

## Efficient Terms of Use (Cloud)

**Last Updated Date:** September 11, 2024

PLEASE READ THIS TERMS OF USE AGREEMENT (“**AGREEMENT**”) CAREFULLY. THIS AGREEMENT IS A LEGAL CONTRACT BETWEEN YOU (“**USER**”) AND EFFICIENTAI CORPORATION (“**EFFICIENT**,” “**WE**,” “**OUR**” OR “**US**”).

By accessing or using playground.efficient.computer or any other websites with an authorized link to this Agreement (“**Website**”) or the Efficient web-based application (“**Application**”), registering an account or accessing or using any content, information, services, features or resources available or enabled via the Website or Application (collectively, the “**Services**”), or clicking on a button or taking another action to signify your acceptance of this Agreement, you: (1) agree to be bound by this Agreement and any future amendments and additions to this Agreement as published through the Services; (2) represent you are of legal age in your jurisdiction of residence to form a binding contract; and (3) represent that you have the authority to enter into this Agreement personally and, if applicable, on behalf of any company, organization or other legal entity on whose behalf you use the Services. **Except as otherwise provided herein, if you do not agree to be bound by this Agreement, you may not access or use the Services.**

**SECTION 14 CONTAINS PROVISIONS THAT GOVERN HOW TO RESOLVE DISPUTES BETWEEN YOU AND EFFICIENT. AMONG OTHER THINGS, SECTION 14 INCLUDES AN AGREEMENT TO ARBITRATE WHICH REQUIRES, WITH LIMITED EXCEPTIONS, THAT ALL DISPUTES BETWEEN YOU AND US SHALL BE RESOLVED BY BINDING AND FINAL ARBITRATION. SECTION Error! Reference source not found. ALSO CONTAINS A CLASS ACTION AND JURY TRIAL WAIVER. PLEASE READ SECTION 14 CAREFULLY.**

THE AGREEMENT IS SUBJECT TO CHANGE BY EFFICIENT IN ITS SOLE DISCRETION AT ANY TIME AS SET FORTH IN SECTION 15.4.

**1. SERVICES.** The Services enable end users to upload code and/or application files, which are transmitted to Efficient’s cloud instance of its compiler, and to receive responses with visualizations of code, error messages, performance metrics and more. YOU REPRESENT AND WARRANT THAT YOU WILL NOT UPLOAD TO THE SERVICES ANY CODE OR APPLICATION FILES THAT MAY CONSTITUTE YOUR CONFIDENTIAL OR PROPRIETARY INFORMATION.

### **2. REGISTRATION.**

**2.1 Registering Your Account.** In order to access certain features of the Services, you may be required to become a Registered User. For purposes of the Agreement, a “**Registered User**” is a user who has registered an account on the Services (“**Account**”). You may sign up for the Services through the Website, and once your sign-up is approved by Efficient, you will be invited to create an Account. You may be required to register your Account using a third party single sign-on solution (e.g., Auth0) and we may use information received from such third party (e.g., email address and phone number) to register you for an Account.

**2.2 Registration Data.** In registering an account on the Application, you agree to (a) provide true, accurate, current and complete information about yourself as prompted by the registration form (the “**Registration Data**”); and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You represent that you are (c) of legal age to form a binding contract; and (d) not a person barred from using the Services under the laws of the United States, your place of

residence or any other applicable jurisdiction. You are responsible for all activities that occur under your Account. You may not share your Account or password with anyone, and you agree to (e) notify Efficient immediately of any unauthorized use of your password or any other breach of security; and (f) exit from your Account at the end of each session. If you provide any information that is not compatible, untrue, inaccurate, not current or incomplete, or Efficient has reasonable grounds to suspect that any information you provide is not compatible, untrue, inaccurate, not current or incomplete, Efficient has the right to suspend or terminate your Account and refuse any and all current or future use of the Services (or any portion thereof). You agree not to create an Account using a distribution e-mail address or an e-mail alias, false identity or information, or on behalf of someone other than yourself. You agree that you shall not have more than one Account per platform. Efficient reserves the right to remove or reclaim any usernames at any time and for any reason, including but not limited to, claims by a third party that a username violates the third party's rights. You agree not to create an Account or use Services if you have been previously removed by Efficient, or if you have been previously banned from any of the Services.

**2.3 Your Account.** Notwithstanding anything to the contrary herein, you acknowledge and agree that you shall have no ownership or other property interest in your Account, and you further acknowledge and agree that all rights in and to your Account are and shall forever be owned by and inure to the benefit of Efficient.

### **3. OWNERSHIP.**

**3.1 Services.** Except with respect to Your Data (as defined below), you agree that Efficient and its suppliers own all rights, title and interest in the Services. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying any Service.

**3.2 License.** Subject to this Agreement, Efficient grants you a non-transferable, non-exclusive, revocable, limited license to use, access the Services for your own personal or internal business, non-commercial use. Efficient reserves the right to change the terms of your license, by imposing limits on the number of lines submitted under an Account and/or the amount of data or size of files uploaded or stored by Registered Users of an Account, from time to time, as determined by Efficient in its sole discretion.

**3.3 Trademarks.** Efficient and all related graphics, logos, service marks and trade names used on or in connection with the Services are the trademarks of Efficient and may not be used without permission in connection with your or any third-party products or services. Other trademarks, service marks and trade names that may appear on or in the Services are the property of their respective owners.

**3.4 Feedback.** You agree that submission of any ideas, suggestions, documents, and/or proposals to Efficient through its suggestion, feedback, wiki, forum or similar pages ("**Feedback**") is at your own risk and that Efficient has no obligations (including without limitation obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to Efficient a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights, in connection with the operation and maintenance of the Services and/or Efficient's business.

**3.5 Your Data.** Efficient does not claim ownership of Your Data (as defined below). Subject to any applicable account settings that you select, you grant Efficient a fully paid, royalty-free, perpetual, irrevocable, worldwide, royalty-free, non-exclusive and fully sublicensable right (including any moral rights) and license to use, license, distribute, reproduce, modify, adapt, publicly perform, and publicly display Your Data (in whole or in part) for the purposes of operating and providing the Services.

**3.6 Analytics and Improvements.** You hereby grant Efficient the right to de-identify and analyze any data or information you provide us through the use of the Services, and agree that Efficient exclusively owns such de-identified data and any improvements or new services arising therefrom. Additionally, you agree that we shall have the right to collect usage data and metrics with respect to your use of the Services, and may use such data to provide and/or improve the Services.

#### **4. RESPONSIBILITY FOR DATA.**

**4.1 Types of Content.** You acknowledge that you, and not Efficient, are entirely responsible for all data that you upload, post, e-mail, transmit, store or otherwise make available ("**Make Available**") through the Services ("**Your Data**"), and that you and other users of the Services, and not Efficient, are similarly responsible for all data they Make Available through the Services ("**User Data**").

**4.2 Your Warranty; Responsibility for Security.** You represent and warrant that Your Data will not (a) infringe any copyright, trademark, or patent; (b) misappropriate any trade secret; (c) be deceptive, defamatory, obscene, pornographic or unlawful; (d) contain any viruses, worms or other malicious computer programming codes intended to damage Efficient's system or data; and (e) otherwise violate the rights of a third party. Efficient is not obligated to back up any of Your Data; you are solely responsible for creating backup copies of any of Your Data at your sole cost and expense. You agree that any use of the Services contrary to or in violation of the representations and warranties in this Section 4.2 and/or applicable laws, rules, and regulations, constitutes unauthorized and improper use of the Services. You will be responsible for all changes to and/or deletions of Your Data and the security of all passwords and other access protocols required in order to access the Services. You will have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all of Your Data, including in the event of a security breach resulting from your own actions.

**4.3 No Obligation to Pre-Screen.** You acknowledge that Efficient has no obligation to pre-screen Your Data, although Efficient reserves the right in its sole discretion to pre-screen, refuse or remove any of Your Data. By entering into the Agreement, you hereby provide your irrevocable consent to such monitoring. You acknowledge and agree that you have no expectation of privacy concerning the transmission of Your Data, including without limitation chat communications, or Your Data. In the event that Efficient pre-screens, refuses or removes any of Your Data, you acknowledge that Efficient will do so for Efficient's benefit and the benefit of the community, not yours. Without limiting the foregoing, Efficient shall have the right to remove any of Your Data that violates the Agreement or is otherwise objectionable.

**5. USER CONDUCT AND CERTAIN RESTRICTIONS.** While using or accessing the Services, you agree that you will not, under any circumstances:

**5.1** Upload files that contain software or other material protected by intellectual property laws or other laws (unless you own or control the rights thereto or have received all necessary consents), contain viruses, corrupted files or any similar software or programs that may damage the operation of the Services, or that you are not otherwise authorized to upload;

**5.2** Use cheats, exploits, automation software, bots, hacks, mods or any unauthorized software designed to modify or interfere with the Services;

**5.3** Interfere with or damage the Services, including, without limitation, through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial-of-service attacks, packet or IP spoofing, forged routing or electronic mail address information, or similar methods or technology;

**5.4** Modify or cause to be modified any files that are a part of the Services, except as otherwise permitted herein;

**5.5** Disrupt, overburden, or aid or assist in the disruption or overburdening of: (i) any computer or server used to offer or support Services; or (ii) the enjoyment of the Services by any other person;

**5.6** Institute, assist, or become involved in any type of attack, including, but not limited to, distribution of a virus, denial of service attacks upon Services, or other attempts to disrupt the Services or any other person's use or enjoyment of the Services;

**5.7** Attempt to gain unauthorized access to the Services, accounts registered to others, or to the computers, servers or networks connected to the Services by any means other than the user interface provided by Efficient, including, but not limited to, by circumventing or modifying, attempting to circumvent or modify, or encouraging or assisting any other person to circumvent or modify, any security, technology, device or software that is part of the Services;

**5.8** Access, tamper with or use non-public areas of the Services, Efficient's computer systems, or the technical delivery systems of Efficient's providers;

**5.9** Attempt to probe, scan, or test the vulnerability of any Efficient system or network, or breach any security or authentication measures;

**5.10** Disrupt or interfere with the security of, or otherwise cause harm to, the Services, systems, resources, accounts, passwords, servers or networks connected to or accessible through the Services or any affiliated or linked sites; or

**5.11** Avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by Efficient or any of Efficient's providers or any other third party (including another user) to protect the Services.

**6. FEES AND PURCHASE TERMS.** Efficient does not currently charge a fee for the Services. However, it reserves the right to charge such fees in the future.

**7. THIRD-PARTY SERVICES.** The Services may contain links or other access to third-party websites, applications, tools, or services (collectively, "**Third-Party Services**"). When you click on a link to a Third-Party Service, we may not warn you that you have left the Services and are subject to the terms and conditions (including privacy policies) of another website or destination. Such Third-Party Services are not under the control of Efficient. Efficient is not responsible for any Third-Party Services. Efficient provides these Third-Party Services only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Services, or their products or services. You access and use all Third-Party Services at your own risk. When you leave our Services, this

Agreement and policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Services, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

**8. INDEMNIFICATION.** You agree to indemnify and hold Efficient, its parents, subsidiaries, affiliates, officers, employees, agents, partners, suppliers, and licensors (each, a “**Efficient Party**” and collectively, the “**Efficient Parties**”) harmless from any losses, costs, liabilities and expenses (including reasonable attorneys’ fees) relating to or arising out of any and all of the following: (a) Your Data; (b) your use of, or inability to use, the Services; (c) your violation of the Agreement; or (d) your violation of any applicable laws, rules or regulations, including any violation of applicable laws, rules, or regulations resulting from Your Data. Efficient reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Efficient in asserting any available defenses. This provision does not require you to indemnify any of the Efficient Parties for any unconscionable commercial practice by such party or for such party’s fraud, deception, false promise, misrepresentation or concealment, suppression or omission of any material fact in connection with the Website, Application or any Services provided hereunder. You agree that the provisions in this section will survive any termination of your Account, the Agreement and/or your access to the Services.

**9. DISCLAIMER OF WARRANTIES AND CONDITIONS.**

**9.1 As Is.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK, AND THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITH ALL FAULTS. EFFICIENT PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARISING FROM USE OF THE WEBSITE OR APPLICATION.

**(a)** EFFICIENT PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) THE SERVICES WILL MEET YOUR REQUIREMENTS; (2) YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; OR (3) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES, WILL BE ACCURATE OR RELIABLE.

**(b)** THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. EFFICIENT MAKES NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF THE SERVICES.

**(c)** NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM EFFICIENT OR THROUGH THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN, AND EFFICIENT IS NOT RESPONSIBLE FOR ANY ACTION OR INACTION ON YOUR PART BASED ON THE RESULTS.

**(d)** FROM TIME TO TIME, EFFICIENT MAY OFFER NEW “BETA” FEATURES OR TOOLS WITH WHICH ITS USERS MAY EXPERIMENT. SUCH FEATURES OR TOOLS ARE OFFERED SOLELY FOR EXPERIMENTAL PURPOSES AND WITHOUT ANY WARRANTY OF ANY KIND, AND MAY BE MODIFIED OR DISCONTINUED AT EFFICIENT’S SOLE DISCRETION. THE PROVISIONS OF THIS SECTION APPLY WITH FULL FORCE TO SUCH FEATURES OR TOOLS.

**9.2 No Liability for Conduct of Third Parties.** YOU ACKNOWLEDGE AND AGREE THAT EFFICIENT PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD EFFICIENT PARTIES LIABLE, FOR THE CONDUCT OR OMISSIONS OF THIRD PARTIES, INCLUDING ANY USERS OF THE SERVICES, AND THAT THE RISK OF INJURY FROM SUCH THIRD PARTIES RESTS ENTIRELY WITH YOU.

## **10. LIMITATION OF LIABILITY.**

**10.1 Disclaimer of Certain Damages.** YOU UNDERSTAND AND AGREE THAT IN NO EVENT SHALL EFFICIENT PARTIES BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, IN EACH CASE WHETHER OR NOT EFFICIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE SERVICES, ON ANY THEORY OF LIABILITY, RESULTING FROM: (1) THE USE OR INABILITY TO USE SERVICES; (2) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED FOR TRANSACTIONS ENTERED INTO THROUGH THE SERVICES; (3) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (4) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICES; OR (5) ANY OTHER MATTER RELATED TO THE SERVICES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING CAP ON LIABILITY SHALL NOT APPLY TO LIABILITY OF AN EFFICIENT PARTY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY AN EFFICIENT PARTY'S NEGLIGENCE; OR FOR (B) ANY INJURY CAUSED BY AN EFFICIENT PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

**10.2 Cap on Liability.** UNDER NO CIRCUMSTANCES WILL EFFICIENT PARTIES BE LIABLE TO YOU FOR MORE THAN THE GREATER OF (A) THE TOTAL AMOUNT PAID TO EFFICIENT BY YOU DURING THE ONE-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY AND (B) THE REMEDY OR PENALTY IMPOSED BY THE STATUTE UNDER WHICH SUCH CLAIM ARISES. THE FOREGOING CAP ON LIABILITY SHALL NOT APPLY TO LIABILITY OF AN EFFICIENT PARTY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY AN EFFICIENT PARTY'S NEGLIGENCE; OR FOR (B) ANY INJURY CAUSED BY AN EFFICIENT PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

**10.3 Data.** EXCEPT FOR EFFICIENT'S OBLIGATIONS TO PROTECT YOUR PERSONAL DATA AS SET FORTH IN EFFICIENT'S PRIVACY POLICY, EFFICIENT ASSUMES NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY DATA (INCLUDING, BUT NOT LIMITED TO, YOUR DATA), USER COMMUNICATIONS OR PERSONALIZATION SETTINGS.

**10.4 Basis of the Bargain.** THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN EFFICIENT AND YOU.

## **11. REMEDIES.**

**11.1 Violations.** If Efficient becomes aware of any possible violations by you of the Agreement, Efficient reserves the right to investigate such violations. If, as a result of the investigation, Efficient believes that criminal activity has occurred, Efficient reserves the right to refer the matter to, and to cooperate with, any and all applicable legal authorities. Efficient is entitled, except to the extent prohibited by applicable law, to disclose any information or materials on or in the Services, including Your Data, in Efficient's possession in connection with your use of the Services, to (a) comply with applicable

laws, legal process or governmental request; (b) enforce the Agreement, (c) respond to any claims that Your Data violates the rights of third parties, (d) respond to your requests for customer service, or (e) protect the rights, property or personal safety of Efficient, its Registered Users or the public, and all enforcement or other government officials, as Efficient in its sole discretion believes to be necessary or appropriate.

**11.2 Breach.** In the event that Efficient determines, in its sole discretion, that you have breached any portion of the Agreement, or have otherwise demonstrated conduct inappropriate for the Services, Efficient reserves the right to:

- (a) Warn you via e-mail (to any e-mail address you have provided to Efficient) that you have violated the Agreement;
- (b) Delete any of Your Data provided by you or your agent(s) to the Services;
- (c) Discontinue your registration(s) with any of the Services;
- (d) Discontinue your subscription to any Services;
- (e) Notify and/or send of Your Data to and/or fully cooperate with the proper law enforcement authorities for further action; and/or
- (f) Pursue any other action which Efficient deems to be appropriate.

**12. TERMINATION.** This Agreement will remain in full force and effect until terminated as set forth herein. You may terminate your Account, your access to the Services, and this Agreement at any time, for any reason by emailing [effccplaygroundaccounts@efficient.computer](mailto:effccplaygroundaccounts@efficient.computer). At its sole discretion, Efficient may modify or discontinue the Services, or may modify, suspend or terminate your access to the Services, for any reason, with or without notice to you and without liability to you or any third party. In addition to suspending or terminating your access to the Services, Efficient reserves the right to take appropriate legal action, including without limitation pursuing civil, criminal or injunctive redress. Even after your right to use the Services is terminated, this Agreement will remain enforceable against you and unpaid amounts you owe to Efficient will remain due. All provisions of the Agreement which by their nature should survive, shall survive termination of Services, including without limitation, ownership provisions, warranty disclaimers, and limitation of liability.

**13. INTERNATIONAL USERS.** The Services can be accessed from countries around the world and may contain references to the Services and data that are not available in your country. These references do not imply that Efficient intends to announce such Services or data in your country. Services are controlled and offered by Efficient from its facilities in the United States of America. Efficient makes no representations that Services are appropriate or available for use in other locations. Those who access or use the Services from other countries do so at their own volition and are responsible for compliance with local law.

**14. ARBITRATION AGREEMENT.** Please read this section (the “Arbitration Agreement”) carefully. It is part of your contract with Efficient and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

**14.1 Applicability of Arbitration Agreement.** Subject to the terms of this Arbitration Agreement, you and Efficient agree that any dispute, claim, disagreements arising out of or relating in any way to your access to or use of the Service, any communications you receive, any products sold or distributed through the Services or this Agreement and prior versions of this Agreement, including claims and disputes that arose between you and us before the effective date of this Agreement (each, a **“Dispute”**) will be resolved by binding arbitration, rather than in court, except that: (i) you and Efficient may assert claims or seek relief in small claims court if such claims qualify and remain in small claims court; and (ii) you or Efficient may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). For purposes of this Arbitration Agreement, **“Dispute”** will also include disputes that arose or involve facts occurring before the existence of this or any prior versions of this Agreement as well as claims that may arise after the termination of this Agreement.

**14.2 Informal Dispute Resolution.** There might be instances when a Dispute arises between you and Efficient. If that occurs, Efficient is committed to working with you to reach a reasonable resolution. You and Efficient agree that good faith informal efforts to resolve Disputes can result in a prompt, low-cost and mutually beneficial outcome (**“Informal Dispute Resolution”**). You and Efficient therefore agree that before either party commences arbitration against the other (or initiates an action in small claims court if a party so elects), we will personally meet and confer telephonically or via videoconference, in a good faith effort to resolve informally any Dispute covered by this Arbitration Agreement (**“Informal Dispute Resolution Conference”**). If you are represented by counsel, your counsel may participate in the conference, but you will also participate in the conference.

The party initiating a Dispute must give notice to the other party in writing of its intent to initiate an Informal Dispute Resolution Conference (**“Notice”**), which shall occur within forty-five (45) days after the other party receives such Notice, unless an extension is mutually agreed upon by the parties. Notice to Efficient that you intend to initiate an Informal Dispute Resolution Conference should be sent by email to [effccplaygroundaccounts@efficient.computer](mailto:effccplaygroundaccounts@efficient.computer) or regular mail to our offices located at 2261 Market Street, STE 10513, San Francisco, CA 94114. The Notice must include: (1) your name, telephone number, mailing address, e-mail address associated with your Account (if you have one); (2) the name, telephone number, mailing address and e-mail address of your counsel, if any; and (3) a description of your Dispute.

The Informal Dispute Resolution Conference shall be individualized such that a separate conference must be held each time either party initiates a Dispute, even if the same law firm or group of law firms represents multiple users in similar cases, unless all parties agree; multiple individuals initiating a Dispute cannot participate in the same Informal Dispute Resolution Conference unless all parties agree. In the time between a party receiving the Notice and the Informal Dispute Resolution Conference, nothing in this Arbitration Agreement shall prohibit the parties from engaging in informal communications to resolve the initiating party’s Dispute. Engaging in the Informal Dispute Resolution Conference is a condition precedent and requirement that must be fulfilled before commencing arbitration. The statute of limitations and any filing fee deadlines shall be tolled while the parties engage in the Informal Dispute Resolution Conference process required by this section.

**14.3 Waiver of Jury Trial.** YOU AND EFFICIENT HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and Efficient are instead electing that all Disputes shall be resolved by arbitration under this Arbitration Agreement, except as specified in Section 14.1. There is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.



**14.4 Waiver of Class and Other Non-Individualized Relief.** YOU AND EFFICIENT AGREE THAT, EXCEPT AS SPECIFIED IN SECTION 14.9, EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT ON A CLASS, REPRESENTATIVE, OR COLLECTIVE BASIS, AND THE PARTIES HEREBY WAIVE ALL RIGHTS TO HAVE ANY DISPUTE BE BROUGHT, HEARD, ADMINISTERED, RESOLVED, OR ARBITRATED ON A CLASS, COLLECTIVE, REPRESENTATIVE, OR MASS ACTION BASIS. ONLY INDIVIDUAL RELIEF IS AVAILABLE, AND DISPUTES OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. Subject to this Arbitration Agreement, the arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by the party's individual claim. Nothing in this paragraph is intended to, nor shall it, affect the terms and conditions under Section 14.9 (Batch Arbitration). Notwithstanding anything to the contrary in this Arbitration Agreement, if a court decides by means of a final decision, not subject to any further appeal or recourse, that the limitations of this section are invalid or unenforceable as to a particular claim or request for relief (such as a request for public injunctive relief), you and Efficient agree that that particular claim or request for relief (and only that particular claim or request for relief) shall be severed from the arbitration and may be litigated in the state or federal courts located in the Commonwealth of Pennsylvania. All other Disputes shall be arbitrated or litigated in small claims court. This section does not prevent you or Efficient from participating in a class-wide settlement of claims.

**14.5 Rules and Forum.** This Agreement evidences a transaction involving interstate commerce; and notwithstanding any other provision herein with respect to the applicable substantive law, the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, will govern the interpretation and enforcement of this Arbitration Agreement and any arbitration proceedings. If the Informal Dispute Resolution process described above does not resolve satisfactorily within sixty (60) days after receipt of your Notice, you and Efficient agree that either party shall have the right to finally resolve the Dispute through binding arbitration. The arbitration will be administered by the American Arbitration Association ("**AAA**"), in accordance with the Consumer Arbitration Rules (the "**AAA Rules**") then in effect, except as modified by this section of this Arbitration Agreement. The AAA Rules are currently available at <https://www.adr.org/sites/default/files/Consumer%20Rules.pdf>.

A party who wishes to initiate arbitration must provide the other party with a request for arbitration (the "**Request**"). The Request must include: (1) the name, telephone number, mailing address, e-mail address of the party seeking arbitration and the account username (if applicable) as well as the email address associated with any applicable Account; (2) a statement of the legal claims being asserted and the factual bases of those claims; (3) a description of the remedy sought and an accurate, good-faith calculation of the amount in controversy in United States dollars; (4) a statement certifying completion of the Informal Dispute Resolution process as described above; and (5) evidence that the requesting party has paid any necessary filing fees in connection with such arbitration.

If the party requesting arbitration is represented by counsel, the Request shall also include counsel's name, telephone number, mailing address, and email address. Such counsel must also sign the Request. By signing the Request, counsel certifies to the best of counsel's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that: (1) the Request is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of dispute resolution; (2) the claims, defenses and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and (3) the factual and damages contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

Unless you and Efficient otherwise agree, or the Batch Arbitration process discussed in Section 14.9 is triggered, the arbitration will be conducted in the county where you reside. Subject to the AAA Rules, the arbitrator may direct a limited and reasonable exchange of information between the parties, consistent with the expedited nature of the arbitration. If the AAA is not available to arbitrate, the parties will select an alternative arbitral forum. Your responsibility to pay any AAA fees and costs will be solely set forth in the applicable AAA Rules.

You and Efficient agree that all materials and documents exchanged during the arbitration proceedings shall be kept confidential and shall not be shared with anyone except the parties' attorneys, accountants, or business advisors, and shall be subject to the condition that they agree to keep all materials and documents exchanged during the arbitration proceedings confidential.

**14.6 Arbitrator.** The arbitrator will be either a retired judge or an attorney licensed to practice law in the Commonwealth of Pennsylvania and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within thirty-five (35) days of delivery of the Request, then the AAA will appoint the arbitrator in accordance with the AAA Rules, provided that if the Batch Arbitration process under Section 14.9 is triggered, the AAA will appoint the arbitrator for each batch.

**14.7 Authority of Arbitrator.** The arbitrator shall have exclusive authority to resolve any Dispute, including, without limitation, disputes arising out of or related to the interpretation or application of the Arbitration Agreement, including the enforceability, revocability, scope, or validity of the Arbitration Agreement or any portion of the Arbitration Agreement, except for the following: (1) all Disputes arising out of or relating to Section 14.4, including any claim that all or part of Section 14.4 is unenforceable, illegal, void or voidable, or that such Section 14.4 has been breached, shall be decided by a court of competent jurisdiction and not by an arbitrator; (2) except as expressly contemplated in Section 14.9, all Disputes about the payment of arbitration fees shall be decided only by a court of competent jurisdiction and not by an arbitrator; (3) all Disputes about whether either party has satisfied any condition precedent to arbitration shall be decided only by a court of competent jurisdiction and not by an arbitrator; and (4) all Disputes about which version of the Arbitration Agreement applies shall be decided only by a court of competent jurisdiction and not by an arbitrator. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties, except as expressly provided in Section 14.9. The arbitrator shall have the authority to grant motions dispositive of all or part of any Dispute. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The award of the arbitrator is final and binding upon you and us. Judgment on the arbitration award may be entered in any court having jurisdiction.

**14.8 Attorneys' Fees and Costs.** The parties shall bear their own attorneys' fees and costs in arbitration unless the arbitrator finds that either the substance of the Dispute or the relief sought in the Request was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)). If you or Efficient need to invoke the authority of a court of competent jurisdiction to compel arbitration, then the party that obtains an order compelling arbitration in such action shall have the right to collect from the other party its reasonable costs, necessary disbursements, and reasonable attorneys' fees incurred in securing an order compelling arbitration. The prevailing party in any court action relating to whether either party has satisfied any condition precedent to arbitration, including the Informal Dispute Resolution process, is entitled to recover their reasonable costs, necessary disbursements, and reasonable attorneys' fees and costs.

**14.9 Batch Arbitration.** To increase the efficiency of administration and resolution of arbitrations, you and Efficient agree that in the event that there are one-hundred (100) or more individual Requests of a substantially similar nature filed against Efficient by or with the assistance of the same law firm, group of law firms, or organizations, within a thirty (30) day period (or as soon as possible thereafter), the AAA shall (1) administer the arbitration demands in batches of 100 Requests per batch (plus, to the extent there are less than 100 Requests left over after the batching described above, a final batch consisting of the remaining Requests); (2) appoint one arbitrator for each batch; and (3) provide for the resolution of each batch as a single consolidated arbitration with one set of filing and administrative fees due per side per batch, one procedural calendar, one hearing (if any) in a place to be determined by the arbitrator, and one final award ("**Batch Arbitration**").

All parties agree that Requests are of a "substantially similar nature" if they arise out of or relate to the same event or factual scenario and raise the same or similar legal issues and seek the same or similar relief. To the extent the parties disagree on the application of the Batch Arbitration process, the disagreeing party shall advise the AAA, and the AAA shall appoint a sole standing arbitrator to determine the applicability of the Batch Arbitration process ("**Administrative Arbitrator**"). In an effort to expedite resolution of any such dispute by the Administrative Arbitrator, the parties agree the Administrative Arbitrator may set forth such procedures as are necessary to resolve any disputes promptly. The Administrative Arbitrator's fees shall be paid by Efficient.

You and Efficient agree to cooperate in good faith with the AAA to implement the Batch Arbitration process including the payment of single filing and administrative fees for batches of Requests, as well as any steps to minimize the time and costs of arbitration, which may include: (1) the appointment of a discovery special master to assist the arbitrator in the resolution of discovery disputes; and (2) the adoption of an expedited calendar of the arbitration proceedings.

This Batch Arbitration provision shall in no way be interpreted as authorizing a class, collective and/or mass arbitration or action of any kind, or arbitration involving joint or consolidated claims under any circumstances, except as expressly set forth in this provision.

**14.10 30-Day Right to Opt Out.** You have the right to opt out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to: 2261 Market Street, STE 10513, San Francisco, CA 94114, within thirty (30) days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, the email address associated with your Account (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of this Agreement will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with us.

**14.11 Invalidity, Expiration.** Except as provided in Section 14.4, if any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Arbitration Agreement shall continue in full force and effect. You further agree that any Dispute that you have with Efficient as detailed in this Arbitration Agreement must be initiated via arbitration within the applicable statute of limitation for that claim or controversy, or it will be forever time barred. Likewise, you agree that all applicable statutes of limitation will apply to such arbitration in the same manner as those statutes of limitation would apply in the applicable court of competent jurisdiction.

**14.12 Modification.** Notwithstanding any provision in this Agreement to the contrary, we agree that if Efficient makes any future material change to this Arbitration Agreement, we will notify you. Unless you reject the change within thirty (30) days of such change become effective by writing to Efficient at 2261 Market Street, STE 10513, San Francisco, CA 94114, your continued use of the Service, including the acceptance of products and services offered on the Services following the posting of changes to this Arbitration Agreement constitutes your acceptance of any such changes. Changes to this Arbitration Agreement do not provide you with a new opportunity to opt out of the Arbitration Agreement if you have previously agreed to a version of this Agreement and did not validly opt out of arbitration. If you reject any change or update to this Arbitration Agreement, and you were bound by an existing agreement to arbitrate Disputes arising out of or relating in any way to your access to or use of the Service, any communications you receive, any products sold or distributed through the Services or this Agreement, the provisions of this Arbitration Agreement as of the date you first accepted this Agreement (or accepted any subsequent changes to this Agreement) remain in full force and effect. Efficient will continue to honor any valid opt outs of the Arbitration Agreement that you made to a prior version of this Agreement.

## **15. GENERAL PROVISIONS.**

**15.1 Electronic Communications.** The communications between you and Efficient may take place via electronic means, whether you visit the Services or send Efficient e-mails, or whether Efficient posts notices on the Services or communicates with you via e-mail. For contractual purposes, you (a) consent to receive communications from Efficient in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Efficient provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights, including but not limited to the Electronic Signatures in Global and National Commerce Act at 15 U.S.C. §7001 et seq. ("E-Sign").

**15.2 Assignment.** The Agreement, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without Efficient's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

**15.3 Force Majeure.** Efficient shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

**15.4 Agreement Updates.** When changes are made, Efficient will make a new copy of this Terms of Use available on the Website, and we will also update the "Last Updated" date at the top of this Agreement. If we make any material changes and you have registered an Account with us, we will also send an email with an updated copy of this Agreement to you at the email address associated with your Account. Unless otherwise stated in such update, any changes to this Agreement will be effective immediately. Efficient may require you to provide consent to the updated Agreement in a specified manner before further use of the Services is permitted. IF YOU DO NOT AGREE TO ANY CHANGE(S) AFTER RECEIVING A NOTICE OF SUCH CHANGE(S), YOU SHALL STOP USING THE SERVICE.

**15.5 Exclusive Venue.** To the extent the parties are permitted under this Agreement to initiate litigation in a court, both you and Efficient agree that all claims and disputes arising out of or relating to

the Agreement will be litigated exclusively in the state or federal courts located in Pittsburgh, Pennsylvania.

**15.6 Governing Law.** THE AGREEMENT AND ANY ACTION RELATED THERETO WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, CONSISTENT WITH THE FEDERAL ARBITRATION ACT, WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THE AGREEMENT.

**15.7 Notice.** Where Efficient requires that you provide an e-mail address, you are responsible for providing Efficient with your most current e-mail address. In the event that the last e-mail address you provided to Efficient is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by the Agreement, Efficient's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to Efficient at the following address: 2261 Market Street, STE 10513, San Francisco, CA 94114. Such notice shall be deemed given when received by Efficient by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

**15.8 Waiver.** Any waiver or failure to enforce any provision of the Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**15.9 Severability.** If any portion of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions shall remain in full force and effect.

**15.10 Export Control.** You may not use, export, import, or transfer the Services except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the Services, and any other applicable laws. In particular, but without limitation, the Services may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using the Services, you represent and warrant that (y) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (z) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use the Services for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You acknowledge and agree that products, services or technology provided by Efficient are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer Efficient products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.

**15.11 Entire Agreement.** The Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.