



Terms of use

The lawyers said we had to.

General

Alation Edition

Last Updated: April 6, 2023

These terms of use (the “**Terms of Use**”) are a legal agreement between you and Toro Data Labs, Inc. dba Bigeye Inc. (“**Bigeye**,” “**we**,” “**us**,” or “**our**”). These Terms of Use specify the terms under which you may access and use the website located at <https://bigeye.com/> (the “**Website**”), our On Prem Product and SaaS Product (each defined below, collectively the “**Products**” and together with the Website, the “**Services**”). By clicking “I Agree,” accessing or using our Services, or otherwise manifesting your assent to these Terms of Use, you acknowledge that you have read, understood, and agree to be legally bound by these Terms of Use and our Privacy Policy, which is hereby incorporated by reference (collectively, this “**Agreement**”). If you do not agree to any of these terms, then please do not use the Services.

THE SECTIONS BELOW TITLED “**BINDING ARBITRATION**” AND “**CLASS ACTION WAIVER**” CONTAIN A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER. THEY AFFECT YOUR LEGAL RIGHTS. PLEASE READ THEM.

If you accept or agree to this Agreement on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to the Agreement and, in such event, “you” and “your” will refer and apply to that company or other legal entity, and any employees, contractors, or agents authorized by you to access and use the Products pursuant to the terms of this Agreement (“Authorized Users”).

Capitalized terms not defined in these Terms of Use shall have the meaning set forth in our Privacy Policy.

1. RESTRICTIONS

The Services are available only to individuals aged 13 years or older. If you are 13 or older, but under the age of majority in your jurisdiction, you should review this Agreement with your parent or guardian to make sure that you and your parent or guardian understand it. If you are under the age of 13, you may use the Services only with the consent of your parent or guardian.

We reserve the right, in our sole and absolute discretion, to deny you access to the Services, or any portion of the Services, without notice and without reason.

2. DESCRIPTION OF THE PRODUCTS; ACCOUNTS

Our proprietary software can either be deployed on your premises (the “On Prem Product”) or you can access the Product as a service through our Website (“SaaS Product”).

If you have purchased (or arranged for use on a Free Trial basis) the On Prem Product, you will need to provide Bigeye your Amazon account ID so that you can access a copy of the On Prem Product. Bigeye will then assist you with deploying the On Prem Product in your environment. The On Prem Product will function entirely in your environment and Bigeye will not have access to any data run through the On Prem Product.

To access either Product, your account administrator must create an account (“Account Administrator”). Once the Account Administrator creates an account, the Account Administrator may grant permission to you and/or other Authorized Users to create an account. To create an account you will be asked to provide an email address (“Sign-In Name”), a password (“Password”), and perhaps certain additional information that will assist us in authenticating your identity when you log in in the future (“Unique Identifiers”). The account you create to access the On Prem Product will be within your internal systems and Bigeye will not have any access to such account information, including any Sign-In Name, Password, or Unique Identifiers. The account you create to access the SaaS Product will be through Bigeye’s Website, which Bigeye will have access to. Each account can be used by only one user. You are solely responsible for the confidentiality and use of your Sign-In Name, Password, and Unique Identifiers, and for any use, misuse, or communications entered through the Products using one or more of them. You are entirely responsible for any individual you grant the right to access the Product, and acknowledge that Bigeye has no control over who is granted access rights to the Product. We will not be liable for any loss or damage caused by any unauthorized use of your account.

If you are using the SaaS Product, your Account Administrator has the capability to deactivate a Password or Sign-In Name or change any Unique Identifier. To the extent the Account Administrator is unable to deactivate an account or change account information, you will promptly inform us of any need to take such action on our end. Please note that if you use the On Prem Product Bigeye will not have the capability to deactivate or change any Authorized User’s account and such power will only reside with the Account Administrator, and as such you must notify the Account Administrator if there is a need to deactivate or change your account. We reserve the right to delete or change your Password, Sign-In Name, or Unique Identifier on the SaaS Product at any time and for any reason and shall have no liability to you for any loss or damage caused by such action. Bigeye is under no obligation to accept any individual or entity as an account holder for the SaaS Product, and may accept or reject any registrations in our sole and complete discretion.

