

Terms of Service

Updated July 17, 2019

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY USING THE BONSAI.IO WEBSITE AND/OR ANY SERVICES PROVIDED BY ONE MORE CLOUD, INC., YOU ARE HEREBY AGREEING TO THESE TERMS AND CONDITIONS.

These Terms of Service constitute an agreement (this "Agreement") by and between One More Cloud, Inc., a Delaware corporation ("Company," "we," "our" or "us") and you ("you," "your" or "Customer") and govern your use and access to our website (the "Website") and our products and services (collectively with the Website, the "Services"). By using the Services, you are agreeing to be bound by this Agreement and our [Privacy Policy](#). Your use of and our provision of the Services are governed by this Agreement.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY THESE TERMS, AND THAT YOU ARE AUTHORIZED TO DO SO. IF YOU ARE ACCEPTING THIS AGREEMENT AND USING THE SERVICES ON BEHALF OF A COMPANY, ORGANIZATION, GOVERNMENT, OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT TO THE COMPANY THAT YOU HAVE FULL POWER AND AUTHORITY TO DO SO.

1 Definitions

The following capitalized terms shall have the following meanings whenever used in this Agreement.

- 1.1 **"Customer Data"** means data in electronic form input or collected through the Services by or from Customer, including without limitation by Customer's Users.

- 1.2 **"Customer Marks"** means any of Customer's trademarks, trade names, service marks, and any visual representations thereof, including logos, designs, symbols, word marks, images, colors and color combinations.
- 1.3 **"Documentation"** means the documents provided by the Company related to use of the Services, including those found at <https://docs.bonsai.io/>.
- 1.4 **"Plan"** means your current plan for access to the Services, including any free trials or paid license plans to the Service.
- 1.5 **"Privacy Policy"** means Company's privacy policy, currently posted at <https://bonsai.io/privacy>.
- 1.6 **"User"** means you and any individual who uses the Services, on your behalf or through your account or passwords, whether authorized or not.

2 The Services

2.1 Use of the Services

Customer may access and use the Services pursuant to: (a) the terms of any outstanding Plan, including such features and functions as the Plan requires; and (b) Company's policies posted on its Website including the Company's [Privacy Policy](#) and the [Terms of Service](#), as such policies may be updated from time to time without notice.

2.2 Documentation

Customer may reproduce and use the Documentation solely as necessary to support Users' use of the Services.

2.3 Service Revisions

Company may revise Service features and functions at any time, including without limitation by removing, modifying, such features and functions, temporarily or permanently.

3 Account Terms

- 3.1 You must be 13 years or older to use this Service.
- 3.2 You must be a human. Accounts registered by "bots" or other automated methods are not permitted.
- 3.3 You must provide a valid email address and any other information requested in order to complete the signup process.

- 3.4 Your login may only be used by a single organization, person or entity – a single login shared by multiple entities and not under a singular use is not permitted.
- 3.5 You are responsible for maintaining the security of your account, API key, and password. We cannot and will not be liable for any loss or damage from your failure to comply with this security obligation.
- 3.6 You are responsible for all content posted and activity that occurs under your account.
- 3.7 You may not use the Service for any illegal or unauthorized purpose. You must not, in the use of the Service, violate any laws in your jurisdiction (including but not limited to copyright laws).

4 Service Fees and Payment

- 4.1 Customer shall pay Company the fee set forth in the Customer's subscribed Plan (the "*Subscription Fee*") for the term of such Plan. Company will not be required to refund the Subscription Fee under any circumstances. Prices of all Services, including but not limited to license plan fees to the Service, are subject to change. Notice of any such changes may be provided at any time by posting the changes to the Website or the Services itself. Additional payment and account terms are as follows:
- 4.2 You must designate and provide information about your preferred payment method (e.g., credit card, online payment service or any other payment method made available by us).
- 4.3 Upon signing up, or the conclusion of your free trial, if applicable, you will be billed for the upcoming month of service at the displayed rate.
- 4.4 You may upgrade or downgrade, or cancel your account at any time, and you will be automatically billed the new rate on a pro-rated basis.
- 4.5 In the event that Internet service providers or 3rd party applications experience downtime or otherwise create interruptions, no refunds or partial credits will be issued.
- 4.6 All fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes.
- 4.7 Canceling your Service or delinquency in payment may cause the loss of content, features, or capacity of your account. We do not accept any liability for such loss.

