

MASTER SERVICES AGREEMENT

By agreeing to this Clickwrap Master Services Agreement (“**Agreement**”) you represent that you have the right to bind your organization (“**Customer**”) to its terms and conditions. If you do not have such right, you should not agree to this Agreement or use the Services.

- 1. Ordering.** Customer may order from TreeTop Commons, LLC (“**TreeTop**”) rights to access and use TreeTop’s online services (the “**Services**”) as specified in one or more order forms (each an “**Order Form**”). Each Order Form constitutes a binding commitment to license and pay for the items described on such Order Form under this Agreement. All Order Forms are incorporated herein by reference.
- 2. Scope and Access Rights.** Customer may access and use the Services in accordance with and subject to any restrictions set forth in this Agreement and other documents expressly referenced herein. Subject to the terms and conditions of this Agreement, TreeTop hereby grants to Customer and its designated users (“**Users**”) a limited, worldwide, non-exclusive, non-transferable, non-sublicensable right to access and use the Services solely for Customer’s internal business purposes.
- 3. Restrictions.** Except as otherwise permitted hereunder, Customer agrees not to: (a) reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Services, except to the extent such restriction is not permitted by law; (b) distribute, transfer, sublicense, or otherwise make available the Services (or any portion thereof) to third parties other than Users, or as otherwise provided herein; (c) use the Services in violation of any applicable law, rule or regulation, including any export/import laws, or (d) in any way access, use, or copy any portion of the Services to directly or indirectly develop, promote, distribute, sell or support any competitive product or service.
- 4. Customer Data.** TreeTop may collect and use data derived from Customer’s use of the Services (“**Usage Data**”) for its own internal business purposes and to provide you with the Services. You also expressly agree and acknowledge that Usage Data may also be released for research purposes to institutions of higher education, non-profit research institutions, and government agencies within the United States. Any such Usage Data may only be disclosed in accordance with any relevant law and in an anonymous, aggregated format that in no way identifies Customer or any User.
- 5. Compliance.** Customer warrants that it, and all users and individuals utilizing the Services through it, shall comply with this Agreement, TreeTop’s [Acceptable Use Policy](#) (the “**AUP**”), [Privacy Policy](#), and all applicable laws relating to its use of the Services. By entering into this Agreement, Customer represents and warrants that it has had the opportunity to read and review the AUP and Privacy Policy.
- 6. Fees.** All fees for licenses to the Services (the “**Fees**”) will be set forth on the applicable Order Form. Unless otherwise agreed to in writing signed by the parties, Customer will pay to TreeTop all Fees owed within thirty (30) days after execution of the Order Form. Customer is responsible for any and all applicable sales, use, and other taxes (other than taxes based on TreeTop’s income). Each party is responsible for its own expenses under this Agreement.

7. Term & Termination.

- a. **Term.** This Agreement shall continue in effect until terminated as set forth herein. The term of each license to the Services licensed and paid for by Customer will commence on the Start Date on the applicable Order Form and will continue until the End Date on an applicable Order Form (the “*Term*”). Unless otherwise set forth on the applicable Order Form, Customer’s license to the Services will automatically renew for additional one (1) year Terms (“*Renewal Terms*”) at the rates set forth in such Order Form, or as otherwise designated by TreeTop prior to such End Date, unless Customer gives TreeTop written notice of its intent not to renew on the same terms at least thirty (30) days prior to the end of the then-current Term.
- b. **Termination.** This Agreement and/or any Order Form, if applicable, may be terminated (a) by either party if the other party materially breaches this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching party; or (b) by either party if the other party provides proof that it made a general assignment for the benefit of creditors, suffered or permitted the appointment of a receiver for its business or assets, or availed itself of or became subject to any proceeding under the U.S. Federal Bankruptcy Act or any other foreign or domestic statute, law, rule or regulation relating to insolvency or the protection of rights of creditors. Upon any termination of this Agreement or an Order Form (a) all rights licensed and obligations required thereunder shall immediately cease; provided that Sections 4, 5, 8, and 9 shall survive termination, and (b) Customer shall pay to TreeTop any Fees accrued or outstanding prior to the date of termination.

