

## Space Monkey Terms of Use

Welcome, and thank you for your interest in Space Monkey, Inc., a subsidiary of Vivint, Inc. (“**Space Monkey**”, “**we**,” or “**us**”) and our Web site at <http://www.spacemonkey.com> (the “**Site**”), our Space Monkey hardware device (including all accessories and materials provided with the device) (the “**Device**”), as well as all related web sites, networks, embeddable widgets, downloadable software, mobile applications (including tablet applications), and other services provided by us and on which a link to these Terms of Use is displayed (collectively, together with the Site and Device and including the Software (as defined below), our “**Service**”). These Terms of Use are a legally binding contract between you and Space Monkey regarding your use of the Service.

PLEASE READ THE FOLLOWING TERMS OF USE CAREFULLY. BY CLICKING “I ACCEPT,” YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING THE SPACE MONKEY PRIVACY POLICY (COLLECTIVELY, THESE “**TERMS**”). If you are not eligible, or do not agree to these Terms, then please do not use the Service. Your use of the Service may also be subject to a separate written agreement between you and Space Monkey, or Space Monkey’s parent company, Vivint, Inc. (the “**Order Form**”). In the event of a conflict, the terms of the Order Form will govern.

These Terms of Use provide that all disputes between you and Space Monkey will be resolved by BINDING ARBITRATION. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS UNDER THIS CONTRACT (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT A JUDGE OR JURY and your claims cannot be brought as a class action. Please review Section 26 below for the details regarding your agreement to arbitrate any disputes with Space Monkey.

### 1. **Space Monkey Service Overview.**

1.1 **User Content.** Our Service includes features that enable eligible users to upload, store, make public, share, and download materials made available by users of the Service. These materials may be files of any kind, including messages, reviews, photos, videos, images, folders, data, text, and other types of files (collectively, “**User Content**”). YOU RETAIN COPYRIGHT AND OTHER PROPRIETARY RIGHTS THAT YOU MAY HOLD IN USER CONTENT THAT YOU UPLOAD.

1.2 **Device.** Our Service may be a little different than other online storage services, and we encourage you to read our security page at [https://www.spacemonkey.com/learn\\_secure](https://www.spacemonkey.com/learn_secure) to understand more about our Service before submitting any User Content through your account. In many cases, you must obtain and set-up a Device before you can use some features of the Service, and certain features of the Service, including the process of making backup of copies of your User Content, may not operate if the Device associated with your account is not online and operating properly. We may have the ability to disable the Device remotely and we can automatically update the Device. Because of this requirement, this means that, in addition to the fees that we may charge, you may also have to pay expenses related to keeping the Device connected, including the cost of the power to operate the Device and the Internet bandwidth consumed by the Device. Additional information and requirements related to the Device are set forth in Section 7.

2. **Eligibility.** You must be at least 18 years of age to use the Service. By agreeing to these Terms, you represent and warrant to us: (a) that you are at least 18 years of age; (b) that you have not previously been suspended or removed from the Service; and (c) that your registration and your use of the Service is in compliance with any and all applicable laws and regulations. If you are using the Service on behalf of an entity, organization, or company, you represent and warrant that you have the authority to bind that entity, organization, or company to these Terms and you agree to be bound by these Terms on behalf of that entity, organization, or company.

3. **Accounts and Registration.** To access most features of the Service, you must register for an account. When you register for an account, you may be required to provide us with some information about yourself (such as your e-mail address or other contact information). You agree that the information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. When you register, you will be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password. You agree to accept

responsibility for all activities that occur under your account. You agree to notify Space Monkey immediately of any unauthorized use of your log-in credentials or any other breach of security with respect to your account. Space Monkey will not be liable for any loss or damage arising from unauthorized use of your credentials prior to you notifying Space Monkey of such unauthorized use or loss of your credentials. You agree to provide true, accurate, current, and complete information about yourself as requested in any registration forms and to update the information about yourself promptly, and as necessary, to keep it current and accurate.