5 Customer Data & Privacy

- 5.1 *Use of Customer Data.* Unless we receive your prior written consent, we: (a) shall not access, process, or otherwise use Customer Data other than as necessary to facilitate the Services; and (b) shall not intentionally grant any third party access to Customer Data, including without limitation Company's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, we may disclose Customer Data as required by applicable law or by proper legal or governmental authority.
- 5.2 *Privacy Policy.* The Privacy Policy applies only to the Services including the Website and to the products and services provided by us. It does not apply to any third party site or service linked to our Website or recommended or referred by our Website, through our products or services, or by our staff or to products and services offered by other companies or individuals who may use or resell our services.
- 5.3 *Risk of Exposure.* You recognize and agree that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the Services, you assume such risks. Company offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties.
- 5.4 *Data Accuracy.* Company shall have no responsibility or liability for the accuracy of data uploaded to the Services by Customer, including without limitation Customer Data and any other data uploaded by Users.
- 5.5 *Data Deletion.* Company may permanently erase Customer Data if Customer's account is delinquent, suspended, or terminated for 30 days or more.
- 5.6 *Aggregate & Anonymized Data.* Notwithstanding the provisions above of this Article 5, Company may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data in any way, in its sole discretion. ("Aggregate Data" refers to Customer Data with the following removed: personally identifiable information and the names and addresses of Customer and any of its Users or customers.)
- 5.7 *Publicity.* Customer owns all right, title and interest, including all intellectual property rights, in and to the Customer Marks; however, notwithstanding anything to the contrary herein or as explicitly provided in any written agreement between you and the Company, the Company may disclose the fact that you are a customer of the Company in written, oral and electronic materials, including on our Website. Client hereby grants the Company a non-exclusive, revocable, non-transferable, royalty-free license to use, copy and

distribute Customer Marks solely for the purposes of this Section 5.7 for the term of your Plan.

- 5.8 *Accounts and Passwords.* You are entirely responsible for maintaining the confidentiality of your account information, including your password, and for any and all activity that occurs under your account. You agree to notify the Company immediately of any unauthorized use of your account or password, or any other breach of security. However, you may be held liable for losses incurred by the Company or any other user of or visitor to the Website due to someone else using your ID, password or account. You may not use anyone else's ID, password or account at any time without the express permission and consent of the holder of that ID, password or account. The Company will not be liable for any loss or damage arising from your failure to comply with these obligations.

6 Customer's Responsibilities & Restrictions

- 6.1 *Acceptable Use.* Customer agrees not to:

- (a) use the Services in any way which would allow third parties to exploit the Services;
- (b) provide Services passwords or other log-in information to any third party;
- (c) share non-public Services features or content with any third party;
- (d) access the Services in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the Services, or to copy any ideas, features, functions or graphics of the Services;
- (e) harass, threaten, or defame any person or entity, contact any person who has requested no further contact, or use ethnic or religious slurs against any person or group;
- (f) violate the privacy rights of any person, collect or disclose any personal address, social security number, or other personally identifiable information without each holder's written permission, or cooperate in or facilitate identity theft;
- (g) infringe upon the copyrights, trademarks, trade secrets, or other intellectual property rights of any person or entity, or reproduce, publish, or disseminate software, audio recordings, video recordings, photographs, articles, or other works of authorship without the written permission of the copyright holder;

- (h) access any computer or communications system without authorization, including the computers used to provide the Service, attempt to penetrate or disable any security system, intentionally distribute a computer virus, launch a denial of service attack, or in any other way attempt to interfere with the functioning of any computer, communications system, or website, or attempt to access or otherwise interfere with the accounts of other users of the Service;
- (i) send bulk unsolicited e-mails (“Spam”) or sell or market any product or service advertised by or connected with Spam, facilitate or cooperate in the dissemination of Spam in any way, or violate the CAN-Spam Act of 2003;
- (j) issue fraudulent offers to sell or buy products, services, or investments;
- (k) mislead anyone about the details or nature of a commercial transaction;
- (l) use the Services in connection with or to promote any obscene, pornographic, abusive or otherwise offensive content, prostitution, or escort services; or
- (m) commit fraud or violate any law.

