



metadata.io  
Terms of Use

PLEASE READ THIS AGREEMENT CAREFULLY. BY CLICKING THE "I ACCEPT BUTTON," EXECUTING AN ORDER FORM WITH COMPANY, OR ACCESSING OR USING ANY OF THE COMPANY SERVICES, CUSTOMER REPRESENTS THAT (1) CUSTOMER HAS READ, UNDERSTANDS, AND AGREES TO BE BOUND BY THIS AGREEMENT, (2) CUSTOMER IS OF LEGAL AGE TO FORM A BINDING CONTRACT, AND (3) CUSTOMER HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY THIS AGREEMENT, CUSTOMER MAY NOT ACCESS OR USE THE COMPANY SERVICES.

## 1. Definitions

**"Access Protocols"** means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures necessary to access the Company Services.

**"Agreement"** means these Terms of Use, the applicable Order Form(s), and all materials and other documents referred to in these Terms of Use.

**"Authorized Payment Method"** means a current, valid, payment method accepted by us, as may be updated from time to time.

**"Authorized User"** means each of Customer's employees, agents, and independent contractors who are authorized to access the Company Services pursuant to Customer's rights under this Agreement. Authorized Users must be 18 years of age or older.

**"Company Services"** means all our web-based applications, tools, and platforms that you have subscribed to under an Order Form or that we otherwise make available to you, and are developed, operated, and maintained by us, and any ancillary products and services, including, without limitation, Metadata's data augmentation, intelligence, campaign, and other services. Documentation and Supplementary Data, as applicable are included in, and a subset of, Company Services.

**"Content"** means all information, in whatever form, including articles, case studies, images, stories, creative advertising, commentary, video, music, photographs, logos, trademarks, custom embedded objects, and all other forms of media provided by Customer to Company in connection with Customer's use of the Company Services. Customer Data is included in, and a subset of, Content.

**"Customer Data"** means name, email address, phone number, online user name, telephone number, and similar information uploaded by you to the Company Services or submitted by visitors to your website, landing pages, or other marketing forms.

**"Documentation"** means the technical materials provided by Company to Customer in hard copy or electronic form describing the use and operation of the Company Services.

**"Free Services"** means the Company Services or other products and features made available to Customer on an unpaid trial or free basis.

**"Intellectual Property Rights"** means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark

rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights; and (f) other proprietary rights of every kind and nature.

**"Metadata," "Company," "we," "us," or "our"** means Metadata, Inc.

**"Order Form/Order"** means any form that describes the Company Services ordered by Customer, as well as the fees and schedule for such Company Services. An Order Form may be in the form of a standard order form, quote, online subscription process, proposal, or other similar documentation.

**"Professional Services"** means professional services provided by Company to Customer as described in any Order Form, including services relating to, but not limited to, creative asset creation, animated ads, ad copywriting, video production, and Content strategy working sessions.

**"Sensitive Information"** means credit or debit card numbers; financial account numbers or wire instructions; government issued identification numbers (such as Social Security numbers, passport numbers), biometric information, personal health information (or other information protected under any applicable health data protection laws), personal information of children protected under any child data protection laws, and any other information or combinations of information that falls within the definition of "special categories of data" under the EU General Data Protection Regulation, California Privacy Rights Act, or any other applicable law relating to privacy and data protection.

**"Supplementary Data"** means additional third party or derived data points that augment the Customer Data (e.g., technographics, firmographics, and business contact information).

**"Subscription Term"** means the initial term of your subscription to the applicable Company Services, as specified on your Order Form, and each subsequent renewal term (if any). For Free Services, the Subscription Term will be the period during which you have an account to access the Free Services.

**"Third-Party Applications"** means online applications and offline software products that are provided by entities or individuals other than Metadata and that interoperate with the Company Services.

**"You," "your," or "Customer"** means the person or entity using or receiving the Company Services and identified in the applicable Order Form as the customer.

## 2. Use of Services

2.1 Access. During the Subscription Term, we will provide Customer access to use the Company Services as described in this Agreement and the applicable Order Form. Customer must ensure that all access and use by your Authorized Users is subject to and in compliance with this Agreement.

2.2 Additional Features. You may subscribe to additional features of the Company Services by placing an additional Order or activating the additional features from within your account (if this option is made available by us). The terms of this Agreement will apply to all additional Orders and features.

