

Diagrid Terms of Service

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE USING THE SERVICE OFFERED BY DIAGRID INC. (“**DIAGRID**”). BY MUTUALLY EXECUTING ONE OR MORE ORDER FORMS WITH COMPANY WHICH REFERENCE THESE TERMS (EACH, A “**SERVICE ORDER**”) OR BY ACCESSING OR USING THE SERVICE OR SOFTWARE IN ANY MANNER, YOU (“**YOU**” OR “**CUSTOMER**”) AGREE TO BE BOUND BY THESE TERMS (TOGETHER WITH ALL APPLICABLE ORDER FORMS, SERVICE DESCRIPTIONS, AND INCORPORATED TERMS HEREIN, THE “**AGREEMENT**”) TO THE EXCLUSION OF ALL OTHER TERMS. YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT; IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ORGANIZATION OR ENTITY, REFERENCES TO “CUSTOMER” AND “YOU” IN THIS AGREEMENT, EXCEPT THIS SENTENCE, REFER TO THAT ORGANIZATION OR ENTITY. IF YOU DO NOT AGREE TO ALL OF THE FOLLOWING, YOU MAY NOT USE OR ACCESS THE SERVICES IN ANY MANNER. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS.

1. SCOPE OF SERVICE AND RESTRICTIONS

1.1 Access to and Scope of Service. Subject to Customer’s compliance with this Agreement (including payment of any applicable Fees as specified in a corresponding Service Order), Diagrid will use commercially reasonable efforts to make the service specified in the corresponding Service Order or Service Description (herein, the “**Service**”) available to Customer as set forth in this Agreement. Customer may access and use the Service during the period specified in the Service Order, or Service Description, as applicable. Any such use of the Service by Customer is solely for Customer’s internal business. “**Service Description**” means the description available on the Diagrid website describing the use limitations with respect to the applicable Service, including but not limited to the use period, applicable unit of measure, and associated limitations.

1.2 Restrictions. Customer will use the Service only in accordance with the Service Description and all applicable laws, including, but not limited to, laws related to data. Customer agrees not to (and will not allow any third party to): (i) remove or otherwise alter any proprietary notices or labels from the Service or any portion thereof; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discover the underlying structure, ideas, or algorithms of the Service or any software used to provide

or make the Service available; or (iii) rent, resell or otherwise allow any third-party access to or use of the Service.

1.3 Ownership. Diagrid retains all right, title, and interest in and to the Service, and any software, products, works or other intellectual property created, used, provided, or made available by Diagrid under or in connection with the Service. Customer may from time to time provide suggestions, comments, or other feedback to Diagrid with respect to the Service (“**Feedback**”). Customer shall, and hereby does, grant to Diagrid a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid-up license to use and exploit the Feedback for any purpose. Nothing in this Agreement will impair Diagrid’s right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with any products, software, or technologies that Customer may develop, produce, market, or distribute.

1.4 Software License. Subject to the terms and conditions of this Agreement, to the extent Diagrid makes Diagrid proprietary software available to Customer, Diagrid hereby grants to Customer, and Customer hereby accepts from Diagrid, a limited, non-exclusive, non-transferable, non-assignable and non-sublicensable license to: run such software solely as necessary to make use of the Service. Customer agrees that, it shall not: (a) exceed the scope of the licenses granted in Section 1.1; (b) make copies of the software, or use the Software or any component thereof to run, or in connection with, Customer’s software or its internal systems; (c) distribute, sublicense, assign, delegate, rent, lease, sell, time-share or otherwise transfer the benefits of, use under, or rights to, the license granted in Section 1.1; (d) reverse engineer, decompile, disassemble or otherwise attempt to learn the source code, structure or algorithms underlying the software, except to the extent required to be permitted under applicable law; (e) modify, translate or create derivative works of the software; (f) remove any copyright, trademark, patent or other proprietary notice that appears on the software or copies thereof; or (g) combine or distribute any of the software with any third party software that is licensed under terms that seek to require that any of the software (or any associated intellectual property rights) be provided in source code form (e.g., as “open source”), licensed to others to allow the creation or distribution of derivative works, or distributed without charge. Notwithstanding the foregoing, in the event that any “open source” software or related project is a component of Diagrid’s service offering as further described within an applicable Service Description, any services (including software code shared or licensed in connection with such Service) delivered by Diagrid will remain compliant with the terms and conditions of any software licensed by Customer or a third-party licensor in connection with Diagrid’s provision of the Service to Customer.