3. COMMUNITY GUIDELINES

Bigeye's community, like any community, functions best when its users follow a few simple rules. By accessing the Services, you agree to comply with these community guidelines (the "Community Guidelines") and that:

- You will comply with all applicable laws in your use of the Services and will not use the Services for any unlawful purpose;
- You will not access or use the Services to collect any market research for a competing business;
- You will not impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;
- You will not interfere with or attempt to interrupt the proper operation of the Services through the use of any virus, device, information collection or transmission mechanism, software or routine, or access or attempt to gain access to any Content (as defined below), data, files, or passwords related to the Services through hacking, password or data mining, or any other means;
- You will not decompile, reverse engineer, or disassemble any software or other products or processes accessible through the Services;
- You will not cover, obscure, block, or in any way interfere with any advertisements and/or safety features on the Services;
- You will not circumvent, remove, alter, deactivate, degrade, or thwart any of the Content protections in the Services;
- You will not use any robot, spider, scraper, or other automated means to access the Services for any purpose without our express, written permission; provided, however, we grant the operators of public search engines permission to use spiders to copy materials from the public portions of the Website for the sole purpose of, and solely to the extent necessary for, creating publicly-available searchable indices of the materials, but not caches or archives of such materials; and
- You will not take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our technical infrastructure.
- You will retain all copyright and other proprietary notices contained in the original Content.
- You will not, unless otherwise provided herein, sell, transfer, assign, license, sublicense, modify, or adapt the Content or Services, or reproduce, copy, display, publicly perform, make a derivative version of, distribute, or otherwise use the Content or Services in any way for any public or commercial purpose.

If you find something that violates our Community Guidelines, please let us know, and we'll review it. You are responsible for the acts and omissions of your Authorized Users and any other person who accesses and uses the Products using your or any of your Authorized Users' access credentials.

4. INTELLECTUAL PROPERTY; LICENSE

The Services contain materials, such as software, text, graphics, images, and other material provided by or on behalf of Bigeye (collectively referred to as the “Content”). The Content does not include User Analytics (defined below). The Content may be owned by us or third parties. The Content and the Services protected under both United States and foreign laws. Unauthorized use of the Content or Services may violate copyright, trademark, and other laws.

Bigeye grants you a limited, nonexclusive, non-transferable license without the right to grant sublicenses, to access and use the Content and Services solely for your internal use, and no other use is permitted without the prior written consent of Bigeye. Bigeye and its licensors retain all right, title, and interest, including all intellectual property rights, in and to the Content and Services, and all modifications, improvements, adaptations, enhancements, or translations made thereto, and all intellectual property rights therein. We reserve the right to remove Content from our Services at any time for any reason without any notice to you.

If you violate any part of this Agreement, your permission to access the Content and the Services automatically terminates and you must immediately destroy any copies you have made of the Content.

The trademarks, service marks, and logos of Bigeye (the “Bigeye Trademarks”) used and displayed on the Services are registered and unregistered trademarks or service marks of Bigeye. Other company, product, and service names located on the Services may be trademarks or service marks owned by others (the “Third-Party Trademarks,” and, collectively with Bigeye Trademarks, the “Trademarks”). Nothing on the Services should be construed as granting, by implication, estoppel, or otherwise, any license or right to use the Trademarks, without our prior written permission specific for each such use. Use of the Trademarks as part of a link to or from any site is prohibited unless establishment of such a link is approved in advance by us in writing. All goodwill generated from the use of Bigeye Trademarks inures to our benefit.

Elements of the Services are protected by trade dress, trademark, unfair competition, and other state and federal laws and may not be copied or imitated in whole or in part, by any means, including, but not limited to, the use of framing or mirrors. None of the Content or Services may be retransmitted without our express, written consent for each and every instance.

Bigeye is permitted to put Customer’s logo on its website. Customer and Bigeye will cooperate for mutually agreed marketing including customer references, a case study, analyst interviews, customer quotes, product reviews, and other logo use.