- 8. Proprietary Rights.** As between the parties, (a) TreeTop will retain all ownership rights, title, and interest in and to the Services, all updates and/or upgrades thereto, and other derivative works of the Services that may be provided by TreeTop, including any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the Services, and all intellectual property rights incorporated into or related to the foregoing; and (b) Customer will retain all ownership rights in and to any content that it uploads into the Services (“*Customer Content*”).

- 9. Confidentiality.** “*Confidential Information*” means, with respect to a party (the “*Disclosing Party*”), information that pertains to such party’s business, including, without limitation, technical, marketing, financial, employee, planning, product roadmaps and documentation, performance results, pricing, and other proprietary information. Confidential Information will be designated and/or marked as confidential when disclosed, provided that any information that the party receiving such information (the “*Receiving Party*”) knew or reasonably should have known is considered confidential or proprietary by the Disclosing Party, will be considered Confidential Information of the Disclosing Party even if not designated or marked as such. The Receiving Party shall preserve the confidentiality of the Disclosing Party’s Confidential Information and treat such Confidential Information with at least the same degree of care that the Receiving Party uses to protect its own Confidential Information, but not less than a reasonable standard of care. The Receiving Party will use the Confidential Information of the Disclosing Party only to exercise rights and perform obligations under this Agreement. Confidential Information of the Disclosing Party will be disclosed only to those employees and contractors of the Receiving Party with a need to know such information. The Receiving Party shall not be liable to the Disclosing Party for the release of Confidential Information if such information: (a) was known to the Receiving Party on or before the effective date of this Agreement without restriction as to use or

disclosure; (b) is released into the public domain through no fault of the Receiving Party; (c) was independently developed solely by the employees of the Receiving Party who have not had access to Confidential Information; or (d) is divulged pursuant to any legal proceeding or otherwise required by law, provided that, to the extent legally permissible, the Receiving Party will notify the Disclosing Party promptly of such required disclosure and reasonably assists the Disclosing Party in efforts to limit such required disclosure.

10. TreeTop Warranties, Indemnification, and Limitation of Liability.

- a. **By TreeTop.** TreeTop warrants that (a) the Services will be provided in a workmanlike manner, and (b) TreeTop will not knowingly introduce any “back door,” “time bomb,” “Trojan horse,” “worm,” “drop dead device,” “virus,” “preventative routines” or other computer software routines within the Services that are intentionally designed to permit unauthorized access to or use of either the Services or Customer’s computer systems (“*Viruses*”). In the event of any breach of the warranty in subsection (a) above, TreeTop shall, as its sole liability and Customer’s sole remedy, diligently remedy any components of the Service not provided in a workmanlike manner promptly after its receipt of written notice from Customer. TreeTop will not be liable to the extent that any breach of the foregoing warranties are caused by (i) third-party components (including in combination with the Services) not provided by TreeTop; (ii) unauthorized use or use of the Services other than in accordance with TreeTop’s instruction, or (iii) Viruses introduced by Customer or its agents (collectively, “*Exclusions*”).
- b. **Indemnification.** TreeTop will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that the Services infringe or misappropriate any copyright or trade secret rights, and TreeTop will pay those reasonable costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim, or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer notifying TreeTop promptly in writing of such action, Customer giving TreeTop sole control of the defense thereof and any related settlement negotiations, and Customer cooperating and, at TreeTop’s reasonable request and expense, assisting in such defense. If the Services (or any component thereof) becomes, or in TreeTop’s opinion is likely to become, the subject of an infringement claim, TreeTop may, at its option and expense, either (a) procure for Customer the right to continue exercising the access rights granted to Customer in this Agreement, or (b) replace or modify the Services so that they become non-infringing and remain functionally equivalent. If neither of the foregoing options are, in TreeTop’s reasonable opinion, commercially reasonable, TreeTop may terminate this Agreement and will refund to Customer a pro-rata portion of any applicable prepaid Fees. Notwithstanding the foregoing, TreeTop will have no obligation under this Section 10.2 or otherwise with respect to any infringement claim based upon (i) any Exclusions or (ii) Customer Content. This Section 10.2 states TreeTop’s entire liability and Customer’s sole and exclusive remedy for infringement claims and actions.
- c. **Disclaimer.** THE EXPRESS WARRANTIES IN SECTION 10 ARE THE EXCLUSIVE WARRANTIES OFFERED BY TREETOP, AND ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, QUIET ENJOYMENT,