2.3 Limits. The limits that apply to you, including, without limitation, number of audiences, maximum ad spend, and available advertising channels, will be specified in your Order Form. For our Free Services these limits may also be designated from within the product itself and changed from time to time, at our sole discretion.

**2.4 Third-Party Applications.** The Company Services may contain features designed to interoperate with Third-Party Applications. To use such features, Customer may be required to obtain access to the Third-Party Applications from their providers. If the provider of a Third-Party Application ceases to make the Third-Party Application available for interoperation with the Company Services, Company may cease providing the interoperation without entitling you to any refund or other compensation.

**2.5 No Sensitive Information.** YOU ACKNOWLEDGE THAT THE COMPANY SERVICES HAVE NOT BEEN DESIGNED TO PROCESS OR MANAGE SENSITIVE INFORMATION AND ACCORDINGLY YOU AGREE NOT TO USE THE COMPANY SERVICES TO COLLECT, MANAGE OR PROCESS SENSITIVE INFORMATION. COMPANY SPECIFICALLY DISCLAIMS ANY LIABILITY THAT MAY RESULT FROM YOUR USE OF THE COMPANY SERVICES TO COLLECT, PROCESS, OR MANAGE SENSITIVE INFORMATION.

**2.6 Free Services.** If you register for Free Services, we will make the applicable Company Services available to you on a trial basis free of charge until the earlier of (a) the end of the free trial period (if not terminated earlier) or (b) the start date of your paid subscription. If you (i) do not purchase the applicable Company Services before the end of the free trial; or (ii) cancel the free trial prior to the paid Subscription Term, all your data may be permanently deleted at the end of the trial. If we include additional terms and conditions on the trial registration web page, those terms are also applicable.

### **3. Fees and Payments**

**3.1 Fees.** Fees for the Company Services are due in accordance with the billing frequency and terms stated in the Order Form. All payment obligations are non-cancelable and all amounts paid are non-refundable, except as specifically provided for in this Agreement. The fees will remain fixed during the initial term of your subscription unless (i) you exceed your applicable limits, including, but not limited to the number of audiences, (see the 'Limits' section above), (ii) you upgrade products or base packages, (iii) you subscribe to additional features or products, or (iv) as otherwise agreed to in your Order. Unless otherwise agreed, all charges and payments shall be in U.S. dollars.

**3.2 Fee Adjustments at Renewal.** Upon renewal, we may increase your fees up to our then-current list price.

**3.3 Payment of Fees.** If you are paying by credit card, you authorize us to charge your Authorized Payment Method for all fees listed in the Order Form. You further authorize us to use a third party to process payments and consent to the disclosure of your payment information to such third party. If you are paying by invoice, we will invoice you in accordance with the relevant Order Form. Unless otherwise stated in an Order Form, all amounts invoiced are due and payable within thirty (30) days from the date of the invoice.

**3.4 Payment Information.** You will keep your Authorized Payment Method, contact information, and billing information up to date for the payment of incurred and recurring fees, as applicable. You authorize Metadata to continue to charge your Authorized Payment Method for applicable fees during your Subscription Term and until all outstanding Fees have been paid in full.

**3.5 Sales Tax.** All fees are exclusive of taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties (excluding taxes imposed on Company's net income). In the event Company pays any such taxes and has not collected them previously from Customer, Customer shall promptly reimburse Company.

**3.6 Late Payments.** For late payments, including where Customer's Authorized Payment Method fails, Company may impose a charge equal to the greater of one and one-half percent (1 ½%) or the maximum rate permitted

by law, whichever is lower, per month until payment is made. Customer will be responsible for reimbursing Company for any costs incurred by Company collecting overdue fees, including bank charges, processing fees, attorneys' fees, collection agency fees, and related costs.

#### **4. Term; Termination; Suspension**

4.1 Term and Renewal. Your initial Subscription Term will be specified in your Order Form, and, unless otherwise specified in your Order Form, your subscription will automatically renew for the shorter of the subscription term, or one year.

4.2 Notice of Non-Renewal. Unless otherwise specified in your Order Form, to prevent renewal of your subscription, you or we must give written notice of non-renewal. The deadline for sending this notice is thirty (30) days prior to renewal.

4.3. Early Cancellation. You may choose to cancel your subscription early at your convenience; however, Company will not provide any refunds of prepaid fees and you will promptly pay all unpaid fees due through the end of the Subscription Term.

