

# OdinText Terms of Service

This OdinText Terms of Service ("Agreement") are by and between OdinText, Inc., a Connecticut corporation with offices at 154 Cold Spring Road Suite 80, Stamford, CT 06905 ("Vendor") and Customer.

In accordance with the applicable Order, the following are the terms and conditions that shall govern Customer's right to use and access Vendor's Service. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## 1. Definitions.

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Customer" means the applicable entity executing an Order.

"Customer Data" means all data or information submitted, used, accessed, or created by Customer in the course of using the Service.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"Order" means the ordering documents for Customer's purchases from Vendor that are executed by the parties and reference this Agreement.

"Service" means the online, web-based application provided by Vendor via Amazon Web Services and/or other designated websites, including associated offline components, but excluding Third-Party Applications.

"Third-Party Applications" means any online, web-based, mobile and offline applications or other software products or services that are (i) provided by third parties and (ii) access or interoperate with the Service provided to Customer, including those identified as third-party applications in any Order.

"Users" means individuals who are authorized by a Customer to use a Service, for whom subscriptions to the Service have been purchased, and who have been supplied user identifications and passwords by a Customer or Vendor. Users may include but are not limited to employees, consultants, contractors and agents of a Customer and its Affiliates.

"Vendor" has the meaning set forth in the preamble of this Agreement.

## 2. Service.

2.1 Provision of Service. To the extent set forth in the applicable Order, Vendor hereby grants

to Customer a non-exclusive, non-transferable, non-sublicensable license to use the Service solely for Customer's internal business purposes during the subscription term set forth in the applicable Order. Customer agrees that Customer's purchase of subscriptions is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Vendor with respect to future functionality or features.

2.2 Additional Users. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Service. Unless otherwise specified in the relevant Order, (i) additional User subscriptions may be added; (ii) the term of the additional User subscriptions shall be coterminous with the expiration of the subscription term in effect at the time the additional Users are added; and (iii) pricing for the additional User subscriptions shall be mutually agreed by the parties.

2.3 Additional Record Uploads. Each Order will specify the number of permitted record uploads in connection with such Order. The parties may agree to additional record uploads based on pricing mutually agreed by the parties.

2.4 Service Modifications. Vendor shall provide reasonable advance notice to Customer of any updates to the Service and of any new software, services or features that materially affect the Service.

### 3. Use of the Service.

3.1 Vendor's Responsibilities. Vendor shall: (i) make the Service available to Customer pursuant to the terms of the applicable Order and this Agreement; (ii) in addition to Vendor's confidentiality obligations hereunder, not use, modify or disclose to anyone other than Users the Customer Data, except as expressly permitted under this Agreement or as required by applicable law; and (iii) maintain the security and integrity of the Service in accordance with the terms of this Agreement.

3.2 Customer's Responsibilities. Customer is responsible for all activities that occur in User accounts and for Users' compliance with this Agreement. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Vendor promptly of any such unauthorized access or use; and (iii) comply with all applicable local, state, federal and foreign laws in using the Service. Vendor is not responsible for determining the requirements of laws applicable to Customer's business,

including those relating to the Service that Customer acquires under this Agreement, or Vendor's provision of or Customer's receipt of a particular Service under this Agreement meets the requirements of such laws.

3.3 Vendor Guidelines. Customer shall use the Service solely for Customer's internal business purposes as contemplated by this Agreement and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than to Users or as otherwise contemplated by this Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store Malicious Code; (v) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (vi) attempt to gain unauthorized access to the Service or Vendor's related systems or networks; (vii) access the Service if Customer is a direct competitor of Vendor, except with Vendor's prior written consent; or (viii) access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

3.4 Third-Party Products and Services. Any acquisition by Customer of third-party products or services, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between Customer and any third-party provider, is solely between Customer and the applicable third-party provider. Vendor does not warrant or support third-party products or services, whether or not they are designated by Vendor as "certified" or otherwise, except as specified in an Order. No purchase of third-party products or services is required to use the Service.

3.5 Third-Party Applications and Customer Data. If Customer installs or enables Third-Party Applications for use with the Service, Customer acknowledges that Vendor may allow providers of those Third-Party Applications to access Customer Data as required for the interoperation of such Third-Party Applications with the Service. Vendor shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third-Party Application providers.

3.6 Privacy. Vendor's privacy and security policies may be viewed at <http://odintext.com/privacy-policy/>. Vendor reserves the right to modify these privacy and security policies in Vendor's reasonable discretion from time to time.

3.7 Security. Each party agrees (i) it shall maintain information security measures designed to protect Customer Data from unauthorized disclosure or use, and (ii) it shall, upon request,

provide the other party with information regarding such security measures upon the reasonable request of such party and promptly provide the requesting party with information regarding any failure of such security measures or any security breach related to Customer Data. Customer acknowledges and agrees that Vendor uses a third party provider to host the Service.

#### 4. Fees and Payment.

4.1 Fees. Customer shall pay all fees specified in all Order hereunder. Except as otherwise provided, all fees are quoted and payable in United States dollars. Except as otherwise specified herein or in an Order, fees are based on services purchased and not actual usage, payment obligations are non-cancelable, fees paid are non-refundable, and the number of subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order.

