

Descartes Labs Terms of Service

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These Descartes Labs, Inc. (“Descartes Labs,” “Company,” “we,” “us” or “our”) Terms of Service (these “Terms”) govern how you may access and use: (i) <https://www.descarteslabs.com> and any other website where these Terms are posted (collectively, the “Site”); (ii) the various tools and documentation, such as application programming interfaces (“APIs”), made available on the Site or otherwise by Descartes Labs (collectively, the “Tools”); (iii) Descartes Labs’ online hosted services; (iv) the data, content, and information provided to you by Descartes Labs (including, without limitation, through Descartes Labs’ online hosted services); and (v) any other technology, platform, dashboard or software of Descartes Labs (or its licensors) provided by Descartes Labs to you that provides or allows you to access any of the foregoing ((i) through (v) collectively, the “Services”). We may from time to time provide you with a more detailed description of the Services through published software libraries, APIs and additional resources we make available to you on our Site.

BY CLICKING “I AGREE,” “SUBMIT”, OR THE LIKE INDICATING ACCEPTANCE ELECTRONICALLY, OR BY ACCESSING OR USING THE SERVICES, YOU SIGNIFY THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS AND TO THE COLLECTION AND USE OF YOUR INFORMATION AS SET FORTH IN OUR PRIVACY POLICY AVAILABLE AT WWW.DECARTESLABS.COM (“PRIVACY POLICY”), WHETHER OR NOT YOU ARE A REGISTERED USER OF OUR SERVICES.

IF YOU ACCESS OR USE THE SITE, TOOLS OR SERVICES ON BEHALF OF A COMPANY, PRINCIPAL OR OTHER ENTITY (WHETHER A SINGLE ENTITY OR MULTIPLE ENTITIES), YOU REPRESENT AND WARRANT THAT YOU HAVE AUTHORITY TO BIND EACH SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND THAT THESE TERMS ARE FULLY BINDING UPON SUCH ENTITY AND ITS AFFILIATES. IN SUCH CASE, THE TERM “YOU” AND “YOUR” WILL REFER TO BOTH YOU INDIVIDUALLY AND SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS, YOU MAY NOT ACCESS OR USE THE SITE, TOOLS OR SERVICES. YOU SHOULD READ AND KEEP A COPY OF THESE TERMS FOR YOUR RECORDS.

PLEASE READ THESE TERMS CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THESE TERMS CONTAIN A MANDATORY INDIVIDUAL ARBITRATION AND CLASS ACTION/JURY TRIAL WAIVER PROVISION THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.

1. GRANT OF LICENSE; COMPANY ACCOUNTS.

1.1 License to Services. Subject to your full compliance with these Terms, Company grants you a non-exclusive, revocable, nonsublicensable, nontransferable, limited license to access and use the Site, Tools, and Services, and to integrate the APIs and portions of Tools into websites and applications that you operate, in each case exercisable by and through the authorized users as set forth on your ordering documentation solely for your Internal Use and in accordance with these Terms. As used herein, “Internal Use” means your right to access and use the Services in order to perform its intended and customary function, in accordance with its applicable documentation, solely in connection with your operations and not for use to provide access to the Services to unauthorized users, and, for clarity, Internal Use excludes

any right to distribute, license, sublicense, sell or otherwise transfer or make available the Services to any third party (excluding to your authorized users as permitted herein). You may not download, copy, install, or use the Tools or Services for any other purpose without Company's prior written consent. No rights or licenses are granted except as expressly set forth in these Terms. The software contained in the Tools and Services is licensed to you, not sold. Some portions of the Tools or Services may be subject to an open-source copyright license agreement, and use of Tools or Services portions will also be governed by and subject to the open-source license terms provided with the Tools or Services. You may not use the APIs for any purpose, function, or feature not described in the API documentation, support pages and other pages on our Site ("Documentation"). We may update the API and Documentation from time to time, and may add or remove functionality, in each case in our sole discretion.

