



## Inline Digital, Inc. Customer Terms of Use

Last Modified: October 8, 2019

PLEASE READ THESE CUSTOMER TERMS OF SERVICE (“TERMS”) CAREFULLY BEFORE USING THE SERVICES OFFERED BY INLINE DIGITAL, INC. (“INLINE”). BY MUTUALLY EXECUTING ONE OR MORE ORDER FORMS WITH INLINE WHICH REFERENCE THESE TERMS (EACH, AN “ORDER FORM”) OR ACCESSING THE INLINE SERVICES THROUGH THE INLINE WEBSITE OR APPLICATION, YOU (“CUSTOMER”) AGREE TO BE BOUND BY THESE TERMS (TOGETHER WITH ALL ORDER FORMS, THE “AGREEMENT”) TO THE EXCLUSION OF ALL OTHER TERMS. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS.

1. **ORDER FORMS.** Upon mutual execution, each Order Form shall be incorporated into and form a part of the Agreement.
2. **ACCESS TO THE SERVICES AND SUPPORT.**
  - a. Subject to Customer’s compliance with the terms and conditions of this Agreement (including any limitations and restrictions set forth on the applicable Order Form) Inline grants Customer the right to access and use the services on our website or through the Inline application (the “Application”) as specified in each Order Form (collectively, the “Service,” or “Services”) during the applicable Order Form Term (as defined below) for the internal business purposes of Customer.
  - b. Upon payment of any applicable fees set forth in each Order Form, Inline agrees to use reasonable commercial efforts to provide standard implementation assistance for the Service only if and to the extent such assistance is set forth on such Order Form (“Implementation Assistance”). If Inline provides Implementation Assistance in excess of any agreed-upon hours estimate, or if Inline otherwise provides additional services beyond those agreed in an Order Form, Customer will pay Inline at its then-current hourly rates for consultation.
  - c. From time to time, Inline may provide upgrades, patches, enhancements, or fixes for the Services to its customers generally without additional charge (“Updates”), and such Updates will become part of the Services and subject to this Agreement. Notwithstanding the foregoing, Inline shall have no obligation under this Agreement or otherwise to provide any such Updates. Customer understands that Inline may cease supporting old versions or releases of the Services at any time in its sole discretion.
  - d. Inline will undertake commercially reasonable efforts to make the Services available twenty-four (24) hours a day, seven (7) days a week.
  - e. Subject to the terms hereof, Inline will provide reasonable support to Customer for the Services via email, or other electronic form of request as prescribed by Inline, during Inline’s normal business hours (Monday-Friday, 9:00am – 5:00pm ET, excluding federal holidays in the USA). Inline will undertake commercially reasonable efforts to acknowledge or provide a response to any and all support requests received in writing within one (1) business day after receipt thereof during Inline’s business hours. For the

sake of clarity, if a support request is received on Friday during Inline's business hours, then Inline will acknowledge or provide a response to such support request on Monday during Inline's business hours.

