

Cirrus Link Solutions, LLC

TERMS OF SERVICE - October 2015

PLEASE READ THESE TERMS OF SERVICE ("ToS") CAREFULLY, AS THEY REPRESENT THE TERMS OF A BINDING AGREEMENT (THE "AGREEMENT") BETWEEN YOU AND CIRRUS LINK SOLUTIONS, LLC, ("CLS" OR "WE" AND RELATED PRONOUNS) AND GOVERNS YOUR USE OF CLS CLOUD SERVICES. YOU WILL BE ACCEPTING AND AGREEING TO BE BOUND BY THESE TERMS BY: (A) CLICKING A BOX INDICATING YOUR ACCEPTANCE OF THESE TERMS, (B) EXECUTING AN ACCOUNT AGREEMENT OR ORDER FORM THAT REFERENCES THESE TERMS AND/OR (C) ACCESSING AND/OR OTHERWISE USING THE SERVICE.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, YOU MUST NOT INDICATE YOUR ACCEPTANCE ON BEHALF OF THE ENTITY. IF YOU ARE A USER WORKING FOR OR ON BEHALF OF A COMPANY, YOU REPRESENT AND AGREE THAT: (1) SUCH COMPANY HAS DULY AUTHORIZED YOUR ACCESS TO THE APPLICABLE SERVICE AS A USER, AND (2) YOU HAVE READ THESE TERMS, UNDERSTAND THEM AND AGREE TO BE BOUND BY ALL TERMS APPLICABLE TO USERS. IF YOU DO NOT ACCEPT THESE TERMS IN THEIR ENTIRETY, YOU MUST NOT INDICATE YOUR ACCEPTANCE AND MAY NOT USE THE SUBJECT SERVICE IN ANY WAY.

YOUR ACCEPTANCE OF THESE TERMS CONSTITUTES AN ESSENTIAL PART OF THE BARGAIN BETWEEN YOU AND CLS, WITHOUT WHICH CLS WOULD NOT AGREE TO EXTEND THE RIGHTS SET FORTH HEREIN.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement will become effective between You and Us upon Your acceptance of these ToS on the basis described above. The Services are provided expressly subject to these ToS, and Your rights to use the Service are conditioned upon: (i) Your compliance with all provisions of these ToS, and (ii) Your timely payment of all applicable Fees (as defined in Section 4 below).

CLS reserves the right, in its sole discretion, at any time and from time to time, to replace, modify, add to or retract/delete all or any portion of these ToS. It is Your obligation to review the most recent version of these ToS from time to time, posted at www.CLS.com/legal/cloud-terms, to ensure Your continued acceptance hereof. Any revisions to these ToS will become effective, and will constitute an amendment to this Agreement, twenty (20) business days after such revisions are posted, unless You expressly accept the revised ToS as of an earlier date. Your continued use of the Service after the applicable effective date of such revisions will conclusively establish Your acceptance to be bound by the revised ToS. If You have questions about these ToS or the Service, please contact CLS customer support at www.CLS.com/support/.

1. **DEFINITIONS.** The following definitions apply to capitalized terms used in this document:
 - 1.1 "CHARIOT" refers to the CLS Chariot SCADA, Chariot Asset Tracker, Chariot Asset Geotab Integrator Cloud services, a cloud-based infrastructure that provides TCP/IP-based communication with a Registered Device or between a Registered Device and a software application.
 - 1.2 "Account" means an account subscription for online access to and use of Remote Manger subject to these Terms of Service.
 - 1.3 "Direct Account" means an Account established in accordance by a signed Account Agreement made directly with Us.
 - 1.4 "Account Term" means the duration of an Account, which (unless earlier terminated per these ToS), will be for a Direct Account, the Initial Term identified on the applicable Account Agreement plus any renewal periods created per section 4.1
 - 1.5 "Cloud Service(s)" means the applicable Cloud service(s) provided by CLS (Chariot SCADA, Chariot Asset Tracker, Chariot Asset Geotab Integrator or another edition of Chariot, as the case may be).
 - 1.6 "Services" or "Service" refers to those Cloud Services applicable to an Account, which will be for a Direct Account, the Cloud Services identified in the Service Description portion of the Account Agreement. The Services may

include device management services, data communications services, subscription-based applications, and/or other services that may be introduced in the future. The term “Services” may refer to a single service or a collection of services and/or subscription-based applications.

