



Terms of Use: Access and Use License and Restrictions

Updated 4/8/21

Access and Use License

Company hereby grants Client a nonexclusive, nontransferable, nationwide license to access and use the Service(s), solely for Client's own internal business purposes including Client's provision of access to the Service(s) to Users (the "License"). All rights not expressly granted to Client are reserved by Company and, where applicable, Company's licensors.

Limitations

Except as otherwise specifically agreed in writing between Client and Company, Client may use the Service(s) only for Client's internal business, training, educational, and management purposes and shall not (i) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or allow access or use by any third party so that it may commercially exploit the Service(s) or the Company Content in any way; (ii) create Internet "links" to the Service(s) or "frame" or "mirror" any Company Content on any other server or wireless or Internet-based device; (iv) reverse engineer or access the Service(s) in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service(s), or (c) copy ideas, features, functions or graphics of the Service(s), (v) interfere with or disrupt the integrity or performance of the Service(s) or the data contained therein; or (vi) attempt to gain unauthorized access to the Service(s) or its related systems or networks.

Restrictions on Transmittal of Materials

Client shall not use the Service(s) to: (i) send spam or otherwise duplicative or unsolicited messages or posts in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, harassing or otherwise unlawful or tortious material, including material harmful to children or which violates a third party's privacy rights; or (iii) send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs. All of the foregoing is strictly prohibited, whether accomplished through electronic mail, Usenet postings or otherwise.

Means of Access

Company agrees to provide access to the Service(s) in accordance with Company's specified media platforms (i.e., web-based, smartphone or similar handheld device application, etc.), as may be set forth in a duly executed Sales Order Form, or as such platforms are set forth and updated on Company's website from time to time.

Client Responsibilities:

Security

Client is responsible for all activity occurring under Client's User accounts, including but not limited to account logins and passwords, and shall abide by all applicable local, state, national, and foreign statutes, treaties and regulations in connection with Client's use of the Service(s), including those related to data privacy, international communications, and the transmission of technical or personal data. Client shall implement generally accepted industry standards for securing its applications, infrastructure and Client Content. Client shall: (i) notify Company immediately of any unauthorized use of any password or account or any other known or suspected breach of security, and (ii) report to Company immediately and use reasonable efforts to stop immediately any copying or distribution of Company Content that is known or suspected by Client. Client agrees that if any security violations are reasonably believed to have occurred with respect to its account, Company

has the right to suspend access to the account pending investigation and resolution.

Content

Unless otherwise agreed/licensed, Client does not own any Content. Company will provide client access to content. Company reserves the right to withhold, remove, and/or discard Client Content without notice.

Intellectual Property Ownership:

Ownership by Company

Company (and, where applicable, its licensors) shall exclusively own all right, title, and interest, including all related Intellectual Property Rights, in and to the Company Technology, the Company Content and the Service(s) and any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Client or any other party relating to the Service(s).

Client Acknowledgments

Client acknowledges it will not in any way, directly or indirectly, do or cause to be done, any act or thing contesting or which would reasonably be known to impair or tend to impair any part of Company's (and, where applicable, its licensors') right, title and interest in connection with Company's Intellectual Property Rights in the Company Technology, Company Content, or the Service(s). Client shall not represent that it has any ownership in Company's Intellectual Property Rights in the Company Technology, Company Content, and Service(s). Client agrees that it shall not, directly or indirectly attack the validity of Company's ownership of Intellectual Property Rights in the Company Technology, Company Content, and Service(s) or attack the validity of the License granted herein. Client acknowledges that any enhancement requests, suggestions, recommendations or other feedback provided by Client to the Company Content or the Company Technology shall be owned exclusively by Company.

Trademarks

Each Party acknowledges that the other Party is the sole owner of its respective trade names, service marks, slogans, logos and other trademarks (the "Marks"), and nothing herein is intended to imply or grant a license or other rights to the counter Party with respect to such Marks, except as specifically agreed to herein or in writing by the owning Party.

Manner of Performance.

Company will retain sole and exclusive right to control or direct the manner or means by which the Services are performed and may subcontract or assign any or all of its obligations. Any such subcontract or assignment is subject to Client's consent, which consent shall not be unreasonably withheld or delayed.

