

Agency Terms of Service

This Agency Platform Agreement (the "Agreement") is made and entered into by and between Agency Cyber Inc., Agency, or any related entity or subsidiary ("Agency", "We", "Our") and the entity or person agreeing to these terms ("Customer", "You").

This Agreement is effective as of the date Customer clicks to accept the Agreement (the "Effective Date"). If you are accepting on behalf of Customer, you represent and warrant that: (i) you have full legal authority to bind Customer to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree on behalf of Customer, to this Agreement. If you do not have the legal authority to bind Customer and/or if you do not agree with all of the Customer Terms, then you are expressly prohibited from using the Services and must discontinue use immediately. This Agreement governs Customer's access to and use of the Service.

PLEASE NOTE: THESE TERMS CONTAIN AN ARBITRATION CLAUSE AND CLASS ACTION WAIVER, WHICH AFFECT HOW DISPUTES WITH AGENCY ARE RESOLVED. BY ACCEPTING THESE TERMS, YOU AGREE TO BE BOUND BY THE ARBITRATION PROVISION (SECTION 15). PLEASE READ IT CAREFULLY.

1. Provision of the Services

- a. Services Use Subject to this Agreement, during the Term, Customer may: (a) use the Services and (b) use any Software provided by Agency as part of the Services. Customer may not sublicense or transfer these rights except as permitted under the Assignment section of the Agreement.
- b. Third Party Services. Agency provides third-party software for use in connection with our Services. Each third-party software has its' own end user license agreement ("EULA"), the terms of the EULA will govern your use of the software. You must agree to any EULA you use or install on your devices. Your use of and agreement to any third-party software EULA is non-revocable and non-transferable while using the Services. You agree to use such software solely in connection with the Services and in accordance with this Agreement.
- c. Identity Theft Protection and Loss of Funds Coverage. Agency provides access to these services through a third party. If You would like to use these services, You must agree to the terms of that third party, which may change from time to time. Agency is not a party to Your agreement for these services. At no time is Your use of Agency's Services contingent upon Your use or availability of the identity theft protection and loss of funds coverages. Except as otherwise expressly provided herein, Agency provides this service "As Is" and "As Available" and without any representations, warranties, or conditions of any kind. You agree to indemnify Agency and hold Agency's officers, directors, and employees and agents harmless from and against any matter relating to Identity theft protection, coverage, and loss of funds coverage. If you'd like a copy of the third party's terms prior to signing up, please contact support@help.getagency.com.
- d. Agency Cyber Guarantee. The Agency Cyber Guarantee is provided under a separate set of terms found at [GetAgency.com/terms/guarantee](https://getagency.com/terms/guarantee). By accepting this Agreement, you are also accepting the Agency Cyber Guarantee Terms and Conditions.
- e. Agency Referral Program Terms. The Referral Program is provided under a separate set of terms found at [GetAgency.com/terms/referrals](https://getagency.com/terms/referrals). by accepting this Agreement, you are also accepting the Agency Referral Program Terms.
- f. Console. Agency will provide the Services to Customer. As part of receiving the Services, Customer, and others explicitly under the control of and authorized by Customer, will have access to the "SOC" or Admin Console, through which Customer may administer the Services.
- g. Device. Customer must have a Device, each with a unique identifier ("Token"), to use the Services, and is responsible for the information Customer provides to create the Token, the security of the Token and the Customer's passwords for the Device, and for any use of the Customer's Device and the Token. If Customer becomes aware of any unauthorized use of its password, Device or the Token, Customer will notify Agency as promptly as possible. Agency has no obligation to provide Customer multiple Tokens or Device accounts nor to address or cure any such unauthorized use of the Customer's Device, Token, or password(s).
- h. New Applications and Services. Agency may: (i) make new applications, tools, features or functionality available from time to time through the Services and (ii) add new services to the "Services" definition from time to time, the use of which may be contingent upon Customer's agreement to additional terms.
- i. Modifications.

- I. To the Services. Agency may make commercially reasonable updates to the Services from time to time. If Agency makes a material change to the Services, Agency will inform Customer, provided that Customer has subscribed with Agency to be informed about such change.
- II. To the Agreement. Agency may make changes to this Agreement, including pricing (and any linked documents) from time to time. Unless otherwise noted by Agency, material changes to the Agreement will become effective 30 days after they are posted, except if the changes apply to new functionality in which case they will be effective immediately. Agency will post any modification to this Agreement to the Terms URL. For purposes of this section a material change shall be considered a change that affects this Agreement in a way that does not reflect the original intended services of this Agreement
- j. GDPR Compliance. Agency makes no representation that the Services are GDPR compliant, nor does Agency recommend or authorize the Services for any jurisdiction or country that requires GDPR compliance. If you are in such a jurisdiction or require such compliance you are not authorized nor should you use any of the Agency sites or Services.
- k. Export Control. Agency's Services may be subject to U.S. export and re-export control laws and regulations or similar laws applicable in other jurisdictions, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC"), and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. You warrant that you are (1) not located in any country to which the United States has embargoed goods or has otherwise applied any economic sanctions; and (2) not a denied party as specified in any applicable export or re-export laws or regulations or similar laws applicable in other jurisdictions. You agree to comply with all applicable export and reexport control laws and regulations, including the EAR, trade and economic sanctions maintained by OFAC, and the ITAR. Specifically, you agree that you shall not – directly or indirectly – sell, export, reexport, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from Agency under the Agreements to any destination, entity, or person prohibited by any applicable laws or regulations of the United States or any other jurisdiction without obtaining prior authorization from the competent government authorities as required by those laws and regulations.

