

## **Eydle Master User Terms of Service**

Last Updated: 2022-11-18

Please read these Terms of Service (the “Terms”) carefully as they govern (i) your (“user(s),” “you”, or “your”) access to and use of our website, <https://www.eydle.com> (the “Site”), your access to and use of the services that link to or reference these Terms (the “Services”), and contain important information about your legal rights, remedies and obligations. By accessing or using the Services, you are agreeing to these Terms and concluding a legally binding contract with Eydle, Inc., and its affiliates (the “Company,” “we,” “us” or “our”), a Delaware corporation headquartered in Pasadena, California, U.S.A.

In addition to the Terms, our business relationship with you is governed by a Customer Agreement (defined below) entered into by and among the Company and you. Any capitalized but undefined terms referenced herein shall have the meaning applicable to such terms in the Customer Agreement between you and the Company.

You represent that you have read and understood our privacy policy (“Privacy Policy”), which is available at [https://www.eydle.com/wp-content/uploads/2023/06/privacy\\_policy.html](https://www.eydle.com/wp-content/uploads/2023/06/privacy_policy.html) Note that we may disclose information about you to third parties if we have a good faith belief that such a disclosure is reasonably necessary to (i) take action regarding suspected illegal activities; (ii) enforce or apply our Terms or Privacy Policy; (iii) comply with legal process or other government inquiry, such as a search warrant, subpoena, statute, judicial proceeding or other legal process served on us; or (iv) protect our rights, reputation, and property or that of our users, affiliates or the public.

Do not access or use the Services if you are unwilling or unable to be bound by the Terms.

PLEASE NOTE: SECTION 12 (DISPUTE RESOLUTION) OF THESE TERMS CONTAINS AN ARBITRATION CLAUSE AND A CLASS ACTION WAIVER THAT APPLIES TO ALL USERS OF OUR SERVICES. SECTION 12 (DISPUTE RESOLUTION) AFFECTS HOW DISPUTES WITH US ARE RESOLVED. BY ACCEPTING THESE TERMS, YOU AGREE TO BE BOUND BY THIS BINDING ARBITRATION AND CLASS ACTION WAIVER CLAUSE.

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## 1. **Modification.**

We may modify the Terms from time to time. The most current version of these Terms will be located at <https://www.eydle.com>. You understand and agree that your access to or use of the Services is governed by the Terms effective at the time of your access to or use of the Services. If we make material changes to these Terms, we will notify you by email at least thirty (30) days prior to the effective date of the changes. You can see when the Terms were last updated by checking the “last updated” date displayed at the top of this terms of service. Any revised Terms will supersede all previous terms of service. **Please note that prior to any update of the Terms, we shall post a notice on our website thirty (30) days in advance of the effective date of the changes and keep the previous terms of service for user to check.**

## 2. **Using the Services.**

2.1. Eligibility. To access or use the Services, you must be at least eighteen (18) years old and have the requisite power and authority to enter into these Terms. You may not access or use the Services if we have previously banned you from the Services.

2.2. Permission to Use the Services. The Services are provided for your use, and unless otherwise specified on or in the Services, are solely for your business purposes. This authorization is subject to your compliance with the Terms, and are limited, non-exclusive, non-transferable, terminable license to view and use the Services only for your business purpose. Except as expressly provided herein, we do not grant you any other express or implied rights or license in or to the Services, and all rights, title and interest that we have in the Services and rights not explicitly granted to you by the Company. Except as expressly set forth in the Terms, you may not modify (including without limitation making derivative works), copy, adapt, reverse engineer, de-compile or otherwise reduce to human perceivable format, distribute, frame, reproduce, republish, download, scrape, display, post, transmit, transfer, license or sublicense, publicly display or sell in any form or by any means, in whole or in part, the content of the Services without the Company’s express prior written permission, nor migrate such data elsewhere. The Terms, and any rights or obligations hereunder, are not assignable, transferable, or sublicensable by you except with our prior written consent but may be assigned or transferred by the Company without restriction. Any attempted assignment by you without our consent is a violation of these Terms and shall be void.