- 3. OWNERSHIP; RESTRICTIONS; FEEDBACK.** As between the parties, Inline retains all right, title, and interest in and to the Services, and all software, products, works, and other intellectual property and moral rights related thereto or created, used, or provided by Inline for the purposes of this Agreement, including any copies and derivative works of the foregoing. Any software which is distributed or otherwise provided to Customer hereunder shall be deemed a part of the "Services". No rights or licenses are granted except as expressly and unambiguously set forth in this Agreement. Customer may from time to time provide suggestions, comments or other feedback to Inline with respect to the Service ("Feedback"). Customer shall, and hereby does, grant to Inline a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and exploit the Feedback for any purpose; provided that such license grant shall not be construed to relieve Inline of any confidentiality obligations it may have hereunder with respect to Customer Data. Nothing in this Agreement will impair Inline's right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with any products, software or technologies that Customer may develop, produce, market, or distribute.
- 4. FEES; PAYMENT.** Customer shall pay Inline fees for the Service as set forth in each Order Form ("Fees"). Unless otherwise specified in an Order Form, all Fees shall be invoiced annually in advance and all invoices issued under this Agreement are payable in U.S. dollars within thirty (30) days from date of invoice. Past due invoices are subject to interest on any outstanding balance of the lesser of 0.5% per month or the maximum amount permitted by law. Customer shall be responsible for all taxes associated with Service other than taxes based on Inline's net income. Unless otherwise specified herein, all Fees paid are non-refundable and are not subject to set-off. Inline reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of each pre-paid term or at the end of the then-current prepaid renewal term, as applicable, upon sixty (60) days prior notice to Customer (which may be sent by email), unless otherwise provided for in the Order Form.
- 5. RESTRICTIONS.** Except as expressly set forth in this Agreement, Customer shall not (and shall not permit any third party to), directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Service (except to the extent applicable laws specifically prohibit such restriction); (ii) modify, translate, or create derivative works based on the Service; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Service; (iv) use the Service for the benefit of a third party; (v) remove or otherwise alter any proprietary notices or labels from the Service or any portion thereof; (vi) use the Service to build an application or product that is competitive with any Inline product or service; (vii) interfere or attempt to interfere with the proper working of the Service or any activities conducted on the Service; or (viii) bypass any measures Inline may use to prevent or restrict access to the Service (or other accounts, computer systems or networks connected to the Service); (ix) "crawl," "scrape," or "spider" any page, data, or portion of or relating to the Service (or any information, data or content made available through the Service), whether through use of manual or automated means, or (x) use the Service in a manner that violates applicable laws or

regulations. Customer is responsible for all of Customer's activity in connection with the Service, including but not limited to uploading Customer Data (as defined below) onto the Service. Customer (i) shall use the Service in compliance with all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Service (including those related to data privacy, international communications, export laws and the transmission of technical or personal data laws), and (ii) shall not use the Service in a manner that violates any third party intellectual property, contractual or other proprietary rights.

- 6. CUSTOMER DATA.** For purposes of this Agreement, "Customer Data" shall mean any data, information or material provided, uploaded, or submitted by Customer to the Service in the course of using the Service. Customer shall retain all right, title and interest in and to the Customer Data (as defined below), including all intellectual property rights therein. Customer, not Inline, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data. Customer represents and warrants that it owns or has secured all licenses or permissions necessary to grant the rights and licenses under this Agreement. For clarity, Inline does not assume any responsibility for the accuracy or completeness of any Customer Data, and will not undertake to verify its accuracy or completeness. Inline shall use commercially reasonable efforts to maintain the security and integrity of the Service and the Customer Data. Inline is not responsible to Customer for unauthorized access to Customer Data or the unauthorized use of the Service unless such access is due to Inline's gross negligence or willful misconduct. Customer is responsible for the use of the Service by any person to whom Customer has given access to the Service, and any person who gains access to Customer Data, even if Customer did not authorize such use. Customer agrees and acknowledges that Customer Data may be irretrievably deleted if Customer's account is ninety (90) days or more delinquent. Notwithstanding anything to the contrary, Customer acknowledges and agrees that Inline may (i) internally use and modify (but not disclose) Customer Data for the purposes of (A) providing the Service to Customer and (B) generating Aggregated Anonymous Data, and (ii) freely use and make available Aggregated Anonymous Data for Inline's business purposes. "Aggregated Anonymous Data" means data submitted to, collected by or generated by Inline in connection with Customer's use of the Service, but only in aggregate, anonymized form which can in no way be linked specifically to Customer. Customer shall own and hereby reserves all right, title and interest in the Customer Data. To the extent the Customer Data contains personally identifiable information, the use of which will be in accordance with Inline's Privacy policy, available [here](#).
- 7. THIRD PARTY SERVICES.** Customer acknowledges and agrees that the Products may operate on, with or using application programming interfaces (APIs) and/or other services operated or provided by third parties ("Third Party Services"), including without limitation through integrations or connectors to such Third Party Services that are provided by Inline. Inline is not responsible for the operation of any Third Party Services nor the availability or operation of the Services to the extent such availability and operation is dependent upon Third Party Services. Customer is solely responsible for procuring any and all rights necessary for it to access Third Party Services (including any Customer Data or other information relating thereto) and for complying with any applicable terms or conditions thereof. Inline does not make any representations or warranties with respect to Third Party Services or any third party providers. Any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider and is governed by such third party's terms and conditions.