1.5 Customer Data. Customer is solely responsible for Customer Data including, but not limited to: (a) compliance with all applicable laws and this Agreement; (b) any claims relating to Customer Data; and (c) any claims that Customer Data infringes, misappropriates, or otherwise violates the rights of any third party. For purposes of this Agreement, “**Customer Data**” shall mean any data, information or other material provided, uploaded, or submitted by Customer to the Service in the course of using the Service. Customer shall retain all right, title and interest in and to the Customer Data, including all intellectual property rights therein. Customer is responsible for the use of the Service by any person to whom Customer has given access to the Service, even if Customer did not authorize such use. In addition to these Terms of Service, Diagrid maintains Customer Data in accordance with its published [Privacy Policy](https://diagrid.io/privacy-policy) currently located here: diagrid.io/privacy-policy.

1.6 Use of Customer Data. Customer hereby grants to Diagrid a limited license to use the Customer Data as necessary to provide the Service to Customer. Customer acknowledges and consents to the collection of Customer Data resulting from the activities and obligations set forth in this Agreement, including but not limited to periodic collection of information in connection with improvements to the Service. Customer acknowledges and agrees that Customer Data may be irretrievably deleted if Customer’s account is terminated.

1.7 Aggregated De-identified Data. Notwithstanding anything to the contrary, Diagrid may freely use Aggregated De-identified Data for Diagrid’s business purposes (including without limitation, for purposes of improving, testing, operating, promoting, and marketing Diagrid’s current and future products and services). “**Aggregated De-identified Data**” means data submitted to, collected by, or generated by Diagrid in connection with Customer’s use of the Service, but only in aggregate, de-identified form which is not linked specifically to Customer or any individual.

1.8 Personal Data. Customer acknowledges and agrees that it will not make available or otherwise expose Diagrid to any personally identifiable information or similar data subject to applicable law or regulation unless Diagrid expressly agrees otherwise in writing.

1.9 Trials. If Customer is accessing or making use of the Service on a trial or evaluation basis as identified in the corresponding Service Order, Service Description or registration process (the “**Trial**”), Customer may use the Service during the Trial provided such use does not to exceed the Service levels set forth in the corresponding Service Order or Service Description, as applicable. Customer acknowledges and agrees that the Trial is provided on an “as-is” basis and, notwithstanding anything to the

contrary herein, the Trial is provided without any indemnification, support, or warranties or representation of any kind. Further, Trial use may be subject to certain additional restrictions, limitations and differing terms all as specified in the corresponding Service Order, or Service Description, as applicable.

1.10 Uptime and Support. Subject to Customer's payment of the corresponding fees and compliance with its obligations in the Agreement, Diagrid will use commercially reasonable efforts to (a) make the Service available to Customer during the period specified in the corresponding Service Order, if any (the "**Uptime SLA**"); and (b) make the Diagrid support services specified in the corresponding Service Order or Service Description (the "**Support**") available to Customer.

1.11 Service Suspension. Diagrid may suspend Customer's access to or use of the Service as follows: (a) immediately if Diagrid reasonably believes Customer's use of the Service may pose a security risk to or may adversely impact the Service; (b) immediately if Customer become insolvent, has ceased to operate in the ordinary course, made an assignment for the benefit of creditors, or becomes the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding; (c) following thirty (30) days written notice if Customer is in breach of this Agreement or any Service Order, or Service Description (and has not cured such breach, if curable, within the thirty (30) days of such notice); or (d) Customer has failed to pay Diagrid the Fees with respect to the Service.

1.12 Discontinuance. Customer acknowledges and agrees that in regard to any Trial or no-fee / freemium services, Diagrid may discontinue or terminate such Service at any time and for any reason and may modify the applicable terms governing such Service use by publishing a notice on the Diagrid website, or through other notification processes as may be required by applicable law.