4.4 Suspension. In the event of any breach of this Agreement by Customer (including non-payment of fees), without limiting Company's other rights and remedies, Company may immediately, with written notice (email is sufficient), suspend Customer's access to the Company Services.

4.5 Termination for Cause. Either party may terminate this Agreement for cause, as to any or all Company Services: (i) upon thirty (30) days' notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) immediately, if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, cessation of business, liquidation or assignment for the benefit of creditors. This Agreement may not otherwise be terminated prior to the end of the Subscription Term.

4.6. Effect of Termination or Expiration. Upon termination or expiration of this Agreement, including any Free Trials, you will no longer have rights to and shall stop all use of the Company Services, including the Supplementary Data, Documentation, and audiences, except as otherwise set forth in Section 6.

If you terminate this Agreement for cause, we will promptly refund any prepaid but unused fees covering use of the Company Services after termination. If we terminate this Agreement for cause, you will promptly pay all unpaid fees due through the end of the Subscription Term. Fees are otherwise non-refundable.

#### **5. Customer Intellectual Property; Content; Customer Data**

5.1 Customer's Proprietary Rights. The Content, including all Customer Data, and all worldwide Intellectual Property Rights in it, is the exclusive property of Customer. All rights in and to the Content not expressly granted to Company in this Agreement are reserved by Customer. Customer hereby grants to Company a revocable, non-exclusive, worldwide, royalty-free, and fully paid up right and license to use, distribute, transmit, publish, and display Content as necessary to perform the Company Services and as otherwise permitted by this Agreement.

5.2 Content Rights. Customer represents that Customer has all legal rights, including under applicable data privacy laws, needed for Customer to grant Company the license to use the Content as described in this Agreement. Customer is solely responsible for all obligations with respect to the accuracy, quality and legality of Content. Company shall have the right, in its sole discretion, to remove any Content if the Content violates the Agreement or applicable law.

5.2 Limits on Metadata. We will not use your Customer Data to contact any individual or company except as you direct or otherwise permit. We will use Customer Data only in order to provide the Company Services to you and only as permitted by applicable law and this Agreement.

5.3. Benchmarking; Analytics. Metadata may use usage logs and results, in an aggregated and anonymized form, to: (i) improve the Company Services and products and services; (ii) provide analytics and benchmarking; and (iii) generate and disclose statistics regarding the Company Services.

5.8 Retention of Content. Although Company performs regular routine backups of data, Customer is primarily responsible for all data that Customer has transferred or that relates to any activity Customer has undertaken using the Company Services. Company is not obligated to back up any Content; the Customer is solely responsible for creating backup copies of any Content at Customer's sole cost and expense. Unless required by applicable law, upon a termination of this Agreement, Company shall not retain any of the Content.

5.9. API Connection. To use certain Company Services, Customer may need to provide access to its customer relationship management ("CRM") and/or marketing automation ("MA") platforms. As applicable, Customer will input the necessary credentials in order to authorize the required API integrations for Company to access Customer Data. Such credentials and Customer Data may be retained by Company for the term of the Agreement, subject to the 'Limits on Metadata' section. Customer represents that it has proper authority to permit Company to utilize such credentials for such purpose.

5.9 Protection of Customer Data. To the extent the Customer Data includes Personal Data (as defined in the DPA), the terms of the Data Processing Addendum ("DPA"), located at [metadata.io/data-processing-addendum](https://metadata.io/data-processing-addendum) are hereby incorporated by reference. The DPA sets out how we will process Personal Data on your behalf in connection with the Company Services.

5.10 Customer Feedback. Any questions, comments, suggestions, ideas, feedback or other information about the Company Services provided by Customer are non-confidential and Company shall be entitled to the unrestricted use and dissemination of such information for any purpose, commercial or otherwise, without acknowledgment or compensation to Customer.

5.11. Account Credentials. Customer will be responsible for all changes to and/or deletions of Customer's Content and/or campaigns and the security of all passwords and other Access Protocols required in order to access the Company Services, including removing access for former employees.

## **6. Metadata Intellectual Property; Supplementary Data; Audiences**

6.1 Use of and Access to Company Services. This is an agreement for the use of and access to the Company Services, and Customer is not granted a license to any software or Intellectual Property Rights by this Agreement. Except as expressly granted herein, we retain all Intellectual Property Rights to the Company Services.