4. **License.** During the Term (as set forth on the Order Form), we grant you a personal, limited, revocable, non-transferable license to use the Service solely for your personal, non-business use. Any software that updates, supplements or replaces the software or the firmware on or provided with the Device (the “**Software**”) is governed by these Terms unless separate license terms accompany such update, supplement or replacement, in which case such separate terms will govern in the event of a conflict with these Terms or as otherwise provided in such separate terms. The license in this Section 4 states the entirety of your rights with respect to the Service, and we reserve all rights not expressly granted to you in these Terms. Without limiting the foregoing, you will not, or authorize or permit any third party to, do any of the following: (a) distribute, license or sell the Service; (b) use the Service for any purpose other than your own internal use in connection with your use of the System; (c) reverse engineer, decompile, disassemble or attempt to discover the source code for the Service; (d) modify, alter or create any derivative works of the Service; (e) remove, alter or obscure any copyright, trademark or other proprietary rights notice on or in the Service; or (f) use the Service in any unlawful manner or for any unlawful purposes. In the event of misuse of the Service, we will have the right to terminate these Terms at any time and in our sole discretion upon written notice to you (of which email will suffice) and, upon such revocation by us, you will immediately cease the use of the Software.

5. **Payment.** Access to the Service, or to certain features of the Service, may require you to pay fees, which will be set forth in the Order Form. Before you are required to pay any fees, you will have an opportunity to review and accept the applicable fee that you will be charged. All fees are in U.S. Dollars and are non-refundable, except for any charges for the Service that we explicitly identify as refundable on the Site. Space Monkey may change the fees for the Service or any feature of the Service, including by adding additional fees or charges, on a going-forward basis at any time. SPACE MONKEY WILL CHARGE THE PAYMENT METHOD YOU SPECIFY AT THE TIME OF PURCHASE, AND IF YOU DO NOT CANCEL A SERVICE THAT AUTOMATICALLY RENEWS PRIOR TO THE END OF THE CURRENT TERM FOR THAT SERVICE IN ACCORDANCE WITH SECTION 14 OF THESE TERMS, YOU WILL AUTOMATICALLY BE CHARGED THE THEN-CURRENT FEE FOR THAT SERVICE AT THE START OF THE FOLLOWING RENEWAL TERM. YOU AUTHORIZE SPACE MONKEY TO CHARGE ALL SUMS DESCRIBED HEREIN TO SUCH PAYMENT METHOD. IF YOU PAY ANY APPLICABLE FEES WITH A CREDIT CARD, SPACE MONKEY MAY SEEK PRE-AUTHORIZATION OF YOUR CREDIT CARD ACCOUNT PRIOR TO YOUR PURCHASE TO VERIFY THAT THE CREDIT CARD IS VALID AND HAS THE NECESSARY FUNDS OR CREDIT AVAILABLE TO COVER YOUR PURCHASE, INCLUDING PRIOR TO THE RENEWAL OF ANY SERVICE THAT AUTOMATICALLY RENEWS. YOU ACKNOWLEDGE THAT IF YOU FAIL TO MAKE ANY PAYMENT WHEN DUE, WE MAY, BY GIVING YOU WRITTEN NOTICE, DISCONTINUE THE SERVICE AND TERMINATE THESE TERMS. IN ADDITION, WE MAY IMPOSE A LATE CHARGE ON ALL PAYMENTS MORE THAN TEN (10) DAYS PAST DUE IN THE MAXIMUM AMOUNT PERMITTED BY STATE LAW.

## 6. **User Content.**

6.1 **Limited License Grant to Space Monkey.** You grant us a limited right to the User Content associated with your account and you permit us and the third parties that provide services to us, to each process, store, encrypt, transfer, share, publish, and otherwise use User Content solely for operating the Service. This limited license includes the right to (a) make one or more backup copies of each file associated with your account, in whole or in smaller pieces, (b) to transfer that file (or each piece of a file) to any location for storage on one or more of our Devices, to other systems that we operate, or to a third party that may process or store User Content for us and (c) display your User Content to the users you designate. You grant us and each third party we work with the right to transfer your data to any location, including outside of the jurisdiction where you reside.