2. Payment Terms.

a. Online Billing.

- I. You may purchase a Service plan directly from Agency either by paying an upfront yearly service fee disclosed to you prior to your purchase or through a third-party. Agency may change the price for the Service, including recurring service fees, from time to time and will communicate any price changes to you in advance and, if applicable, how to accept those changes. Price changes will take effect at the start of the next service period following the date of the price change. Subject to applicable law, you accept the new price by continuing to use the Service after the price change takes effect. If you do not agree with a price change, you have the right to reject the change by unsubscribing from the Service plan prior to the price change going into effect. Any discounts or special pricing offers provided through a coupon or promo code maybe modified by Agency at any time without notice.
- II. You will automatically be charged at the end of the applicable period, unless you cancel your Service plan before the end of the then-current service period. The cancellation will take effect the day after the last day of the current service period, and the Services and your account will be deactivated. We do not provide refunds or credits for any partial subscription periods.

b. Taxes.

- I. (a) Customer is responsible for any Taxes, and Customer will pay Agency for the Services without any reduction for Taxes. If Agency is obligated to collect or pay Taxes, the Taxes will be invoiced to Customer, unless Customer provides Agency with a timely and valid tax exemption certificate authorized by the appropriate taxing authority. In some states the sales tax is due on the total purchase price at the time of sale and must be invoiced and collected at the time of the sale. If Customer is required by law to withhold any Taxes from its payments to Agency, Customer must provide Agency with an official tax receipt or other appropriate documentation to support such withholding.
- II. If required under applicable law, Customer will provide Agency with applicable tax identification information that Agency may require to ensure its compliance with applicable tax regulations and authorities in applicable jurisdictions. Customer will be liable to pay (or reimburse Agency for) any taxes, interest, penalties or fines arising out of any mis-declaration by the Customer.

- c. Invoice Disputes & Refunds. Any disputes must be submitted prior to the payment due date. If the parties determine that certain billing inaccuracies are attributable to Agency, Agency will issue a credit memo specifying the incorrect amount in the

affected invoice and Customer will be responsible for paying the resulting net balance due on that invoice. To the fullest extent permitted by law, Customer waives all claims relating to Fees unless claimed within thirty days after charged (this does not affect any Customer rights with its credit card issuer). Refunds (if any) are at the discretion of Agency and will only be in the form of credit for the Services. Nothing in this Agreement obligates Agency to extend credit to any party.

- d. Delinquent Payments; Suspension. Late payments may bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) from the payment due date until paid in full. Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by Agency in collecting such delinquent amounts. If Customer is late on payment for the Services, Agency may Suspend the Services or terminate the Agreement for breach pursuant to Section 10b.

3. Customer Obligations.

a. Acceptable Use.

I. Customer agrees not to, and not to allow third parties to use the Services:

1. to violate, or encourage the violation of, the legal rights of others (for example, this may include allowing Customer End Users to infringe or misappropriate the intellectual property rights of others in violation of the Digital Millennium Copyright Act);
2. to engage in, promote or encourage illegal activity;
3. for any unlawful, invasive, infringing, defamatory or fraudulent purpose (for example, this may include phishing, creating a pyramid scheme or mirroring a website);
4. to intentionally distribute viruses, worms, Trojan horses, corrupted files, hoaxes, or other items of a destructive or deceptive nature;
5. to interfere with the use of the Services, or the equipment used to provide the Services, by customers, authorized resellers, or other authorized users;
6. to disable, interfere with or circumvent any aspect of the Services;
7. to generate, distribute, publish or facilitate unsolicited mass email, promotions, advertisings or other solicitations ("spam"); or
8. to use the Services, or any interfaces provided with the Services, to access any other Agency product or service in a manner that violates the terms of service of such other Agency product or service.
9. to use on Devices owned and/or operated by those that under 18 years of age.
10. allow access to your account through any third parties or give access to third parties.
11. give access to your account to a third party, voluntarily or involuntarily. If access is given, then you will be entirely responsible for any decisions that the third party may make. Agency is not responsible for the actions of third parties, which will be deemed to be your actions. The use of Agency Services is at your sole risk and provided on an "as is" and "as available" basis, and we will not be liable for failure to deliver or transmit any information from your Account, which is your sole responsibility.

- b. Compliance. Customer is solely responsible for its Devices and Customer Data and for making sure its Devices and Customer Data comply with the Acceptable Use policies in Section 3a ("AUP"). Agency reserves the right to review the Devices and available Customer Data for compliance with the AUP. Customer is responsible for ensuring all Customer End Users comply with Customer's obligations under the AUP, the Service Specific Terms, and the restrictions in Sections 3d and 3e below.