1.2 Third-Party Data; Premium Data. Company may make available on or in connection with the Services certain data, content and information provided by third parties ("Third-Party Data"). All or some portions of Third-Party Data may be subject to separate third-party license agreements, including but not limited to open source license agreements. Notwithstanding anything to the contrary in these Terms, such third-party license agreements govern your use of such Third-Party Data and control and supersede these Terms to the extent of any conflict herewith, and you are responsible for compliance with all third-party license agreements applicable to Third-Party Data. Company or such third parties may modify such third-party license agreements and use restrictions from time to time and it is your responsibility to check for updates to such license agreements or use restrictions. If a modification of any third-party license agreement, or use restrictions is unacceptable, you may cancel your access upon written notice to Company or discontinue use of the Services, as applicable. Continued use of the Services will be deemed acceptance of any such modifications. Notwithstanding anything to the contrary in these Terms and without limiting Section 1.1, except as otherwise expressly authorized by Company in writing you shall not: (a) download or export from the Services any data identified on the Services as "Restricted Data" (or the like); (b) access or use any data identified on the Services as "Location-Restricted Data" (or the like) if you are located in Japan, Saudi Arabia, Taiwan, China, Azerbaijan, Estonia, Georgia, Iran, Kirghizstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, Uzbekistan, Russian Federation, or Belarus; or (c) access or use any data identified on the Services as "Non-Governmental Use Data" (or the like) if you are accessing such data on behalf of the United States Government or any other governmental entity.

1.3 Company Accounts. Your Company account gives you access to the Services and functionality that we may establish and maintain from time to time and in our sole discretion. You may never use another user's account without permission. You are solely and fully responsible and liable to Company for the activity that occurs on your account, including the acts or omissions of each authorized user on your account or any other person accessing or using the Services through or in connection with your account. When creating your account, you must provide accurate and complete information, and you must keep your account password secure. We encourage you to use "strong" passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with your account. You must notify Company immediately of any breach of security or unauthorized use of your account. Company will not be liable for any losses caused by any unauthorized use of your account. By providing Company your email address you consent to our using the email address to send you Services-related notices, including any notices required by law, in lieu of communication by postal mail. We may also use your email address to send you other messages, such as changes to features of the Services and special offers. If you do not want to receive such email messages, you may opt out or change your preferences in your account

settings. Opting out may prevent you from receiving email messages regarding updates, improvements, or offers.

2. PROPRIETARY RIGHTS.

2.1 Customer Data; Customer-Supplied Technology; Output. As between Company and you, you (or your licensors) will own any data, information, and content, that you provide to Company or that you upload or transmit to the Services (collectively, “Customer Data”) and any and all of your Customer-Supplied Technology (as defined below). For clarity, Customer Data as used herein excludes Customer-Supplied Technology. Except as otherwise expressly agreed by Company and you in writing, Customer Data will not include or contain any personally identifiable information or personal data. Company may provide to you via the Services certain features and functionality that permit the download and/or export of certain results in the format provided by Company (“Output”), and except as otherwise agreed by Company and you in writing, you may use the Output solely for your Internal Use. You (on behalf of yourself and your licensors) grant, and you represent and warrant that you have all rights necessary to grant, Company an irrevocable, assignable, sublicensable (through multiple tiers), transferable, fully paid, royalty-free, and worldwide right and license to copy, store, reproduce, distribute, publicly display, modify, use, and create derivative works of the Customer Data, Customer-Supplied Technology and Output to: (w) maintain and provide the Services to you; (x) create and use de-identified data in order to improve Descartes Labs’ products and services, system performance, architecture, and functionality (and such derived data will be Descartes Labs’ property); (y) create and share with Company’s other customers (in aggregate and anonymous form) reports and information to help them optimize and benchmark their data and services; and (z) perform such other actions as authorized or instructed by you in connection with your use of the Services.

2.2 Solutions Development Services.

(a) Definitions.

“Analytical Process” means software, algorithms, methodologies, processes and the like to which data or datasets are applied producing results or output.

“Solution” means an Analytical Process developed or configured by Descartes Labs for you as part of Solutions Development Services.

“Solutions Development Services” means the Solutions development and/or configuration services as detailed in your ordering documentation.

“Customer-Supplied Technology” means your Analytical Processes (a) supplied by you or (b) developed by you on the Services using the functionality of the Services.

(b) Descartes Labs will provide the Solutions Development Services identified in your ordering documentation in accordance with the terms and conditions of your ordering documentation and these Terms. Upon completion of development and/or configuration of a Solution, you may use the Solution on a subscription basis solely pursuant to your ordering documentation for such use mutually executed by the parties. The Solutions Development Services and, once subscribed to under applicable ordering documentation, the Solutions are deemed part of the Services for purposes of these Terms. You agree to cooperate with Descartes Labs in all matters relating to the Solutions Development Services, provide such materials or information as Descartes Labs may reasonably request to carry out the Solutions Development Services in a timely manner and ensure that such materials or information are complete and accurate in all material respects. If Descartes Labs’ performance of its obligations hereunder is materially prevented or delayed by any act or omission attributable to you or your agents, subcontractors, consultants or employees, Descartes Labs will not be deemed in breach of its obligations hereunder or otherwise liable for any costs, charges or losses sustained or incurred by you, in each case, to the extent arising directly or indirectly from such prevention or delay.