6.2 **Sharing of User Content.** We may offer features that enable you to make User Content available to others (whether publicly or to a specified group). We do not have the ability to control what any third party may do

with User Content and we are not responsible for those actions. Once User Content has been shared, those with access to it may be able to reshare, publish, re-use, modify, or otherwise exploit User Content, so please carefully consider what you choose to share before you share it. While our Service may include sharing features, we may place limits on the volume and speed at which materials are available, we may temporarily disable or limit sharing in order to protect the health of the Service, and in many cases the availability of your User Content will depend on the speed and capacity of the Internet connection that is connected to the Device associated with your account.

6.3 User Content Representations and Warranties. You are solely responsible for User Content associated with your account and the consequences of uploading, posting, or sharing that User Content. By uploading, posting, or sharing User Content, you affirm, represent, and warrant that:

6.3.1 you are the creator and owner of, or have the necessary licenses, rights, consents, and permissions to use and to authorize Space Monkey and others, as described in this Section 6, to exercise the rights and permissions granted by you in this Section 6; and

6.3.2 your User Content, and the use thereof as contemplated herein, does not and will not: (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; or (b) slander, defame, or libel any third-party.

6.4 User Content Disclaimer. We are under no obligation to edit or control User Content that you or other users post or publish, and will not be in any way responsible or liable for User Content. Space Monkey may, however, at any time and without prior notice, screen, remove, edit, or block any User Content that in our sole judgment violates these Terms or is otherwise objectionable. You understand that when using the Service you may be exposed to User Content from a variety of sources and acknowledge that User Content may be inaccurate, offensive, indecent or objectionable. You agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against Space Monkey with respect to User Content. We expressly disclaim any and all liability in connection with User Content. If notified by a user or content owner that User Content allegedly does not conform to these Terms, we may investigate the allegation and determine in our sole discretion whether to remove the User Content, which we reserve the right to do at any time and without notice.

## 7. **Device.**

7.1 The Device Must Be Connected and Operational. Certain features of the Service may be unavailable or otherwise limited unless you have a Device associated with your account and that Device is connected to the Internet and operational. If you have any questions about the setup or operation of the Device, please consult our support site at <http://support.spacemonkey.com>. We suggest reviewing the terms of your Internet service and monitoring your bandwidth consumption to avoid any overage fees or other charges that may result from bandwidth consumption by the Device, since you are responsible for this cost.

7.2 Device Usage. You will ensure that: (a) each Device will only be used in a careful and proper manner and in accordance with the written instructions provided by us, as may be updated by us from time to time; (b) each Device will be used and held with due care and will not be defaced, modified, or used or operated in any illegal manner or for any illegal purpose in violation of any applicable international or U.S. federal, state, or local law or regulation; (c) any regulatory or certification markers affixed to a Device will not be removed, defaced, or otherwise obstructed; (d) no one will open the Device, tamper with the Device, or attempt to or obtain unauthorized access to the Service, any User Content, or any software and other technology contained within the Device; (e) no one will reverse engineer or otherwise attempt to discover the source code of any software on the Device, except to the extent that we may not restrict this activity under applicable law or Third Party Terms (as defined below); and (f) each Device will only be repaired subject to Section 8 below and Space Monkey's express written authorization and in accordance with Space Monkey's instructions and requirements. The unauthorized use of a Device or the Service may result in criminal fines or imprisonment.

7.3 Device Ownership and Loans. The Device is Vivint's property. Vivint may provide you with new or refurbished Device to use with the Service. You agree to: (i) keep the Device in good working condition; (ii) pay Vivint up to \$199, for any damage you cause to the Device; (iii) allow Vivint to recover the Device provided to you

from Vivint even after Service expiration or cancellation; and, (iv) pay equivalent to the full purchase price plus the cost to recover for any Device not returned to Vivint upon expiration or cancellation of the Service.