- c. Privacy. Customer will obtain and maintain any required consents necessary to permit the processing of Customer Data under this Agreement.

- d. Restrictions. Customer will not, and will not allow third parties under its control to: (1) copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any or all of the source code of the Services (subject to Section 3e below and except to the extent such restriction is expressly prohibited by applicable law); (ii) use the Services for High Risk Activities; (iii) sublicense, resell, or distribute any or all of the Services; (iv) create multiple Devices to simulate or act as a single Device or otherwise access the Services in a manner intended to avoid incurring Fees or exceed usage limits or quotas; or (v) process or store any Customer Data that is subject to the International Traffic in Arms Regulations maintained by the Department of State. Unless otherwise specified in writing by Agency, Agency does not intend uses of the Services to create obligations under HIPAA, and makes no representations that the Services satisfy HIPAA requirements. If Customer is (or becomes) a Covered Entity or Business Associate, as defined in HIPAA, Customer will not transmit any covered Protected Health Information (as defined in HIPAA) to Agency.

- e. Third Party Components. Third party components (which may include open source software) of the Services may be subject to separate license agreements, terms of service, privacy policy, and other similar agreements ("Third Party Agreements").

Customer shall separately agree to all Third Party Agreements and Customer's use of Agency Services signifies to Agency that Customer has read, understood, and explicitly agreed to all Third Party Agreements. To the limited extent a third-party license expressly supersedes this Agreement, that third party license governs Customer's use of that third party component. A list of such services is available upon request by contacting customer support.

- f. Documentation. Agency may provide Documentation for Customer's use of the Services. The Documentation may specify restrictions (e.g. attribution or HTML restrictions) on how the Services may be used and Customer will comply with any such restrictions specified.

4. Suspension.

- a. AUP Violations. If Agency becomes aware that Customer's or any Customer End User's use of the Services violates the AUP, Agency will give Customer notice of the violation by requesting that Customer correct the violation. If Customer fails to correct the violation within 24 hours of Agency's request, then Agency may Suspend all or part of Customer's use of the Services until the violation is corrected.
- b. Other Suspension. Notwithstanding Section 4a (AUP Violations) Agency may immediately Suspend all or part of Customer's use of the Services if: (i) Agency believes Customer's or any Customer End User's use of the Services could adversely impact the Services, other customers' or their end users' use of the Services, or the Agency network or servers used to provide the Services; (ii) there is suspected unauthorized third-party access to the Services; (iii) Agency believes it is required to Suspend immediately to comply with applicable law; or (iv) Customer is in breach of Section 3d (Restrictions). Agency will lift any such Suspension when the circumstances giving rise to the Suspension have been resolved. At Customer's request, unless prohibited by applicable law, Agency will notify Customer of the basis for the Suspension as soon as is reasonably possible.

5. Intellectual Property Rights; Use of Customer Data; Feedback; Benchmarking

- a. Intellectual Property Rights. Except as expressly set forth in this Agreement, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data, and Agency owns all Intellectual Property Rights in the Services, Software, and any other IP that is not considered Customer Data or can be proven to have been originally owned by Customer.
- b. Use of Customer Data. Agency will not access or use Customer Data, except as necessary to provide the Services and technical support to Customer. Customer understands that any and all electronic mail, video chat, screenshare, or phone numbers of Agency are not encrypted and are not secure therefore any sensitive, private, or personal information that Customer shares via electronic mail, text, video, or voice shall not be protected and Agency does not have any obligations to protect or secure any such information that Customer elects to freely give Agency or its third parties.
- c. Customer Feedback. If Customer provides Agency Feedback about the Services, then Agency may use that information without obligation to Customer, and Customer hereby irrevocably assigns to Agency all right, title, and interest in that Feedback.
- d. Benchmarking. Customer may not publicly disclose directly or through a third party the results of any comparative or compatibility testing, benchmarking, or evaluation (each, a "Test") of the Services, unless the disclosure includes all information necessary for Agency or a third party to replicate the Test. If Customer conducts, or directs a third party to conduct, a Test of the Services and publicly discloses the results directly or through a third party, then Agency (or a Agency-directed third party) may conduct Tests of any publicly available products or services provided by Customer and publicly disclose the results of any such Test (which disclosure will include all information necessary for Customer or a third party to replicate the Test). To the extent this Section 5d conflicts with any other Customer product or service terms, this Section 5d will govern.

6. Technical Support Services

- a. By Customer. Customer is responsible for technical support of its Device(s).
- b. By Agency. Agency will provide technical support for Agency's Services only. In the event the Customer requests further technical support from Agency in order to troubleshoot issues related to a third-party program, application, software, or device, Agency may, in its sole discretion, elect to troubleshoot with the Customer the issue. Notwithstanding the foregoing, Agency is under no obligation to troubleshoot or support Customer on third-party programs, applications, software, or devices and therefore neither Agency, its employees, third-party partners nor related entities may be responsible for any issues, problems, or damages that may arise from Agency's technical support of third-party program, application, software, or device(s).