2.3 Company Property. As between Company and you, Company solely and exclusively owns and will own all rights, title, and interest in and to the Services and Solutions, and all patents, copyrights (including rights in derivative works), moral rights, rights of publicity, trademarks, service marks, logos and designs, Marks (defined below), trade secrets, and all other intellectual property embodied by, or contained in the API, Tools, Site, Documentation, Solutions and Services, and any copies thereof. The technology underlying the Services and Solutions is protected by copyright, trade secret, patent, and other intellectual property laws. All rights not expressly granted to you in these Terms are reserved by Company.

2.4 Authentication Keys. You: (a) are responsible for protecting all authentication key(s) for the APIs; (b) shall not disclose the authentication key(s) to any third party except your employees; (c) shall not use the authentication key(s) for any purpose other than as necessary to exercise rights granted under these Terms; and (d) are responsible for all activity that occurs with the authentication key(s). You shall notify Company promptly in the event you learn of any unauthorized access to any authentication key(s).

2.5 Ideas. You may choose to or we may invite you to submit comments or ideas about the Services, including without limitation about how to improve the Services or our products (“Ideas”). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place Company under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, Company does not waive any rights to use similar or related ideas previously known to Company, or developed by its employees, or obtained from sources other than you.

2.6 Company Marks. We may make certain Company logos or marks (the “Marks”) available for use by you and other users to allow you to identify Company as a service provider. To use the Marks, you must first agree in writing to any written conditions or instructions regarding such use provided by Company to you. Company may limit or revoke your ability to use the Marks at any time. You may never use any Marks or any Company intellectual property consisting of trademarks or service marks without our express written permission, or in any manner that may lead people to confuse the origin of your products or services with ours. During the term of these Terms, you may publicly identify us as the provider of the Services to you and we may publicly identify you as a Company user. Upon your separate written consent (email to suffice) Company may use your trade name and logo in Company’s marketing and promotional materials, including but not limited to Company’s websites, sales and pitch decks, and other marketing materials, solely for the purpose of referring to you as a customer of Company’s products and services. Neither you nor we will imply any untrue sponsorship, endorsement, or affiliation between you and Company.

3. LICENSE AND USE RESTRICTIONS. You agree that you will not, and will not assist, permit or enable others to:

(a) identify or refer to Company, the Site, Tools, or Services in a manner that could reasonably imply an endorsement, relationship or affiliation with or sponsorship between you or a third party and Company, other than your permitted use of the Services under these Terms;

(b) copy, rent, lease, sell, transfer, assign, sublicense, disassemble, reverse engineer, decode or decompile, modify, alter, scrape, or create derivative works of any part of the Site, Tools or Services;

(c) remove any copyright notices and proprietary legends from the Services;

(d) use the Site, Tools or Services in a manner that impacts the stability of Company’s servers, the operation or performance of the Services, or the behavior of other applications using the Services;

- (e) identify the Company or display any portion of the Site, Tools or Services on any site or service that disparages Company or its products or services, or infringes any Company intellectual property or other rights;
- (f) use the Site, Tools or Services in any manner or for any purpose that violates any applicable law, regulation, legal requirement or obligation, contractual obligation, or any right of any person including, but not limited to, intellectual property rights, rights of privacy and/or rights of personality, or which otherwise may be harmful (in Company's sole discretion) to Company, its providers, its suppliers, end users of the Site, or your end users;
- (g) use the Site, Tools or Services in a manner that could reasonably be interpreted to suggest that the use represents the views of Company;
- (h) use the Site, Tools or Services in competition with Company or for benchmarking or competitive analysis, to develop competing products or services, or otherwise to Company's detriment or commercial disadvantage;
- (i) use the Site, Tools or Services in connection with or to promote any products, services, or materials that constitute, promote or are used primarily for the purpose of dealing in: spyware, adware, or other malicious programs or code; counterfeit goods; items subject to U.S. embargo; unsolicited mass distribution of email; multi-level marketing proposals; hate materials; hacking/surveillance/interception/descrambling equipment; libelous, defamatory, obscene, abusive or otherwise offensive content; prostitution; stolen products and items used for theft; illegal activities or conduct; or any other subject matter prohibited by these Terms;
- (j) attempt to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Site or Services;
- (k) transmit viruses, worms, or other software agents through the Site or Services;
- (l) share passwords or authentication credentials for the Site or Services, impersonate another person or otherwise misrepresent your affiliation with a person or entity, conduct fraud, or hide or attempt to hide your identity; or
- (m) bypass the measures we may use to prevent or restrict access to the Site or Services, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Site or Services or the content therein.