- 1.7 “**User**” means an individual You have authorized to use the Services associated with Your Account.
- 1.8 “**Enabled Device**” means a Cloud Service-capable device rightfully under Your control.
- 1.9 “**Registered Device**” refers to an Enabled Device connecting on the applicable Cloud Service.
- 1.10 “**Third-Party Supplier**” means an infrastructure provider or entity that supplies other technologies or services used by the Service. This term includes those which provide services [example: mapping services] for use by other solution providers (similar to the Service), where the service is hosted by the Third-Party Supplier and is not within the control of CLS.
- 1.11 “**Terms of Service**” or “**ToS**” refers to the most current version of the terms of service applicable to the Service, which will be posted at www.CLS.com/legal/cloud-terms. The Terms of Service will include any referenced attachments and Exhibits, which will be an integral part of those terms.

2. YOUR USE OF THE SERVICE

- 2.1 During the Account Term, We grant You the right to use the Services subject to (a) timely payment of all charges applicable to Your Account, (b) these Terms of Services, and (c) for a Direct Account, the terms of the Account Agreement. We reserve all other rights not expressly granted in these Terms of Services or an applicable Account Agreement.
- 2.2 You will be solely responsible for:
 - (a) maintaining the security of each Enabled Device, Your Account, passwords and files,
 - (b) all use of the Services (including payment of fees associated with those uses) occurring as a part of Your Account, whether or not authorized by You or done with Your knowledge or consent, and
 - (c) all data, information or other content transmitted over or uploaded to the Service as part of Your Account.
- 2.3 As a condition to using the Services, each User of the Services may be required to register and select a password and user name (“**User ID**”). You will ensure that Your Users provide accurate and complete, registration information and will update their registration information, as necessary, to keep it current. Your Users may not (i) select or use as a User ID a name of another person with the intent to impersonate that person; or (ii) use as a User ID a name subject to any rights of a person other than such User without appropriate authorization. Each User ID will be assigned to (and may only be used by) one unique User and You will ensure that each User ID will not be shared with or used by any party other than the unique User to which it is assigned.
- 2.4 You acknowledge that, except as expressly stated, each Party retains all rights in its trademarks, service marks, software, technology and intellectual property.
- 2.5 If We conduct an investigation of Service outages, security problems, or a suspected security breach of the Service, You agree to provide a reasonable level of cooperation to help facilitate Our investigation, to the extent warranted by the facts of the situation. If Your cooperation requires more than a small amount of time and effort, We will discuss in good faith an appropriate level of compensation.
- 2.6 Applicable law requires maintenance of a level of security or privacy for certain kinds of data. You will abide by all legal requirements regarding the data You transmit to or store in the Service.
- 2.7 For the security of Your own data and compliance with PCI-DSS standards, you: (i) will encrypt all Your data [including payment card data subject to the PCI-DSS and primary account numbers (PAN)] prior to transmitting it to the Service, (ii) will not disclose the encryption key to CLS or any third party.
- 2.8 You represent and warrant that:
 - (a) in the event that You, Your Users, and/or anyone using Your Account utilize(s) any aspect of the Service to transmit, receive, store, or process Protected Health Information (“**PHI**”) as that term is defined by the Health Insurance Portability and Accountability Act (“**HIPAA**”) and/or the Health Information Technology for Economic and Clinical Health Act (“**HITECH Act**”) as amended and as implemented by the associated regulations (collectively, the “**Acts**”), You: (i) will fully comply with the Acts; (ii) will encrypt all PHI at rest and in motion and (iii) acknowledge that You do not consider CLS as a Business Associate, as defined in the Acts.
 - (b) each Enabled Device, has, if required by law, all approvals and certifications by the Food and Drug Administration (FDA) and/or other federal and state regulators in connection with each device.
- 2.9 Unless and until You notify Us in writing to the contrary, We will have the limited right to use Your company name and logo to identify You as a customer for the Services in our marketing communications and collaterals. As soon as reasonably practical after receipt of notice of termination of this right, We will cease further Use of Your name and logo, but will have no obligation to remove them from any pre-existing printed collateral materials We have in inventory.