2. FEES AND TAXES

2.1 Fees. Customer shall pay to Diagrid the fees as set forth in each applicable Service Order(s) or Service Description, as applicable (collectively, the "**Fees**") and will provide accurate and updated billing contact information. Customer acknowledges and agrees that Fees are non-refundable.

2.2 Invoicing Terms. If the Service Order, or Service Description, as applicable specifies that payment will occur by a method other than a credit card, Customer shall provide a purchase order number in the applicable amount (or reasonable alternative proof of Customer's ability to pay the fees specified in a Service Order, or Service Description), and promptly notify Diagrid of any changes necessary for payment of an invoice. Diagrid will invoice Customer either monthly

or according to the billing frequency stated in the Service Order. Invoices are due pursuant to the corresponding Service Order, or Service Description, as applicable. If any invoiced amount is not received by Diagrid by the due date, then without limiting Diagrid's rights or remedies those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

2.3 Taxes. Any and all payments made by Customer in accordance with this Agreement are exclusive of any taxes that might be assessed against Customer by any jurisdiction. Customer shall pay or reimburse Diagrid for all sales, use, property and similar taxes; all customs duties, import fees, stamp duties, license fees and similar charges; and all other mandatory payments to government agencies of whatever kind, except taxes imposed on the net or gross income of Diagrid. All amounts payable to Diagrid under this Agreement shall be without set-off and without deduction of any taxes, levies, imposts, charges, withholdings and/or duties of any nature which may be levied or imposed, including without limitation, value added tax, customs duty and withholding tax.

3. TERM AND TERMINATION

3.1 Term. The term of this Agreement shall commence on the Effective and unless terminated earlier according to this Section 3, will end on the last day of the term specified in a last Service Order, or Service Description, as applicable (the "**Term**"). Each Service Order will renew automatically at the end of the applicable term unless either party provides to the other advance written notice with respect to non-renewal at least thirty (30) days prior to the end of the then current term.

3.2 Termination. This Agreement and the Service Orders, or Service Description, as applicable hereunder may be terminated: (a) by either party if the other has materially breached this Agreement, within thirty (30) calendar days after written notice of such breach to the other party if the breach is remediable or immediately upon notice if the breach is not remediable; or (b) by Diagrid upon written notice to Customer if Customer (i) has made or attempted to make any assignment for the benefit of its creditors or any compositions with creditors, (ii) has any action or proceedings under any bankruptcy or insolvency laws taken by or against it which have not been dismissed within sixty (60) days, (iii) has effected a compulsory or voluntary liquidation or dissolution, or (iv) has undergone the occurrence of any event analogous to any of the foregoing under the law of any jurisdiction.

3.3 Effect of Termination. Upon any expiration or termination of this Agreement, Customer shall (i) immediately cease use of the Service, and (ii) return all Diagrid Confidential Information and other materials and information provided by Diagrid. Any termination or expiration shall not relieve Customer of its obligation to pay all Fees

accruing prior to termination. If the Agreement is terminated due to Section 3.2 (a), Customer shall pay to Diagrid all Fees set forth in the corresponding Service Order(s) and Service Description.

3.4 Survival. The following provisions will survive termination of this Agreement: Sections 1.2 (Restrictions) -1.8 (Personal Data), 3.3 (Effect of Termination), Section 3.4 (Survival), Section 4 (Confidentiality), Section 7 (Limitation of Liability), Section 8 (Miscellaneous).

4. CONFIDENTIALITY

During the term of this Agreement, either party may provide the other party with confidential and/or proprietary materials and information (“**Confidential Information**”). All materials and information provided by the disclosing party and identified at the time of disclosure as “Confidential” or bearing a similar legend, and all other information that the receiving party reasonably should have known was the Confidential Information of the disclosing party, shall be considered Confidential Information. This Agreement is Confidential Information, and all pricing terms are Diagrid Confidential Information. The receiving party shall maintain the confidentiality of the Confidential Information and will not disclose such information to any third party without the prior written consent of the disclosing party. The receiving party will only use the Confidential Information internally for the purposes contemplated hereunder. The obligations in this Section shall not apply to any information that: (a) is made generally available to the public without breach of this Agreement, (b) is developed by the receiving party independently from and without reference to the Confidential Information, (c) is disclosed to the receiving party by a third party without restriction, or (d) was in the receiving party’s lawful possession prior to the disclosure and was not obtained by the receiving party either directly or indirectly from the disclosing party. The receiving party may disclose Confidential Information as required by law or court order; provided that, the receiving party provides the disclosing with prompt written notice thereof and uses the receiving party’s best efforts to limit disclosure. At any time, upon the disclosing party’s written request, the receiving party shall return to the disclosing party all disclosing party’s Confidential Information in its possession, including, without limitation, all copies and extracts thereof.

