

Terms of Service

INFO

ACCEPTANCE OF THIS AGREEMENT IS REQUIRED AS A CONDITION TO PROCEEDING WITH ACCESS TO AND USE OF THE EARTHMOVER PLATFORM AND SOFTWARE. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE EARTHMOVER PLATFORM AND SOFTWARE.

1 - RIGHT TO USE EARTHMOVER PLATFORM

1.1 - Earthmover Service Platform

Earthmover will make its Software-as-a-Service platform (the "Earthmover Platform") available to you pursuant to this Agreement ("Agreement"). Subject to the terms and conditions of this Agreement, Earthmover hereby grants you the limited, nonexclusive, non-transferable (except as expressly set forth herein), non-sublicensable right to access and use the Earthmover Platform during the term of this Agreement. The foregoing license includes the right to access and use the application programming interface ("API") made available as part of the Earthmover Platform within your products and services that use Earthmover functionality or data ("Your Products").

1.2 - Earthmover Software

Certain downloadable software components will be provided by Earthmover for your use (the "Earthmover Software"). Subject to the terms and conditions of this Agreement, Earthmover hereby grants you the limited, nonexclusive, non-transferable (except as expressly set forth herein), non-sublicensable right and license to install, copy and use the Earthmover Software for the purpose of your use of the Earthmover Platform. With respect to any Earthmover Software identified as a software development kit or redistributable software, Earthmover further hereby grants you the limited, nonexclusive, non-transferable (except as expressly set forth herein), non-sublicensable right and license to distribute and incorporate such Earthmover Software as part of Your Products.

1.3 - Limitations

The following limitations and restrictions will apply to the Earthmover Platform and Earthmover Software, where stated: a. You will not provide or transfer your access to the Earthmover Platform to any other person. For clarity, the foregoing restriction does not limit your ability to make available Your Products that access the Earthmover Platform through the API in compliance with this Agreement. b. Except as expressly permitted hereunder you will not and will not permit or authorize any third party to:

- (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Earthmover Platform or

Earthmover Software;

- (ii) modify, translate or create derivative works based on the Earthmover Platform or Earthmover Software;
- (iii) copy, rent, lease, distribute, pledge, assign or otherwise transfer or allow any lien, security interest or other encumbrance on the Earthmover Platform or Earthmover Software; (iv) use the Earthmover Platform or Earthmover Software for time sharing or service bureau purposes or otherwise for the benefit of a third party;
- (v) hack, manipulate, interfere with or disrupt the integrity or performance of or otherwise attempt to gain unauthorized access to the Earthmover Platform or Earthmover Software or related systems, hardware or networks or any content or technology incorporated in any of the foregoing;
- (vi) remove or obscure any proprietary notices or labels of Earthmover or its suppliers on the Earthmover Platform or Earthmover Software;
- (vii) access or use the Earthmover Platform or Earthmover Software to develop or provide a competitive product or service; or
- (viii) use the Earthmover Platform or Earthmover Software to collect, store, process or transmit any personally identifiable information or personal health information.

2 - OWNERSHIP; RESERVATION OF RIGHTS

2.1 - Your Data

a. You own the data that you provide or make available for processing by the Earthmover Platform and Earthmover Software ("Your Data"). b. You hereby grant to Earthmover a non-exclusive, worldwide, royalty-free, fully paid up, sublicenseable, right and license, during the term of this Agreement, to copy, distribute, display and create derivative works of and use Your Data to perform Earthmover's obligations under this Agreement. c. You also hereby grant to Earthmover a non-exclusive, world-wide, royalty-free, fully paid up right and license, during the term of this Agreement, to derive analytical and statistical data (e.g., types and amounts of data) from Your Data ("Statistical Data"). Further, you acknowledges that Earthmover may collect data relating to your use of and interaction with the Earthmover Platform and Earthmover Software ("Usage Data"). Statistical Data and Usage Data are not Your Data and will not incorporate the contents of any Your Data. Statistical Data and Usage Data will be owned by Earthmover. d. You reserve any and all right, title and interest in and to Your Data other than the licenses expressly granted to Earthmover under this Agreement.

2.2 - Earthmover Platform and Software Ownership; Reservation of Rights

You acknowledge and agree that, as between the parties, Earthmover retains all rights, title and interest in and to the Earthmover Platform and Earthmover Software, all copies or parts thereof (by whomever produced) and all intellectual property rights therein. Earthmover grants no, and reserves any and all, rights other than the rights expressly granted to you under this Agreement with respect to the Earthmover Platform and Earthmover Software.

2.3 - Feedback

You may from time to time provide suggestions, comments for enhancements or functionality or other feedback ("Feedback") to Earthmover with respect to the Earthmover Platform or Earthmover Software. You hereby grants Earthmover a royalty-free, fully paid-up, worldwide, transferable, sublicensable, irrevocable, perpetual license to (a) copy, distribute, transmit, display, perform, and create derivative works of the Feedback in whole or in part; and (b) use the Feedback in whole or in part, including without limitation, the right to develop, manufacture, have manufactured, market, promote, sell, have sold, offer for sale, have offered for sale, import, have imported, rent, provide and/or lease products or services which practice or embody, or are configured for use in practicing, the Feedback in whole or in part. For clarity, Your Data is not Feedback.

2.4 - Your Responsibilities

You will (a) use commercially reasonable efforts to prevent unauthorized access to or use of the Earthmover Platform and Earthmover Software and notify Earthmover promptly of any such unauthorized access or use, and (b) use the Earthmover Platform and Earthmover Software only in accordance with its documentation and applicable laws and regulations.

2.5 - Earthmover Responsibilities

Earthmover will implement and maintain reasonable administrative, physical and technical safeguards which attempt to prevent any collection, use or disclosure of, or access to Your Data that this Agreement does not expressly authorize.

3 - TERM, TERMINATION

3.1 - Term

The term of this Agreement will commence on the date of your signature and continue for one (1) year, unless earlier terminated as set forth herein.

3.2 - Termination

Either party may terminate this Agreement for any reason upon written notice by email to the other party. You acknowledge that Earthmover may discontinue the service, or your access to it, at any time.

3.3 - Effect of Termination

Upon any termination or expiration of this Agreement for any reason, Earthmover will delete any of Your Data stored or otherwise archived on the Earthmover Platform or on Earthmover's network (for clarity, subject to Earthmover's rights to retain and use Statistical Data and Usage Data under Section 2.1(c)), unless you enter into a new agreement with Earthmover to use the Earthmover

Platform. Except as expressly stated herein, upon any expiration or termination of the Agreement, all rights granted hereunder and all obligations of Earthmover to provide the Earthmover Platform and Earthmover Software will immediately terminate and you will (i) cease use of the Earthmover Platform and Earthmover Software; and (ii) return or destroy all other copies or other embodiments of Earthmover's Confidential Information.

3.4 - Survival

Upon expiration or termination of this Agreement, all obligations in this Agreement will terminate, provided that Sections 2.2 (Earthmover Platform and Software Ownership; Reservation of Rights), 2.3 (Feedback), 3.3 (Effect of Termination), 4 (Confidentiality), 5 (Disclaimer), 6 (Limitations of Liability; Indemnification), and 7 (General) will survive.

4 - CONFIDENTIALITY

As used herein, "Confidential Information" means, subject to the exceptions set forth in the following sentence, any information or data, regardless of whether it is in tangible form, disclosed by either party (the "Disclosing Party") that the Disclosing Party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the other party (the "Receiving Party"); provided, however, that a Disclosing Party's business plans, strategies, technology, research and development, current and prospective customers, billing records, and products or services will be deemed Confidential Information of the Disclosing Party even if not so marked or identified. Earthmover's Confidential Information includes, without limitation, the Earthmover Platform, Earthmover Software and the terms of this Agreement. Your Confidential Information includes, without limitation, Your Data (subject to the rights expressly granted to Earthmover herein). Information will not be deemed "Confidential Information" if such information: (a) is known to the Receiving Party prior to receipt from the Disclosing Party and without an obligation of confidentiality to the Disclosing Party; (b) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; or (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party. Each party acknowledges that the Confidential Information constitutes valuable trade secrets and proprietary information of a party, and each party agrees that it will use the Confidential Information of the other party solely in accordance with the provisions of this Agreement and it will not disclose, or permit to be disclosed, the same directly or indirectly, to any third party without the other party's prior written consent, except as otherwise permitted hereunder. Each party will use reasonable measures to protect the confidentiality and value of the other party's Confidential Information. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement. Upon the termination of this Agreement, each Receiving Party agrees to promptly return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party that is in the possession of the Receiving Party and to certify the return or destruction of all such Confidential Information and embodiments thereof.