TITLE, MERCHANTABILITY AND THOSE THAT ARISE FROM ANY COURSE OF DEALING OR COURSE OF PERFORMANCE ARE HEREBY DISCLAIMED.

d. **Limitation of Liability.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. THE WARRANTIES, IF ANY, SET FORTH HEREIN ARE LIMITED TO THEIR EXPRESS TERMS AND ARE IN LIEU OF, AND TREETOP, ITS LICENSORS, AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY (a) WARRANTY THAT THE TECHNOLOGY OR SERVICES ARE ERROR-FREE OR “BUG”-FREE, ACCURATE, SECURE, OR RELIABLE; (b) WARRANTY THAT THE TECHNOLOGY OR SERVICES WILL OPERATE WITHOUT INTERRUPTION; (c) WARRANTY THAT ALL ERRORS WILL BE CORRECTED OR THAT THE TECHNOLOGY OR SERVICES WILL COMPLY WITH ANY LAW, RULE, OR REGULATION; (d) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT; (e) IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE; AND (f) WARRANTY THAT THE TECHNOLOGY OR SERVICES WILL MEET CUSTOMER’S REQUIREMENTS. TREETOP WILL NOT BE LIABLE FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT, STATUTE, TORT, OR OTHERWISE), INCLUDING DAMAGES FOR LOST PROFITS, LOST SAVINGS, COST OF REPLACEMENT SERVICES, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, OR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, WHETHER OR NOT TREETOP HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HOWEVER, SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION ONLY APPLIES WHERE ALLOWED. TO THE EXTENT PERMITTED BY APPLICABLE LAW, TREETOP’S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO THE TOTAL OF THE FEES ACTUALLY PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE ONE (1) YEAR PERIOD PRIOR TO THE DATE THAT SUCH LIABILITY FIRST ARISES.

11. Accessibility. Within a reasonable period of time, TreeTop’s Services will meet the accessibility standards set forth in WCAG 2.0 and be compliant with Section 508 of the Americans with Disabilities Act.

12. Miscellaneous. Each party will be excused from any delay or failure in performance hereunder caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to acts of God, earthquake, labor disputes and strikes, riots, war and governmental requirements. The obligations and rights of the party so excused will be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay. The parties are independent contractors with respect to each other, and nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership or a joint venture between the parties. This Agreement controls the actions of all party representatives, officers, agents, employees and associated individuals. The terms of

this Agreement shall be binding on the parties, and all successors to the foregoing. Except as otherwise set forth herein, neither party will assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without the other party's prior written consent, except pursuant to a transfer of all or substantially all of such party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment, transfer or delegation in violation of the foregoing shall be null and void. All modifications to or waivers of any terms of this Agreement must be in a writing that is signed by the parties hereto and expressly references this Agreement. This Agreement shall be governed by the laws of the State of Oregon, without regard to its conflict of laws rules. In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. This Agreement includes any Order Forms agreed to by the parties in writing and all expressly referenced documents. Collectively the foregoing constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications, including, without limitation, any quotations or proposals or other documents submitted by the parties. The terms on any purchase order or similar document submitted by Customer to TreeTop will have no effect and are hereby rejected. All notices, consents and approvals under this Agreement must be delivered in writing by courier, by facsimile, or by certified or registered mail, (postage prepaid and return receipt requested) to the other Party at the address set forth on the applicable Order Form.