- c. Customer Data Shared in Communications. Customer understands and accepts that any correspondence, whether written or verbal, is not protected or encrypted and under no circumstances shall Agency be responsible for any information included in correspondences to Agency that Customer elects to include personal, sensitive, or protected data.
- d. Uptime. Agency shall give reasonable efforts to keep Services operational however, certain technical difficulties, maintenance or test, result in interruptions outside of Agency's control may result in a suspension or diminishment of Services. Customer understands and accepts such possible downtimes may happen and shall hold Agency harmless from any damages, whether direct or indirect of any type.

7. Deprecation of Services.

Agency may discontinue any Services or any portion or feature for any reason at any time without liability to Customer. Agency will use commercially reasonable efforts to continue to operate certain Services without these changes for at least three months after that announcement, unless (as Agency determines in its reasonable good faith judgment):

- a. required by law or third-party relationship (including if there is a change in applicable law or relationship), or
- b. doing so could create a security risk or substantial economic or material technical burden.

8. Security and Fraud Controls.

- a. Agency's Security. Agency is responsible for protecting the security of certain Customer Data provided by you that is in our possession. We will maintain commercially reasonable administrative, technical, and physical procedures to protect User Data and Personal Data stored in our servers from unauthorized access, accidental loss, modification, or breach, and we will comply with applicable Laws when we handle User and Personal Data. However, no security system is impenetrable and we cannot guarantee that unauthorized parties will never be able to defeat our security measures or misuse any Customer Data in our possession. You provide Customer Data, which may include user data and customer data, to Agency with the understanding that any security measures we provide may not be appropriate or adequate for your business, and you agree to implement Security Controls (as defined below) and any additional controls that meet your specific requirements. In our sole discretion, we may take any action, including suspension of account and Services, to maintain the integrity and security of the Services or Data, or to prevent harm to you, us, Customers, or others. You waive any right to make a claim against us for losses you incur that may result from such actions.
- b. Customer Security. Customer is solely responsible for the security of any Customer Data on Customer's Device(s) in Customer's possession, or that Customer is otherwise authorized to access or handle. Customer will comply with applicable Laws when handling or maintaining user data and personal data and will provide evidence of Customer compliance to Agency upon request. If Customer does not provide evidence of such compliance to Agency's satisfaction, Agency may suspend your Agency account, Services, or terminate this Agreement.
- c. Security Controls. Customer is responsible for assessing any and all security requirements of Customer or anyone using the Services and selecting and implementing security procedures and controls ("Security Controls") appropriate to mitigate Customer exposure to security incidents. Agency may provide Security Controls as part of the Services or suggest that Customer implement specific Security Controls. However, Customer's responsibility for securing Customer devices is not diminished by any Security Controls that Agency provide or suggest, and if Customer believes that the Security Controls Agency provide are insufficient, then Customer must separately implement additional controls that meet Customer's requirements. No security solution is foolproof and therefore AGENCY DOES NOT GUARANTEE OR WARRANT THAT USE OF SERVICE WILL FIND, LOCATE, OR DISCOVER ALL SYSTEM THREATS, VULNERABILITIES, MALWARE, MALICIOUS SOFTWARE, ETC. AND THEREFORE, AGENCY WILL NOT BE HELD LIABLE FOR ANY SUCH FAILURE IN NOTIFICATION OR PROTECTION. ADDITIONALLY, THE AGENCY SERVICES ARE NOT FAULT TOLERANT OR DESIGNED OR INTENDED TO BE USED IN ANY ENVIRONMENT REQUIRING FAIL-SAFE PERFORMANCE OR OPERATION. DO NOT USE OUR SERVICE IN CONNECTION WITH ANYTHING THAT WOULD REQUIRE CONTINUOUS CONNECTION OR USE. Nothing in our informational materials or advertising should be construed in a way or read by the Customer that we provide the foregoing.
- d. Risk. While Agency may provide or suggest Security Controls, Agency cannot guarantee that Customers will never become victims of fraud or cyber-attack. Any Security Controls Agency provide or suggest may include processes or applications developed by Agency, its affiliates, or other companies. Customer agrees to review all the Security Controls Agency suggest and choose those that are appropriate for Customer's device(s) to protect against unauthorized access and, if appropriate for Customer device(s), independently implement other security procedures and controls not provided by Agency. If Customer disable or fail to properly use Security Controls, Customer will increase the likelihood of unauthorized access and other similar occurrences. Keep in mind that Customer are solely responsible for losses Customer incur from the use of lost or stolen

credentials, Customer Data, or accounts by fraudsters or cyber attackers who engage in nefarious or fraudulent actions with Customer, and Customer's failure to implement Security Controls will only increase the risk of fraud or cyber-attack. Agency may assist Customer with recovery, but Customer are solely responsible for losses due to lost or stolen credentials or accounts, compromise of Customer's username or password, changes Account, and any other unauthorized use or modification of Customer's Agency Account. Agency is not liable or responsible to Customer and Customer waives any right to bring a claim against Agency for any losses that result from the use of lost or stolen credentials or unauthorized use or modification of Customer's Agency Account.