4. TOOLS AND SERVICE CHANGES. The Site, Tools and Services all are subject to change from time to time, in Company's sole discretion, without prior notice to you. Company has no obligation to update, correct, maintain, or continue to provide any aspect of the Site, Tools or Services. We may require action on your part before you may use any updated or modified Services, including activation through your Company account or acceptance of new or additional terms.

5. CUSTOMER DATA AND CUSTOMER-SUPPLIED TECHNOLOGY

RESTRICTIONS. You agree not to post, upload, transmit or provide any Customer Data or Customer-Supplied Technology that: (i) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to you or any other person; (ii) may create a risk of any other loss or damage to any person or property; (iii) may constitute or contribute to a crime or tort; (iv) contains any information or content that we deem to be unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, profane, obscene, or otherwise objectionable; (v) contains any information or content that is illegal or that you do not have a right to make available under any law or under contractual or fiduciary relationships; or (vi) contains any information or content that you know is not correct and current. You agree that any Customer Data and Customer-Supplied Technology that you provide or post does not and will not infringe or violate third-party rights of any kind, including without limitation any privacy, patent, copyright, trademark, trade secret, or other

third party or intellectual property rights. Company takes no responsibility and assumes no liability for any Customer Data or Customer-Supplied Technology that you or any other user or third party provides, posts, sends, or otherwise makes available over the Services. You shall be solely responsible for your Customer Data and Customer-Supplied Technology and the consequences of providing, posting, publishing it, sharing it, or otherwise making it available on the Site or Services.

6. YOUR REPRESENTATIONS AND WARRANTIES. You represent and warrant that:

- (a) you are at least eighteen (18) years old, and you have the legal capacity to enter into contracts;
- (b) your Customer Data, Customer-Supplied Technology and your use of the Site, Tools and Services will comply with all applicable laws and regulations, including without limitation privacy and data protection laws;
- (c) you have all necessary rights, licenses and consents to provide, receive, access and/or use the Customer Data, Customer-Supplied Technology and any other content you provide, receive, access and/or use through or in connection with the Services;
- (d) you will disclose your data collection and use practices in a privacy policy that is accessible on any website and in any application, product or service that you use with the Tools and the Services to collect or receive Customer Data;
- (e) you will provide all required notices, and obtain all required consents, that relate to your use of the Tools and Services, and that allow Company to receive and use Customer Data as permitted under these Terms, including from individuals: (i) who use websites, applications, or other products or services that you incorporate the APIs or portions of the Tools or Services into; or (ii) that you receive Customer Data from or that Customer Data or you receive or provide relates to;
- (f) you have the written consent of each and every identifiable natural person in the Customer Data, if any, to use such person's name or likeness in the manner contemplated by the Services and these Terms, and each such person has released you from any liability that may arise in relation to such use;
- (g) you have obtained and are solely responsible for obtaining all consents as may be required by law to post any Customer Data relating to third parties, and you are responsible for clearing all rights and paying all licensing fees and other costs and expenses arising in connection with your Customer Data;
- (h) your Customer Data and Customer-Supplied Technology, and Company's use or distribution thereof as contemplated by these Terms and the Services, will not violate any law or infringe or misappropriate any rights of any third party, including but not limited to any intellectual property rights or privacy rights;
- (i) Except as otherwise expressly agreed by Company in writing, your Customer Data will not include or contain any personally identifiable information or personal data;
- (j) Company may exercise the rights to your Customer Data granted under these Terms without liability for payment of any third party fees, residuals, payments, or royalties; and
- (k) to the best of your knowledge, your Customer Data and other information that you provide to us is truthful and accurate.

7. PAID SERVICES AND SUBSCRIPTIONS.

7.1 Subscription Plans. We may offer plans that you can sign up for that allow you to use certain aspects of the Services (a "Subscription Plan"). Subscription Plans may set allotments for use of designated Services aspects. Use of Services aspects in excess of a Subscription Plan's designated allotment may result in additional fees, as specified in the plan.

