

# ESSOFORE TERMS OF USE

## 1 DEFINITIONS

- You/Buyer/Purchaser/User means the individual or entity purchasing the product.
- We/Us/Licensor means Essofore LLC.
- Product refers to the Amazon Machine Image (AMI) being purchased.
- Software means the Essofore Chat Server as described in the [developer documentation](#).
- Configuration file(s) and shell scripts are text files that can be used to configure the running of the Software. These are not considered part of the Software.
- Binary refers to the file(s) constituting the machine-readable code (library and/or executable) of the Software.

ESSOFORE LLC hereby grants the purchaser a non-exclusive worldwide license to the Software subject to the terms of use set forth in this document.

## 2 ACCEPTABLE USE

User can use the provided AMI (Amazon Machine Image) to create new EC2 instances and is permitted to make changes to configuration files and shell scripts as specified in the [developer documentation](#). User is NOT permitted to make copies of any binary or make changes to it or decompile or reverse-engineer it or distribute it in any form. User is permitted to create derivative AMIs out of the provided AMI for their own private use provided that the derived AMIs inherit the original AMIs billing and product codes.

## 3 RESTRICTIONS

Except as specified under Acceptable Use, You may not: (a) copy the Software in whole or in part; (b) distribute copies of Software, in whole or in part, to any third party; (c) modify, adapt, translate, make alterations to or make derivative works based on Software or any part thereof; (d) except as permitted by Law, decompile, reverse engineer, disassemble or otherwise attempt to derive source code, algorithms or the underlying structure of the Product; (e) use, rent, loan, sub-license, lease, distribute or attempt to grant other rights to any part of the Software to third parties; (f) use the Software to act as a consultant, service bureau or application service provider; or (g) permit access of any kind to the Software to any third party.

## 4 NO WARRANTY OR LIABILITY

- You agree to use the software as-is and at your own risk. We are not responsible for any damages arising out of the use of the software.
- THE SOFTWARE IS PROVIDED “AS IS”, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.

- IN NO EVENT WILL THE COLLECTIVE LIABILITY OF ESSOFORE LLC AND ITS SUBSIDIARIES, AFFILIATES, LICENSORS, SERVICE PROVIDERS, CONTENT PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, AND DIRECTORS TO ANY PARTY (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE) EXCEED THE GREATER OF \$100 OR THE AMOUNT YOU PAID TO ESSOFORE LLC FOR THE PREVIOUS 6 MONTHS FOR THE APPLICABLE MATERIALS OR SERVICES OUT OF WHICH LIABILITY AROSE.

## 5 HOLD HARMLESS AND INDEMNIFICATION

To the fullest extent permitted by applicable law, you will indemnify, defend (at our option), and hold harmless Essofore LLC and our officers, directors, partners, licensors, employees and agents from and against any losses, liabilities, claims, demands, damages, expenses or costs ("Claims") arising out of or related to: (a) your access to or use of the Software; (b) the Content or Feedback; (c) your violation of these Terms; (d) your violation, misappropriation, or infringement of any rights of another (including intellectual property rights or privacy rights); or (e) your conduct in connection with the Software or the Content. You will cooperate with Essofore LLC in defending such Claims, and pay all fees, costs, and expenses associated with defending such Claims (including attorneys' fees). Essofore LLC will have control of the defense or settlement, at Essofore LLC's sole option, of any third-party Claims. This indemnity is in addition to, and not in lieu of, any other indemnities set forth in a written agreement between you and Us.

## 6 NO REFUNDS

We provide a trial period that you can use to evaluate the product free of charge. Beyond that we do not provide any refunds.

## 7 ARBITRATION

PLEASE NOTE THAT THIS AGREEMENT PROVIDES FOR THE MANDATORY ARBITRATION OF DISPUTES AND INCLUDES A WAIVER OF THE RIGHT TO A JURY TRIAL AND CLASS ACTION WAIVER, AS SET FORTH BELOW.

Most user issues can be resolved informally by contacting our customer service by e-mail at [complaints@essofore.com](mailto:complaints@essofore.com). However, if you have a dispute with Us, and you are unable to resolve the dispute informally, you and Us agree that upon demand by either you or Us, the dispute will be resolved through binding arbitration. A "dispute" is any unresolved disagreement between you and Us, regardless of when the claim arose, and includes claims based on contracts, torts, statutes, regulations, common law, and equitable claims. All statutes of limitation applicable to any dispute shall apply in any arbitration between you and Us.

YOU AND ESSOFORE LLC AGREE THAT YOU ARE EACH WAIVING THE RIGHT TO A JURY TRIAL OR A TRIAL BEFORE A JUDGE IN COURT. You and Us further agree that each may bring claims against the other only in an individual capacity, and that neither you nor Essofore LLC shall be entitled to join or consolidate claims by or against others in any arbitration, or to include in any arbitration any dispute as a representative or member of a class, or on behalf of the general public, or as a private attorney general. You and Essofore LLC agree that the arbitrator may award injunctive relief only in favor of the party seeking relief, and only to the extent necessary to provide relief warranted by that party's individual claim. In the event of any inconsistency between this arbitration provision and any provision contained in any other applicable Guidelines, disclaimer or privacy policy relating to Essofore LLC, this arbitration provision shall control.

Each arbitration, including the selection of the arbitrator, will be administered by the American Arbitration Association (the “AAA”) according to its Commercial Arbitration Rules (the “AAA Rules”). The AAA Rules are available online at [www.adr.org](http://www.adr.org), or by calling the AAA at 1-800-778-7879. In the event of any inconsistency between the AAA Rules and this arbitration provision, this arbitration provision shall control. Either party may demand arbitration of a dispute at any time, regardless of whether a lawsuit or other proceeding has previously been commenced. Either party may demand arbitration by completing the form for Consumer-Related Disputes provided for that purpose, and following the instructions on the form. The form is available on the AAA’s website, [www.adr.org](http://www.adr.org), or by calling AAA Case Filing Services at 1-877-495-4185. You should attach a copy of this arbitration provision, which will remain available online. If you demand arbitration, you must send a copy of the form to [legal@essofores.com](mailto:legal@essofores.com). If Essofore LLC demands arbitration, you will be sent a copy of the form or other demand, by U.S. Certified Mail or other overnight, traceable courier at the most current postal address that Essofore LLC has for you in its records. Except as otherwise provided by applicable law, each party will remain solely responsible for their own attorneys’ fees and expenses incurred in connection with the arbitration.

You and Essofore LLC agree that: (1) the parties are participating in transactions affecting interstate commerce; (2) this arbitration provision and any resulting arbitration are governed by the Federal Arbitration Act (Title 9 of the United States Code); (3) the arbitrator shall decide any dispute regarding the interpretation, application, or enforceability of this arbitration provision; (4) neither party will disclose, to any third party, any information obtained from the other party in the arbitration proceeding, except as required by applicable law; and (5) neither party will be entitled to rely on any arbitration award, finding of fact, or conclusion of law issued in any other arbitration proceeding involving only one of the parties. This arbitration provision shall survive the termination of any other contract between you and Essofore LLC.

This is the complete Agreement between you and us on the subject of arbitration. No party is relying on any representations except as specifically set forth in this Agreement. If any provision of this Agreement is held to be void or unenforceable, that shall not affect the validity of the remainder of the Agreement, and all other provisions shall remain in full force and effect.