5. INDEMNIFICATION

5.1 Indemnification by Customer. Customer will defend, indemnify, and hold Diagrid, its affiliates, suppliers and licensors harmless and each of their respective officers, directors, employees and representatives from and against any claims, damages,

losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim with respect to: (a) Customer Data; (b) breach of this Agreement or violation of applicable law by Customer; or (c) alleged infringement or misappropriation of third-party's intellectual property rights resulting from Customer Data.

5.2 Indemnification by Diagrid. In relation to any paid or fee-based Service offered by Diagrid per this Agreement, Diagrid will defend, indemnify, and hold Customer harmless from and against any third-party claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising from claims by a third party that Customer's use of the Service directly infringes or misappropriates a third party's United States (or Berne Convention signatory country) intellectual property rights (an **"Infringement Claim"**). Notwithstanding any other provision in this Agreement, Diagrid shall have no obligation to indemnify or reimburse Customer with respect to any Infringement Claim to the extent arising from: (a) the combination of any Customer Data with the Service; (b) the combination of any products or services, other than those provided by Diagrid to Customer under this Agreement, with the Service; or (c) non-discretionary designs or specifications provided to Diagrid by Customer that caused such Infringement Claim. Customer agrees to reimburse Diagrid for any and all damages, losses, costs and expenses incurred as a result of any of the foregoing actions.

5.3 Notice of Claim and Indemnity Procedure. In the event of a claim for which a party seeks indemnity or reimbursement under this Section 5 (each an **"Indemnified Party"**) and as conditions of the indemnity, the Indemnified Party shall: (a) notify the indemnifying party in writing as soon as practicable, but in no event later than thirty (30) days after receipt of such claim, together with such further information as is necessary for the indemnifying party to evaluate such claim; and (b) the Indemnified Party allows the indemnifying party to assume full control of the defense of the claim, including retaining counsel of its own choosing. Upon the assumption by the indemnifying party of the defense of a claim with counsel of its choosing, the indemnifying party will not be liable for the fees and expenses of additional counsel retained by any Indemnified Party. The Indemnified Party shall cooperate with the indemnifying party in the defense of any such claim. Notwithstanding the foregoing provisions, the indemnifying party shall have no obligation to indemnify or reimburse for any losses, damages, costs, disbursements, expenses, settlement liability of a claim or other sums paid by any Indemnified Party voluntarily, and without the indemnifying party's prior written consent, to settle a claim. Subject to the maximum liability set forth in Section 7, the provisions of this Section 5 constitute the entire understanding of the parties regarding each party's respective liability under this Section 5, including but not limited to Infringement Claims (including

related claims for breach of warranty) and each party's sole obligation to indemnify and reimburse any Indemnified Party.

6. WARRANTY

6.1 Warranty. The Service, when used by Customer in accordance with the provisions of this Agreement and in compliance with the applicable Documentation, will perform, in all material respects, the functions described in the Documentation during the Term. EXCEPT TO THE LIMITED EXTENT EXPRESSLY PROVIDED PURSUANT TO A SERVICE ORDER OR SERVICE DESCRIPTION, CUSTOMER ACKNOWLEDGES THAT ANY TRIAL AND NO-FEE SERVICES ARE PROVIDED WITH LIMITED OR NO SUPPORT OBLIGATIONS FROM DIAGRID, ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND.

6.2 Exclusive Remedies. Customer shall report to Diagrid, pursuant to the notice provision of this Agreement, any breach of the warranties set forth in this Section 6. In the event of a breach of warranty by Diagrid under this Agreement, Customer's sole and exclusive remedy, and Diagrid's entire liability, shall be prompt correction of any material non-conformance in order to minimize any material adverse effect on Customer's business.