7.2 Billing Policies. Subscription Plans may be offered for a fee for a set period of time of Services use (e.g., monthly, annually, etc.) (a "Subscription Period"). You agree to the

pricing and payment terms provided to you in writing and herein as we may update them from time to time. Company may change Subscription Plans by offering new services for additional fees and charges, and adding or amending fees and charges for existing Subscription Plans/services, at any time in its sole discretion. We may automatically charge the payment method associated with your Services account on a recurring basis (depending on the subscription term you choose). You further acknowledge that the amount of the recurring charge may change if the applicable tax rates change or if you are notified that there will be an increase in the applicable subscription fees. Any change to a Subscription Plan's pricing or payment terms shall become effective in the billing cycle following notice of such change to you as provided in these Terms.

7.3 Automatic Renewal. All Subscription Plans, unless earlier terminated or expired as described in these Terms or as otherwise agreed to, will automatically renew until cancelled by you or the Company. If you do not want a Subscription Plan to renew, please cancel it at least sixty (60) days before the end of the Subscription Period.

7.4 Data Retention. Company reserves the right to delete Customer Data and Customer-Supplied Technology after the period applicable to the Subscription Plan you have chosen, so download or copy it before that time if you want to preserve a copy.

7.5 Cancellations; Refunds. If we terminate your Subscription Plan, we will grant you a prorated refund for the remaining unused portion of your Subscription Period. You are not entitled to a refund for any Subscription Plan that you cancel. When you cancel a Subscription Plan, you cancel only future charges associated with your subscription. You may notify us of your intent to cancel at any time, but the cancellation will become effective at the end of your current billing period. Cancellations are effective the following billing cycle. You will not receive a refund for the current billing cycle. You will be responsible for all charges (including any applicable taxes and other charges) incurred with respect to any orders processed prior to your cancellation of a Subscription Plan.

7.6 Payment Information; Taxes. All information that you provide in connection with a purchase, Subscription Plan, or other monetary transaction interaction with the Services must be accurate, complete, and current. You agree to pay all charges incurred by users of your credit card, debit card, or other payment method used in connection with a purchase, Subscription Plan, or other monetary transaction interaction with the Services at the prices in effect when such charges are incurred. You will pay any applicable taxes, if any, relating to any such purchases, transactions or other monetary transaction interactions.

8. COMPANY'S DISCLAIMER OF WARRANTIES. THE SITE, TOOLS, SERVICES AND THIRD-PARTY DATA ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED, OR STATUTORY. EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW, COMPANY AND ITS AFFILIATES, SERVICE PROVIDERS, AND AGENTS EACH DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SITE, TOOLS, SERVICES AND THIRD-PARTY DATA, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, RESULTS OF USE, RELIABILITY, FITNESS FOR A PARTICULAR PURPOSE, PRIVACY, SECURITY, TITLE, INTERFERENCE WITH QUIET ENJOYMENT, AND NON-INFRINGEMENT. FURTHER, COMPANY DISCLAIMS ANY WARRANTIES THAT YOUR USE OF THE SITE, TOOLS OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

9. LIABILITY LIMITATION. REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THESE TERMS FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL COMPANY OR ITS AFFILIATES, SERVICE PROVIDERS, OR AGENTS BE LIABLE TO YOU OR TO

ANY THIRD PARTY UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION FOR ANY: (a) DIRECT DAMAGES, (b) LOSS OF REVENUE, PROFITS, REPUTATION OR GOODWILL, (c) LOST OR CORRUPTED DATA, WEBSITE OR APPLICATION FAILURE, COMPUTER FAILURE OR MALFUNCTION, (d) INTERRUPTION OF BUSINESS, (e) UNAVAILABILITY OF THE SITE, TOOLS, OR SERVICES, (f) BREACH OF DATA, SYSTEM, OR SERVICES SECURITY, (g) BUGS, VIRUSES, TROJAN HORSES, OR OTHER SIMILAR ERRORS OR VULNERABILITIES THAT THE SITE, TOOLS OR SERVICES INCLUDES OR CAUSES, OR (f) OTHER SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE. IN ANY CASE, TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY'S SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER ANY PROVISION OF THESE TERMS SHALL BE: THE REPLACEMENT OF THE SERVICES, OR REFUND OF AMOUNTS PAID BY YOU FOR THE TOOLS OR SERVICES, IN COMPANY'S SOLE DISCRETION. ANY CLAIM ARISING OUT OF OR RELATING TO THESE TERMS MUST BE BROUGHT WITHIN ONE (1) YEAR AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH CLAIM. IN ADDITION, COMPANY DISCLAIMS ALL LIABILITY OF ANY KIND FOR ACTIONS OF COMPANY'S AFFILIATES, SERVICE PROVIDERS, OR AGENTS.