This list of prohibitions provides examples and is not complete or exclusive. This Agreement does not require the Company to take any action against Customer or any User or other third party for violating this Section 6.1, or this Agreement, but Company is free to take any such action it sees fit. The Company may suspend or terminate Customer’s access to the Services or Customer’s account without advanced notice and for any reason, in addition to such other remedies as Company may have.

- 6.1 *Compliance with Laws.* In its use of the Services, Customer shall comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information and other laws applicable to the protection of Customer Data.
- 6.2 *Users & Services Access.* Customer is responsible and liable for: (a) Customer and Customer’s Users’ use of the Services, including without limitation unauthorized User conduct and any User conduct that would violate the requirements of this Agreement as applicable to Customer; and (b) any use of the Services through Customer’s account, whether authorized or unauthorized.

7 IP & Feedback

- 7.1 *IP Rights to the Services.* Company retains all right, title, and interest in and to the Services, including without limitation all software used to provide the Services and all graphics, user interfaces, logos, and trademarks reproduced

through the Services. Other than a limited, revocable, non-transferable, non-exclusive right to use the Services pursuant to this Agreement and your selected Plan, this Agreement does not grant Customer any intellectual property license or rights in or to the Services or any of its components. Customer recognizes that the Services and its components are protected by copyright and other laws.

- 7.2 *Feedback.* Notwithstanding anything contrary in this Agreement, Company has not agreed to and does not agree to treat as confidential any Feedback (as defined below) Customer or Users provide to Company, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Company's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer or the User in question. ("Feedback" refers to any suggestion or idea for improving or otherwise modifying any of Company's products or services.)

8 Confidential Information

8.1 Non-disclosure

You acknowledge that Confidential Information (as hereinafter defined) is a valuable, special and unique asset of Company and agree that you will not disclose, transfer, use (or seek to induce others to disclose, transfer or use) any Confidential Information for any purpose other than disclosure to your authorized employees and agents who are bound to maintain the confidentiality of Confidential Information. You shall promptly notify Company in writing of any circumstances which may constitute unauthorized disclosure, transfer, or use of Confidential Information. You shall use best efforts to protect Confidential Information from unauthorized disclosure, transfer or use. You shall return all originals and any copies of any and all materials containing Confidential Information to Company upon termination of this Agreement for any reason whatsoever.

The term "*Confidential Information*" shall mean any and all of Company's trade secrets, confidential and proprietary information and all other information and data of Company that is not generally known to the public or other third parties who could derive value, economic or otherwise, from its use or disclosure. Confidential Information shall be deemed to include technical, financial, strategic and other proprietary and confidential information relating to Company's business, operations and properties, including information about

Company's Users or partners, or other business information disclosed directly or indirectly in writing, orally or by drawings or observation.

8.2 Injunction

Customer agrees that breach of this Article 8 would cause Company irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Company will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

8.3 Termination & Return

With respect to each item of Confidential Information, the obligations of Section 8.1 above (Nondisclosure) will terminate 3 years after the date of disclosure; provided that such obligations related to Confidential Information constituting Company's trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, Customer shall return all copies of Confidential Information to Company or certify, in writing, the destruction thereof.

8.4 Retention of Rights

This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Company will retain all right, title, and interest in and to all Confidential Information.

8.5 Exception & Immunity

Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Recipient is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:

(a) *Immunity.* An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(b) *Use of Trade Secret Information in Anti-Retaliation Lawsuit.* An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual

and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

9 Representation & Warranties

9.1 *From Customer.* Customer represents and warrants that:

(a) it has the full right and authority to enter into and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement;

(b) it has accurately identified itself and it has not provided any inaccurate information about itself to or through the Services.

9.2 **Warranty Disclaimers**

CUSTOMER ACCEPTS THE SERVICES "AS IS" AND AS AVAILABLE, WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

(a) COMPANY HAS NO OBLIGATION TO INDEMNIFY OR DEFEND CUSTOMER OR USERS AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY;

(b) COMPANY DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND

(c) COMPANY DOES NOT REPRESENT OR WARRANT THAT THE SERVICES IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

10 Indemnification

Customer shall defend, indemnify, and hold harmless Company and the Company Associates (as defined below) against any "*Indemnified Claim*," meaning any third party claim, suit, or proceeding arising out of or related to Customer's alleged or actual use of, misuse of, or failure to use the Services,

including without limitation: (a) claims by Users or by Customer's employees, as well as by Customer's own customers; (b) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including Customer Data; (c) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the Services through Customer's account or Company's use of Customer Marks in accordance with this Agreement; and (d) claims that use of the Services through Customer's account harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising. Indemnified Claims include, without limitation, claims arising out of or related to Company's negligence. Customer's obligations set forth in this Article 10 include retention and payment of attorneys and payment of court costs, as well as settlement at Customer's expense and payment of judgments. Company will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. (The "*Company Associates*" are Company's officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.)