5. USER DATA AND USER ANALYTICS; AGGREGATE DATA

5.1. User Data and User Analytics. All right, title, and interest in and to the data, media, and other materials that you submit or upload to the Products or permit the Products to access and query pursuant to this Agreement (“User Data”), and any and all reproductions, visualizations, analyses, automations, scales, and other reports output by the Products based on such User Data (“User Analytics”) will be and remain your sole and exclusive property. Subject to the terms and

conditions of this Agreement, you hereby grant Bigeye a non-exclusive, worldwide, fully paid-up, royalty-free right and license, with the right to grant sublicenses through multiple tiers to vendors providing services to us (such as hosting providers), to reproduce, execute, use, store, archive, modify, perform, display, and distribute the User Data and User Analytics solely for the purpose of providing you with access to and usage of the Products hereunder.

5.2. Aggregate Data. We monitor the performance and use of the Website and SaaS Product by you, and we collect Usage Data in connection therewith. We may combine this Usage Data with other data (including User Data and User Analytics), and use such combined data, or a subset thereof, in an aggregate and anonymous manner (the “Aggregate Data”). Aggregate Data does not and shall not identify you or any individual. Once User Data and User Analytics are aggregated and anonymized they are considered Aggregate Data, and such Aggregate Data shall be owned by Bigeye. You hereby agree that we may collect, use, publish, disseminate, sell, transfer, and otherwise exploit such Aggregate Data to improve our Services, or as otherwise provided for in the Privacy Policy.

6. SERVICE LEVELS AND SUPPORT

Bigeye, or our contractors, shall host the SaaS Product, periodically monitor the SaaS Product to optimize performance thereof, and shall use commercially reasonable efforts to minimize any downtime, other than for scheduled maintenance or downtime caused by reasons beyond our reasonable control, including, but not limited to, acts of God, acts of any governmental body, war, insurrection, sabotage, armed conflict, terrorism, embargo, fire, flood, strike or other labor disturbance, unavailability of or interruption or delay in telecommunications or third-party services, or virus attacks or hackers. You may request support assistance with respect to the Products by emailing questions to hello@bigeye.com; Bigeye uses commercially reasonable efforts to respond to support questions.

7. FREE TRIAL

Bigeye offers a free trial (“Free Trials”) for people who are interested in trying our Products before committing to purchasing them on a long term basis. To learn more about Free Trial benefits and limitations, please email us at hello@bigeye.com. Bigeye may, in its sole discretion, terminate a Free Trial at any time and/or impose restrictions on the use of a Free Trial. We will not charge you any fees unless and until you purchase the Product. Upon termination of the Free Trial you will no longer have access to the Products unless you purchase the Products. All of the terms of this Agreement shall apply during any Free Trial period.

8. PURCHASE TERMS

Unless you are using the Products on a Free Trial basis, you must pay a fee to purchase the Products. By purchasing the Products, you agree to pay Bigeye, through our third-party payment vendor, Stripe (“Payment Processor”), all charges at the prices then in effect for such Products in accordance with the applicable payment terms. By purchasing the Products, you agree to Stripe’s terms and conditions and privacy policy, which are available at <https://stripe.com/legal> and <https://stripe.com/us/privacy>, respectively.

Bigeye reserves the right to refuse to permit you to purchase the Products or any other services or cancel a purchase for any reason. Verification of information may be required prior to the acceptance of a purchase. Prices for the Products are subject to change without notice. Where applicable, you shall pay all purchase prices, taxes, and other fees in connection with a purchase in the manner specified by Bigeye.

9. COMMUNICATIONS WITH US

Although we encourage you to e-mail us, we do not want you to, and you should not, e-mail us any content that contains confidential information. With respect to all e-mails and communications you send to us (whether oral or written), including, but not limited to, feedback, questions, comments, suggestions, and the like, we shall be free to use any ideas, concepts, know-how, or techniques contained in your communications for any purpose whatsoever, including but not limited to, the development, production, and marketing of products and services that incorporate such information without compensation or attribution to you.

10. NO WARRANTIES; LIMITATION OF LIABILITY

THE SERVICES, CONTENT, AND USER ANALYTICS ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING THAT THE SERVICES, CONTENT, OR USER ANALYTICS WILL OPERATE ERROR-FREE OR THAT THE SERVICES, ITS SERVERS, OR THE CONTENT ARE FREE OF COMPUTER VIRUSES OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES.