10. MONETARY LIABILITY CAP. IN NO EVENT WILL COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THE SITE, TOOLS, SERVICES, OR THESE TERMS, WHETHER FROM BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY EXCEED THE AMOUNTS ACTUALLY PAID TO COMPANY IN THE PRIOR THREE MONTHS PRECEDING THE EVENT GIVING RISE TO LIABILITY. THE FOREGOING CAP APPLIES EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

11. INDEMNITY. You agree that Company shall have no liability whatsoever for any use you make of the Site, Tools, Customer Data, Customer-Supplied Technology, Output or Services. You shall indemnify, defend, and hold harmless Company and its officers, directors, employees, affiliates, service providers, and agents (collectively, "Company Indemnitees") from any and all claims, suits, actions, proceedings, damages, losses, liabilities, judgments, settlements, fines, penalties, expenses, costs and fees (including attorney fees) arising from or related to your (or any of your third-party service providers') access to or use of the Site, Tools, Customer Data, Customer-Supplied Technology, Output and/or Services, including without limitation any actual or alleged: (i) breach of, or activities that would constitute a breach of, these Terms, including your representations and warranties; (ii) infringement, misappropriation or violation of any copyright, patent, trademark, trade secret, or other intellectual property or other right by use of the Site, Tools, Customer Data, Customer-Supplied Technology, Output and/or Services with any hardware, software, system, network, service, or other matter that is not provided by Company nor expressly authorized in these Terms; (iii) violation of applicable law or any third party proprietary or privacy rights; or (iv) gross negligence or willful misconduct.

12. TERM AND TERMINATION. These Terms shall continue until terminated as set forth in this Section. Company may terminate these Terms at any time per, for any reason, or for no reason, however, these Terms shall continue in effect for the duration of any Subscription Period. Either party may terminate these Terms before the expiration of the Subscription Period if the other party materially breaches any of the terms of these Terms and does not

cure the breach within thirty (30) days after written notice of the breach. Either party may also terminate these Terms before the expiration of the Subscription Period if the other party ceases to operate, declares bankruptcy, or becomes insolvent or otherwise unable to meet its financial obligations. You may terminate these Terms at any time with notice to Company, but you will not be entitled to any credits or refunds as a result of convenience termination for a prepaid but unused Subscription Plan. Any termination of these Terms shall also terminate the license granted hereunder. Upon termination of these Terms for any reason, and for termination by you to be effective: you shall destroy and remove from all websites, applications, computers, hard drives, networks, and other storage media all copies of the Tools and Services, you shall stop using all aspects of the Services, and you shall certify to Company that such actions have occurred. Company shall have the right to inspect and audit your websites, applications, and facilities to confirm the foregoing. Sections 1.2, 2-3, 6-14, and 16-24 of these Terms shall survive the termination or expiration of these Terms.

13. CONFIDENTIALITY. “Confidential Information” shall mean the Tools and Services and all other information disclosed to you that Company characterizes as confidential at the time of its disclosure, or that reasonably ought to be understood by you as confidential, except for information which you can demonstrate: (a) is previously rightfully known to you without restriction on disclosure; (b) is or becomes, from no act or failure to act on your part, generally known in the relevant industry or public domain; (c) is disclosed to you by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by you without access to the Confidential Information. You shall use your best efforts to preserve and protect the confidentiality of the Confidential Information at all times, both during the term hereof and for a period of at least 3 years after termination of these Terms, provided, however, that any source code you receive shall be held in confidence in perpetuity (except as expressly allowed by Company, such as to the extent needed to comply with an open source license). You will not disclose Confidential Information except to employees and agents who need to know it and have agreed in writing to keep it confidential; only those parties may use the Confidential Information, and only to exercise your rights and fulfill your obligations under these Terms, while using at least a reasonable degree of care to protect it; provided, however, that you shall not disclose, disseminate or otherwise publish or communicate any source code you receive to any person, firm, corporation or other third party without the prior written consent of Company. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify Company in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of these Terms, and you will cooperate with Company in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If you are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, you will (i) immediately notify Company prior to such disclosure to allow Company an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with Company in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, you shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements. You acknowledge that Company will be irreparably harmed if Confidential Information is distributed in breach of this Section, and that Company would not have an adequate remedy at law in the event of such an actual or threatened breach by you. Therefore, you agree that Company shall be entitled to seek injunctive relief against any actual or threatened breaches of this Section by you without the necessity of Company

showing actual damages or showing that monetary damages would not afford an adequate remedy.