- 8. TERM.** Subject to earlier termination as provided below, this Agreement shall commence on the Effective Date identified in the Order Form and shall end after the completion of the Contract Length specified in the Order Form (such period the “Initial Term”). After the Initial Term, the Agreement shall automatically renew for one (1) year renewal terms (each, a “Renewal Term”) unless either party gives prior written notice of its intent not to renew the Agreement at least thirty (30) days before the end of the then-current Initial Term or Renewal Term, as applicable. The Initial Term and any Renewal Terms are referred to collectively as the “Term.” If no Contract Length is specified, or if the Specification is for a month-to-month or open-ended subscription, either party may terminate this Agreement upon at least sixty (60) days’ prior written notice to the other party.
- 9. TERMINATION.** In the event of a material breach of this Agreement by either party, the non-breaching party may terminate this Agreement by providing written notice to the breaching party, provided that the breaching party does not materially cure such breach within thirty (30) days of receipt of such notice. Without limiting the foregoing, Inline may suspend or limit Customer’s access to or use of the Service if (i) Customer’s account is more than thirty (30) days past due, or (ii) Customer’s use of the Service results in (or is reasonably likely to result in) damage to or material degradation of the Service which interferes with Inline’s ability to provide access to the Service to other customers; provided that in the case of subsection (ii): (a) Inline shall use reasonable good faith efforts to work with Customer to resolve or mitigate the damage or degradation in order to resolve the issue without resorting to suspension or limitation; (b) prior to any such suspension or limitation, Inline shall use commercially reasonable efforts to provide notice to Customer describing the nature of the damage or degradation; and (c) Inline shall reinstate Customer’s use of or access to the Service, as applicable, if Customer remediates the issue within thirty (30) days of receipt of such notice. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, accrued payment obligations, ownership provisions, warranty disclaimers, indemnity and limitations of liability.
- 10. INDEMNIFICATION.** Each party (“Indemnitor”) shall defend, indemnify, and hold harmless the other party, its affiliates and each of its and its affiliates’ employees, contractors, directors, suppliers and representatives (collectively, the “Indemnitee”) from all liabilities, claims, and expenses paid or payable to an unaffiliated third party (including reasonable attorneys’ fees) (“Losses”), that arise from or relate to any claim that (i) the Customer Data or Customer’s use of the Service (in the case of Customer as Indemnitor), or (ii) the Service (in the case of Inline as Indemnitor), infringes, violates, or misappropriates any third party intellectual property or proprietary right. Each Indemnitor’s indemnification obligations hereunder shall be conditioned upon the Indemnitee providing the Indemnitor with: (i) prompt written notice of any claim (provided that a failure to provide such notice shall only relieve the Indemnitor of its indemnity obligations if the Indemnitor is materially prejudiced by such failure); (ii) the option to assume sole control over the defense and settlement of any claim (provided that the Indemnitee may participate in such defense and settlement at its own expense); and (iii) reasonable information and assistance in connection with such defense and settlement (at the Indemnitor’s expense). The foregoing obligations of Inline do not apply with respect to the Service or any information, technology, materials or data (or any portions or components of the foregoing) to the extent (i) not created or provided by Inline, (ii) made in whole or in part in accordance to Customer specifications, (iii) modified after delivery by Inline, (iv) combined with other products,

processes or materials not provided by Inline (where the alleged Losses arise from or relate to such combination), (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) Customer's use of the Service is not strictly in accordance herewith.

**11. WARRANTY; DISCLAIMER.** Inline warrants that the Services shall perform in substantial accordance with any and all official specifications and similar documentation provided to Customer by Inline for a period of ninety (90) days after initial delivery of the Services to Customer. In the event the Services do not substantially conform to such specifications or documentation, Customer shall provide written notice of non-conformance to Inline and Inline shall, at its option and as its sole obligation and as Inline's sole liability and Customer's exclusive remedy, repair the affected portion of the Services at no additional charge, or, if it determines that the foregoing option is not commercially practical, terminate this Agreement with respect to the Electric Platform and issue a refund for any prepaid amounts for unused portions of the term. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" AND ARE WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE, USAGE OF TRADE, OR COURSE OF DEALING, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

**12. LIMITATION OF LIABILITY.** EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS AND EXCEPT TO THE EXTENT PROHIBITED BY LAW, IN NO EVENT SHALL EITHER PARTY, NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) THE FEES PAID (OR PAYABLE) BY CUSTOMER TO INLINE HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO A CLAIM HEREUNDER.

