

TOWERIQ TERMS OF USE

Last modified and effective as of: April 22, 2019

THESE TERMS OF USE (AND THE PRIVACY POLICY, AS NOTED BELOW) CREATE A LEGAL AGREEMENT (“AGREEMENT”) BETWEEN TOWERIQ, INC. (“TOWERIQ” OR “WE” OR “US” OR “OUR”) AND THE USER OF THE SERVICE ENTERING INTO THIS AGREEMENT (“YOU” OR “YOUR”). YOU SHOULD CAREFULLY READ THIS AGREEMENT, AND THE TOWERIQ [PRIVACY POLICY](#) (“PRIVACY POLICY”), WHICH IS INCORPORATED INTO AND GOVERNED BY THIS AGREEMENT. THIS AGREEMENT GOVERNS YOUR USE OF THE APPLICATION AT MYTOWERIQ.COM AND ANY SUBDOMAINS AND THE SERVICES, FEATURES, AND INFORMATION AVAILABLE THROUGH THE APPLICATION AND/OR ANY MOBILE APPLICATIONS WE MAY OFFER (ALONG WITH ASSOCIATED AND SUCCESSOR WEBSITES, APPLICATIONS, FEATURES, INFORMATION, AND SERVICES, OR ANY PART THEREOF, THE “SERVICE”). BY USING OR ACCESSING THE SERVICE, YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, OR YOU ARE BELOW THE AGE OF 18, YOU ARE NOT PERMITTED TO USE THE SERVICE.

1. Changes to this Agreement. Except with respect to Section 11.4 (Mandatory Arbitration), TowerIQ reserves the right, in its sole discretion, to change, modify, add to, supplement or delete any terms and conditions of this Agreement (including the Privacy Policy, which is incorporated into and governed by this Agreement) at any time; provided, however, that TowerIQ will use reasonable efforts to provide you with notification of any material changes (as determined in TowerIQ’s sole discretion) by email, postal mail, website posting, pop-up screen, or in-app notice. You should visit this page whenever you use the Service to review this Agreement and learn if any terms have changed. If any future changes to this Agreement are unacceptable to you or cause you to no longer be in compliance with this Agreement, you must immediately stop using the Service. Your continued use of the Service following any revision to this Agreement constitutes your complete acceptance of any and all such changes.

2. Access to the Service.

2.1. Subject to your acceptance of and compliance with this Agreement, TowerIQ grants to you a non-exclusive, non-transferable, revocable limited license to use the Service and associated Content (as defined below) for your personal non-commercial use. You agree not to use the Service for any other purpose, or to copy or distribute the Content except as permitted within the Service. For purposes of this Agreement, “Content” means all works of authorship contained within the Service; including, but not limited to, our proprietary analyses and/or models of such data, and all third party materials and data.

2.2. TowerIQ may change, modify, suspend, or discontinue in its entirety or any aspect of the Service at any time. TowerIQ may also impose limits on certain features or restrict or prohibit your access to parts or all of the Service at any time, all without notice or liability, provided that you will be entitled to a pro rata credit of any amounts paid attributable to a period when the Services have been discontinued or substantially diminished or limited.

2.3. Your use of the Service is conditioned upon your compliance with this Agreement and any use of the Service in violation of this Agreement may constitute infringement of TowerIQ’s intellectual property rights in and to the Service and Content (as applicable). TowerIQ reserves the right to terminate your access to the Service without notice if you violate this Agreement or for any reason at TowerIQ’s discretion.

2.4. Individuals under the age of 18 may not use the Service. By using the Service, you represent that you are 18 or older.

3. Ownership of Intellectual Property.

3.1. The Service and all materials that are part of the Service; including without limitation, all code, text, graphics, photos, and the TowerIQ name and logos (collectively, "TowerIQ IP"), are owned, controlled, or licensed by TowerIQ and its licensors, and are protected by law from unauthorized use. The entire Service and all works of authorship contained therein are protected by copyright under U.S. copyright law and/or similar laws of other jurisdictions. TowerIQ, and the TowerIQ logos, are trademarks of TowerIQ and may not be copied, imitated, or used, in whole or in part, without the express written permission of TowerIQ.

