherwise share such Company Data and Derived Data in its sole discretion.
3. **Derived Data.** You agree that we exclusively own Derived Data, including all intellectual property rights therein. We may use the Derived Data for our own business purposes including without limitation, to improve our technology and products and services; provided that this will not include information that is able to identify you, Customer or specific bills and / or clients.
4. **Results.** Subject to our rights in and to the Company Data, Customer will own and have the right to use all Customer Reports for its own (and its client's own) business purposes. Customer will not share, distribute, sell or otherwise transfer any Company Data as contained within such Customer Reports.

## 7. Confidentiality; Security Obligations

1. **Confidential Information.** Each of us as a "Receiving Party" agree and acknowledge that any and all technical, trade secret, or business information, including, without limitation, financial information, business or marketing strategies or plans, product development or customer information including



without limitation any Data or Account Information, as applicable, which is disclosed to the Receiving Party from or on behalf of the other party ("Disclosing Party") (the "**Confidential Information**") is confidential and proprietary, constitutes the Disclosing Party's Confidential Information.

2. **Exceptions.** Confidential Information does not include information that is (i) already rightfully known to the Receiving Party at the time of the disclosure; (ii) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the Receiving Party; or (iii) subsequently disclosed to the Receiving Party on a non-confidential basis by a third party not having a confidential relationship with the Disclosing Party and which third party rightfully acquired such information.
3. **Obligations.** Each Receiving Party agrees to maintain as confidential and not disclose, copy, or use for purposes other than in connection with provision or use of the Service as authorized hereunder, the Confidential Information.
4. The Receiving Party agrees to protect the Confidential Information of the Disclosing Party with the same degree of care a prudent person would exercise to protect its own confidential information, but in no case less than a reasonable degree of care, and to prevent the unauthorized, negligent, or inadvertent use, disclosure, or publication thereof. The Receiving Party shall be liable under this Agreement to the Disclosing Party for any use or disclosure in violation of this Agreement by the Receiving Party's employees, users, consultants, attorneys, accountants, or other advisors or agents to whom such Confidential Information is disclosed. Customer will not disclose the Confidential Information of the Company to any representatives who do not require such information for the exercise of their duties for Customer. For Customer Users, this Section 7.3 is in addition to, and without limiting, any duties of confidentiality that you may owe to the corresponding Customer.
5. **Data Protection and Security Obligations.** We will maintain an information security program for the protection of Customer Data and Account Information, including commercially reasonable administrative, physical and technical measures designed to (i) protect the confidentiality, availability and integrity of Customer Data and Account Information, and (ii) ensure the appropriate storage, disposal and destruction of Customer Data and Account Information.

## 8. Disclaimers

1. COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SERVICE AND ANY DATA OR

ACCOUNT INFORMATION, MATERIALS AND SERVICES PROVIDED HEREUNDER, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON- INFRINGEMENT. WE DO NOT REPRESENT OR WARRANT THAT THE SERVICE, DATA OR ACCOUNT INFORMATION, OR ANY ASSOCIATED SERVICES WILL BE AVAILABLE, ERROR FREE, COMPLETELY SECURE, VIRUS FREE, OR WITHOUT INTERRUPTION, OR THAT THEIR FUNCTIONS WILL MEET ANY PARTICULAR REQUIREMENTS, OR THAT PROGRAM DEFECTS OR ERRORS ARE CAPABLE OF CORRECTION OR IMPROVEMENT. THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS AND WE ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