4.2 Invoicing and Payment. Vendor will invoice Customer annually in advance and otherwise in accordance with the relevant Order. Unless otherwise stated in the Order, charges are due net 30 days from the invoice date. Customer is responsible for maintaining complete and accurate billing and contact information on the Service (including Customer's legal company name, street address, e-mail address and name and telephone number of an authorized billing contact).

4.3 Overdue Payments. Any payment not received from Customer by the due date may accrue (except with respect to charges then under reasonable and good faith dispute), at Vendor's discretion, late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

4.4 Suspension of Service. If Customer's account is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of Vendor's other rights or remedies, Vendor reserves the right to suspend the Service provided to Customer, without liability to Customer, until such amounts are paid in full.

4.5 Taxes. Unless otherwise stated, Vendor's fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder, excluding taxes based on Vendor's net income or property. If Vendor has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to

and paid by Customer, unless Customer provide Vendor with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 5. Proprietary Rights.

5.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, Vendor reserves all rights, title and interest in and to the Service, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

5.2 Restrictions. Customer shall not (i) modify, copy or create derivative works based on the Service; (ii) frame or mirror any content forming part of the Service, other than on Customer's own intranets or otherwise for Customer's own internal business purposes; (iii) reverse engineer the Service; or (iv) access the Service in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Service.

5.3 Customer Data. As between Vendor and Customer, Customer exclusively owns all rights, title and interest in and to all Customer Data. Customer Data is deemed Confidential Information under this Agreement. Vendor shall retain administrative access to the instance of the Service that Customer will use, so that Vendor may, in its discretion, provide ongoing support and service, but Vendor shall not access Customer's User accounts, including Customer Data, except to respond to service or technical problems, or at Customer's request, or to aggregate non-identifiable, generalized information about Customers' usage patterns. Vendor may make such generalized usage information available to third parties; provided that any such information will not disclose any information about Customer or Customer Data.

5.4 Suggestions. Vendor shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer's or Customer's Users relating to the operation of the Service.

## 6. Confidentiality.

6.1 Definition of Confidential Information. As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in all Order hereunder), the Customer Data, the Service,

business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for Customer Data) shall 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) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

6.2 Protection. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).

6.3 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

6.4 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief.

## 7. Warranties and Disclaimers.

7.1 Warranties. Each party represents and warrants that it has the legal power to enter into this Agreement. Vendor represents and warrants that (i) Vendor will provide the Service in accordance with the Order; (ii) the functionality of the Service will not be materially decreased during a subscription term, except as provided herein; and (iii) Vendor will implement reasonable measures to assure that the Service will not contain or transmit to Customer any Malicious Code (except for any Malicious Code contained in User-uploaded attachments or content or otherwise originating from Users or third parties).

7.2 Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY LAW, VENDOR AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES (INCLUDING IMPLIED AND STATUTORY WARRANTIES) OTHER THAN THOSE EXPRESSLY PROVIDED IN SECTION 7.1 ABOVE, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. FURTHER, VENDOR AND ITS SUPPLIERS DO

NOT WARRANT THAT ANY SERVICE SHALL MEET CUSTOMER'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION OR ARE ERROR FREE. VENDOR DOES NOT PROVIDE, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, AND ALL OBLIGATIONS OR LIABILITIES FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE, MAINTENANCE OR PERFORMANCE THEREOF. ANY ESTIMATE REGARDING SCOPE, TIME OF COMPLETION, COSTS, OR OTHER MATTERS WHICH MAY BE PROVIDED BY VENDOR ORALLY OR IN WRITING (WHETHER IN A STATEMENT OF WORK OR OTHERWISE) ARE GIVEN USING COMMERCIALY REASONABLE METHODS OF ESTIMATION AND ARE IN GOOD FAITH, BUT SHALL NOT BE CONSTRUED AS A WARRANTY OR GUARANTEE OF ANY TYPE.

## 8. Mutual Indemnification.

8.1 Indemnification by Vendor. Subject to this Agreement, Vendor shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Customer by a third party alleging that the use of the Service as contemplated hereunder infringes the patents and/or copyrights of a third party; provided, that Customer (a) promptly give written notice of the Claim to Vendor; (b) give Vendor sole control of the defense and settlement of the Claim (provided that Vendor may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (c) provide to Vendor, at Vendor's cost, all reasonable assistance. Vendor shall have no obligation regarding any claim arising from or relating to, in whole or in part, any of the following: (a) anything provided by Customer or a third party on Customer's behalf (including any use of Third-Party Applications); (b) modification of a Service by Customer or a third party on Customer's behalf; (c) a Service's use other than in accordance with its applicable licenses and restrictions; (d) the combination, operation, or use of the Service with anything not provided by Vendor; or (d) the distribution, operation, or use of the Service outside Customer and Customer's Affiliates or for the benefit of any third party.