3. YOUR ACCOUNT

3.1 Renewals.

Direct Accounts will, at the end of the Initial Term and each renewal period, unless either Party gives the other party notice of non-renewal at least one month in advance, be subject to automatic renewal for a renewal period equal to that of the Initial Term.

3.2 Fees.

- Unless otherwise agreed in writing, fees for the Initial Term of Your Account will be payable upon signing of Your Account Agreement, and fees for any renewal period will be due and payable at the inception of such period.
- All fees are in US dollars, unless otherwise stated.
- Fees for Your Account are payable regardless whether Services are being used by a Registered Device. Fees are non-cancelable and non-refundable. Unless otherwise agreed in writing, CLS reserves the right to change the amount of the fees or applicable charges and/or to institute new charges for any renewal period, provided that notice of such charges is provided at least thirty (30) days in advance of the renewal period. In addition, CLS may introduce new features and functionalities, which may be made available to You at an additional cost.
- You will be responsible for the payment of taxes of any kind [including any federal, state, local or foreign taxes, duties or levies but excluding taxes based on Our net income] imposed on or based on the provision, sale or use of the Services (“**Taxes**”). Except where You provide us with a valid and correct tax exemption certificate applicable to the Services, we will bill You for, and You will pay, any Taxes We are obligated to collect in connection with the Services provided under this Agreement. You will not rely on Us to determine taxability and will be responsible for assessing and paying any applicable use taxes when appropriate.

4. ADDING DEVICES; UPGRADES

- (a) If You wish to add new Registered Devices to Your Account, You and We will execute an Addendum to the Account Agreement to include the new devices. The Addendum will identify the effective date for the expanded scope of the Services and any associated pricing. All other provisions of the Account Agreement (including those relating to its term and renewal) will remain unchanged.
- (b) If You request an upgrade to Your edition of the Service, We will negotiate in good faith with You to negotiate a new Account Agreement to include the upgraded edition and to supersede and replace this Account Agreement. When such a new Account Agreement has become effective, We will issue You a credit memo, (applicable against amounts due under the new Account Agreement) for the pro-rated value of unused Services remaining under the superseded Account Agreement.

5. TERMINATION AND SUSPENSION

- 5.1 We may, without liability, suspend or terminate any or all Services to some or all of Our Account holders (including You) or users (including Your Users): (a) following a possible or actual security breach or cyber-attack on the Service; (b) in order to protect the Service network; or (c) if required by a governmental entity.
- 5.2 We may, without liability, suspend or terminate any or all Services in Your Account if: (a) You are engaging in suspected fraudulent or unauthorized use, (b) You or any of Your affiliates are listed on a government-issued restricted persons or entities list or warning list; (c) We, in Our discretion, determine that Your use of the Services (or that of Your Users) poses a business, technological or legal risk to CLS or its customers; (d) You have breached the Terms of Service, the Account Agreement or other contract You may have with CLS relating to the Service; (e) Payments in Your Account are past due; (f) You fail to provide a reasonable level of cooperation in an investigation pursuant to subsection 3.7; (g) there are few or no data transactions in Your Account or (h) as otherwise provided in an Account Agreement.
- 5.3 CLS may, without liability, suspend or terminate Services for a Registered Device (i) if You or Your User is using a device or equipment that is defective or illegal (ii) if the Registered Device is causing technical or other problems on the Service or (iii) upon termination of Your Account.
- 5.4 Either Party may terminate Your Account and any associated Account Agreement if the other Party becomes insolvent or is unable to pay its debts or enters into or files (or has filed or commenced against it) a petition, arrangement, application, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or any similar laws of any state or country (a "**Proceeding**") provided the Proceeding is not stayed within forty-five (45) days of being filed.
- 5.5 Portions of these Terms of Service and any associated Account Agreement which by their nature should survive termination, will survive termination, including, without limitation, those respecting accrued rights to payment, warranty disclaimers and limitations of liability. However, upon termination, Your right to use the Services will immediately terminate