8. **Repair.** During the Term, we will repair or service any defective part of the Service as follows:

8.1 What is Covered. We will, so long as we are providing services pursuant to these Terms, provide a replacement for any defective part without charge. We can use new or used parts of the same functionality for replacements or repairs.

8.2 How to Get Service. Call or write us at the address and telephone number at the top of your Order Form and tell us what is wrong with the Service. We will provide service as soon as possible during our normal business hours, which are 8:00 a.m. to 6:00 p.m. Monday through Friday, Mountain time, excluding holidays we observe.

8.3 What is Not Included. Repair of the Service is our only duty. We make no other express warranty including any warranty of merchantability of the Service or its fitness for any special purpose. We do not warrant that the Service cannot be compromised or that it will always operate. This warranty does not cover repairs that are needed because of an accident, acts of God, your failure to properly use the Service, or if someone other than us attempts to repair or change the Service, or any other reason except a defect in the equipment or our installation. We are not liable for consequential or incidental damages. You agree that this is our only warranty and we have given you no other warranty for the Service.

8.4 State Law. Some states do not allow a limitation on the duration of implied warranties or the exclusion or the limitation of consequential or incidental damages, so the above limitations or exclusions may not apply to you. The warranty gives you specific legal rights and you may also have other rights which may vary from state to state.

9. **Installation.** You will permit us to install the Service during our normal business hours, in such location(s) and such a manner as to fully comply with applicable state laws and regulations, and you will give us uninterrupted access to your premises. You have approved the locations where the Device will be installed and the computing devices on which the Software will be installed. We are not responsible if the installation is delayed because of weather, labor disputes, acts of God or other reasons beyond our control. We will connect your Device to the Service.

#### 10. **Digital Millennium Copyright Act.**

10.1 DMCA Notification. We comply with the provisions of the Digital Millennium Copyright Act applicable to internet service providers (17 U.S.C. §512, as amended). If you have any complaints with respect to material posted on the Service, you may contact our Designated Agent at the following address:

Space Monkey, Inc.  
4931 N 300 W  
Provo, UT 84604  
E-mail: [copyright@spacemonkey.com](mailto:copyright@spacemonkey.com)

10.2 Any notice alleging that materials hosted by or distributed through the Service infringe intellectual property rights must include the following information:

10.2.1 an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other right being infringed;

10.2.2 a description of the copyrighted work or other intellectual property that you claim has been infringed;

10.2.3 a description of the material that you claim is infringing and where it is located on the Service;

10.2.4 your address, telephone number, and email address;

10.2.5 a statement by you that you have a good faith belief that the use of the materials on the Service of which you are complaining is not authorized by the copyright owner, its agent, or the law; and

10.2.6 a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

10.3 **Repeat Infringers.** Space Monkey will promptly terminate without notice the accounts of users that are determined by Space Monkey to be “repeat infringers.” A repeat infringer is a user who has been notified of infringing activity more than twice and/or has had User Content removed from the Service more than twice.

#### 11. **Prohibited Conduct.** BY USING THE SERVICE YOU AGREE NOT TO:

11.1 use the Service for any illegal purpose, or in violation of any local, state, national, or international law;

11.2 violate the rights of third parties, including by infringing or misappropriating third party intellectual property rights;

11.3 interfere with security-related features of the Service, including without limitation by: (a) disabling or circumventing features that prevent or limit use or copying of any content, (b) monitoring, recording, or analyzing any network communications in connection with the Service including any communications to or from a Device, or (c) reverse engineering or otherwise attempting to discover the source code of the Service or any part thereof except to the extent that such activity cannot be restricted under applicable law or Third Party Terms;

11.4 post, upload, or distribute any User Content or other content that is unlawful, defamatory, libelous, inaccurate, or that a reasonable person could deem to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate;

11.5 interfere with the operation of the Service or any user’s enjoyment of the Service, including without limitation by: (a) uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code, (b) making unsolicited offers or advertisements to other users of the Service, (c) collecting personal information about users or third parties without their consent, or (d) interfering with or disrupting any networks, equipment, or servers connected to or used to provide the Service, or violating the regulations, policies, or procedures for those networks, equipment, or servers;

11.6 perform any fraudulent activity including impersonating any person or entity, claiming false affiliations, accessing the Service accounts of others without permission, or falsifying your age or date of birth;

11.7 sell or otherwise transfer the access granted herein or any Materials (as defined below) or any right or ability to view, access, or use any Materials; or

11.8 attempt to do any of the foregoing in this Section 11, or assist or permit any persons in engaging or attempting to engage in any of the activities described in this Section 11.