2. YOU ACKNOWLEDGE THAT THE SERVICE IS INTENDED TO BE USED BY TRAINED PROFESSIONALS AND THAT THE SERVICE IS NOT A SUBSTITUTE FOR CUSTOMER'S PROFESSIONAL JUDGEMENT. YOUR USE OF THE SERVICE IS DEPENDENT ON YOUR PROVISION OF COMPLETE, ACCURATE AND TIMELY DATA AND YOUR SELECTION OF APPROPRIATE STANDARDS FOR ASSESSMENT. THE SERVICE HAS BEEN DEVELOPED FOR EVALUATION OF RISK UNDER THE IEC 62305-2 STANDARD WHICH MAY NOT BE APPROPRIATE FOR YOUR USE; PROVIDED THAT WE DO NOT WARRANT OR GUARANTEE THE RESULTS. THE SERVICE IS NOT RECOMMENDED FOR PROJECTS INVOLVING HAZARDOUS ENVIRONMENTS AND SITUATIONS (INCLUDING NUCLEAR FACILITIES, AIR TRAFFIC CONTROL OR NAVIGATION AND THE LIKE), MISSION CRITICAL SYSTEMS OR EMERGENCY SERVICES, PUBLIC SAFETY SITUATIONS OR OTHER HIGH-RISK SITUATIONS. FOR ALL PROJECTS INCLUDED PROJECTS INVOLVING THESE KIND OF RISKS, YOU ARE STRONGLY ENCOURAGED TO CONSULT WITH RELEVANT INDUSTRY EXPERTS TO ASSESS THE FIT FOR YOUR PROJECT AND ALL RESULTS OF THE SERVICE TO ENSURE YOUR OWN COMPLIANCE WITH ALL APPLICABLE LAWS AND STANDARDS. WE ARE NOT RESPONSIBLE FOR THE INTEGRITY OF INFORMATION, INCLUDING WITHOUT LIMITATION, DATA AND ACCOUNT INFORMATION, INCLUDING COMPLETENESS, ACCURACY, VALIDITY, AUTHORIZATION FOR USE AND INTEGRITY OVER TIME, AND WE SHALL NOT BE RESPONSIBLE FOR ANY LOSS, DAMAGE OR LIABILITY ARISING OUT OF THE DATA OR ACCOUNT INFORMATION, INCLUDING ANY MISTAKES CONTAINED IN THE DATA, ACCOUNT INFORMATION, OR THE USE OR TRANSMISSION OF THE DATA OR ACCOUNT INFORMATION. YOU ACCEPT SOLE RESPONSIBILITY FOR, AND ACKNOWLEDGE THAT YOU EXERCISE

YOUR OWN INDEPENDENT JUDGMENT IN, YOUR SELECTION AND USE OF ALL CUSTOMER REPORTS, DATA OR ACCOUNT INFORMATION AND ANY RESULTS OBTAINED THEREFROM. CUSTOMER IS SOLELY RESPONSIBLE FOR SELECTION OF THE SERVICE AND THE ADEQUACY OF THE SERVICE FOR CUSTOMER'S PURPOSES.

3. IF YOU ARE ACCESSING OR USING THE SERVICE IN A PRERELEASE, BETA TEST, TRIAL OR EVALUATION STAGE, AND NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS AGREEMENT: (I) YOU ARE PERMITTED TO ACCESS AND USE THE SERVICE ONLY FOR TESTING OR EVALUATION PURPOSES AND ONLY FOR A LIMITED PERIOD AS SET FORTH IN THE RELATED SUBSCRIPTION AGREEMENT; AND (II) THE SERVICE AND ALL RESULTS ARE PROVIDED "AS IS" WITHOUT SUPPORT OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND (iii) COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGES, DIRECT OR INDIRECT, RESULTING FROM USE OF THE SERVICE AND IN ANY EVENT THE AGGREGATE LIABILITY OF COMPANY, IN CONNECTION WITH ANY SUCH LIMITED USE SHALL NOT EXCEED \$50 UNDER ANY CIRCUMSTANCES.

## 9. Representations made by You

1. You represent, warrant and covenant that (i) you will comply with all Applicable Laws with respect to your access to and use of the Service and all Customer Reports; and (ii) you have received all third party consents and certifications necessary for the transmission of Customer Data to the Service. We are not responsible for ensuring that the Service, or any portion thereof, is in compliance with your criteria or legal compliance. You are solely responsible for the Customer Data, and acknowledge that Company has no responsibility or intent to review or monitor any Customer Data.