5 - DISCLAIMER

YOU ACKNOWLEDGE AND AGREE THAT THE EARTHMOVER PLATFORM AND EARTHMOVER SOFTWARE ARE IN BETA AND ARE PROVIDED ON AN "AS-IS" BASIS AND EARTHMOVER DISCLAIMS ANY AND ALL WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. ALL OTHER EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. NEITHER PARTY WARRANTS AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE PRODUCTS OR SERVICES PROVIDED BY SUCH PARTY OR AGAINST INFRINGEMENT. NEITHER PARTY WARRANTS THAT THE PRODUCTS OR SERVICES PROVIDED BY SUCH PARTY ARE ERROR-FREE OR THAT OPERATION OF SUCH PARTY'S PRODUCTS OR SERVICES WILL BE SECURE OR UNINTERRUPTED. NEITHER PARTY WILL HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF THE OTHER PARTY TO ANY THIRD PARTY.

6 - LIMITATIONS OF LIABILITY; INDEMNIFICATION

6.1 - Disclaimer of Consequential Damages

NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IN NO EVENT WILL EARTHMOVER BE LIABLE TO YOU OR ANY THIRD PARTY FOR DAMAGES OF ANY KIND HEREUNDER, INCLUDING ANY DIRECT, SPECIAL, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, LOST OR DAMAGED DATA, LOST PROFITS OR LOST REVENUE, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF EARTHMOVER HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF. TO THE EXTENT THE FOREGOING IS INEFFECTIVE UNDER APPLICABLE LAW, EARTHMOVER'S MAXIMUM AGGREGATE LIABILITY HEREUNDER WILL BE ONE HUNDRED DOLLARS (\$100). EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THEY HAVE FAILED OF THEIR ESSENTIAL PURPOSE. YOU ACKNOWLEDGE THAT EARTHMOVER WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT SUCH PROVISIONS.

6.2 - Indemnification

You will indemnify, defend and hold Earthmover and the officers, directors, agents, and employees of Earthmover ("Earthmover Parties") harmless from Liabilities that are payable to any third party or incurred by the Earthmover Parties (including reasonable attorneys' fees) arising from, directly or indirectly, any claim, demand or allegation by a third party arising from or related to (a) any use or disclosure by you of the Earthmover Platform or Earthmover Software in violation of this Agreement or (b) any claim that Earthmover does not have the right to use Your Data as permitted by this Agreement.

7 - GENERAL

You may not provide access to the Earthmover Platform or Earthmover Software to any person or entity that is (a) identified on the Specially Designated Nationals List or Foreign Sanctions Evaders List of the Office of Foreign Assets Control, U.S. Department of the Treasury, as amended from time to time; (b) located in Cuba, Iran, North Korea, Sudan, Syria, or any other country that is subject to U.S. economic sanctions prohibiting such access; or (c) otherwise unauthorized to have such access under any law or regulation of the United States or any non-U.S. authority of competent jurisdiction. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. You may not assign this Agreement without Earthmover's prior written consent. Any assignment or attempted assignment by either party otherwise than in accordance with this Section 7 will be null and void. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and a party does not have any authority of any kind to bind the other party in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. You acknowledge that any unauthorized use of the Earthmover Platform or Earthmover Software will cause irreparable harm and injury to Earthmover for which there is no adequate remedy at law. In addition to all other remedies available under this Agreement, at law or in equity, you further agree that Earthmover will be entitled to injunctive relief in the event you use the Earthmover Platform or Earthmover Software in violation of the limited license granted herein or use the Earthmover Platform or Earthmover Software in any way not expressly permitted by this Agreement. Each party agrees that it will not, without prior written consent of the other, issue a press release regarding their business relationship. Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service, in whole or in part, as a result of a cause beyond its reasonable control, including, but not limited to, acts of God, acts of war, epidemics, fire, communication line failures, power failures, earthquakes, floods, blizzard, or other natural disasters. This Agreement will be governed by the laws of Delaware without regard to its conflict of laws provisions. For all disputes relating to this Agreement, each party submits to the exclusive jurisdiction of the state and federal courts located in Delaware and waives any jurisdictional, venue, or inconvenient forum objections to such courts.