1.1. Services. The Services available for purchase are (i) searches for any potential profiles impersonating you, a brand that you own, or a personality or brand that you represent (“Fake Profiles”) on the social media platforms such as Facebook, LinkedIn, Instagram, Twitter, Youtube, or Tiktok as identified in your Customer Agreement (“Social Media Platforms”) (such service, “Monitoring”), and (ii) submission to the Social Media Platforms identified in your

Customer Agreement of requests to remove identified Fake Profiles from the applicable Social Media Platforms that offer a mechanism to do so (“Takedown Requests”) (each, or both, the “Subscription Services”). We may also offer additional services pursuant to your Customer Agreement (“Additional Services”, and together with the Subscription Services, the “Purchased Services”). We may, at our own discretion, from time to time, offer new or change the availability of the Purchased Services. Details of the Purchased Services are set out in these Terms and the applicable Customer Agreement. All features, content, specifications, Services and prices of Purchased Services and any other services described or depicted in this Site are subject to change at any time without notice. By using the Purchased Services, you represent that the Purchased Services will be used only in a lawful manner.

(a) Identification Documents. In order for us to verify you are the rightful owner of a profile, to conduct Monitoring services, and to complete a Takedown Request, you are required to provide information that demonstrates you are the rightful owner of the profile(s) hosted on the applicable Social Media Platforms and as identified in your Customer Agreement (your “Identification Documents”). Your Identification Documents will be securely stored and will only be transmitted to the relevant Social Media Platforms in the event you ask us to conduct a Takedown Request.

(b) Monitoring. Monitoring results will vary depending on the severity and number of Fake Profiles. There may be no results found if there are no Fake Profiles on the applicable Social Media Platforms. The Company makes no guarantees as to the accuracy of the results of the Purchased Services in identifying Fake Profiles.

(c) Takedown Requests.

(i) Transmission of Identification. In order to complete a Takedown Request, we must transmit some or all of your Identification Documents to the relevant Social Media Platforms. YOU HEREBY CONSENT TO THE COMPANY’S TRANSMISSION OF YOUR IDENTIFICATION DOCUMENTS TO SUCH SOCIAL MEDIA PLATFORMS IN ORDER TO COMPLETE TAKEDOWN REQUESTS.

(ii) Social Media Platform Identification Requirements. Certain Social Media Platforms have stringent requirements regarding the form of your Identification Documents provided to complete takedowns of Fake Profiles, and therefore we may ask you for Identification Documents that comply with any such requirements. If you do not provide your Identification Documents in a format that complies with any such Social Media Platform requirements, we will proceed with the Takedown Request, but may be unsuccessful.

(iii) Takedowns Not Guaranteed. THE COMPANY WILL SUBMIT TAKEDOWN REQUESTS BUT DOES NOT HAVE CONTROL OVER WHETHER THE SOCIAL MEDIA PLATFORM ACTUALLY REMOVES ANY FAKE PROFILES. THERE WILL BE NO REFUNDS FOR TAKEDOWN REQUESTS THAT ARE NOT ADDRESSED BY THE RELEVANT SOCIAL MEDIA PLATFORM.

2.4 Service Availability. The Services may be modified, updated, interrupted, suspended, or discontinued by the Company at any time without notice or liability. In the event the Company suspends any Services, such Services shall remain available to customer for the duration of the Term identified in the Customer Agreement.

2.5 User Account. You must create a user account (“Account”) and provide certain identifying information in order to use the features that are offered through the Services. Providing the Company with such identifying information is your choice. You acknowledge and agree that you have no ownership or other proprietary interest in such Account.