9. Confidential Information.

- a. Obligations. The recipient will not disclose the Confidential Information, except to Affiliates, employees, agents or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will ensure that those people and entities use the received Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to keep it confidential.
- b. Required Disclosure. Notwithstanding any provision to the contrary in this Agreement, the recipient may also disclose Confidential Information to the extent required by applicable Legal Process; provided that the recipient uses commercially reasonable efforts to: (i) promptly notify the other party of such disclosure before disclosing; and (ii) comply with the other party's reasonable requests regarding its efforts to oppose the disclosure. Notwithstanding the foregoing, subsections (i) and (ii) above will not apply if the recipient determines that complying with (i) and (ii) could: (1) result in a violation of Legal Process; (2) obstruct a governmental investigation; and/or (3) lead to death or serious physical harm to an individual. As between the parties, Customer is responsible for responding to all third-party requests concerning its use and Customer End Users' use of the Services.

10. Term and Termination.

- a. Agreement Term. The "Term" of this Agreement will begin on the Effective Date and continue until the Agreement is terminated as set forth in Section 10 of this Agreement.
- b. Termination for Breach. Either party may terminate this Agreement for breach if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches. In addition, Agency may terminate any, all, or any portion of the Services or Projects, if Customer meets any of the conditions in Section 10b(i), (ii), and/or (iii).
- c. Termination for Convenience. Customer may stop using the Services at any time. Customer may terminate this Agreement for its convenience at any time on prior written notice and upon termination, must cease use of the applicable Services. Agency may terminate this Agreement for its convenience at any time without liability to Customer to the extent permitted by law.
- d. Effect of Termination. If the Agreement is terminated, then: (i) the rights granted by one party to the other will immediately cease; (ii) all Fees owed by Customer to Agency are immediately due; (iii) Customer will delete the Software and any Customer Data; and (iv) upon request, each party will use commercially reasonable efforts to return or destroy all Confidential Information of the other party. The Customer shall not be owed any refunds.

11. Representations and Warranties.

Each party represents and warrants that: (a) it has full power and authority to enter into the Agreement; (b) it understands that there are third party services being used in the Services; and (c) it will comply with all laws and regulations applicable to its provision, or use, of the Services, as applicable.

12. Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (a) AGENCY AND ITS SUPPLIERS DO NOT MAKE ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT; (b) AGENCY AND ITS SUPPLIERS ARE NOT RESPONSIBLE OR LIABLE FOR THE DELETION OF OR FAILURE TO STORE ANY CUSTOMER DATA AND OTHER COMMUNICATIONS MAINTAINED OR TRANSMITTED THROUGH USE OF THE SERVICES; (c) CUSTOMER IS SOLELY RESPONSIBLE FOR SECURING AND BACKING UP ITS DEVICE AND CUSTOMER DATA AND FOR NOT INCLUDING ANY INFORMATION THE CUSTOMER

DOES NOT WANT TO MAKE PUBLIC IN ANY COMMUNICATIONS OR CORRESPONDENCES WITH AGENCY; (c) AGENCY DOES NOT GUARANTEE THE SECURITY, FUNCTIONALITY OR SERVICES BY THE THIRD PARTIES IT USES IN THE AGENCY SERVICES; and (d) NEITHER AGENCY NOR ITS SUPPLIERS WARRANT THAT THE OPERATION OF THE SOFTWARE OR THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED. NEITHER THE SOFTWARE NOR THE SERVICES ARE DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES.

13. Limitation of Liability.

a. Limitations. TO THE MAXIMUM EXTENT PERMITTED BY LAW, AGENCY, ITS EMPLOYEES AND ITS AFFILIATES, WILL UNDER NO CIRCUMSTANCES BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM PERFORMANCE OF ANY TECHNICAL SUPPORT OR CUSTOMER SERVICE SERVICES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS (INCLUDING LOSS OF PROFITS ON CONTRACTS); LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION; LOSS OF, DAMAGE TO, OR CORRUPTION OF DATA; OR ANY COSTS OF RECOVERING, PROGRAMMING, OR RESTORING ANY PROGRAM OR DATA STORED OR USED WITH YOUR PRODUCT AND ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY OF DATA STORED ON YOUR PRODUCT. THE FOREGOING LIMITATION SHALL NOT APPLY TO DEATH OR PERSONAL INJURY CLAIMS. AGENCY SPECIFICALLY DOES NOT WARRANT THAT IT WILL BE ABLE TO (i) REPAIR, TROUBLESHOOT OR REPLACE YOUR PRODUCT WITHOUT RISK TO OR LOSS OF PROGRAMS OR DATA, AND (ii) MAINTAIN THE CONFIDENTIALITY OF DATA. IF ANY PRODUCT SHOULD BE DAMAGED, LOST, OR OTHERWISE WHILE IN AGENCY'S CUSTODY INCLUDING DURING THE TIME AGENCY MAY BE GIVEN ACCESS TO THE CUSTOMER'S DEVICE BY THE CUSTOMER OR DURING ANY TECHNICAL SUPPORT OR CUSTOMER SERVICE SERVICES, AGENCY'S LIABILITY WILL BE LIMITED TO THE COST OF REPAIR OR REPLACEMENT OF THE AFFECTED PRODUCT. OTHERWISE, AGENCY'S LIABILITY FOR ANY AND ALL DAMAGE SHALL IN NO EVENT EXCEED THE THREE MONTHS PAYMENT ON THE INDIVIDUAL ACCOUNT PRIOR TO THE EVENT GIVING RISE TO LIABILITY. THE REMEDIES SET FORTH HEREIN SHALL BE YOUR SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH BY AGENCY UNDER THESE TERMS AND CONDITIONS. AGENCY IS NOT LIABLE FOR LOSS OR CORRUPTION OF DATA OR YOUR CONFIDENTIAL, PROPRIETARY OR PERSONAL INFORMATION OR REMOVABLE DATA. BEFORE YOU USE THE SERVICES ON YOUR DEVICE OR ANY DEVICE YOU SHOULD MAKE A BACKUP COPY OF YOUR DATA.

14. Indemnification.

- a. By Customer. Unless prohibited by applicable law, Customer will defend and indemnify Agency and its Affiliates against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from: (i) any Device and Customer Data; or (ii) Customer's, or Customer End Users', use of the Services in violation of the AUP.
- b. Exclusions. This Section 14 will not apply to the extent the underlying Allegation arises from:
- I. the indemnified party's breach of this Agreement;
 - II. modifications to the indemnifying party's technology or Brand Features by anyone other than the indemnifying party;
 - III. combination of the indemnifying party's technology or Brand Features with materials not provided by the indemnifying party; or
 - IV. use of non-current or unsupported versions of the Services or Brand Features;
 - V. and services, functionality or other attributes provided by a third party or Supplier that is governed by or has its own terms of service, privacy policy, or agreements.
- c. Conditions. Sections 14a and 14b will apply only to the extent:
- I. The indemnified party has promptly notified the indemnifying party in writing of any Allegation(s) that preceded the Third-Party Legal Proceeding and cooperates reasonably with the indemnifying party to resolve the Allegation(s) and Third-Party Legal Proceeding. If breach of this Section 14d(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 14a or 14b (as applicable) will be reduced in proportion to the prejudice.
 - II. The indemnified party tenders sole control of the indemnified portion of the Third-Party Legal Proceeding to the indemnifying party, subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.
- d. Remedies.

- I. If Agency reasonably believes the Services might infringe a third party's Intellectual Property Rights, then Agency may, at its sole option and expense: (1) procure the right for Customer to continue using the Services; (2) modify the Services to make them non-infringing without materially reducing their functionality; or (c) replace the Services with a non-infringing, functionally equivalent alternative.
 - II. If Agency does not believe the remedies in Section 14d(I) are commercially reasonable, then Agency may Suspend or terminate Customer's use of the impacted Services.
- e. Sole Rights and Obligations. Without affecting either party's termination rights, this Section 14 states the parties' only rights and obligations under this Agreement for any third party's Intellectual Property Rights Allegations and Third-Party Legal Proceedings.

15. Agency Waivers.

Agency makes no claims that the Services are appropriate or may be downloaded outside of the United States of America. Access to the Services may not be legal by certain persons or in certain countries. If you access the Services from outside the United States, you do so at your own risk and are responsible for compliance with the laws of your jurisdiction.

a. MANDATORY AGREEMENT TO ARBITRATE ON AN INDIVIDUAL BASIS; CLASS ACTION WAIVER.

- I. Please read this Section 15 carefully. It is part of your Agreement with Agency and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER. Most customer concerns can be resolved quickly and to a customer's satisfaction by writing to our customer service department at support@help.getagency.com or Agency, Attn: Customer Service, 401 Park Avenue South, 10th Floor, New York NY 10016. In the unlikely event that our customer service department is unable to resolve a complaint you may have to your satisfaction, the terms of this Section 15 govern dispute resolution between us.
- II. Applicable to the United States: Any and all controversies, disputes, demands, counts, claims, or causes of action (including the interpretation and scope of this clause, and the arbitrability of the controversy, dispute, demand, counts, claim, or cause of action) between you and the Agency or the Agency's employees, agents, successors, or assigns, shall exclusively be settled through binding and confidential arbitration, except that you or the Agency may take claims to small claims court if the dispute qualifies for hearing by such a court. In addition, each party retains the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights.
- III. There is no judge or jury in arbitration and arbitration procedures are simpler and more limited than rules applicable in court. YOU ACKNOWLEDGE AND AGREE THAT, APART FROM THE NARROW EXCEPTIONS ABOVE, YOU AND AGENCY ARE EACH WAIVING YOUR RIGHTS TO SUE IN COURT, INCLUDING RIGHTS TO RECEIVE A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION LAWSUIT, CLASS-WIDE ARBITRATION, PRIVATE ATTORNEY-GENERAL ACTION, OR ANY OTHER REPRESENTATIVE PROCEEDING.
- IV. Arbitration shall be subject to the U.S. Federal Arbitration Act and federal arbitration law, and shall be conducted by Judicial Arbitration Mediation Services, Inc. ("JAMS") pursuant to the JAMS Streamlined Arbitration Rules & Procedures effective July 1, 2014 (the "JAMS Rules") and as modified by this agreement to arbitrate. The JAMS Rules, including instructions for bringing arbitration, are available on its website at <http://www.jamsadr.com/rules-streamlined-arbitration>. The Minimum Standards are available at <https://www.jamsadr.com/consumer-minimum-standards/>.
- V. You and the Agency must abide by these rules: (a) the arbitration shall be conducted on an individual basis and not in a class, consolidated or representative action and the arbitrator shall not award class-wide relief; (b) the Agency will pay its arbitration costs as required by JAMS rules, and in the event that you are able to demonstrate that the costs of arbitration will be prohibitive as compared to costs of litigation, the Agency will pay as much of your arbitration filing and hearing fees as the arbitrator deems is necessary to prevent the arbitration from being cost-prohibitive as compared to the cost of litigation; (c) the arbitrator may award any individual relief or individual remedies that are permitted by applicable law; and (d) each side pays his, her or its own attorneys' fees and costs unless the claim(s) at issue permit the prevailing party to be paid its fees and litigation costs, and in such instance, the fees and costs awarded shall be determined by the applicable law.
- VI. With the exception of subpart (a) in the paragraph above, if any part of this arbitration provision is deemed invalid, unenforceable or illegal, then the balance of this arbitration provision shall remain in effect and be construed in accordance with its terms as if the invalid, unenforceable, or illegal provision were not contained. If, however, subpart (a) in the paragraph above is found invalid, unenforceable or illegal, then the entirety of this arbitration provision shall be

null and void. If for any reason a claim proceeds in court rather than in arbitration, the dispute shall be exclusively brought in state or U.S. federal court in California.

VII. Pre-Arbitration Dispute Resolution and Notification. Prior to initiating an arbitration, you and Agency each agree to notify the other party of the dispute and attempt to negotiate an informal resolution to it first. The party who intends to seek arbitration must first send to the other party a Notice of Dispute, which must include: (a) your name; (b) your Account number; (c) the services (if any) to which the claim pertains; (d) a description of the nature and basis of the claim or dispute; (e) an explanation of the specific relief sought and the basis for the calculations; (f) the party's signature; and (g) if the party has retained an attorney, the party's signed statement authorizing the other party to disclose confidential Account records to its' attorney if necessary in resolving the claim. The other party shall have 60 days to resolve the matter before an arbitration is filed.

16. **Individual Use Regardless of Paying Party.**

By entering into this Agreement, You agree that you are using the services provided by Agency entirely at your own discretion, regardless of whether the Service was paid for by you or by a third-party (the "Paying Party"). The terms of this Agreement shall apply regardless of whether the Services were paid for by You or by a Paying Party. Additionally:

- a. You agree to hold Paying Party harmless for any matter arising out of your use of the Services, this Agreement, or your relationship with Agency, and under no circumstances shall Paying Party have any liability to you in connection with the Services, regardless of the nature of the associated matter or claims.
- b. You agree that Agency has no liability to you or to Paying Party in connection with Paying Party's payment of these services. You have elected to use the Services at your own discretion, and your relationship to the Services and to Agency is governed exclusively by this Agreement.
- c. Indemnification. You agree to indemnify both Paying Party, as well as Agency, against any damages that may arise out of a dispute or legal proceeding of any kind between you and Paying Party.
 - I. For the avoidance of doubt, any dispute between you and Paying Party shall not be considered a Third-Party Legal Proceeding.

17. **Miscellaneous.**

- a. Notices. All notices must be in writing and addressed to the other party's legal department and primary point of contact. The address for notices being sent to Agency's Legal Department is 401 Park Avenue South, 10th Floor, New York NY 10016.
- b. Assignment. Customer may not assign any part of this Agreement without the written consent of Agency, except to an individual where: (i) the individual has agreed in writing to be bound by the terms of this Agreement; (ii) the Customer remains liable for obligations under the Agreement if the individual defaults on them; and (iii) the Customer has notified Agency of the assignment
- c. Force Majeure. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.
- d. No Agency. This Agreement does not create any agency, partnership or joint venture between the parties.
- e. No Waiver. Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this Agreement.
- f. Severability. If any term (or part of a term) of this Agreement is invalid, illegal, or unenforceable, the rest of the Agreement will remain in effect
- g. No Third-Party Beneficiaries. This Agreement does not confer any benefits on any third party unless it expressly states that it does
- h. Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.
- i. U.S. Governing Law. ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES WILL BE GOVERNED BY CALIFORNIA LAW, EXCLUDING THAT STATE'S CONFLICT OF LAWS RULES, AND WILL BE LITIGATED EXCLUSIVELY IN THE FEDERAL OR STATE COURTS OF LOS ANGELES COUNTY, CALIFORNIA, USA; THE PARTIES CONSENT TO PERSONAL JURISDICTION IN THOSE COURTS.
- j. Survival. The following Sections will survive expiration or termination of this Agreement: 5 and 7-16.
- k. Entire Agreement. This Agreement sets out all terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into this Agreement, neither party has relied on, and neither party will have any right or remedy based on, any statement, representation or warranty (whether made negligently or innocently), except those expressly set out in this Agreement. The terms located at a URL referenced in this Agreement and

the Documentation are incorporated by reference into the Agreement. After the Effective Date, Agency may provide an updated URL in place of any URL in this Agreement.