12. **Feedback.** From time to time, you may provide to Space Monkey (either on your own accord or at our request) feedback, analysis, suggestions and comments (including, but not limited to, bug reports and test results, and design suggestions or ideas) related to the Service (collectively, “**Feedback**”). As between you and Space Monkey, all right, title and interest in and to any such Feedback will be owned by Space Monkey. You agree that Space Monkey will have the perpetual, irrevocable and worldwide right to use, modify, license, sublicense and otherwise exploit all or part of the Feedback or any derivative thereof in any manner or media now known or hereafter devised without any remuneration, compensation or credit to you.

13. **Third-Party Services and Linked Websites.** Space Monkey may provide tools through the Service that enable you to export information, including User Content, to third party services, including through features that allow you to link your account on Space Monkey with an account on the third party service, such as Twitter or Facebook, or through our implementation of third party buttons (such as “like” or “share” buttons). By using these tools, you agree that we may transfer such information to the applicable third-party service. Those third party services are not under our control, and we are not responsible for their use of your exported information. The Service may also contain links to third-party websites. Those linked websites are not under our control, and we are not responsible for their content.

14. **Termination of Use; Discontinuation and Modification of the Service.** If you violate any provision of these Terms, your permission to use the Service will terminate automatically. Additionally, Space Monkey, in its sole discretion may terminate your user account on the Service or suspend or terminate your access to the Service at any time, with or without notice. We also reserve the right to modify or discontinue the Service at any time (including, without limitation, by limiting or discontinuing certain features of the Service) without notice to you. We will have no liability whatsoever on account of any change to the Service or any suspension or termination of your access to or use of the Service. YOU MAY TERMINATE YOUR ACCOUNT AT ANY TIME BY CONTACTING CUSTOMER SERVICE AT SUPPORT@SPACEMONKEY.COM. IF YOU TERMINATE YOUR ACCOUNT, YOU WILL REMAIN OBLIGATED TO PAY ALL OUTSTANDING FEES, IF ANY, RELATING TO YOUR USE OF THE SERVICE INCURRED PRIOR TO TERMINATION. IF THESE TERMS ARE TERMINATED FOR ANY REASON, YOU AUTHORIZE US TO REMOTELY TERMINATE ACCESS TO THE SERVICE. IF YOU TERMINATE THESE TERMS PRIOR TO THE END OF THE INITIAL TERM (AS SET FORTH ON THE ORDER FORM), THEN YOU WILL PAY SPACE MONKEY A CANCELLATION FEE. THE SERVICE CANCELLATION FEES WILL BE \$99. UPON TERMINATION, YOU AGREE TO RETURN TO SPACE MONKEY THE DEVICE WITHIN 30 DAYS OF CANCELLATION OF SERVICE. IF THE DEVICE IS NOT RETURNED WITHIN 30 DAYS OF CANCELLATION OF SERVICE, YOU AGREE TO PAY SPACE MONKEY \$199. YOU AUTHORIZE SPACE MONKEY AND ITS AGENTS TO CHARGE THE DEVICE REPLACEMENT CHARGE TO THE CREDIT CARD ON FILE WITH SPACE MONKEY. IF SPACE MONKEY IS UNABLE TO OBTAIN A CHARGE AUTHORIZATION FOR THE FULL AMOUNT DUE, YOU AGREE TO PROVIDE ALTERNATIVE PAYMENT IN THE FORM OF A MONEY ORDER, CASHIER’S CHECK, OR OTHER CERTIFIED BANK CHECK WITHIN 10 DAYS OF NOTIFICATION OF THE AMOUNT DUE.