- 5.6 UPON TERMINATION OF YOUR ACCOUNT FOR ANY REASON, YOU WILL IMMEDIATELY RECONFIGURE YOUR ENABLED DEVICES SO THEY NO LONGER ATTEMPT TO COMMUNICATE WITH THE SERVICE. If you fail to so reconfigure an Enabled Device, CLS reserves the right (but is not obligated) to remotely and without notice reconfigure the device so it no longer attempts to communicate with the Service. A device that has been registered with the Service will remain in the account after account termination and will be usable with other cloud services offered by CLS only if it is (1) returned to its manufacturer for re-work with a new device identification number or (2) with the Service only if the terminated account is converted to a paid Service account or (3) physical possession of the device can be verified by CLS. For any CLS devices returned for re-work, you will be responsible for the costs of parts and labor (at then-current rates) and the costs of shipping both ways.
- 5.7 In the event You validly terminate Your Account for cause per this section 7, We will refund to You a pro-rata share of any fees You have paid Us in advance for Services through the date of termination. In no other case will We be obligated to refund any amounts paid to Us.

6 DATA RETENTION

- 6.1 Unless otherwise provided within Your Account, We will not retain data transmitted to the Service on a long-term basis. We may, in Our discretion, purge Your data at any time. Typically, data are purged every 48 hours, but this may occur at intervals which are more or less frequent.
- 6.2 Upon termination of Your Account, We may, but are not obligated to, delete the data associated with Your Account.

7. SERVICES, WARRANTY

- 7.1 Services may be temporarily unavailable for scheduled or unscheduled maintenance by CLS or Third-Party Suppliers, or for other causes beyond Our reasonable control. **CLS DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE, OR COMPLETELY SECURE. CLS MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. THE SERVICES ARE PROVIDED “AS IS” AND CLS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**
- 7.2 **CLS SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY AND WARRANTIES, IMPLIED OR EXPRESS, FOR USES REQUIRING FAIL-SAFE PERFORMANCE OR FOR USES THAT REQUIRE IMMEDIATE, MISSION-CRITICAL, REAL-TIME DATA WHERE FAILURE COULD LEAD TO (A) PERSONAL INJURY OR DEATH, (B) PROPERTY DAMAGE OR (C) ENVIRONMENTAL DAMAGE. FOR EXAMPLE, THIS DISCLAIMER APPLIES TO, BUT IS NOT LIMITED TO, SOLUTIONS INVOLVING LIFE SUPPORT, MEDICAL DEVICES, NUCLEAR APPLICATIONS OR CRITICAL ASSET MONITORING. THE SERVICES ARE NOT DESIGNED FOR AND SHOULD NOT BE USED IN ANY OF THESE OR OTHER FAIL-SAFE APPLICATIONS.**
- 7.3 You acknowledge that (i) a TCP/IP connection between an Enabled Device and the Service is required in order to make use of the Services; (ii) due to technical, geographic or political limitations or circumstances, You or Your Enabled Devices may not be able to communicate with the Service and (iii) CLS cannot guarantee that an Enabled Device will be able to connect to the Services from every geographic location. You are responsible for determining whether You or Your Enabled Devices are able to connect to the Service and whether the connection is of a quality sufficient to meet Your requirements.
- 7.4 CLS reserves the right to reduce the speed at which transactions are conducted within the Service (i.e. to “throttle” transactions) if the size of transactions, individually or as a group, in Your Account, within a predefined period of time, adversely affects the overall performance of the Service.