6.2 Supplementary Data. In providing certain Company Services, Company may provide or make available Supplementary Data to Customer. Company grants to Customer a non-exclusive, non-transferable, worldwide, royalty-free and fully paid up right and license during the term of this Agreement and any Order Form to use the Supplementary Data solely for Customer's internal business purposes. To the extent any Supplementary Data is integrated, pursuant to the Company Services and in conformity with this Agreement, into Customer's CRM, MA, or other platforms or data sets, the license shall also become perpetual and irrevocable; and Company represents that their use of the data shall conform to applicable laws, including applicable data privacy laws.

Customer shall not transfer the Supplementary Data to third parties, except to its service providers that are bound by confidentiality and use restrictions that prohibit the further disclosure of such data and prohibit the use of such data for any purpose other than for the benefit of Customer.

6.3 Protection of Supplementary Data. To the extent that any Supplementary Data that Company provides or makes available to Company under this Agreement includes or contains Personal Data (as defined in the DPA), the DPA located at <https://metadata.io/data-processing-addendum> shall govern. Company represents that it has all legal rights, including under applicable data privacy laws, needed to grant Customer the license to use the Supplementary Data as described in this Agreement.

6.4 Audiences. Customer has a perpetual limited license to use audiences created through the Company Services. Company grants to Customer an irrevocable, perpetual, non-exclusive, non-transferable, worldwide, royalty-free, and fully paid up right and license to use audiences for Customer's internal business purposes.

## **7. Campaigns, Professional Services, and Third-Party Content**

7.1 Professional Services. Customer may request, pursuant to an Order Form, that Company perform Professional Services. As part of such activities, if directed by Customer in writing, Company may set up advertising channel accounts, including entering into certain agreements (e.g., channel user agreements), and other services through which the campaigns will be conducted. Company will provide Customer with the credentials for all such accounts. If directed by Customer in writing, Customer also authorizes Company to initiate ad-campaigns on such accounts, provided that Company is not authorized to exceed any budget communicated to Company by Customer for such ad-campaigns.

Where the parties have agreed to Company's provision of Professional Services, the details of such Professional Services will be set out in an Order Form. The Order Form will include: (a) a description of the Professional Services; (b) the schedule for the performance of the Professional Services; and (c) the fees applicable for the performance of the Professional Services.

7.2 Campaign Costs. Charges for campaigns conducted under such accounts will be paid for by Customer's Authorized Payment Method or other method required by the service. The campaign spend may include operational fees such as charges from Data Management Platforms (DMPs), Demand-Side Platforms (DSPs), and advertising networks, all such charges will be incorporated into the programmatic ad spend and associated metrics such as CPM, CPC, and CPL. Customer is responsible for managing its campaign budgets. Company will not serve as the billing administrator for such campaign accounts and shall not be responsible for any excess expense incurred.

7.3 Third-Party Content. Company may, at Customer's direction, utilize third party service providers to facilitate specified creative advertising content creation. These third parties may provide content including, but not limited to, articles, case studies, stories, photographs, images, infographics, video, and custom embedded objects. Customer expressly understands and agrees that as between Company and Customer, all third-party content is provided "AS-IS" and at Customer's sole risk.

## **8. Prohibited Activities**

8.1. Prohibited Activities. Customer may not use the Company Services for any purpose other than that for which Company makes them available. Prohibited activity by Customer or its Authorized Users includes, but is not limited to:

- a) using the Company Services in violation of applicable law;
- b) uploading Content that contains obscene, defamatory, pornographic, libelous, sexually explicit, illegal, offensive, deceptive, or other prohibited material;
- c) using the Company Services as part of any effort to compete with Company;
- d) knowingly uploading Content that contains any software viruses, worms, Trojan horses, time bombs, cancelbots, or other harmful computer code, files, scripts, agents, programs, or programming routines;
- e) deciphering, decompiling, disassembling or reverse engineering any of the software comprising or in any way making up a part of the Company Services;
- f) using the Company Services on behalf of a third party or as a service bureau;
- g) using or permitting others to use any Supplementary Data (i) in connection with credit granting, credit monitoring, account review, collection, insurance underwriting, employment or for any other purpose covered by the FCRA, 15 USC Section 1681b, or any similar statute, (ii) for any form of debt collection, (iii) as the sole source of data for hard background check purposes, (iv) for a government license or benefit, or (vi) for any purpose other than business-to-business marketing activities; and
- h) uploading Content that targets children under the age of thirteen (13) and, based on the overall content of the websites targeted for the native advertising, is likely to attract children under such age as its primary audience and Customer represents that it does not have actual knowledge that it is collecting any personal information (as defined under the Children's Online Privacy Protection Act) directly from users of child-directed websites.