3.2. Subject to the terms of this Agreement, TowerIQ hereby grants you the limited, non-exclusive, non-sublicensable license to access and use the Service solely for your internal business use. You do not acquire any ownership rights by using the Service, or by copying or downloading information through the Service.

4. Accounts. You are responsible for all actions on the Service by you or under your password or account. You may not share your password or login. It is your sole responsibility to (1) control the dissemination and use of your login and password; (2) authorize, monitor, and control access to and use of your account; (3) promptly inform TowerIQ of any need to deactivate a password.

5. Usage Rules. As a condition of your use of and access to the Service, you agree to comply with the following usage rules, which TowerIQ may modify or supplement in its discretion from time to time (with notice to you of material changes, per Section 1). You agree that you will not, in regard to the Service (as determined by TowerIQ in its discretion):

(a) Copy, adapt, reverse engineer, decompile, reverse assemble, modify or attempt to discover any software (source code or object code) comprising the Service, or that the Service creates to generate web pages or any software, or other products or processes accessible through the Service;

(b) use or launch, develop or distribute any automated system, including, without limitation, any spider, bot, cheat utility, scraper or offline reader that accesses the Service, or use or launch any unauthorized script or other software;

(c) distribute any virus, time bomb, trap door, or other harmful or disruptive computer code, mechanism or program;

(d) cover or obscure any notice, legend, warning, banner or advertisement contained on the Service;

(e) interfere with or circumvent any security feature of the Service or any feature that restricts or enforces limitations on use of or access to the Service;

(f) harvest or otherwise collect information about others, including email addresses;

(g) infringe or violate the rights of any other party, including without limitation any intellectual property rights or rights of privacy or publicity;

(h) engage in conduct that is obscene, offensive, pornographic, fraudulent, deceptive, defamatory, threatening, harassing, abusive, slanderous, hateful, or causes embarrassment to any other person;

(i) further any chain letters or pyramid schemes, transmit unsolicited messages, or engage in "spam"

(j) deliberately mislead anyone as to your identity, impersonate another, or allow another person or entity to use your identity in order to access the Service;

(k) use automated queries, including screen and database scraping, spiders, robots, crawlers, information harvesting, and any other automated activity with the purpose of obtaining Content or data from the Service.

(l) Develop any third-party application that interacts with the Service;

(m) Encourage or induce any third party to engage in any of the prohibited activities listed above.

6. Privacy and Protection of Personal Information. TowerIQ respects the privacy of users of the Service. Information collected from you by TowerIQ is subject to the TowerIQ Privacy Policy. Please see the TowerIQ Privacy Policy here for more information on the collection and use of your information. You acknowledge and agree that the TowerIQ Privacy Policy, including, but not limited to, the manner in which TowerIQ collects, uses and discloses your personally identifiable information and non-personally identifiable information, is incorporated into and governed by this Agreement. By accepting this Agreement, you agree to all of the terms of the TowerIQ Privacy Policy. You further agree to comply with all applicable laws with respect to all information you may receive from TowerIQ.

7. Child Online Protection Act Notification. Pursuant to 47 U.S.C. § 230(d) as amended, TowerIQ hereby notifies you that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist you in limiting access to material that is harmful to minors. Information identifying providers of such protection is available on the websites StaySafeOnline (<http://staysafeonline.org/stay-safe-online/>), GetNetWise (<http://kids.getnetwise.org/>), and OnGuardOnline (<http://www.onguardonline.com/>). Please note that TowerIQ is not affiliated with the above listed sites, nor is the above intended as an endorsement of any of the products or services listed on such sites.

8. Disclaimers; Limitations; Waivers of Liability.

8.1. YOU EXPRESSLY AGREE THAT USE OF THE SERVICE AND THE CONTENT IS AT YOUR SOLE RISK AND IS PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (EXCEPT ONLY TO THE EXTENT THIS DISCLAIMER IS PROHIBITED UNDER APPLICABLE LAWS, AND WITH ANY LEGALLY REQUIRED WARRANTY PERIOD LIMITED TO THE SHORTER OF 30 DAYS FROM FIRST USE OR THE MINIMUM PERIOD REQUIRED). WITHOUT LIMITING THE FOREGOING, NEITHER TOWERIQ NOR ITS AFFILIATES OR SUBSIDIARIES, OR ANY OF THEIR DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, THIRD-PARTY CONTENT PROVIDERS, DISTRIBUTORS, LICENSEES OR LICENSORS (COLLECTIVELY, "TOWERIQ PARTIES") WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, UNCORRUPTED, TIMELY, OR ERROR-FREE.