8. INDEMNITY AND LIMITATION OF LIABILITY

- 8.1 You agree to indemnify and hold harmless CLS, its officers, directors, representatives, employees and agents against any damages, losses, liabilities, settlements and expenses (including, without limitation, costs and attorneys’ fees) in connection with a claim or action against CLS that arises from or is based on (i) an alleged violation of the ToS or any Account Agreement by You or otherwise from Your use of the Service (or any of its features or associated services, including the Managed Device Monitoring Service) or (ii) an alleged violation of law.
- 8.2 In the event any claim, suit or action is brought against You that alleges any Service infringes a third party’s U.S. patent or copyright, then CLS shall provide You with indemnity through one of the following means at its sole option and expense: (i) procure for You the right to continue using the Service, (ii) modify the Service so that it is non-infringing, (iii) procure a replacement Service that has substantially the same functionality, or (iv) cease providing any Service under this Agreement and pay You the amount of Your actual damages derived from such claim, suit or action subject to a liability limits contained in these ToS. Our obligation under this subsection extend only to claims, suits or actions involving the Service itself on a standalone basis and CLS shall have no obligations under this subsection to You: (a) if the technology comprising the Service has been modified in any way, (b) for claims,

suits or actions involving in whole or in part the manner in which You used or are using the Service, (c) for claims, suits or actions based in whole or in part on the use of the Service in combination with other technologies, (d) use of the Service that violates the law, or (e) use of the Service in a manner for which it was not intended. THIS SECTION STATES OUR ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM, SUIT OR ACTION ALLEGING INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

- 8.3 We may use Third-Party Suppliers for data transport and storage. You acknowledge that storage technologies provided by Third-Party Suppliers may utilize multi-tenancy architecture, which may allow parties not associated with CLS or a Third-Party Supplier to store or transmit data within the same framework used to store or transmit Your data. You also acknowledge that the transmission and storage of Your data may result in Your data crossing through or residing in multiple political jurisdictions. Each of these jurisdictions may have unique provisions relating to the privacy of Your data and information.
- 8.4 You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of privacy, privacy data, Confidential Information, and property. You also acknowledge that there are risks inherent with transmitting log-in credentials, either for the Service or for the CIS, over a public network
- 8.5 NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY, NEITHER CLS NOR ITS OFFICERS OR EMPLOYEES WILL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY CLAIM OR ACTION RELATED TO THE SERVICE (OR TO ANY OF ITS FEATURES OR ASSOCIATED SERVICES, INCLUDING THE MANAGED DEVICE MONITORING SERVICE) UNDER ANY THEORY, WHETHER UNDER THE LAWS OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANOTHER THEORY. UNDER NO CIRCUMSTANCES WILL CLS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. CLS WILL NOT BE LIABLE FOR (A) ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) ANY MATTER BEYOND THE REASONABLE CONTROL OF CLS, EVEN IF CLS HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING LOSSES OR DAMAGES; (C) ATTACKS ON OR HACKS OF YOUR DATA, WHETHER IN TRANSIT OR IN STORAGE; (D) PHYSICAL ATTACKS OR CYBER-ATTACKS UPON THE SERVICE OR ITS NETWORK OR THE NETWORKS OR FACILITIES OF THIRD-PARTY SUPPLIERS; (E) THE BREACH OF OR LOSS OF PRIVACY OF E-MAIL ADDRESSES, REGISTRATION OR IDENTIFICATION INFORMATION, DISK SPACE, COMMUNICATIONS, CONFIDENTIAL OR TRADE-SECRET INFORMATION, OR ANY OTHER CONTENT STORED ON CLS EQUIPMENT, TRANSMITTED OVER NETWORKS ACCESSED BY THE SERVICE, OR OTHERWISE CONNECTED WITH THE USE OF THE SERVICES; OR (F) ANY REMEDY FOR FAILURE TO PROVIDE MANAGED DEVICE MONITORING SERVICES NOTIFICATIONS BEYOND THE LIMITED REMEDIES SPECIFIED IN THE AGREEMENT REFERENCED IN SECTION 8.3.
- 8.6 CLS MAKES NO GUARANTY OF CONFIDENTIALITY OR PRIVACY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED ON THE SERVICE SITE OR ANY WEB-SITE LINKED TO THE SERVICE.
- 8.7 YOU ACKNOWLEDGE THAT A GOVERNMENTAL ENTITY MAY (A) INTERCEPT YOUR DATA OR (B) REQUIRE CLS TO DISCLOSE YOUR DATA OR INFORMATION.
- 8.8 IT IS AGREED THAT THE LIABILITY OF CLS WILL NOT EXCEED THE AGGREGATE AMOUNT OF FEES COLLECTED IN YOUR ACCOUNT OVER THE TWELVE (12) MONTH PERIOD PRECEDING THE ACCRUAL OF A CLAIM UPON WHICH LIABILITY IS BASED.
- 8.9 THE PRICE STATED FOR THE SERVICES IS A CONSIDERATION IN LIMITING CLS'S LIABILITY.
- 8.10 NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TERMS OF SERVICE OR ANY ACCOUNT AGREEMENT MAY BE BROUGHT BY YOU MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