## 9. Confidentiality

9.1. Confidential Information. "Confidential Information" means all information disclosed by one party ("Disclosing Party") to the other ("Receiving Party"), whether provided prior to or after execution of this Agreement, orally, or in writing, that: (a) is marked or otherwise identified in writing as confidential or proprietary, (b) is provided under circumstances indicating that it is confidential or proprietary by Disclosing Party, or (c) should reasonably be understood by Receiving Party to be confidential or proprietary because of the nature of the information or material itself. Confidential Information includes all information concerning: the Disclosing Party's customers and potential customers, past, present or proposed products, marketing plans, engineering and other designs, technical data, business plans, business opportunities, finances, research, development, and the terms and conditions of this Agreement.

9.2 Exceptions to Confidentiality. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party by individuals that did not have access to the Confidential Information.

9.2 Mutual Confidentiality. The Receiving Party will: (i) protect the confidentiality of the Confidential Information of the Disclosing Party using the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind, but in no event less than reasonable care, (ii) not use any Confidential

Information of the Disclosing Party for any purpose outside the scope of this Agreement, (iii) not disclose Confidential Information of the Disclosing Party to any third party, and (iv) limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party confidentiality obligations at least as restrictive as those contained in this Agreement.

9.3 Compelled Disclosure. Notwithstanding the foregoing, Receiving Party may disclose certain Confidential Information of Disclosing Party if required by valid order of a court or a governmental body with jurisdiction, provided that Receiving Party provides Disclosing Party with prompt, prior written notice of such order and disclosure and makes a reasonable effort to assist Disclosing Party, at Disclosing Party's discretion and expense, in obtaining a protective order preventing or limiting the disclosure.

9.4 Term of Confidentiality. The obligations of the parties regarding the Confidential Information that constitutes trade secrets shall remain in effect for as long as such Confidential Information shall remain a trade secret under applicable law. All other Confidential Information shall remain protected during the term of this Agreement and for three (3) years thereafter.

9.5 Injunctive Relief. The parties acknowledge that monetary damages may not be sufficient for unauthorized disclosure of Confidential Information and that the Disclosing Party shall be entitled, without waiving any other rights or remedies, to seek injunctive or equitable relief.

## **10. Disputes**

10.1 Choice of Law; Venue. This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of California, excluding its conflicts of law rules. The parties expressly agree that any controversy or claim arising out of or relating to this Agreement shall exclusively be brought in the federal or state courts located in or with jurisdiction over San Francisco, California.

10.2 Excluded Laws. Application of the United Nations Convention on Contracts for the International Sale of Goods and Uniform Computer Information Transaction Act (UCITA) is excluded from this Agreement.

10.3 Actions Permitted. Except for actions for nonpayment or breach of a party's Intellectual Property Rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than two (2) years after the cause of action has accrued.

## **11. Warranties and Disclaimers**

11.1 Metadata Performance Warranty. Company represents and warrants that: (a) it will operate the Company Services in a professional and competent manner using properly qualified and trained employees; and (b) will not knowingly introduce any viruses or other forms of malicious code into the Company Services; provided however, this warranty will not apply to you if you only use the Free Services.

In the event of non-conformance with this warranty, we will use commercially reasonable efforts to correct such non-conformance. If we cannot correct the non-conformance within thirty (30) days from the date when you notified us of the non-conformity (the "Remedy Period"), then either party may terminate this Agreement by providing the other party written notice. If you terminate the Agreement for this reason, we will refund any prepaid but unused fees covering use of the Company Services after termination subject to the 'Effect of Termination or Expiration' section of this Agreement.

Notwithstanding the foregoing, Company will have no obligation under this section or otherwise with respect to any warranty claim based upon (i) any use of the Company Services not in accordance with this Agreement; (ii) any use of the Company Services in combination with other products, equipment, software or data not supplied by Company; or (iii) any modification of the Company Services by any person other than Company or its authorized agents.