8.2 Indemnification by Customer. Subject to this Agreement, Customer shall defend, indemnify and hold Vendor harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Vendor by a third party alleging that the Customer Data, any materials provided by Customer (e.g., Third-Party Applications and any other intellectual property that Customer may provide hereunder) or Customer's use of the Service in violation of this Agreement, infringes the intellectual property rights of a third party; provided, that Vendor (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases Vendor of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

## 9. Limitation of Liability.

9.1 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER HEREUNDER IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 4 (FEES AND PAYMENT) OR EITHER PARTIES' INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 (MUTUAL INDEMNIFICATION).

9.2 Exclusion of Consequential and Related Damages. CUSTOMER AGREES THAT THE CONSIDERATION WHICH VENDOR IS CHARGING HEREUNDER DOES NOT INCLUDE CONSIDERATION FOR ASSUMPTION BY VENDOR OF THE RISK OF CUSTOMER'S INCIDENTAL OR CONSEQUENTIAL DAMAGES. EXCEPT IN CONNECTION WITH EITHER PARTIES' INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 (MUTUAL INDEMNIFICATION), IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND OR LOSS OF CUSTOMER DATA, REVENUE, PROFITS, OR ANTICIPATED SAVINGS ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

## 10. Term and Termination.

10.1 Term of Agreement. This Agreement commences on the Order Effective Date (as defined in the applicable Order) and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated.

10.2 Term of Purchased User Subscriptions. User subscriptions purchased by Customer commence on the start date specified in the relevant Order and continue for the subscription term specified therein. User subscriptions shall automatically renew for additional periods of one (1) year at the list price in effect at the time of renewal, unless either party gives the other notice of non-renewal at least 60 days prior to the end of the relevant subscription term.

10.3 Termination for Cause. A party may terminate this Agreement and any Order for



cause: (i) upon 30 days written notice of a material breach of the Agreement to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by Customer, Vendor shall refund Customer the pro-rata portion of any prepaid fees covering the remainder of the subscription term after the date of termination.

10.4 Termination by Vendor. Vendor may at any time terminate this Agreement and any applicable Order in the event that: (i) Vendor is required to do so by law (e.g., the provision of the Service to Customer is, or becomes, unlawful); (ii) the provision of the Service to Customer by Vendor is, in Vendor's opinion, no longer commercially viable; or (iii) Vendor has elected to discontinue the Service (or any part thereof). Upon any termination by Vendor pursuant to Section 10.4(ii) or Section 10.4(iii) above, Vendor shall refund Customer the pro-rata portion of any prepaid fees covering the remainder of the subscription term after the date of termination.

10.5 Outstanding Fees. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to Vendor prior to the effective date of termination. Notwithstanding anything to the contrary in this Agreement or the applicable Order, if Vendor terminates Customer's access to the applicable Service due to Customer's breach of any of the applicable terms of this Agreement, Vendor is not obligated to issue a refund or credit for any unused portion of such Service.

10.6 Deletion of Customer Data. Within a reasonable period after the termination or expiration of the applicable Order, Vendor will delete all Customer Data in Vendor's systems or otherwise in Vendor's possession or under Vendor's control.

10.7 Effect of Termination and Surviving Provisions. If this Agreement and/or the an Order is terminated, Vendor shall terminate Customer's account, including: (i) removal of access to all offerings within the Service; (ii) deletion of Customer's password and all related information; and (c) bar of use of the Service. Upon expiration or termination, Customer shall promptly discontinue use of the Service. The following provisions shall survive any termination or expiration of this Agreement: Sections 4 through 11.

## 11. General Provisions.

11.1 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

11.2 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

11.3 Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) the second business day after sending by confirmed facsimile; or (iv) the second business day after sending by email.

11.4 Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

11.5 Force Majeure. If and to the extent that a party's performance of any of its obligations pursuant to the Agreement (other than its obligation to pay amounts due thereunder) is prevented, hindered or delayed by fire, flood, hurricane, earthquake, other elements of nature or acts of God, acts of war, acts of a public enemy, acts of a nation or any state, territory, province or other political division, terrorism, riots, civil disorders, rebellions or revolutions, epidemics, theft, quarantine restrictions, freight embargoes or any other similar cause in each case beyond the reasonable control and without the fault or negligence of such party (each, a "Force Majeure Event"), then the non-performing, hindered or delayed party will be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues.

11.6 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

11.7 Attorney Fees. Customer shall pay on demand all of Vendor's reasonable attorney fees and other costs incurred by Vendor to collect any fees or charges due Vendor under this Agreement following Customer's breach of Section 4.2 (Invoicing and Payment).

11.8 Publicity. Neither party may issue press releases relating to this Agreement without the other party's prior written consent. Either party may include the name and logo of the other party in lists of customers or vendors in accordance with the other party's standard guidelines.

11.9 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be

unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order), without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.10 Governing Law. This Agreement shall be governed exclusively by the internal laws of the State of New York, without regard to its conflicts of laws rules.

11.11 Venue; Waiver of Jury Trial. The state and federal courts located in New York, New York shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts.

11.12 Export Compliance. Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Service. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not permit Users to access or use the Service in violation of any U.S. export embargo, prohibition or restriction.

11.13 Entire Agreement. This Agreement, including all exhibits and addenda hereto and the applicable Order, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Order, the terms of such Order shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a purchase order or in any other order documentation (excluding Orders) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.