Your Account is for business purposes only. To create an Account, you must be eligible to use the Service for which you are registering, be a resident or incorporated in a country where use of the Services is permitted, have a valid email address, and provide truthful and accurate information. You may not impersonate another business or someone else, create or use an Account for anyone other than yourself or the company you represent, or provide information other than your own. Please read our Privacy Policy for more information.

In addition, to create an Account, the Company requires you to select a username and password. You acknowledge that you shall be responsible for ensuring that any username you select does not infringe any third-party rights and is not otherwise unlawful. You understand and agree that the Company reserves the right to change, remove, alter, or delete any username, with or without prior notice to you, at any time and for any reason in the Company’s sole discretion. **YOU ARE ENTIRELY RESPONSIBLE FOR MAINTAINING THE CONFIDENTIALITY OF YOUR USERNAME AND PASSWORD AND ALL ACCESS TO AND USE OF YOUR ACCOUNT, INCLUDING ANY AND ALL ACTIVITIES (INCLUDING USE OF SERVICES, AS APPLICABLE) THAT ARE CONDUCTED THROUGH THE USE OF YOUR USERNAME AND PASSWORD WHETHER OR NOT AUTHORIZED BY YOU. YOUR ACCOUNT MAY BE SUSPENDED OR TERMINATED IF ANY UNAUTHORIZED USERS USES YOUR ACCOUNT TO ENGAGE IN ACTIVITY THAT VIOLATES THESE TERMS.**

You agree to notify the Company immediately of any unauthorized use of your Account. We reserve the right to close your Account at any time if you violate these Terms or if we otherwise have a legitimate interest to do so, such as complying with a legal or regulatory obligation.

2.6 Customer Agreement. These Terms combined with the signed applicable customer agreement (the “Customer Agreement”) contain the entire agreement between you and the Company regarding the use of the Service and supersede any prior agreement between you and the Company on such subject matter. The parties acknowledge that no reliance is placed on any representation made by not expressly contained in these Terms or the Customer Agreement. In the event of conflict of these terms with the terms contained in the Customer Agreement, the Customer Agreement shall control.

2.7 Communication from the Company. By creating an Account, you agree to receive certain communications in connection with the Services. You can opt-out of non-essential communications by clicking the “unsubscribe” button in the email or by requesting our support team at [support@eydle.com](mailto:support@eydle.com) opt you out of future non-essential communications.

### **3. Privacy Policy.**

You may give us information about yourself when you visit the Site. Our [Privacy Policy](#) explains our practices with respect to that information. We may email you or contact you through the Notification Channels identified in your Customer Agreement to provide you with or request from you important information. You authorize us to send those messages when you visit the Site, use the Services, and provide your contact details.

### **4. Intellectual Property Rights.**

4.1 **Ownership.** All content that the Company creates and makes available in connection with the Services (“[Company Content](#)”) is owned by the Company, and you retain ownership of the content that you submit, or transmit to, through or in connection with the Services, including your Identification Documents (“[Your Content](#)”). Company Content includes but is not limited to visual interfaces, interactive features, graphics, design, our compilation of other Services Content, computer code, products, software, aggregate user review ratings, the Eydle Dashboard, and all other elements and components of the Services excluding Your Content and Third Party Content. We also own the copyrights, trademarks, service marks, trade name, and other intellectual property rights throughout the world (“[Intellectual Property Rights](#)”) associated with the Company Content and the Services, which are protected by copyright, trade dress, patent, trademark laws, and all other applicable intellectual and proprietary rights and laws. As such, you may not modify, reproduce, distribute, create derivative works or adaptations of public displays or in any way exploit any of the Company Content or the Services in whole or in part except as expressly authorized by the Company. Except as expressly and unambiguously provided herein, we do not grant you any express or implied rights, and all rights in and to the Services and the Company Content are retained by the Company. “[Services Content](#)” means all of the content that is made available in connection with the Services, Third Party Content and Company Content. “[Third Party Content](#)” means content that originates from parties other than the Company which is made available in connection with the Services.