## 10. Indemnification and Liability

1. **By User.** If instructed by us, you shall be responsible for defending, and in any event indemnifying, and holding harmless us and our affiliates and our and their licensors, suppliers, officers directors, employees and agents, from and against any and all claims arising out of or incurred as a result of: (i) any breach of this Agreement by you; (ii) your use of the Service and any Customer Reports or Data; and/or (iii) any modification or unauthorized use of Company Data or Customer Reports.

2. **Process.** You must give us prompt notice of any claim under Section 10.1. We may elect to either defend the claim at your sole cost or otherwise allow you or if you are a Customer User, Customer to defend the claim. We shall have the right, at your cost, to employ counsel of its choice to participate in the defense of such claim.
3. **By Company.** Company shall indemnify and defend Customer from and against any and all third party claims against Customer that the Service infringes or misappropriates a third party's US intellectual property rights, provided that Customer promptly notifies Company in writing of the claim, cooperates with Company in the investigation and defense of such claim, and grants Company the sole authority to control the defense and settlement of such claim, but if the settlement of such claim requires any admissions that would adversely affect Customer, then Company shall seek Customer's prior consent, which shall not be unreasonably withheld, prior to agreeing to a settlement. If a claim is made or appears possible, Customer agrees to permit Company, at Company's sole discretion, to (a) modify or replace the Service to make it non-infringing, or (b) obtain the right for Customer to continue use the Service. If Company determines that neither alternative is reasonably available, Company may terminate the Customer's Subscription Agreement and these terms effective on written notice to Customer. This Section will not apply to the extent that the alleged infringement arises from: (i) use of the Service in combination with external data, software, hardware, equipment, or technology not provided by Company; (ii) modifications to the Service not made by Company; or (iii) Customer Data or Materials.
4. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS, COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES OR LOSS OF PROFIT OR REVENUE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SERVICE AND ANY OTHER SERVICES RENDERED HEREUNDER (HOWEVER ARISING, INCLUDING NEGLIGENCE), EVEN IF WE ARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES. OUR TOTAL CUMULATIVE AND AGGREGATE LIABILITY TO YOU WILL NOT EXCEED \$500.

## 11. General

1. **Assignment.** The Agreement and all rights and obligations hereunder are not assignable or transferable by you without our prior written consent, and any attempt to do so shall be void. This Agreement will bind the parties' successors and permitted assigns.
2. **Force Majeure.** We will not be in default or otherwise liable for any delay in or failure of our performance under this Agreement if such delay or failure arises by any reason beyond our reasonable control including without limitation, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, denial of service or other malicious attacks, telecommunications failure or degradation, governmental orders and acts (including government-imposed travel restrictions and quarantines), pandemics, material changes in law, war, terrorism, riot, or acts of God (each, a "**Force Majeure Events**").
3. **Third Party Services.** Certain features and functionalities within the Service as we determine in our sole discretion may include or otherwise also allow you and other holders to interact with, access and/or use compatible third-party services, products, data, technology, websites and content (collectively, "Third Party Services") through the Service. You agree that we do not provide any aspect of the Third Party Services and are not responsible for (i) the accuracy, support or maintenance of such Third Party Services or (ii) any compatibility issues, errors or bugs in the Service or Third Party Services caused in whole or in part by the Third Party Services or any update or upgrade thereto.
4. **Independent Contractor.** You agree and acknowledge that you and the Company are independent contractors and nothing in this Agreement will be deemed to create any agency, employee-employer relationship, partnership, or joint venture between you and us. You will not have or represent that you have the right, power or authority to bind, contract or commit us or to create any obligation on our behalf without its express prior written consent.
5. **Miscellaneous.** Notices to you shall be sent to the address that we have on file with your user account. You agree that we may communicate with you electronically regarding administrative, security and other issues relating to your use of the Service. Notwithstanding anything to the contrary herein, you agree that any notices, agreements, disclosures or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. The foregoing does not affect your statutory rights. If any provision of this Agreement is held by a court of law