9. LEGAL COMPLIANCE

- 9.1 You may not transmit or otherwise export from the United States or allow the transmission of the Services in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.
- 9.2 You represent and warrant that You are not a person to whom CLS is legally prohibited to provide the Services and/or are not on any governmental list of restricted person or entities, including (i) the Commerce Department Entity List, Denied Persons List, and Unverified List; (ii) Treasury Department Specially Designated Nationals & Blocked Persons List; and (iii) State Department Debarred Parties List.
- 9.3 You may not use the Services in any situation where failure or fault of the Services could reasonably be expected to lead to (a) death or serious bodily injury of any person, or (b) to physical or environmental damage. Specifically, but without limiting the foregoing sentence, You may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation (while in transit), any function necessary to

the safe operation of nuclear or chemical facilities, or medical devices classified as Class III under the Federal Food, Drug and Cosmetic Act.

- 9.4 You may not use the Services for
- (a) Designing, developing or fabricating nuclear weapons or nuclear explosive devices; or devising, carrying out or evaluating nuclear tests or nuclear explosions.
 - (b) Designing, assisting in the design of, constructing, fabricating, or operating facilities for the chemical processing of irradiated special nuclear material, production of heavy water, separation of isotopes of any source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonium.
 - (c) Designing, assisting in the design of, constructing, fabricating, furnishing or modifying equipment for the fabrication of chemical or biological weapons, chemical precursors, viruses, viroid, bacteria, fungi or protozoa.
 - (d) Designing, assisting in the design, construction, fabrication or furnishing equipment for components specially designed, modified, or adapted for the above uses of for use in any such facilities.
 - (e) Training personnel in any of the above activities.
- 9.5 You may not provide access to the Services to any person or entity that would be prohibited from using the Services under this section 12.
- 9.6 You warrant that, with respect to any data which are by means of Your Account, collected, transmitted to the Service, downloaded from the Service or viewed using the Service (in this paragraph, the “Data”): (1) You own or are otherwise entitled to collect the Data that passes through an Enabled Device; and (2) You have sufficient legal rights to allow You to use the Service to transmit, download or view the Data. You also acknowledge that the law protects a third party’s rights in certain information and that Your unauthorized use of third party’s information may subject You to civil or criminal penalties.

10. THIRD PARTY USERS

- 10.1 Unless otherwise specifically allowed by CLS, in writing, You will not use Your Account to enable third parties to use or otherwise benefit from the Services without that third-party establishing a separate Service account in its own name.