**13. APPLE, INC. DEVICE AND APPLICATION TERMS.** If you are accessing the Services via the Application on an Apple, Inc. ("Apple") device or otherwise access the Services through the Apple App Store, all the terms of this Agreement apply, but the following additional terms also apply:

- a. Both you and Inline acknowledge that the Terms are concluded between you and Inline only, and not with Apple, and that Apple is not responsible for the Application or the Content;
- b. The Application is licensed to you on a limited, non-exclusive, non-transferrable, non-sublicensable basis, solely to be used in connection with the Services for your private, personal, non-commercial use, subject to all the terms and conditions of these Terms as they are applicable to the Services;

- c. You will only use the Application in connection with an Apple device that you own or control;
- d. You acknowledge and agree that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Application;
- e. In the event of any failure of the Application to conform to any applicable warranty, including those implied by law, you may notify Apple of such failure; upon notification, Apple's sole warranty obligation to you will be to refund to you the purchase price, if any, of the Application;
- f. You acknowledge and agree that Inline, and not Apple, is responsible for addressing any claims you or any third party may have in relation to the Application;
- g. You acknowledge and agree that, in the event of any third-party claim that the Application or your possession and use of the Application infringes that third party's intellectual property rights, Inline, and not Apple, will be responsible for the investigation, defense, settlement and discharge of any such infringement claim;
- h. You represent and warrant that you are not located in a country subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and that you are not listed on any U.S. Government list of prohibited or restricted parties;
- i. Both you and Inline acknowledge and agree that, in your use of the Application, you will comply with any applicable third-party terms of agreement which may affect or be affected by such use; and
- j. Both you and Inline acknowledge and agree that Apple and Apple's subsidiaries are third-party beneficiaries of these Terms, and that upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as the third party beneficiary hereof.

**14. MISCELLANEOUS.** This Agreement represents the entire agreement between Customer and Inline with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between Customer and Inline with respect thereto. The Agreement shall be governed by and construed in accordance with the laws of the State of New York, excluding its conflicts of law rules, and the parties consent to exclusive jurisdiction and venue in the state and federal courts located in New York, New York. All notices under this Agreement shall be in writing and shall be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Notices must be sent to the contacts for each party set forth on the most recent Order Form. Either party may update its address set forth above by giving notice in accordance with this section. Except as otherwise provided herein, this Agreement may be amended only by a writing executed by both parties. Except for payment obligations, neither party shall be liable for any failure to perform its obligations hereunder where such failure results from any cause

beyond such party's reasonable control, including, without limitation, the elements; fire; flood; severe weather; earthquake; vandalism; accidents; sabotage; power failure; denial of service attacks or similar attacks; Internet failure; acts of God and the public enemy; acts of war; acts of terrorism; riots; civil or public disturbances; strikes lock-outs or labor disruptions; any laws, orders, rules, regulations, acts or restraints of any government or governmental body or authority, civil or military, including the orders and judgments of courts. Neither party may assign any of its rights or obligations hereunder without the other party's consent; provided that (i) either party may assign all of its rights and obligations hereunder without such consent to a successor-in-interest in connection with a sale of substantially all of such party's business relating to this Agreement, and (ii) Inline may utilize subcontractors in the performance of its obligations hereunder. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. The failure of either party to act with respect to a breach of this Agreement by the other party shall not constitute a waiver and shall not limit such party's rights with respect to such breach or any subsequent breaches. Inline is permitted to disclose that Customer is one of its customers to any third party at its sole discretion. Inline may use the logo and service marks of Customer on its website and electronic and printed marketing materials. Customer agrees to participate in press announcements, case studies, trade shows, or other forms reasonably requested by Inline.