to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby and the illegal, invalid, or unenforceable provision will be deemed modified such that it is legal, valid, and enforceable and accomplishes the intention of the parties to the fullest extent possible. The failure of either party to enforce any provision of this Agreement, unless waived in writing by such party, will not constitute a waiver of that party's right to enforce that provision or any other provision of this Agreement. IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT TO THE MAXIMUM ALLOWED BY APPLICABLE LAW.

6. This Agreement is made and entered into for the sole protection and benefit of the parties hereto, no other person or entity shall be a direct or indirect beneficiary nor shall they have any direct or indirect cause of action or claim in connection with this Agreement. The enumeration herein of specific remedies shall not be exclusive of any other remedies. Any delay or failure by any party to this Agreement to exercise any right, power, remedy or privilege herein contained, or now or hereafter existing under any applicable statute or law, shall not be construed to be a waiver of such right, power, remedy or privilege, nor to limit the exercise of such right, power, remedy, or privilege, nor shall it preclude the further exercise thereof or the exercise of any other right, power, remedy or privilege. This Agreement supersedes all prior discussions, understandings and agreements with respect to its subject matter. This Agreement may only be modified by us as set forth in the third paragraph of this Agreement's first page, or by the parties in a writing signed by both parties.

## 12. Arbitration Agreement

1. PLEASE READ THIS SECTION (THE "ARBITRATION AGREEMENT") CAREFULLY. IT IS PART OF YOUR AGREEMENT WITH THE COMPANY AND AFFECTS YOUR RIGHTS. IT CONTAINS PROCEDURES FOR MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.
2. **Applicability of Arbitration Agreement.** All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with this Agreement or the use of the Service or any other product or service provided by the Company that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement. Unless otherwise agreed to, all arbitration proceedings shall be held in English. This Arbitration Agreement applies to you and the

Company, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or goods provided under the Agreement.

3. **Notice Requirement and Informal Dispute Resolution.** Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute ("Notice") describing the nature and basis of the claim or dispute, and the requested relief. A Notice to the Company should be sent to: 45 South French Broad Avenue, Suite 170, Asheville, NC 28801 USA. After the Notice is received, you and the Company may attempt to resolve the claim or dispute informally. If you and the Company do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.
4. **Arbitration Rules.** The parties shall agree on an established alternative dispute resolution provider ("ADR Provider") that offers arbitration as set forth in this section. The rules of the ADR Provider shall govern all aspects of the arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with this Agreement. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the arbitration rules. Any hearing will be held in Wilmington, Delaware United States. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party shall bear its own costs (including attorney's fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the ADR Provider.
5. **Time Limit.** If you or the Company pursue arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim).
6. **Authority of Arbitrator.** If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of you and the Company, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary



damages, and to grant any non-monetary remedy or relief available to an individual under applicable law and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and the Company.

7. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and the Company in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND THE COMPANY WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.
8. **Waiver of Class or Consolidated Actions.** ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER.
9. **Confidentiality.** All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent a party from submitting to a court of law any information necessary to enforce this agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.
10. **Severability.** If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the agreement shall continue in full force and effect.
11. **Right to Waive.** Any or all of the rights and limitations set forth in this Arbitration Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of this Arbitration Agreement.

12. **Survival of Agreement.** This Arbitration Agreement will survive the termination of your relationship with the Company.
13. **Emergency Equitable Relief.** Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to protect their confidential information and intellectual property and to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.
14. **Claims Not Subject to Arbitration.** Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark or trade secrets shall not be subject to this Arbitration Agreement.
15. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware and the United State. In any circumstances where the foregoing Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the federal and state courts in the State of Delaware, United States.