15. **Privacy Policy; Additional Terms.**

15.1 Privacy Policy. Please read the Space Monkey Privacy Policy at [http://spacemonkey.com/privacy\\_policy.html](http://spacemonkey.com/privacy_policy.html) carefully for information relating to our collection, use, storage and disclosure of your personal information. The Space Monkey Privacy Policy is hereby incorporated by reference into, and made a part of, these Terms.

15.2 Additional Terms. Your use of the Service is subject to any and all additional terms, policies, rules, or guidelines applicable to the Service or certain features of the Service that we may post on or link to on the Service and any Order Forms (the “**Additional Terms**”), such as end-user license agreements for any downloadable applications that we may offer, or rules applicable to particular features or content on the Service, subject to Section 16 below. All such Additional Terms are hereby incorporated by reference into, and made a part of, these Terms.

16. **Changes to the Terms.** We reserve the right, at our discretion, to change these Terms on a going-forward basis at any time. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, we will make reasonable efforts to notify you of such change. We may provide notice through a pop-up or banner within the Service, by sending an email to any address you may have used to register for an account, or through other mechanisms. Additionally, if the changed Terms materially modify your rights or obligations, we may require you to provide consent by accepting the changed Terms. If we require your acceptance of the changed Terms, changes are effective only after your acceptance. If you do not accept the changed Terms, we may terminate your access to and use of the Service. All other changes are effective upon publication of the changed Terms. Disputes arising under these Terms will be resolved in accordance with the Terms in effect at the time the dispute arose.

17. **Ownership; Proprietary Rights.** The Service is owned and operated by Space Monkey. The Software, Device hardware, the firmware and other software embedded in or distributed with each Device, visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Service (the “**Materials**”) provided by Space Monkey are protected by all relevant intellectual property and proprietary rights and applicable laws. All Materials are the property of Space Monkey or our third-party licensors. Except as expressly authorized by Space Monkey or as required by applicable law, you may not make use of the Materials. Space Monkey reserves all rights to the Materials not granted expressly in these Terms.

18. **Open Source.** The Materials may contain or be accompanied by materials, including software code, provided by third parties (“**Third Party Software**”) subject to separate license terms (the “**Third Party Terms**”), not any license contained in the Terms. Your use of the Third Party Software in conjunction with the Service in a manner consistent with the Terms is permitted, however, you may have broader rights under the applicable Third Party Terms and nothing in the Terms is intended to impose further restrictions on your use of the Third Party Software. You can find certain required notices and other information regarding Third Party Software here: [http://spacemonkey.com/third\\_party\\_software.html](http://spacemonkey.com/third_party_software.html).

19. **Indemnity.** You agree that you will be responsible for your use of the Service, and you agree to defend, indemnify, and hold harmless Space Monkey and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (collectively, the “**Space Monkey Entities**”) from and against any and all claims, liabilities, damages, losses, and expenses, including reasonable attorneys' fees and costs, arising out of or in any way connected with: (a) your access to, use of, or alleged use of the Service; (b) your violation of these Terms or any representation, warranty, or agreements referenced in the Terms, or any applicable law or regulation; (c) your violation of any third-party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right; or (d) any disputes or issues between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (and without limiting your indemnification obligations with respect to such matter), and in such case, you agree to cooperate with our defense of such claim.

20. **Disclaimers; No Warranties.** THE SERVICE, INCLUDING THE SOFTWARE, FIRMWARE, AND ANY LOANED DEVICE HARDWARE, AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS, WITHOUT WARRANTY OR CONDITION OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY. THE SPACE MONKEY ENTITIES SPECIFICALLY (BUT WITHOUT LIMITATION) DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (B) ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. THE SPACE MONKEY ENTITIES DO NOT WARRANT THAT THE SERVICE OR ANY PART THEREOF WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, DEFECTS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND DO NOT WARRANT THAT ANY OF THE FOREGOING WILL BE CORRECTED.