11.2 Disclaimer of Warranties. EXCEPT AS SET FORTH IN THE 'PERFORMANCE WARRANTY' SECTION, CUSTOMER AGREES THAT USE OF THE COMPANY SERVICES WILL BE AT CUSTOMER'S SOLE RISK AND THAT THE COMPANY SERVICES AND SUPPLEMENTARY DATA ARE PROVIDED "AS IS." TO THE EXTENT PERMITTED BY LAW, COMPANY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE COMPANY SERVICES AND SUPPLEMENTARY DATA, AND CUSTOMER'S USE THEREOF, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE COMPANY SERVICES AND SUPPLEMENTARY DATA AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (A) ERRORS, MISTAKES, OR INACCURACIES OF SUPPLEMENTARY DATA, (B) ANY UNAUTHORIZED ACCESS TO OR USE OF SECURE SERVERS AND/OR ANY AND ALL INFORMATION, INCLUDING (WITHOUT LIMITATION) PERSONAL DATA AND/OR FINANCIAL INFORMATION, STORED THEREIN, (C) ANY INTERRUPTION OR CESSATION OF THE COMPANY SERVICES, (D) FAILURE OF THE COMPANY SERVICES TO MEET CUSTOMER REQUIREMENTS OR SALES EXPECTATIONS, AND/OR (E) ANY ERRORS OR OMISSIONS OR VIRUSES IN ANY COMPANY SERVICES OR SUPPLEMENTARY DATA.

## **12. Limitations of Liability**

12.1 No Indirect Damages. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY OR ITS DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED THAT, THIS LIMITATION WILL NOT APPLY TO YOU IF YOU ONLY USE THE FREE SERVICES..

12.2 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY'S TOTAL AGGREGATE LIABILITY TO THE OTHER FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO COMPANY FOR THE COMPANY SERVICES DURING THE PERIOD OF TWELVE (12) MONTHS PRECEDING THE ACT THAT GAVE RISE TO THE LIABILITY; PROVIDED HOWEVER, THIS LIMITATION WILL NOT APPLY TO YOU IF YOU ONLY USE THE FREE SERVICES, AND IN THIS CASE, IF WE ARE DETERMINED TO HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY ARISING FROM YOUR USE OF THE FREE SERVICES, THEN OUR AGGREGATE LIABILITY WILL BE LIMITED TO ONE HUNDRED U.S. DOLLARS.

12.3 Exclusions. THE LIMITATIONS OF LIABILITY IN THIS SECTION DO NOT APPLY TO : (A) CUSTOMER'S LIABILITY FOR PAYMENT OF FEES; (B) EITHER PARTY'S VIOLATION OF THE OTHER'S INTELLECTUAL PROPERTY RIGHTS OR ITS CONFIDENTIALITY OBLIGATIONS; (C) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS; OR (D) EITHER PARTY'S FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT.

## **13. Indemnification**

13.1 Indemnification by Metadata. Company will defend, at its expense, any claim or suit brought against Customer, and will indemnify and hold Customer harmless with respect to any settlement Company makes or approves, or any damages finally awarded in such claim or suit, insofar as such claim or suit is based on a claim by any third party alleging that the Company Services infringe the intellectual property rights of a third party;

provided however, this indemnification will not apply to you if you only use the Free Services. If any portion of the Company Services becomes, or in Company's opinion is likely to become, the subject of such claim of infringement, Company may, at Company's option: (a) procure for Customer the right to continue using the Company Services; (b) replace the Company Services with non-infringing software or services which do not materially impair the functionality of the Company Services; (c) modify the Company Services so that it becomes non-infringing; or (d) terminate this Agreement and refund any prepaid but unused fees covering use of the Company Services after termination in accordance with the 'Effect of Termination or Expiration' provision of this Agreement.

Notwithstanding the foregoing, Company will have no obligation under this section or otherwise with respect to any infringement claim based upon (i) any use of the Company Services not in accordance with this Agreement; (ii) any use of the Company Services in combination with other products, equipment, software or data not supplied by Company; or (iii) any unauthorized modification of the Company Services by Customer (collectively, the "**Excluded Activities**").