11. CONFIDENTIALITY

- 11.1 Confidential Information. For purposes of the ToS and any Account Agreement, “Confidential Information” shall mean all information marked as “Confidential” or “Proprietary” and disclosed by one party to the other in connection with the Account. It includes, but is not limited to trade secrets and business matters such as research and development plans, manufacturing processes, management systems and techniques, the identity and profiles of customers and suppliers, and sales and marketing plans and information. Confidential information does not lose its status as Confidential Information merely because it was known by a limited number of persons or entities or because it was not entirely originated by the disclosing Party.
- 11.2 Confidentiality. During the term of the Account, each Party may receive Confidential Information from the other. Each Party will treat Confidential Information as confidential and protect it from disclosure as it would its own information of a similar nature. Neither Party will disclose Confidential Information other than to those of its employees or agents who need to know such information for performance of the Party’s rights and obligations under the ToS or any Account Agreement. Neither Party will use Confidential Information for any purpose beyond the exercise of its rights and performance of its obligations under the ToS or any Account Agreement without the prior written consent of the other Party. All Confidential Information shall remain the property of the disclosing Party, and each Party will return or destroy any tangible materials containing such Confidential Information upon request of the other Party.
- 11.3 Exclusion. The obligations of confidentiality and protection imposed by this paragraph shall not apply, or shall cease to apply, to any information that: (a) was lawfully known by the receiving Party prior to its receipt hereunder; (b) is or becomes publicly available without breach of the ToS or any Account Agreement by the receiving Party; (c) is lawfully received by the receiving Party from a third party who does not have an obligation of confidentiality to the disclosing Party; (d) is developed independently by employees of the receiving Party not having access to such Confidential Information or (e) has been transmitted or stored in an unencrypted state.

12. GENERAL

- 12.1 CLS will not be liable for any failure or delay in the performance of its obligations hereunder on account of strikes, terrorist activity, shortages, riots, insurrection, fires, floods, power outages, storms, cybercrime, explosions, war, governmental action, labor conditions, earthquakes, terrorism, supplier bankruptcy or default, failure, delay or interruption by third parties, including without limitation, communications providers, or any other cause which is beyond its reasonable control.

- 12.2 You represent that You are not a government agency and are not acquiring the Services pursuant to a government contract or with government funds.
- 12.3 If any provision of the ToS or any Account Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that all other terms will otherwise remain in full force and effect and be enforceable.
- 12.4 Your rights and obligations under the ToS and any Account Agreement are not assignable or transferable and cannot be sub-licensed to another party by You except with Our prior written consent. CLS may transfer, assign or subcontract any of its rights and obligations under the ToS or any Account Agreement without consent.
- 12.5 The terms of the ToS and any Account Agreement represent the complete and exclusive statement of the understanding of the parties and supersede and cancel all previous written and oral agreements, communications and other understandings relating to the subject matter thereof. All waivers and modifications of these terms must be in writing and signed by both parties, except as otherwise provided herein.
- 12.6 No agency, partnership, joint venture, or employment is created as a result of the ToS, the Account, any Account Agreement or Your use of the Service. You do not have authority to bind CLS in any respect.
- 12.7 The terms of the ToS and any Account Agreement will be governed by the laws of the State of Kansas, without regard to its conflict of laws provisions. For purposes of jurisdiction over a claim relating to the ToS or any Account Agreement, Your data are presumed to have resided or to have been transmitted exclusively within the state of Minnesota. Any action or Proceeding arising out of or related to the ToS or any Account Agreement may only be brought in the state or federal courts in Kansas and exclusive venue will be in the Court having jurisdiction over the Johnson County, KS. Each Party hereby consents to the exclusive jurisdiction of such courts with respect to such matters. English is the governing language for: (i) the Service; (ii) Your Account; (iii) the ToS and any Account Agreement; (iv) negotiations related to Your Account or Your use of the Service and (v) the resolution of disputes related to the the ToS, any Account Agreement or Your use of the Service, including negotiations, litigation, mediation or arbitration. Versions of the ToS or any Account Agreement that have been translated into languages other than English may be provided for convenience, but the English version is the only version that defines the rights and obligations of the parties.
- 12.8 If You have dealt with a third-party that is authorized to act as a services representative for the Services (in this section, referred to a “**Representative**”), You agree that:
- (a) the Representative is not a party to agreements or terms relating to Your Account and
 - (b) except for substantial misrepresentations, gross negligence or intentional misconduct by the Representative, You release the Representative from all claims and liability related to Your Account or Your use of the Services.