11 Limitation of Liability

- 11.1 *Liability.* Use of Our Services is at your own risk. We will not be liable for any damages whatsoever arising out of or in connection with the use or performance of the Services, or otherwise in connection with, the Website.
- 11.2 *Exclusion of Consequential Damages.* IN NO EVENT WILL COMPANY BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 11.3 *Clarifications & Disclaimers.* THE LIABILITIES LIMITED BY THIS ARTICLE 11 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF COMPANY IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 11, Company's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Company's liability limits and other rights set forth in this Article 11 apply likewise to Company's affiliates,

licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

12 Digital Millenium Copyright Act Notice

If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible through the Services, please notify us, as set forth in the Digital Millennium Copyright Act of 1998 (DMCA). For your complaint to be valid under the DMCA, you must provide the following information in writing:

- An electronic or physical signature of a person authorized to act on behalf of the copyright owner;
- Identification of the copyrighted work that you claim is being infringed;
- Identification of the material that is claimed to be infringing and where it is located on the Services;
- Information reasonably sufficient to us to contact you, such as your address, telephone number, and e-mail address;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or law; and
- A statement, made under penalty of perjury, that the above information is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner.

Notifications of claimed infringement can be provided to the following:

One More Cloud, Inc.
600 Congress Ave, 14th Floor
Austin, TX 78704
support@bonsai.io

Promptly after receipt of a valid removal notification, we will remove or disable access to the allegedly infringing content. We will also notify the party that posted it of your claim that the material is infringing and will give that party an opportunity to send us a written counter-notification, which may result in us re-posting the content if we believe that it is not infringing.

13 Miscellaneous

13.1 Termination

We may terminate your account, and/or your access to the Services for any or no cause, at any time. After termination, you agree that you shall no longer access or utilize the Services. The provisions of this Agreement which by their intent or meaning are intended to survive such termination, including without limitation the provisions relating to non-disclosure, disclaimer of warranties, limitations of liability, indemnification and dispute resolution shall survive any termination of this Agreement and any termination of your use of or subscription to the Services and shall continue to apply indefinitely.

13.2 Independent Contractors

The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no Company employee or contractor will be an employee of Customer.

13.3 Notices

Company may send notices pursuant to this Agreement to Customer's email contact points provided by Customer, and such notices will be deemed received 24 hours after they are sent. Customer may send notices pursuant to this Agreement to support@bonsai.io, and such notices will be deemed received 72 hours after they are sent.

13.4 Force Majeure

No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.

13.5 Assignment & Successors

Customer may not assign this Agreement or any of its rights or obligations hereunder without Company's express written consent. Except to the extent forbidden in this Section 13.5, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.

13.6 Severability

To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or

otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

13.7 No Waiver

Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

13.8 Choice of Law & Jurisdiction

This Agreement will be governed solely by the internal laws of the State of California, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of the Northern District of California. This Section 13.8 governs all claims arising out of or related to this Agreement, including without limitation tort claims.

13.9 Conflicts

In the event of any conflict between this Agreement and any Company policy posted online, including without limitation the [Privacy Policy](#), the terms of this Agreement will govern.

13.10 Technology Export

Customer shall not: (a) permit any third party to access or use the Services in violation of any U.S. law or regulation; or (b) export any software provided by Company or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Services in, or export such software to, a country subject to a United States embargo (including Cuba, Iran, North Korea, Sudan, and Syria).

13.11 Entire Agreement

This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter.

13.12 Amendment

Company may revise this Agreement and Privacy Policy any time by posting a new version of either at the Website, and such new version will become effective on the date it is posted. Your continued use of the Services after any change in this Agreement will constitute your acceptance of such change.