**13.2 Indemnification by Customer.** Customer will defend at its expense, any claim or suit brought against Company, and will indemnify and hold Company harmless with respect to any settlement Customer makes or approves, or any damages finally awarded in such claim or suit, insofar as such claim or suit is based on a claim by any third party alleging that your Content, Excluded Activities, or your use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law.

**13.3 Exclusive Remedy.** This section states the sole and exclusive remedy of the indemnified party and the entire liability of the indemnifying party, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for the claims and actions described herein.

**13.4 Indemnification Procedure.** The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party will promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party will have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party will cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit. Notwithstanding the foregoing, the indemnifying party shall be relieved from its indemnification obligation only to the extent its ability to defend or settle the claim has been prejudiced as a result of late notice or lack of cooperation with respect to the claim.

## **14. Publicity**

Company will be entitled to display Customer's corporate name and logo on Company's website and marketing materials and to identify Customer as a Company customer. You can opt-out of this by sending a notice to [legal@metadata.io](mailto:legal@metadata.io).

## **15. Miscellaneous**

**15.1 Entire Agreement.** This Agreement (including the Order Form) constitutes the entire agreement between Customer and Company regarding the use of the Company Services and supersedes all other proposals and agreements, whether electronic, oral, or written, between us. Additional or different terms proposed by you, including any contained in your purchase order, acceptance, or website are void. Our obligations are not contingent on the delivery of any future functionality or features of the Company Services.

15.2 Precedence. In the event of a conflict between the terms of the Agreement and an Order, the terms of the Order will control, but only as to that Order.

15.3 Amendment; No Waiver. We may modify any part of the Agreement by posting a revised version at <https://metadata.io/terms-of-use/>. The revised version will become effective and binding the next business day after it is posted. We will provide you notice of this revision by email or in-app notification.

If you do not agree with a modification to the Agreement, you must notify us in writing within thirty (30) days after we send notice of the revision. If you give us this notice, then your Order will continue to be governed by the existing terms of your Agreement until your next renewal date, after which the current terms posted at <https://metadata.io/terms-of-use/> will apply. However, if we can no longer reasonably provide the subscription to you under the terms prior to modification (for example, if the modifications are required by law or result from general product changes), then the Agreement and/or affected Company Services will terminate upon our notice to you and we will promptly refund any prepaid but unused fees covering use of the Company Services after termination in accordance with the 'Effect of Termination or Expiration' provision of this Agreement.

No delay in exercising any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.

15.4 Relationship. No joint venture, partnership, employment, or agency relationship exists between Customer and Company as a result of this Agreement or use of the Company Services.

15.5 Section Titles. The section titles in this Agreement are for convenience and have no legal effect.

15.6 Severability. If any part of this Agreement or an Order Form is determined to be invalid or unenforceable by applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement will continue in effect.

15.7 Assignment. This Agreement may not be assigned by either party without the other's express written consent, provided that either party shall be permitted to assign this Agreement without such consent to an acquirer of that party's business relating to this Agreement effected by merger, acquisition, corporate reorganization, or sale of all, or substantially all, of its assets.

15.8 Force Majeure. Except for payment obligations of amounts due under this Agreement, neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; pandemic; or other event outside the reasonable control of the party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.

15.9 Audit Rights. Upon either party's request, the other party will furnish any documentation, substantiation or releases reasonably necessary to verify that party's compliance with this Agreement.

15.10 Notices. Notices sent pursuant to this Agreement will be deemed effective upon verifiable receipt. Notices to Metadata must be sent to 1754 Technology Drive, Suite 212, San Jose, CA 95110 with a copy to [legal@metadata.io](mailto:legal@metadata.io). Notices to Customer will be sent to the physical or email address provided on the applicable Order Form or as updated in Customer's account. We may give electronic notices by general notice via the



Company Services and may give electronic notices specific to you by email to your e-mail address(es) on record in our account information for you.

For contractual purposes, Customer (a) consents to receive communications from Company in an electronic form; and (b) agrees that all terms and conditions, agreements, notices, disclosures, and other communications that Company provides to Customer electronically satisfy any legal requirement that such communications would satisfy if they were in writing.

15.11 Survival. Any provisions of this Agreement that, in order to fulfill the purposes of such provisions, need to survive the termination or expiration of this Agreement, shall be deemed to survive for as long as necessary to fulfill such purposes.

15.12 Authority. Each party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such party and enforceable in accordance with its terms.