l. Conflicting Terms. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Agreement, and the terms at any URL. If Agency provides this Agreement in more than one language for the country of your billing address, and there is a discrepancy between the English text and the translated text, the English text will govern.

m. Definitions

- I. "Admin Console" means the online console(s) and/or tool(s) provided by Agency to Customer for administering the Services.
- II. "Additional Security Controls" means security resources, features, functionality and/or controls that Customer may use at its option and/or as it determines, including the Admin Console, encryption, logging and monitoring, identity and access management, security scanning, and firewalls.
- III. "Affiliate" means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a party.
- IV. "Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.
- V. "Confidential Information" means information that one party (or an Affiliate) discloses to the other party under this Agreement, and which is marked as confidential or would normally under the circumstances be considered confidential information. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations or becomes public through no fault of the recipient. Subject to the preceding sentence, Customer Data is considered Customer's Confidential Information.
- VI. "Customer Data" has the meaning given in the Agreement or, if no such meaning is given, means data provided by or on behalf of Customer or Customer End Users via the Services under the Account.
- VII. "Customer End Users" has the meaning given in the Agreement or, if not such meaning is given, has the meaning given to "End Users" in the Agreement.
- VIII. Customer Personal Data means the personal data contained within the Customer Data.
- IX. "Device" means Customer's electronic device that is signed up to the Agency Service.
- X. "Documentation" means the Agency documentation (as may be updated from time to time) in the form generally made available by Agency to its customers for use with the Services.
- XI. "Feedback" means feedback or suggestions about the Services provided to Agency by Customer.
- XII. "Fees" means the applicable fees for each Service and any applicable Taxes. The Fees for each Service are set forth here: [GetAgency.com](https://getagency.com)
- XIII. "High Risk Activities" means activities where the use or failure of the Services could lead to death, personal injury, or environmental damage (such as operation of nuclear facilities, air traffic control, life support systems, or weaponry).
- XIV. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 as it may be amended from time to time, and any regulations issued under it.
- XV. "Indemnified Liabilities" means any (i) settlement amounts approved by the indemnifying party; and (ii) damages and costs finally awarded against the indemnified party and its Affiliates by a court of competent jurisdiction.
- XVI. "Intellectual Property Rights" means current and future worldwide rights under patent, copyright, trade secret, trademark, and moral rights laws, and other similar rights
- XVII. "Legal Process" means a data disclosure request made under law, governmental regulation, court order, subpoena, warrant, governmental regulatory or agency request, or other valid legal authority, legal procedure, or similar process.
- XVIII. "Notification Email Address" means the email address(es) designated by Customer in the Admin Console, or in the Order Form or Ordering Document (as applicable), to receive certain notifications from Agency. Customer is responsible for using the Admin Console to ensure that its Notification Email Address remains current and valid.
- XIX. "Package Purchase" has the meaning set forth in the Service Specific Terms.
- XX. "Project" means a grouping of computing, storage, and API resources for Customer, and via which Customer may use the Services. Projects are more fully described in the Documentation
- XXI. "Reserved Capacity Units" have the meaning set forth in the Service Specific Terms
- XXII. "Reserved Unit Term" has the meaning set forth in the Service Specific Terms.
- XXIII. "Reserved Units" have the meaning set forth in the Service Specific Terms.
- XXIV. "Services" means the services as set forth here: [GetAgency.com](https://getagency.com).
- XXV. "Security Controls" has the meaning given in Section 8 (Agency's Security Controls).

- XXVI. "Software" means any downloadable tools, software development kits or other such proprietary computer software provided by Agency in connection with the Services, which may be downloaded by Customer, and any updates Agency may make to such Software from time to time.
- XXVII. "Subprocessor" means a third party authorized as another processor under these Terms to have logical access to and process Customer Data in order to provide parts of the Services and technical support.
- XXVIII. "Suspend" or "Suspension" means disabling or limiting access to or use of the Services or components of the Services.
- XXIX. "Taxes" means any duties, customs fees, or taxes (other than Agency's income tax) associated with the purchase of the Services, including any related penalties or interest.
- XXX. "Term" has the meaning set forth in Section 9 of this Agreement.
- XXXI. "Terms URL" means these terms and the URL associated with these terms
- XXXII. "Third-Party Legal Proceeding" means any formal legal proceeding filed by an unaffiliated third party before a court or government tribunal (including any appellate proceeding).
- XXXIII. "Token" means an alphanumeric key that is uniquely associated with Customer's Account.



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