YOU ASSUME ALL RISK FOR ALL DAMAGES THAT MAY RESULT FROM YOUR USE OF OR ACCESS TO THE SERVICE, YOUR DEALINGS WITH OTHER SERVICE USERS, AND ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE. YOU UNDERSTAND AND AGREE THAT YOU USE THE SERVICE AND USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN MATERIALS OR CONTENT THROUGH THE SERVICE AND ANY ASSOCIATED SITES OR SERVICES AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM USED IN CONNECTION WITH THE SERVICE) OR LOSS OF DATA THAT RESULTS FROM THE USE OF THE SERVICE OR THE DOWNLOAD OR USE OF SUCH MATERIALS OR CONTENT.

SOME JURISDICTIONS MAY PROHIBIT SOME DISCLAIMERS OF WARRANTIES AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

21. **Limitation of Liability.** IN NO EVENT WILL THE SPACE MONKEY ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR ANY OTHER LEGAL THEORY, WHETHER OR NOT THE SPACE MONKEY ENTITIES HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE.

YOU AGREE THAT THE AGGREGATE LIABILITY OF THE SPACE MONKEY ENTITIES TO YOU FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE THE SERVICE (INCLUDING ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE) OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE LESSER OF (A) THE AMOUNTS YOU HAVE PAID TO SPACE MONKEY FOR ACCESS TO AND USE OF THE SERVICE IN THE 12 MONTHS PRIOR TO THE CLAIM OR (B) \$100 UNITED STATES DOLLARS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. ACCORDINGLY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS UNDER THESE TERMS BETWEEN THE PARTIES. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 21 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.’

22. **Third Party Disputes.** Your use of the Service may incur third party fees, such as fees charged by your internet service provider (“**ISP**”) for data usage, and may be subject to third party terms, such as your ISP’s terms of service, and you agree to pay all such fees and abide by all such terms. You acknowledge and agree that you are solely responsible for all such fees incurred by you for use of the Service. SPACE MONKEY IS NOT AFFILIATED WITH ANY OTHER ISP, SERVICE PROVIDER, OR THIRD PARTY SERVICE, AND ANY DISPUTE YOU HAVE WITH ANY ISP, SERVICE PROVIDER, THIRD PARTY SERVICE OR OTHER THIRD PARTY, IS DIRECTLY BETWEEN YOU AND SUCH THIRD PARTY, AND YOU IRREVOCABLY RELEASE THE SPACE MONKEY ENTITIES FROM ANY AND ALL CLAIMS, DEMANDS AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

23. **Governing Law.** These Terms will be governed by the laws of the State of Utah without regard to conflict of law principles. To the extent that any lawsuit or court proceeding is permitted hereunder, you and Space Monkey agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Salt Lake County, Utah for the purpose of litigating all such disputes.

24. **Export.** The Service may be subject to U.S. export and reexport control laws and regulations, including the Export Administration Regulations (EAR) maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department’s Office of Foreign Assets Control (OFAC), and the International Traffic in Arms Regulations (ITAR) maintained by the Department of State. Additionally, Service, Software, and Device may be subject to foreign export controls. You agree to comply with all applicable export and reexport control laws and regulations, including both U.S. and foreign controls. Specifically, you warrant that you are: (a) not located in Cuba, Iran, North Korea, Sudan, or Syria; and (b) not a denied party as specified in the regulations listed above. You also covenants that you will not, directly or indirectly, sell, export, reexport, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from Space Monkey to any destination, entity, or person prohibited by the laws or regulations of the United States or any other country from which the product is exported, without obtaining prior authorization from the competent government authorities as required by those laws and regulations.