WE DISCLAIM ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTIES’ RIGHTS, AND FITNESS FOR PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

Bigeye IS NOT LIABLE FOR ANY COSTS OR FEES ASSOCIATED WITH YOUR USE OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, COSTS INCURRED FROM AMAZON WEB SERVICES OR SIMILAR PROVIDERS FOR INCREASED LOAD.

Bigeye’S PRODUCTS ONLY QUERY DATA SETS YOU SUBMIT TO THE PRODUCTS AND IDENTIFY ISSUES WITHIN THE DATA SETS SPECIFIED BY YOU. Bigeye DOES NOT FIX OR RESOLVE ANY ISSUES IDENTIFIED. Bigeye SHALL NOT BE LIABLE FOR FAILURE TO REMEDIATE ANY IDENTIFIED OR UNIDENTIFIED ISSUES.

IN CONNECTION WITH ANY WARRANTY, CONTRACT, OR COMMON LAW TORT CLAIMS: (I) WE AND OUR LICENSORS SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION RESULTING FROM THE USE OR INABILITY TO ACCESS AND USE THE SERVICES, THE CONTENT, OR THE USER ANALYTICS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) ANY DIRECT DAMAGES THAT YOU MAY SUFFER AS A

RESULT OF YOUR USE OF THE SERVICES, THE CONTENT, OR THE USER ANALYTICS SHALL BE LIMITED TO THE GREATER OF (I) MONIES YOU HAVE PAID US IN CONNECTION WITH YOUR USE OF THE SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM, OR (II) ONE HUNDRED US DOLLARS (\$100).

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. THEREFORE, SOME OF THE ABOVE LIMITATIONS ON WARRANTIES IN THIS SECTION MAY NOT APPLY TO YOU.

11. EXTERNAL SITES

The Services may contain links to third-party websites (“External Sites”). These links are provided solely as a convenience to you and not as an endorsement by us of the content on such External Sites. The content of such External Sites is developed and provided by others. You should contact the site administrator or webmaster for those External Sites if you have any concerns regarding such links or any content located on such External Sites. We are not responsible for the content of any linked External Sites and do not make any representations regarding the content or accuracy of materials on such External Sites. You should take precautions when downloading files from all websites to protect your computer from viruses and other destructive programs. If you decide to access linked External Sites, you do so at your own risk.

12. INDEMNIFICATION

You agree to defend, indemnify, and hold us and our officers, directors, employees, agents, successors, licensees, licensors, and assigns harmless from and against any damages, liabilities, losses, expenses, claims, actions, and/or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from: (i) your breach of this Agreement; (ii) your misuse of the Content, Services, or User Analytics; and/or (iii) your violation of any third-party rights, including without limitation any copyright, trademark, property, publicity, or privacy right. We shall provide notice to you of any such claim, suit, or proceeding and shall assist you, at your expense, in defending any such claim, suit, or proceeding. We reserve the right to assume the exclusive defense and control (at your expense) of any matter that is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.

13. COMPLIANCE WITH APPLICABLE LAWS

The Services are based in the United States. We make no claims concerning whether the Services, Content, or User Analytics may be downloaded, viewed, or be appropriate for use outside of the United States. If you access the Services, the Content, or the User Analytics from outside of the United States, you do so at your own risk. Whether inside or outside of the United States, you are solely responsible for ensuring compliance with the laws of your specific jurisdiction.

14. CHANGES TO THE AGREEMENT

These Terms of Use are effective as of the last updated date stated at the top. We may change these Terms of Use from time to time. Any such changes will be posted on the Website. By accessing the Services after we make any such changes to these Terms of Use, you are deemed to have accepted such changes. Please refer back to these Terms of Use on a regular basis.

15. TERMINATION OF THE AGREEMENT

We reserve the right, in our sole discretion, to restrict, suspend, or terminate this Agreement and your access to all or any part of the Services, at any time and for any reason without prior notice or liability. Sections 4-21 shall survive the termination of this Agreement.

16. CONTROLLING LAW

This Agreement and any action related thereto will be governed by the laws of the State of New York without regard to its conflict of laws provisions.