(a) **Feedback.** If you provide feedback or suggestions about the Services (“[Feedback](#)”) to Company, then Company may use that information without obligation to you, and you irrevocably assign to Company all right, title, and interest in the Feedback.

4.2 **Copyright.** The Company respects the Intellectual Property Rights of others and expects our users to do the same. The Company will take whatever action, in the Company’s sole discretion, that the Company deems appropriate, which may include the removal of, or disabling of access to, any challenged material from the Services.

4.3 **Trademark.** Publications, products, content, or Services referenced herein or on the Site are the exclusive trademarks or service marks of the Company. Other product and company names mentioned in the Site may be the trademarks of their respective owners.

### **5. Restrictions.**

No provision of the Terms includes the right to, and the user shall not, directly or indirectly: (a) enable any person or asset other than the users to access and use the Services; (b) modify or create any derivative work based upon the Services; (c) engage in, permit or suffer to continue any copying or distribution of the Services; (d) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, any software (except to the extent such restriction is limited under applicable law); (e) access or use the Services, for purposes of competitive analysis or the development, provision or use of competing products or services; (g) authorize any end user under the age of 18 or submit any information of any person under the age of 18; (h) unless otherwise prompted, submit health or medical records to the Company; (i) use the Services to engage in fraud; (j) use the Services to be abusive towards or conduct surveillance on individuals or groups; (k) use the Services to discriminate against any individual on the basis of race, sex, or religion, nationality, disability, sexual orientation or age; (l) use the Services to monitor or takedown competitor profiles; and (m) use or permit others to use the Services other than as described in the Terms, or for any unlawful purpose.

## **6. Use and Transaction Policies.**

6.1 Equipment. You will provide at your own expense the equipment and internet connection required to access and use the Services.

6.2 Use Charges. The Company shall have no liability to you for use charges related to any device or service that you use to access the Services, including, without limitation, use charges for mobile telephones, tablet devices, Internet service providers and other devices, whether wireless, wireline, requiring cradle synchronization or otherwise.

6.3 Transaction Charges. The Company is not responsible or liable to you for any third party payment processor credit card or bank-related charges and fees related to your transactions on the Services, on or through third party platforms or for your participation in any third party offers. Such transactions may be administered by a third party payment processor. We expressly disclaim any liability for any such transactions, and you agree that your sole avenue of recourse regarding such transactions is through such third party processor. You acknowledge and agree: (a) that any transaction-related personally identifiable information will be treated by the Company as described in our Privacy Policy and, as applicable, in the privacy policy of the third party payment processor(s) used by the Company on or through the Services or third party platforms, (b) that all credit card and other payment related information that you provide to the Company, the Company's designated payment processor or a third party providing offers, is accurate, current and complete; (c) that you will pay any and all charges incurred by you or any authorized user of your payment method resulting from your purchase at the rate(s) in effect when such charges are incurred; and (d) that you are responsible for any and all taxes that we assess on your purchase(s).

6.4 Payment. You shall pay the Company the amounts specified in Subscription Fee and/or Additional Fee in the Customer Agreement for Purchased Services in accordance with these Terms and your Customer Agreement. Unless otherwise specified in the Customer Agreement, all amounts must be paid in U.S. dollars. All amounts shall be paid prior to the provision of the relevant Services and such payments are non-refundable, and regardless of whether you use the Services identified in the Customer Agreement or otherwise.

6.5 Purchase Errors. We assume no liability for purchase errors, promotion codes or discounts not provided at the time of purchase or any unintended purchased item for any reason (“Purchaser Errors”). We shall not be liable for any errors on billing statements issued to you by your carrier. We shall not be liable or responsible for any Purchaser Errors. If you have other questions in connection with any product or service available through the Services, please contact our customer support at support@eydle.com. We accept ABSOLUTELY NO RETURNS on any Services purchases. You agree to be responsible for obtaining and maintaining all device hardware, software and other equipment needed for access to and use of the Services, and all charges related thereto.

## 7. Suspension or Termination.

7.1 Suspension. The Company reserves the right to investigate potential violations of Section 5 (Restrictions). In the event the Company believes the Terms or the Customer Agreement are being violated, the Company will have the right to suspend, as applicable, your access to and use of the Services for so long as is reasonably necessary to address the potential violation. Except in urgent or emergency situations, the Company will notify you of any such suspension in advance (each, a “Suspension Notice”), and work with you in good faith to resolve the potential violation. In addition, the Company may report any activity that the Company reasonably believes violates any law or regulation to law enforcement, regulators, or other appropriate party, and may also cooperate with any investigation by such parties. For clarity, the Company reserves the right, but does not assume any obligation to you (except with respect to the Suspension Notice), to take any of the actions described in this Section 7.1.

7.2 Termination. The term of these Terms and your Customer Agreement will continue through the expiration of the Term and any Renewal Term(s) identified in your Customer Agreement. In the event of any termination of these Terms, whether by you or the Company, the following Sections will continue in full force and effect: Section 4 (Intellectual Property Rights), Section **Error! Reference source not found.** (Restrictions), Section 6 (Use and Transaction Policies), Section 7 (Suspension, or Termination), Section 9 (Indemnity), Section 10 (No Warranties and Limitations of Liability), Section 11 (Confidentiality and Nondisclosure), Section 12 (Dispute Resolution), 13 (Governing Law,) and Section 14 (Miscellaneous).

(a) Early Termination. The Company may terminate these Terms, the Services and/or the Customer Agreement for its convenience and without cause or further liability upon written notice to you. In addition, either party may terminate these Terms, the Services, and/or the applicable Customer Agreement, effective on written notice to the other party, if the other party materially breaches these Terms or the Customer Agreement and such breach (if capable of cure) remains uncured for ten (10) days after the non-breaching party provides the breaching party with written notice of such breach. In the event of termination under this Section 7.2(a) (Early Termination), it is understood and agreed that only the amounts due to Company for the Services actually provided, and expenses incurred to and including the date of termination will be due and payable.

(b) Effect of Termination. Except as provided for in Section 7.2(a) (Early Termination), upon expiration or earlier termination of these Terms and/or the applicable Customer Agreement: (a) all rights granted to you with respect to the Services under the Customer Agreement will

terminate effective as of the effective date of termination, (b) the Company will have no obligation to provide Services to you or your authorized users after the effective date of the termination, and (c) you will pay to the Company any amounts payable for your use of the Services through the effective date of the termination, together with all other amounts in accordance with the Customer Agreement.

## **8. Sanctions Export Policy.**

You may not use the Services for the benefit of a country, organization, entity, or person embargoed or blocked by any government, including those on sanctions lists identified by the United States Office of Foreign Asset Control (OFAC). We do not claim, and we cannot guarantee that the Company is or will be appropriate or available for any location or jurisdiction, comply with the laws of any location or jurisdiction, or comply with laws governing export, import, or foreign use.

## **9. Indemnity.**

You agree to indemnify, defend and hold the Company, its affiliates, any related companies, suppliers, licensors and partners, and the officers, directors, employees, agents and representatives of each of them (collectively, the “Company Entities”) harmless, including costs, liabilities and legal fees, from any claim or demand made by any third party arising out of or relating to (i) your access to or use of the Services, (ii) your violation of the Terms or your Customer Agreement, (iii) your access to or use of any Purchased Services, or (iv) any infringement by you of any intellectual property or other right of any person or entity. The Company reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify the Company and you agree to cooperate with the Company’s defense of these claims. You agree not to settle any such matter without the prior written consent of the Company. The Company will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of such claim, action or proceeding.

## **10. No Warranties and Limitation of Liability.**

**PLEASE READ THIS SECTION 10 CAREFULLY SINCE THIS SECTION LIMITS THE LIABILITY OF THE COMPANY TO YOU. EACH OF THE SUBSECTIONS BELOW ONLY APPLIES UP TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. NOTHING HEREIN IS INTENDED TO LIMIT ANY RIGHTS YOU MAY HAVE WHICH MAY NOT BE LAWFULLY LIMITED. IF YOU ARE UNSURE ABOUT THIS OR ANY OTHER SECTION OF THESE TERMS, PLEASE CONSULT WITH A LEGAL PROFESSIONAL PRIOR TO ACCESSING OR USING THE SERVICES. BY ACCESSING OR USING THE SERVICES, YOU REPRESENT THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO THESE TERMS, INCLUDING THIS SECTION 10. YOU ARE GIVING UP SUBSTANTIAL LEGAL RIGHTS BY AGREEING TO THESE TERMS.**

10.1 NO WARRANTY OF THE SERVICES. THE SERVICES ARE MADE AVAILABLE TO YOU ON AN “AS IS” WITHOUT WARRANTY, “WITH ALL FAULTS” AND “AS AVAILABLE” BASIS. . AS SUCH, YOUR USE OF THE SERVICES IS AT YOUR OWN



DISCRETION AND RISK. THE COMPANY MAKES NO CLAIMS OR PROMISES ABOUT THE QUALITY, ACCURACY OR RELIABILITY OF THE SERVICES, THE SAFETY OR SECURITY OF THE SERVICES, OR THE SERVICES CONTENT. ACCORDINGLY, THE COMPANY IS NOT LIABLE TO YOU FOR ANY LOSS OR DAMAGE THAT MIGHT ARISE, FOR EXAMPLE, FROM THE SERVICES' INOPERABILITY, UNAVAILABILITY OR SECURITY VULNERABILITIES OR FROM YOUR RELIANCE ON THE QUALITY, ACCURACY OR RELIABILITY OF THE SERVICES CONTENT.

10.2 DISCLAIMER OF WARRANTIES. THE COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES AS TO THE PRODUCTS OR SERVICES OFFERED BY THIRD PARTIES, AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED TO YOU BY A REPRESENTATIVE OF THE COMPANY SHALL CREATE A REPRESENTATION OR WARRANTY.

10.3 USER REMEDIES. YOUR SOLE AND EXCLUSIVE RIGHT AND REMEDY IN CASE OF DISSATISFACTION WITH THE SERVICES, THIRD PARTY SERVICES MADE AVAILABLE THROUGH THE SERVICES, OR ANY OTHER GRIEVANCE SHALL BE YOUR TERMINATION AND DISCONTINUATION OF ACCESS TO, OR USE OF THE SERVICES.

## **11. Confidentiality and Nondisclosure.**

11.1 Confidential Information. In these Terms and your Customer Agreement, any information disclosed by the Company, or you that is designated as confidential, either orally or in writing, or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential is referred to as "Confidential Information". Confidential Information includes without limitation: (a) information relating to our technology, customers, business plans, promotional and marketing activities, finances and other business affairs and (b) third-party information that the Company is obligated to keep confidential. However, Confidential Information does not include any information that: (i) was known to the parties prior to receiving the same from the other party in connection with the Terms and/or your Customer Agreement; (ii) is independently developed by the Company without reference to or use of your Confidential Information; (iii) is acquired by the Company from another source without restriction as to use or disclosure; or (iv) is or becomes publicly available through no fault or action of the Company.

11.2 Confidentiality. Each party reserves any and all right, title, and interest, including any Intellectual Property Rights, that it may have in or to any Confidential Information that it may disclose to the other party under the Terms and applicable Customer Agreement. Each party shall protect the Confidential Information received from the other party against any unauthorized use or disclosure to the same extent that such party protects its own Confidential Information of a similar nature against unauthorized use or disclosure, but in no event shall use less than a reasonable standard of care to protect such Confidential Information. This section will not be interpreted or construed to prohibit: (a) any use or disclosure which is necessary or appropriate in connection with the Company's performance of its obligations or exercise of its rights under the

Terms; (b) any use or disclosure required by applicable law; or (c) any use or disclosure made with the consent of the other party.

## **12. Dispute Resolution.**

READ THIS SECTION 12 CAREFULLY. THIS SECTION 11MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

12.1 Informal Dispute Resolution. We are available by email at support@eydle.com or on the web at <https://www.eydle.com> to address any concerns, disputes, claims or controversies you may have regarding the Services, these Terms (including its interpretation, formation, performance, and breach) or the relationship between you and the Company (collectively, “Disputes”). Most Disputes are quickly resolved in this manner to our users’ satisfaction. The parties shall use their best efforts to settle any Dispute directly through consultation and good faith negotiations which shall be a precondition to either party initiating a lawsuit or arbitration.

12.2 Formal Dispute Resolution. In the event that the parties do not agree upon a resolution in connection with a Dispute within a period of thirty (30) calendar days from the time informal dispute resolution is initiated pursuant to Section 0 (Informal Dispute Resolution), you and the Company expressly agree that exclusive jurisdiction for any claim or action arising out of or relating to the Services or these Terms shall be the courts located in Los Angeles County, California, and you expressly consent to the exercise of personal jurisdiction of such courts; provided, however, that the provisions in Section 12.2(a) (Agreement to Arbitrate), Section 12.2(b) (Location), Section 12.2(c) (Class Action Waiver), Section 12.2(d) (Exception – Litigation of Intellectual Property and Small Claims Court) and Section 12.2(e) (Thirty (30) Day Right to Opt Out) apply to you if (i) you are domiciled in and/or use the Services in the United States or (ii) you are domiciled in and/or use the Services from outside the United States, legal proceedings in connection with a Dispute are initiated within the United States and you are entitled to participate in such proceedings, in each case unless any court or arbitrator determines that the “Agreement to Arbitrate” set forth in Section 12.2(a) (Agreement to Arbitrate) or the “Class Action Waiver” set forth in Section 12.2(c) (Class Action Waiver) are void or unenforceable for any reason or that an arbitration can proceed on a class basis.

12.3 Agreement to Arbitrate. If the parties do not agree upon a resolution in connection with a Dispute within a period of thirty (30) calendar days from the time informal dispute resolution is initiated pursuant to Section 0 (Initial Dispute Resolution), then either party may initiate binding arbitration as the sole means to formally resolve claims (the “Agreement to Arbitrate”), subject to the terms set forth below. Specifically, all Disputes shall be finally settled by binding arbitration administered by the American Arbitration Association (the “AAA”). The arbitration proceedings shall be governed by AAA’s Commercial Arbitration Rules (the “AAA Rules”) and, where appropriate, AAA’s Supplementary Procedures for Resolution of Consumer-Related Disputes (the “AAA Consumer Rules”). This arbitration provision is made pursuant to a transaction involving interstate commerce, and the Federal Arbitration Act shall apply to the interpretation, applicability, enforceability and formation of these Terms notwithstanding any other choice of law provision contained in these Terms. The arbitrator, and not any federal, state

or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of these Terms, including without limitation any claim that all or any party of these Terms are void or voidable, or whether a claim is subject to arbitration. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. The arbitration may be conducted in person, through the submission of documents, by phone or online. The arbitrator shall make a decision in writing and shall provide a statement of reasons if requested by either party. The arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. The AAA Rules and the AAA Consumer Rules are both available at the AAA website [www.adr.org](http://www.adr.org). Your arbitration fees and your share of arbitrator compensation shall be governed by the AAA Rules and, where appropriate, limited by the AAA Consumer Rules. The parties understand that, absent this mandatory provision, they would have the right to sue in court and have a jury trial. They further understand that, in some instances, the costs of arbitration could exceed the cost of litigation and the right to discovery may be more limited in arbitration than in court.

12.4 Location. Arbitration shall be initiated in Los Angeles County, California, and you and the Company agree to submit to the personal jurisdiction of the federal or state court in Los Angeles County, California, in order to compel arbitration, to stay proceedings pending arbitration or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator.

12.5 Class Action Waiver. The parties further agree that any arbitration shall be conducted in their individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. **YOU AND THE COMPANY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR THE COMPANY'S INDIVIDUAL CAPACITY, AND NOT AS A PLANITFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** If any court or arbitrator determines that the class action waiver set forth in this subsection (the "Class Action Waiver") is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provision set forth above shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate Disputes.

12.6 Other Disputes. For Disputes not subject to the Agreement to Arbitrate set forth in Section 12.2(a) (Agreement to Arbitrate), or if any court or arbitrator determines that the Class Action Waiver set forth this Section 13.2(c) (Class Action Waiver) is void or unenforceable for any reason or that an arbitration can proceed on a class basis, exclusive jurisdiction for any claim or action arising out of or relating to the Services or these Terms shall be the federal or state courts in Los Angeles County, California, United States, and you expressly consent to the exercise of personal jurisdiction of such courts.

12.7 Exception – Litigation of Intellectual Property and Small Claims Court Claims. Notwithstanding the parties' decision to resolve all Disputes through arbitration, either party may bring an action in state or federal court that only asserts claims for patent infringement or

invalidity, copyright infringement, moral rights violations, trademark infringement and/or trade secret misappropriation, but not, for clarity, claims related to the license granted to you for the Services under the Terms. Either party may also seek relief in a small claims court for disputes or claims within the scope of that court's jurisdiction.

12.8 Thirty (30) Day Right to Opt Out. You have the right to opt-out and not be bound by the arbitration and class action waiver provisions set forth in Subsection 12.2(a) (Agreement to Arbitrate), Subsection 12.2(b) (Location) and Subsection 12.2(c) (Class Action Waiver) above by sending written notice of your decision to opt-out to the following address: 3583 Brandon Street, Pasadena, CA 91107, Attn: Legal. The notice must be sent within thirty (30) days of your first access or use of the Services; otherwise, you will be bound to resolve Disputes in accordance with the terms of those subsections. If you opt-out of the aforementioned provisions, the Company also will not be bound by such provisions.

12.9 Changes to this Section. The Company will provide sixty (60) days' notice of any changes to this Section 12.2 (Formal Dispute Resolution) and any such change will apply only to any claims arising after the sixtieth (60<sup>th</sup>) day following such notice.

### **13. Governing Law.**

Any claims arising out of the Services or these Terms (including interpretation, claims for breach, and all other claims, including consumer protection, unfair competition, and tort claims) will be subject to the laws of the State of California, United States, without reference to conflict of laws principles.

### **14. Miscellaneous.**

14.1 Rights. Nothing herein is intended, nor will be deemed, to confer rights or remedies upon any third party.

14.2 Agreement Between You and the Company. These Terms and your Customer Agreement contain the entire agreement between you and the Company regarding the use of the Services and supersede any prior agreement between you and the Company on such subject matter. The parties acknowledge that no reliance is placed on any representation made but not expressly contained in these Terms and your Customer Agreement.

14.3 Waiver. Any failure on the Company's part to exercise or enforce any right or provision of the Terms or Customer Agreement does not constitute a waiver of such right or provision. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

14.4 Severance. If any provision of the Terms or Customer Agreement is found to be unenforceable or invalid, then only that provision shall be modified to reflect the parties' intention or eliminated to the minimum extent necessary so that the Terms and applicable Customer Agreement shall otherwise remain in full force and effect and enforceable.

14.5 Section Titles. The section titles in the Terms and Customer Agreement are for convenience only and have no legal or contractual effect.