13. **SPECIAL TERMS: EUROPEAN ECONOMIC AREA OR SWITZERLAND**

- 13.1 **DEFINITIONS.** For the purposes of this Section [Special Terms: European Economic Area or Switzerland], the following definitions shall have the following meanings:
- (a) “Adequate Countries” means those jurisdictions identified by the European Commission from time to time as providing adequate data protection under Article 25 of the Directive;
 - (b) “Data Controller” means a natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by national or European Community laws or regulations, the controller or the specific criteria for his nomination may be designated by national or European Community law;
 - (c) “Data Processor” means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;
 - (d) “Data Protection Rules” means the national laws that apply to the Processing of Personal Data which implement the Directive, as well as applicable privacy and information security laws and regulations that apply from time to time to Personal Data;
 - (e) “Data Subject” means an identified or identifiable natural person whose Personal Data is subject to Processing; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;
 - (f) “Directive” means the Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995 on “the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such Data” as amended or replaced from time to time;
 - (g) “Personal Data” means any information relating to a Data Subject; and
 - (h) “Process”, “Processing” or “Processed” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage,

adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

13.2 YOUR RESPONSIBILITY AS DATA CONTROLLER

- (a) If You are located in (or You collect and use Personal Data on equipment located in) the European Economic Area or Switzerland (collectively: “**EEA**”), separate rules apply to Processing of Personal Data. When using the Services, You understand that You qualify as a Data Controller with respect to Personal Data transmitted over or uploaded to the Service. As a Data Controller You decide on the Processing and are responsible for compliance with sections 3.5, 3.8 and 3.9 of these ToS, the Data Protection Rules and the provisions of this section.
- (b) CLS acts a Data Processor with respect to the Personal Data You transmit or upload to the Service. However, any Personal Data that You may submit for account registration information or to acquire a User ID, CLS acts as a Data Controller and undertakes to Process Your Personal Data in compliance with its Privacy Policy and under the Data Protection Rules.
- (c) Due to the nature of the Service, it is Your responsibility to keep Personal Data transmitted over or uploaded to the Service, including on Enabled Devices, confidential and secure when under Your control. You should use technical means, such as encryption, to ensure Personal Data is kept confidential and will comply with the requirements of these ToS.
- (d) As a Data Controller, You are also responsible for providing Data Subjects with the opportunity to access, rectify, erase, block and object to the Processing of their Personal Data. CLS will work together with You in order to support You in complying with the exercise of these rights. To the extent that CLS uses subcontractors, these contractors will similarly cooperate.

13.3 SECURITY, ACCOUNTABILITY

- (a) CLS takes reasonable security measures to protect against the loss, misuse and alteration of data under its control.. Nevertheless, it is Your responsibility to comply with the Data Protection Rules and to keep Personal Data uploaded in or transmitted to the Service confidential.
- (b) Where required by applicable law, in case of a suspected security breach of the Service that relates to Your use of the Services, CLS will inform You in order to take necessary steps to comply with any notification requirements under local law.

13.4 **THIRD PARTIES.** CLS may use third party service providers to perform all or any part of the Services. CLS can provide a list of relevant third parties with access to Your Personal Data upon request and will ensure that any third parties assist with questions relating to Processing and perform the Services in compliance with the Data Protection Rules.

13.5 INTERNATIONAL TRANSFERS

- (a) You understand that CLS is based in the United States and by entering into the agreement represented by the ToS and any Account Agreement, You consent to the transfer of Your Personal Data outside the EEA to the United States, which is not considered to provide the same level of protection for Your Personal Data as the countries within the EEA. You understand that You are responsible for taking all required action to ensure compliance with applicable Data Protection Rules to transfer Customer-Owned Data to CLS in the United States.
- (b) CLS only transfers Personal Data outside the EEA in compliance with the Data Protection Rules and when notifying You in advance.