Confidentiality:

Confidential Information

Confidential Information means all nonpublic or proprietary business, commercial and technical information that is disclosed by one Party to the other, or any of their respective directors, officers, employees, agents, or contractors. Confidential Information includes, without limitation, information relating to the Disclosing Party's: customers, clients and prospects; research, inventions and developments; manufacturing; purchasing; accounting; business, distribution and marketing plans, practices and strategies; sales or cost data; merchandising and licensing whether it is expressed orally, on paper, disk, diskette, magnetic media, optical media, monitor, screen, or any other medium or form of expression. Information shall also be considered to be "Confidential Information" hereunder if it (i) is marked clearly as confidential or proprietary; or in the case of oral or visual information, designated as confidential or proprietary at the time of disclosure; or (ii) could reasonably be understood to be confidential given the nature of the information or the circumstances surrounding its disclosure.

Protection and Use of Confidential Information

Neither Party shall disclose or use the Confidential Information of the other Party, except as expressly authorized pursuant to this Agreement, during the term of this Agreement and for two (2) years following termination or expiration of this Agreement. The receiving Party shall limit disclosure of the disclosing Party's Confidential Information to the receiving Party's employees or agents who have a need to know such Confidential Information for purposes of this Agreement and who are advised of the confidential nature of such information and bound to keep such information confidential. Notwithstanding the foregoing, Confidential Information may be disclosed if required by law, provided, however, that the receiving Party shall notify the disclosing Party of such requirement immediately in writing and shall reasonably cooperate with the disclosing Party in obtaining a protective or similar order.

Exceptions

Confidential Information will not include information that: (i) is in or enters the public domain through no act or fault of the receiving Party; (ii) is known to and has been reduced to tangible form by the receiving Party at the time of disclosure; (iii) is independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information; or (iv) is disclosed to the receiving Party by a third party, at any time, whether prior to or after the time of its disclosure under this Agreement, on a non-confidential basis, provided that such third party is not, to the receiving Party's knowledge, bound by any obligation of confidentiality to the other Party with respect to such Confidential Information. Client may disclose confidential information as need to its attorneys or accountants.

Return of Confidential Information

Excluding Client Content which, other than as expressly required under this Agreement, Company is not required to retain, return, or destroy, upon the disclosing Party's written request, the receiving Party shall return or destroy all copies of the disclosing Party's Confidential Information and certify promptly in writing that it has done so.

SUPPORT; LIMITED WARRANTIES; DISCLAIMERS:

Support

Company will provide Client with access to the latest supported version of the Service(s) via the Internet or other appropriate media on the Service(s) Commencement Date. Thereafter, Company will automatically provide updates to the latest version of the Service(s), at which point it will no longer provide support for any earlier version of the Service(s).

Limited Warranties

Service(s). The ongoing hosting, maintenance, support and other services that may be provided by Company pursuant to the terms of this Agreement shall be performed in a professional and workmanlike manner in accordance with recognized industry standards. IN THE EVENT THAT SERVICE(S) PROVIDED HEREUNDER FAIL TO CONFORM TO THE FOREGOING WARRANTY, COMPANY'S SOLE OBLIGATION, AND CLIENT'S SOLE REMEDY, SHALL BE FOR COMPANY TO USE COMMERCIALY REASONABLE EFFORTS TO CORRECT SUCH NONCONFORMITY.

Warranty Disclaimer. EXCEPT FOR THE FOREGOING, COMPANY MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING OR RELATING TO ANY DELIVERABLES, MATERIALS OR SERVICES FURNISHED OR PROVIDED TO ANY CLIENT OR USER UNDER THIS AGREEMENT OR THE RESULTS THEREOF. COMPANY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO SAID DELIVERABLES, MATERIAL AND SERVICES, AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING.

No employee, agent, representative, or affiliate of Company has authority to bind Company to any oral representations or warranty concerning the Services or Deliverables. Any written representation or warranty not expressly contained in this Agreement will not be enforceable.