17. BINDING ARBITRATION

In the event of a dispute arising under or relating to this Agreement, the Content, the User Analytics, or the Services (each, a “Dispute”), either party may elect to finally and exclusively resolve the dispute by binding arbitration governed by the Federal Arbitration Act (“FAA”). Any election to arbitrate, at any time, shall be final and binding on the other party. IF EITHER PARTY CHOOSES ARBITRATION, NEITHER PARTY SHALL HAVE THE RIGHT TO LITIGATE SUCH CLAIM IN COURT OR TO HAVE A JURY TRIAL, EXCEPT EITHER PARTY MAY BRING ITS CLAIM IN ITS LOCAL SMALL CLAIMS COURT, IF PERMITTED BY THAT SMALL CLAIMS COURT RULES AND IF WITHIN SUCH COURT’S JURISDICTION. ARBITRATION IS DIFFERENT FROM COURT, AND DISCOVERY AND APPEAL RIGHTS MAY ALSO BE LIMITED IN ARBITRATION. All disputes will be resolved before a neutral arbitrator selected jointly by the parties, whose decision will be final, except for a limited right of appeal under the FAA. The arbitration shall be commenced and conducted by JAMS pursuant to its then current Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those rules, or, where appropriate, pursuant to JAMS’ Streamlined Arbitration Rules and Procedures. All applicable JAMS’ rules and procedures are available at the JAMS website www.jamsadr.com. Each party will be responsible for paying any JAMS filing, administrative, and arbitrator fees in accordance with JAMS rules. Judgment on the arbitrator’s award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitration may be conducted in person, through the submission of documents, by phone, or online. If conducted in person, the arbitration shall take place in the United States county where you reside. The parties may litigate in court to compel arbitration, to stay a proceeding pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator. The parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information) relevant to the Dispute immediately after

commencement of the arbitration. As set forth in Section 19 below, nothing in this Agreement will prevent us from seeking injunctive relief in any court of competent jurisdiction as necessary to protect our proprietary interests.

18. CLASS ACTION WAIVER

You agree that any arbitration or proceeding shall be limited to the Dispute between us and you individually. To the full extent permitted by law, (i) no arbitration or proceeding shall be joined with any other; (ii) there is no right or authority for any Dispute to be arbitrated or resolved on a class action-basis or to utilize class action procedures; and (iii) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons. **YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST US ONLY IN YOUR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.**

19. EQUITABLE RELIEF

You acknowledge and agree that in the event of a breach or threatened violation of our intellectual property rights and confidential and proprietary information by you, we will suffer irreparable harm and will therefore be entitled to injunctive relief to enforce this Agreement. We may, without waiving any other remedies under this Agreement, seek from any court having jurisdiction any interim, equitable, provisional, or injunctive relief that is necessary to protect our rights and property pending the outcome of the arbitration referenced above. All claims or disputes arising out of or in connection with this Agreement shall be heard exclusively by any of the federal or state courts of competent jurisdiction located in the State of New York.

20. EXPORT LAWS

You shall not export or re-export, either directly or indirectly, the Products or any copies thereof in such manner as to violate the export laws and regulations of the United States or any other applicable jurisdiction in effect from time to time (including, without limitation, when such export or re-export requires an export license or other governmental approval without first obtaining such license or approval). Without limiting the foregoing, you shall not permit any third party to access or use the Products in violation of any United States export embargo, prohibition, or restriction. By using the Products, you represent and warrant that you are not located in, under control of, or a national or resident of any country subject to U.S. economic sanctions or other trade controls applicable to the Products, and are not on the U.S. Treasury Department's list of Specially Designated Nationals, the U.S. Commerce Department's Denied Persons List, Unverified Parties List, Entities List, or the U.S. State Department's list of Debarred Parties.

21. MISCELLANEOUS

Our failure to act on or enforce any provision of the Agreement shall not be construed as a waiver of that provision or any other provision in this Agreement. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other

or subsequent instance. Except as expressly agreed by us and you in writing, this Agreement constitutes the entire Agreement between you and us with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between the parties with respect to the subject matter. The section headings are provided merely for convenience and shall not be given any legal import. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees.