



Terms of Service

READ CAREFULLY THIS SAAS SERVICES AGREEMENT (“**AGREEMENT**”), WHICH CONTAINS THE EXCLUSIVE TERMS AND CONDITIONS BETWEEN SHORELINE LABS, INC. (“**COMPANY**”), AND YOU (TOGETHER WITH THE ENTITY FOR WHICH YOU REGISTER, ACCESS OR USE THE SERVICE, “**CUSTOMER**”), REGARDING ACCESS AND USE OF COMPANY’S WEB-BASED SOFTWARE PLATFORM (“**services**”). YOU REPRESENT AND WARRANT THAT YOU HAVE FULL LEGAL AUTHORITY TO ENTER INTO THIS AGREEMENT, UNDER ALL APPLICABLE LAWS AND ON BEHALF OF CUSTOMER. BY SELECTING THE “ACCEPT” BUTTON OR BY ACCESSING OR USING THE SERVICES (“**ACCEPTANCE**”), YOU WILL CREATE A LEGALLY ENFORCEABLE CONTRACT WHERE CUSTOMER AGREES TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS AGREEMENT WITHOUT MODIFICATION. FOR THE PURPOSES OF THE TERMS BELOW AND CONDITIONS IN THIS AGREEMENT, THE “ORDER FORM” SHALL MEAN THE PURCHASE ORDER YOU SIGNED WITH COMPANY OR ITS RESELLERS OR AGENTS, TO WHICH THE SERVICES RELATE.

IF YOU CANNOT OR DO NOT AGREE TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT, YOU SHOULD NOT SELECT THE “ACCEPT” BUTTON AND YOU ARE PROHIBITED FROM ACCESSING OR USING THE SERVICES.

TERMS AND CONDITIONS

1. SERVICES AND SUPPORT

1.1 Subject to the terms and conditions of this Agreement, COMPANY grants to Customer a limited, non-exclusive, non-transferable right, without right of sublicense, during the applicable Service Term, which is set forth on the applicable Order Form, to access and use the Subscription Services in the Territory solely for the Customer’s internal business. “Subscription Services” means the web-based software platform identified on the Order Form. The Subscription Services may be discontinued, modified, enhanced and/or updated from time to time at COMPANY’s sole discretion. COMPANY will use reasonable efforts to give Customer prior written notice of any major modification.

1.2 COMPANY will undertake commercially reasonable efforts to make the Services available twenty-four (24) hours a day, seven (7) days a week. Notwithstanding the foregoing, COMPANY reserves the right to suspend Customer’s access to the Services: (i) for scheduled or emergency maintenance, or (ii) in the event Customer is in breach of this Agreement, including failure to pay any amounts due to COMPANY.

1.3 Subject to the terms hereof, COMPANY will provide reasonable support to Customer for the Services from Monday through Friday during COMPANY’s normal business hours.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Except as otherwise explicitly provided in this Agreement or as may be expressly permitted by applicable law, Customer will not, and will not permit or authorize third parties to: (1) modify, rent, lease, or otherwise permit third parties to use the Subscription Services; (2) decompile, disassemble or reverse engineer the Subscription Services, or otherwise attempt to discover the source code, object code, logic, process or underlying methodology, structure, ideas or algorithms of the Subscription Services, or related trade secrets, or any software, documentation or data related to the Services (“Software”); (3) provide access to the Subscription Services to any third party for purposes of assessing features, functionality, or performance of the Subscription Services; (4) use the Subscription Services or Software for timesharing or service bureau purposes or for any purpose other than its own internal use; (5) use the Subscription Services or Software other than in accordance with this Agreement and in compliance with all applicable laws and regulations; or (6) remove any product identification, proprietary, copyright or other notices contained in the Services or the Software. Customer will use reasonable efforts to prevent any unauthorized use of the Subscription Services or the Software, and will promptly notify COMPANY in writing of any unauthorized use that comes to Customer’s attention and provide all reasonable cooperation to prevent and terminate such use.



2.3 Customer will designate an employee who will be responsible for all matters relating to this Agreement (“Primary Contact”). Customer may change the individual designated as Primary Contact at any time by providing written notice to COMPANY.

2.4 Customer will be responsible for maintaining the security of Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account with or without Customer’s knowledge or consent.

2.5 Customer further acknowledges, agrees to and is bound by the Privacy Policy on COMPANY’s website (as they may be updated from time to time), except to the extent expressly and directly in conflict with the terms hereof.

2.6 Customer acknowledges and agrees that the Subscription Services operates on or with or using application programming interfaces (APIs) and/or other services operated or provided by third parties (“Third Party Services”). COMPANY is not responsible for the operation of any Third Party Services nor the availability or operation of the Services to the extent such availability and operation is dependent upon Third Party Services. Customer is solely responsible for procuring any and all rights necessary for it to access Third Party Services except for those Third Party Services embedded in the Services or otherwise provided by COMPANY. Client is solely responsible for complying with any applicable terms or conditions thereof. COMPANY does not make any representations or warranties with respect to Third Party Services or any third party providers. Any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider and is governed by such third party’s terms and conditions.

3. PROFESSIONAL SERVICES

The parties may enter into by mutual execution separate Statements of Work (the “SOW”) for the provision by COMPANY of Professional Services to Customer, which may include configuration, deployment, guided services, consultation, education or training services. The fees and terms for such Professional Services will be as provided in the applicable SOW.

4. CONFIDENTIALITY

4.1 Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose information relating to the Disclosing Party’s technology or business (hereinafter referred to as “Proprietary Information” of the Disclosing Party).

4.2 The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary information solely to those employees and contractors with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure. In any event, COMPANY may collect data with respect to and report on the aggregate response rate and other aggregate measures of the Services’ performance.

4.3 Customer acknowledges that COMPANY does not wish to receive any Proprietary Information from Customer that is not necessary for COMPANY to perform its obligations under this Agreement. COMPANY will receive a limited amount of Customer information, including personally identifiable information, from Customer (“Customer Data”) for processing exclusively for the purposes of providing the Services to Customer. Customer grants COMPANY a limited license during the Service Term for this use. Unless the parties specifically agree otherwise, COMPANY may reasonably presume that any unrelated information received from Customer is not confidential or Proprietary Information.

4.4 Both Parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a Party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirors.

5. PROPRIETARY RIGHTS



5.2 Customer acknowledges that COMPANY owns and retains all the intellectual property rights in and to the Services, Software, and any related process or methodology provided or used by COMPANY, and any modification, improvement or enhancement thereto however developed or provided. Nothing contained in this Agreement shall be construed to convey to Customer any rights or ownership in or to the Services, Software, or related methodologies or processes, including any related intellectual property rights, other than the limited rights expressly provided in Section 1.1. Either party may provide feedback, suggestions, ideas, enhancement requests, recommendations or other information (the “Feedback”) to the other about the other party’s Confidential Information and/or products and services. All such Feedback is entirely voluntarily. Except as otherwise expressly provided in this Agreement or a separate written agreement signed thereafter between the parties, this Agreement does not limit the party receiving the Feedback from using or exploiting the Feedback provided to it.

5.3 COMPANY will indemnify Customer from all damages, costs, settlements, attorneys’ fees and expenses (“Liabilities”) awarded to unaffiliated third parties resulting from infringement by the Subscription Services of any United States patent or any copyright or misappropriation of any trade secret, provided COMPANY is promptly notified of any and all threats, claims and proceedings (“Claims”) related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; COMPANY will not be responsible for any settlement it does not approve. The foregoing obligations do not apply with respect to portions or components of the Subscription Services (i) not created by COMPANY, (ii) that are modified after delivery by COMPANY where the alleged infringement relates to such modification, (iii) combined with other products, processes or materials where the alleged infringement relates to such combination, (iv) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (v) where Customer’s use thereof is not strictly in accordance with this Agreement and all related documentation. Customer will indemnify COMPANY from all Liabilities resulting in connection with any Claims that arise from an infringement or violation of any third party rights by Customer’s data or information, or infringement or misappropriation Claims excluded from COMPANY’s indemnity obligation by the preceding sentence, or otherwise from Customer’s use of Services or activities hereunder, provided Customer is promptly notified of any Claims related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement.

6. PAYMENT OF FEES

6.1 Customer will pay COMPANY the applicable fees as set forth on the Order Form (the “Fees”). If Customer’s use of the Subscription Services exceeds the limitations set forth on the Order Form, Customer will be invoiced at the end of each calendar month for the excess usage at the rate set forth on the Order Form, and Customer agrees to pay the additional fees without any right of set-off or deduction. To the extent applicable, Customer will pay COMPANY for additional services, such as fees for Professional Services as set forth on the applicable SOW. All payments will be made in accordance with the Payment Schedule and the Method of Payment. If not otherwise specified, payments will be due within thirty (30) days of invoice.

6.2 Unpaid Fees are subject to a finance charge of one percent (1.0%) per month, or the maximum permitted by law, whichever is lower, plus all expenses of collection, including reasonable attorneys’ fees. Fees under this Agreement are exclusive of all taxes, including national, state or provincial and local use, sales, value-added, property and similar taxes, if any. Customer agrees to pay such taxes (excluding US taxes based on COMPANY’s net income) unless Customer has provided COMPANY with a valid exemption certificate. In the case of any withholding requirements, Customer will pay any required withholding itself and will not reduce the amount paid to Customer on account thereof.

7. TERMINATION

7.1 Unless otherwise specified in the Order Form or earlier terminated as provided below, this Agreement is for a one-year Service Term. The Service Term will automatically renew for additional periods equal to the initial service term unless Customer provides written notice of non-renewal at least 30 days prior to the renewal date. Termination notice may be made via email to Nightfall Support at support@nightfall.ai.

7.2 In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty-day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party’s making an assignment for the benefit of creditors, or (iii) upon the other party’s dissolution or ceasing to do business.

7.3 The following sections of this Agreement will survive termination or expiration of this Agreement: Sections 2.1, 4, 5, 6, 7.3, 9 – 12.



of a network, computer program or computer system or any component thereof, including its security or user data. COMPANY will maintain commercially reasonable administrative, physical and technical safeguards for the Subscription Services to protect against the accidental or unauthorized access, use, alteration or disclosure of Customer's data properly uploaded to the Subscription Services and processed or stored on a computer and/or computer network owned or controlled by COMPANY in connection with the Subscription Services. Except as otherwise permitted under this Agreement, Company does not collect, process, store, or otherwise have access to Customer Data. If, at any time, COMPANY fails to comply with the warranty in this Section, Customer may promptly notify COMPANY in writing of any such noncompliance. COMPANY will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting them is not established during such period, Customer may terminate this Agreement as its sole and exclusive remedy for such noncompliance.

9. WARRANTY DISCLAIMER

THE SERVICES, THE SOFTWARE, AND COMPANY PROPRIETARY INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. COMPANY (AND ITS AGENTS, AFFILIATES, LICENSORS AND SUPPLIERS) HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

10. LIMITATION OF LIABILITY

IN NO EVENT WILL COMPANY (OR ANY OF ITS AGENTS, AFFILIATES, LICENSORS OR SUPPLIERS) BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES, THE SOFTWARE, OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE SERVICES, THE SOFTWARE, OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF COMPANY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE LESSER OF (i) TEN THOUSAND DOLLARS, OR (ii) THE FEES PAID TO COMPANY HEREUNDER IN THE THREE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION IN THIS SECTION 10 SHALL NOT LIMIT EITHER PARTY'S INDEMNIFICATION OBLIGATION SET FORTH IN SECTION 5.3, CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 4, OR EITHER PARTY'S LIABILITIES ARISING OUT OF THE PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

11. U.S. GOVERNMENT MATTERS

Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Services or any software or anything related thereto or any direct product thereof (collectively "Controlled Subject Matter"), 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. Without limiting the foregoing Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Service is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. As defined in FAR section 2.101, any software and documentation provided are "commercial items" and are deemed to be "commercial computer software" and "commercial computer software documentation".

12. MODIFICATION OF THIS AGREEMENT

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revision is effective, that use will constitute acceptance of that revision.

13. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with COMPANY's prior written consent. COMPANY may transfer and assign any of its rights and obligations under this Agreement with written notice to Customer. Both parties agree that this Agreement (including any separately executed SOWs that reference this Agreement) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications (except for modification pursuant to in Section 12) must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind COMPANY in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. COMPANY will not be liable for any loss resulting from a cause over which it does not have direct control. This Agreement will be governed by the laws of the State of California, U.S.A. without regard to its conflict of laws provisions. The federal and state courts sitting in San Francisco County, California, U.S.A. will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement, provided that either party may seek injunctive relief in any court of competent jurisdiction. Customer agrees to participate in press announcements, case studies, trade shows, or other forms reasonably requested by COMPANY. COMPANY is permitted to disclose that Customer is one of its customers to any third-party at its sole discretion.



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