Additional Disclaimers

Company exercises no control whatsoever over the Client Content or any other information passed through the Service(s) by Client, or User's who access the Service(s) with or without Client's authorization. COMPANY DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS OBTAINED BY CLIENT OR USERS IN USING THE SERVICES, OR THAT THE USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE, OR THAT THE SERVICES WILL OPERATE IN COMBINATION WITH HARDWARE, SOFTWARE, SYSTEMS, OR DATA OTHER THAN AS IDENTIFIED IN THIS AGREEMENT, OR THAT THE SERVICES WILL MEET CLIENT'S OR ANY USER'S REQUIREMENTS.

Indemnification:

Indemnification by Client

Client shall indemnify and hold Company, its affiliates and each of their respective officers, directors, employees, attorneys, and agents harmless from and against any and all claims, actions, proceedings, costs, damages, losses, liabilities, and expenses (including reasonable attorneys' fees and court costs) (each, a "Claim") arising out of or in connection with: (i) a claim alleging that the Client Content infringes the Intellectual Property Rights of, or has caused harm to, a third party; (ii) the breach of this Agreement by Client or a User; or (iii) Client's or a User's misuse of the Service(s) or Deliverables.

Indemnification by Company

Company shall indemnify and hold Client, its affiliates and each of their respective officers, directors, employees, attorneys, and agents harmless from and against any and all Claims arising out of or in connection with a claim alleging that the Service(s) or Deliverables delivered by Company in accordance with the terms of this Agreement infringe the Intellectual Property Rights of any third party.

Conditions to Indemnification

The indemnity obligations of each Party set forth in this Section are contingent upon (i) the indemnitee giving prompt written notice to the indemnitor of any such Claim(s); (ii) the indemnitee giving the indemnitor sole control of the defense of any such Claim; (iii) the indemnitee not entering into any settlement or compromise of any such Claim without the indemnitor's written approval; and (iv) at the indemnitor's request and expense, the indemnitee cooperating in the investigation and defense of such Claim(s).

Exclusions Relating to Infringement Indemnification/ Company's Options

Company will have no obligation to indemnify Client to the extent any such Claim is based on (a) the use of the Services in a manner other than as specified in this Agreement or in Company published documentation; (b) any use by Client in combination with other products, equipment, software or systems not supplied by Company to the extent such Claim is directed against such combination. Should Company's software or any part of the Services provided by Company hereunder become, or in Company's opinion is likely to become, the subject of any such Claim, Company may at its option: (i) procure for Client the right to continue to use the affected Services as contemplated hereunder; (ii) replace or modify the affected Services to make its use non-infringing or (iii) should such options not be available at reasonable expense, terminate this Agreement with respect to the affected Services and refund to Client the prorated amount of any fees prepaid by Client that were to apply to the remainder of the unexpired term.

Limitation of Liability

EXCEPT AS SPECIFICALLY SET FORTH HEREIN, IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING COST OF COVER, BUSINESS INTERRUPTION, LOSS OF DATA, REVENUE, PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE(S) OR THE PROFESSIONAL SERVICES PROVIDED

HEREUNDER, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE(S), OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR, OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF SERVICES OR DELIVERABLES, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, AND WITHOUT LIMITING THE FOREGOING, THE PARTIES SPECIFICALLY AGREE THAT, EXCEPT WITH RESPECT TO COMPANY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 13.2 ABOVE, IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY (A) WITH RESPECT TO THE SERVICE(S) PROVIDED HEREUNDER, EXCEED THE AMOUNTS ACTUALLY PAID BY CLIENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM, and (B) WITH RESPECT TO THE PROFESSIONAL SERVICE(S) OR DELIVERABLES PROVIDED HEREUNDER, EXCEED THE FEES ACTUALLY PAID BY CLIENT WITH RESPECT TO THE APPLICABLE SOW UNDER SECTION 7.2 ABOVE.

The provisions of this Section allocate risks under this Agreement between Client and Company. Company's pricing reflects this allocation of risk and limitation of liabilities.

No action arising out of any breach or claimed breach of this Agreement or the transactions contemplated by this Agreement may be brought by either Party more than one (1) year after the cause of action has accrued. For purposes of this Agreement, a cause of action will be deemed to have accrued when a Party knew or reasonably should have known of the breach or claimed breach.

Taxes

All amounts are payable in United States dollars and are exclusive of any and all taxes assessed to Client, and Client is responsible for payment of such taxes.

Internet Delays

THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC

COMMUNICATIONS. COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS,
DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH
PROBLEMS.