14. EXPORT CONTROLS. You shall comply with all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control (“OFAC”), or other United States or foreign agency or authority, and you shall not export, or allow the export or re-export of the Services in violation of any such restrictions, laws or regulations. By using the Tools or Services, you agree to the foregoing and represent and warrant that you are not located in, under the control of, or a national or resident of any restricted country.

15. U.S. GOVERNMENT USERS. If you are a United States government user or otherwise accessing or using any of the Services on behalf of the U.S. government, including as a higher-tier subcontractor or prime contractor, you agree to the Mapbox U.S. Government Terms of Services, as applicable, located at www.mapbox.com/usg-tos/ (“Mapbox Terms”). In the event of a conflict between these Terms and the Mapbox Terms, the Mapbox Terms shall prevail.

16. U.S. GOVERNMENT RESTRICTED RIGHTS. The Services provided hereunder is commercial. If the Services is being licensed by the U.S. Government, the Services is commercial computer software and documentation developed exclusively at private expense, and (i) if acquired by or on behalf of a civilian agency, shall be subject to the terms of this computer software license as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; and (ii) if acquired by or on behalf of units of the Department of Defense (“DOD”) shall be subject to the terms of this commercial computer software license as specified in 48 C.F.R. 227.7202-2, DOD FAR Supplement and its successors. The preceding sentence supersedes, any other FAR, DFARS, or other clause, policy or supplemental regulation pertaining to Government rights in computer software or technical data included in the Services.

17. CHANGES TO THESE TERMS. Company reserves the right to modify or revise these Terms at any time, and in connection with doing so, will update the ‘last modified’ date at the top of this page. You should visit the Site periodically to review these Terms and check for updates. If we make any material changes to these Terms, we will use reasonable efforts to notify you of such changes. Your continued use of the Tools or Services after the effective date of any such changes will constitute your acceptance of and agreement to such changes. **IF YOU DO NOT WISH TO BE BOUND TO ANY NEW TERMS, YOU MUST TERMINATE THESE TERMS BY IMMEDIATELY CEASING USE OF THE SITE, TOOLS AND SERVICES.**

18. NOTICES. Notices to Company should be sent to Descartes Labs, Inc., 100 N. Guadalupe Street, Santa Fe, NM 87501, with a copy to legal@descarteslabs.com. Notices to you may be provided using any contact information you provide to us, including any e-mail address or mailing address.

19. DMCA NOTICE. Since we respect artist and content owner rights, it is Company’s policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 (“DMCA”).

If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Services, please notify Company’s copyright agent as set forth in the DMCA. For your complaint to be valid under the DMCA, you must provide the following information in writing:

An electronic or physical signature of a person authorized to act on behalf of the copyright owner;

Identification of the copyrighted work that you claim has been infringed;

Identification of the material that is claimed to be infringing and where it is located on the Services;

Information reasonably sufficient to permit Company to contact you, such as your address, telephone number, and, e-mail address;

A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or law; and

A statement, made under penalty of perjury, that the above information is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner.

The above information must be submitted to the following DMCA Agent:

Attn:

DMCA Notice

Descartes Labs, Inc.

Address:

Descartes Labs, Inc.

1607 Paseo de Peralta, Suite B, Street, Santa Fe, NM 87501

Email: legal@descarteslabs.com

UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY AND CIVIL PENALTIES, INCLUDING MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS' FEES.

Please note that this procedure is exclusively for notifying Company and its affiliates that your copyrighted material has been infringed. The preceding requirements are intended to comply with Company's rights and obligations under the DMCA, including 17 U.S.C. §512(c), but do not constitute legal advice. It may be advisable to contact an attorney regarding your rights and obligations under the DMCA and other applicable laws.

In accordance with the DMCA and other applicable law, Company has adopted a policy of terminating, in appropriate circumstances, users who are deemed to be repeat infringers. Company may also at its sole discretion limit access to the Services and/or terminate the accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

20. PRIVACY; SECURITY. You understand that by using the Services, Company will collect, use, and disclose your personally identifiable information and aggregate data as set forth in our Privacy Policy and transfer your personally identifiable information to and process it in the United States. We care about the integrity and security of your personal information. However, we cannot guarantee that unauthorized third parties will never be able to defeat our security measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk.