6.3 Disclaimer of Warranty. Diagrid does not represent or warrant that the operation of the Service (or any portion thereof) will be uninterrupted or error free, or that the Service (or any portion thereof) will operate in combination with other hardware, software, systems, or data not provided by Diagrid, except as expressly specified in the applicable Documentation. CUSTOMER ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.1, DIAGRID MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICE OR SERVICES, OR THEIR CONDITION. DIAGRID IS FURNISHING THE WARRANTIES SET FORTH IN SECTION 6.1 IN LIEU OF, AND DIAGRID HEREBY EXPRESSLY EXCLUDES, ANY AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES, WHETHER UNDER COMMON LAW, STATUTE OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY AND ALL WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

7. LIMITATIONS OF LIABILITY

IN NO EVENT SHALL DIAGRID BE LIABLE FOR ANY LOST DATA, LOST PROFITS, BUSINESS INTERRUPTION, REPLACEMENT SERVICE OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY. DIAGRID'S LIABILITY FOR ALL CLAIMS ARISING UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED EITHER (A) THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE SERVICE ORDER OR SERVICE DESCRIPTION DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM, OR (B) IN THE CASE OF ANY TRIAL OR NO-FEE SERVICES, ONE HUNDRED (\$100) US DOLLARS.

8. MISCELLANEOUS

8.1 Export Control. Customer hereby certifies that Customer will comply with all current US Export Control laws. Customer agrees to defend, indemnify, and hold Diagrid harmless from any liability for Customer's violation of U.S. Export Control laws.

8.2 Compliance with Laws. Customer shall comply with all applicable laws and regulations in its use of any Service, including without limitation the unlawful gathering or collecting, or assisting in the gathering or collecting of information in violation of any privacy laws or regulations. Customer shall, at its own expense, defend, indemnify, and hold harmless Diagrid from and against any and all claims, losses, liabilities, damages, judgments, government or federal sanctions, costs and expenses (including attorneys' fees) incurred by Diagrid arising from any claim or assertion by any third party of violation of privacy laws or regulations by Customer or any of its agents, officers, directors or employees.

8.3 Assignment. Neither party may transfer and assign its rights and obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Diagrid may transfer and assign its rights under this Agreement without consent from the other party in connection with a change in control, acquisition or sale of all or substantially all of its assets.

8.4 Force Majeure. Neither party shall be responsible for failure or delay in performance by events out of their reasonable control, including but not limited to, pandemics, Internet outage, terrorism, war, fires, earthquakes, and other disasters (each a "**Force Majeure**"). Notwithstanding the foregoing: (i) Customer shall be liable for payment obligations for Service rendered; and (ii) if a Force Majeure continues for more than thirty (30) days, either party may terminate this agreement by written notice to the other party.

8.5 Notice. All notices between the parties shall be in writing and shall be deemed to have been given if personally delivered or sent by registered or certified mail (return receipt), or by recognized courier service.

8.6 No Agency. Both parties agree that no agency, partnership, joint venture, or employment is created as a result of this Agreement. Customer does not have any authority of any kind to bind Diagrid.

8.7 Governing Law. This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of the United States and the State of California, without regard to its conflict of laws provisions. The federal courts of the United States in the Northern District of California and the state courts of the State of California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the doctrine of forum non conveniens or otherwise. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement, or any Purchase Order issued under this Agreement.

8.8 Publicity. Customer hereby grants Diagrid the right to identify Customer as a Diagrid Customer, and use Customer's name, mark and/or logo on Diagrid's website and/or in Diagrid's marketing materials with respect to the same. In addition, Customer agrees to participate in certain publicity activity, such as a case study, customer quote, and joint press release all as agreed to by the parties.

8.9 Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement, and all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. Any term or provision of this Agreement held to be illegal or unenforceable shall be, to the fullest extent possible, interpreted so as to be construed as valid, but in any event the validity or enforceability of the remainder hereof shall not be affected. In the event of a conflict between this Agreement and the Service Order, or Service Description, as applicable, the terms of this Agreement shall control.