25. **General.** These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference herein, constitute the entire and exclusive understanding and agreement between you and Space Monkey regarding your use of and access to the Service, and except as expressly permitted above may be amended only by a written agreement signed by authorized representatives of all parties to these Terms. You may not assign or transfer these Terms or your rights hereunder, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice. The failure to require performance of any provision will not affect our right to require performance at any time thereafter, nor will a waiver of any breach or default of these Terms or any provision of these Terms constitute a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and will not have any impact on the interpretation of particular provisions. If any part of these Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible and the remaining parts will remain in full force and effect. Upon termination of these Terms, any provision that by its nature or express terms should survive will survive such termination or expiration, including, but not limited to, Sections 2, 5, 7.3, 10, 11, 12, 14, 15, and 16 through 29.

## 26. **Dispute Resolution and Arbitration.**

26.1 **Generally.** In the interest of resolving disputes between you and Space Monkey in the most expedient and cost effective manner, you and Space Monkey agree that any and all disputes arising in connection with these Terms will be resolved by binding arbitration. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Our agreement to arbitrate disputes includes, but is not limited to all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, and regardless of whether the claims arise during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND SPACE MONKEY ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

26.2 **Exceptions.** Notwithstanding subsection 26.1, we both agree that nothing herein will be deemed to waive, preclude, or otherwise limit either of our right to: (a) bring an individual action in small claims court; (b) pursue enforcement actions through applicable federal, state, or local agencies where such actions are available; (c) seek injunctive relief in a court of law; or (d) to file suit in a court of law to address intellectual property infringement claims.

26.3 **Arbitrator.** Any arbitration between you and Space Monkey will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, “**AAA Rules**”) of the American Arbitration Association (“**AAA**”), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting Space Monkey.

26.4 **Notice; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other, by certified mail or Federal Express (signature required), or if we do not have a physical address on file for you, by electronic mail (“**Notice**”). Space Monkey’s address for Notice is: Space Monkey, Inc. 4931 N 300 W, Provo, UT 84604. The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“**Demand**”). We agree to use good faith efforts to resolve the claim directly, but if we do not reach an agreement to do so within 30 days after the Notice is received, you or Space Monkey may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Space Monkey will not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If our dispute is finally resolved through arbitration in your favor, Space Monkey will pay you (I) the amount awarded by the arbitrator, if any, (II) the last written settlement amount offered by Space Monkey in settlement of the dispute prior to the arbitrator’s award; or (III) \$1,000.00, whichever is greater.

26.5 **Fees.** If you commence arbitration in accordance with these Terms, Space Monkey will reimburse you for your payment of the filing fee, unless your claim is for greater than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearings will take place at a location to be agreed upon

in Salt Lake County, Utah, provided that if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephonic hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In such case, you agree to reimburse Space Monkey for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator will issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

26.6 No Class Actions. YOU AND SPACE MONKEY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Space Monkey agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

26.7 Modifications. If Space Monkey makes any future change to this arbitration provision (other than a change to Space Monkey's address for Notice), you may reject any such change by sending us written notice within 30 days of the change to Space Monkey's address for Notice, in which case your account with Space Monkey will be immediately terminated and this arbitration provision, as in effect immediately prior to the amendments you reject will survive.

26.8 Enforceability. If Subsection 26.6 is found to be unenforceable or if the entirety of this Section 26 is found to be unenforceable, then the entirety of this Section 26 will be null and void and, in such case, the parties agree that the exclusive jurisdiction and venue described in Section 23 will govern any action arising out of or related to these Terms.

27. **Consent to Electronic Communications.** By using the Service, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about your choices regarding our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing.

28. **Notices.** Except as specified otherwise in these Terms, all notices to Space Monkey must be sent to Space Monkey, Inc., 4931 N 300 W, Provo, UT 84604 by certified mail, and will be deemed given upon receipt by Space Monkey. All notices by Space Monkey to you will be sent to the email address you have made available to Space Monkey, and will be deemed given on the day sent.

29. **Contact Information.** The Service is offered by Space Monkey, Inc., located at 4931 N 300 W, Provo, UT 84604. You may contact us by sending correspondence to the foregoing address or by emailing us at support@spacemonkey.com. If you are a California resident, you may have these Terms mailed to you electronically by sending a letter to the foregoing address with your electronic mail address and a request for these Terms.