21. THIRD-PARTY SERVICES. The Services may contain links to third-party websites, advertisers, services, special offers, or other events or activities that are not owned or controlled by Company. Company does not endorse or assume any responsibility for any such third-party sites, information, materials, products, or services. If you access a third party website from the Services, you do so at your own risk, and you understand that these Terms and our Privacy Policy do not apply to your use of such sites. You expressly relieve Company from any and all liability arising from your use of any third-party website, service, or content. Additionally, your dealings with or participation in promotions of advertisers found on the Services, including payment and delivery of goods, and any other terms (such as warranties) are solely between you and such advertisers. You agree that Company shall not be responsible for any loss or damage of any sort relating to your dealings with such advertisers.

22. GOVERNING LAW, ARBITRATION, AND CLASS ACTION/JURY TRIAL WAIVER.

22.1 Governing Law. You agree that: (i) the Services shall be deemed solely based in California; and (ii) the Services shall be deemed a passive one that does not give rise to personal jurisdiction over us, either specific or general, in jurisdictions other than California. These Terms shall be governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. The parties acknowledge that these Terms evidence a transaction involving interstate commerce. Notwithstanding the preceding sentences with respect to the substantive law, any arbitration conducted pursuant to the terms of these Terms shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16). The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. You agree to submit to the personal jurisdiction of the federal and state courts located in San Francisco County, California for any actions for which we retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a our copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, as set forth in the Arbitration provision below, including any provisional relief required to prevent irreparable harm. You agree that San Francisco County, California is the proper forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision below is found to be unenforceable.

22.2 Arbitration. READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM COMPANY. For any dispute with Company, you agree to first contact us at legal@descarteslabs.com and attempt to resolve the dispute with us informally. In the unlikely event that Company has not been able to resolve a dispute it has with you after sixty (60) days, we each agree to resolve any claim, dispute, or controversy (excluding any claims for injunctive or other equitable relief as provided below) arising out of or in connection with or relating to these Terms, or the breach or alleged breach thereof (collectively, "Claims"), by binding arbitration by JAMS, Inc. ("JAMS"), under the Optional Expedited Arbitration Procedures then in effect for JAMS, except as provided herein. JAMS may be contacted at www.jamsadr.com. The arbitration will be conducted in San Francisco County, California, unless you and Company agree otherwise. If you are using the Services for commercial purposes, each party will be responsible for paying any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules, and the award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses. If you are an individual using the Services for non-commercial purposes: (i) JAMS may require you to pay a fee for the initiation of your case, unless you apply for and successfully obtain a fee waiver from JAMS; (ii) the award rendered by the arbitrator may include your costs of arbitration, your reasonable attorney's fees, and your reasonable costs for expert and other witnesses; and (iii) you may sue in a small claims court of competent jurisdiction without first engaging in arbitration, but this does not absolve you of your commitment to engage in the informal dispute resolution process. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this Section shall be deemed as preventing Company from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of confidentiality, data security, intellectual property rights or other proprietary rights.

22.3 Class Action/Jury Trial Waiver. WITH RESPECT TO ALL PERSONS AND ENTITIES, REGARDLESS OF WHETHER THEY HAVE OBTAINED OR USED THE SERVICES FOR PERSONAL, COMMERCIAL OR OTHER PURPOSES, ALL CLAIMS

MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE PROCEEDING. THIS WAIVER APPLIES TO CLASS ARBITRATION, AND, UNLESS WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. YOU AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND COMPANY ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR OTHER REPRESENTATIVE PROCEEDING OF ANY KIND.

23. VERIFICATION. Company shall be permitted to audit (at least once annually and in accordance with Company's standard procedures, which may include on-site and/or remote audit) the usage of the Services and Output. You shall cooperate reasonably in the conduct of such audits. In the event an audit reveals that you underpaid the fees due to Company, you shall immediately pay such underpaid fees and the reasonable costs of Company's audit. Company reserves all rights at law and equity with respect to your underpayment of fees.

24. MISCELLANEOUS. These Terms constitute the entire agreement between you and Company pertaining to the subject matter hereof, and supersedes any and all written or oral agreements with respect to such subject matter. If any provision of these Terms is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and the remainder of these Terms shall remain enforceable. In these Terms, "including" means "including without limitation" (and similar terms will be construed without limitation) and headings are for convenience only and will not affect interpretation. The failure of Company to act with respect to a breach of these Terms by you or others does not constitute a waiver and shall not limit Company's rights with respect to such breach or any subsequent breaches. These Terms are personal to you and may not be assigned or transferred for any reason whatsoever (including, without limitation, by operation of law, merger, reorganization, or as a result of an acquisition or change of control involving you) without Company's prior written consent and any action or conduct in violation of the foregoing shall be void and without effect. Company expressly reserves the right to assign these Terms and to delegate any of its obligations hereunder.