8.2. THE TOWERIQ PARTIES FURTHER MAKE NO REPRESENTATIONS OR WARRANTIES THAT THE SERVICE WILL BE ACCURATE, RELIABLE, COMPLETE, CURRENT, OR TIMELY. THE SERVICE MAY BE TEMPORARILY UNAVAILABLE FROM TIME TO TIME FOR MAINTENANCE OR OTHER REASONS. TOWERIQ IS NOT RESPONSIBLE FOR TECHNICAL MALFUNCTIONS, TELEPHONE NETWORKS OR SERVICES, COMPUTER SYSTEMS, MOBILE PHONE EQUIPMENT, SOFTWARE, OR EMAIL, INCLUDING TECHNICAL PROBLEMS OR TRAFFIC CONGESTION ON THE INTERNET OR AT ANY SITE OR COMBINATION THEREOF, INCLUDING INJURY OR DAMAGE TO A USER'S OR TO ANY OTHER PERSON'S COMPUTER, MOBILE PHONE, OR OTHER HARDWARE OR SOFTWARE,

RELATED TO OR RESULTING FROM USING OR DOWNLOADING MATERIALS IN CONNECTION WITH THE WEB AND/OR IN CONNECTION WITH THE SERVICES.

8.3. TOWERIQ IS A TECHNOLOGY COMPANY, AND IS NOT AN INSURANCE AGENT, BROKER, OR CARRIER. NO PART OF THE SERVICE SHOULD BE CONSTRUED AS INSURANCE ADVICE. THE TOWERIQ PARTIES DO NOT ENDORSE ANY INSURANCE INDUSTRY PARTICIPANT, OR ANY INFORMATION THAT MAY BE REFERENCED ON OR THROUGH THE SERVICE. THE SERVICE IS DESIGNED FOR INFORMATIONAL AND TRANSACTIONAL PURPOSES ONLY. ANY ACTION ON YOUR PART IN RESPONSE TO THE INFORMATION PROVIDED THROUGH THE SERVICE IS AT YOUR SOLE DISCRETION AND RISK. THE TOWERIQ PARTIES HAVE NO RESPONSIBILITY FOR, OR INVOLVEMENT WITH, ANY TRANSACTIONS OR ANY INTERACTIONS THAT MAY RESULT FROM YOUR USE OF THE SERVICE; INCLUDING BUT NOT LIMITED TO THE BINDING OF INSURANCE POLICIES.

8.4. THE TOWERIQ PARTIES WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, PERSONAL INJURY/WRONGFUL DEATH, LOST PROFITS, LOST DATA, OR BUSINESS INTERRUPTION, THE USE OF, OR INABILITY TO USE, THE SERVICE, WHETHER OR NOT THE TOWERIQ PARTIES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT THAT THE FOREGOING EXCLUSION OF LIABILITY IS FOUND BY A COURT OF COMPETENT JURISDICTION TO BE UNENFORCEABLE, AND A DETERMINATION IS MADE THAT TOWERIQ IS LIABLE, UNDER NO CIRCUMSTANCES WILL THE TOWERIQ PARTIES BE LIABLE TO YOU FOR MORE THAN THE AMOUNT YOU HAVE PAID TOWERIQ IN THE 90 DAYS IMMEDIATELY PRECEDING THE DATE ON WHICH YOU FIRST ASSERT THE CLAIM.

8.5. TO THE FULLEST EXTENT PERMITTED BY LAW, THESE DISCLAIMERS OF LIABILITY CONTAINED HEREIN APPLY TO ANY AND ALL DAMAGES OR INJURY WHATSOEVER CAUSED BY OR RELATED TO USE OF, OR INABILITY TO USE, THE SERVICE UNDER ANY CAUSE OR ACTION WHATSOEVER OF ANY JURISDICTION, INCLUDING, WITHOUT LIMITATION, ACTIONS FOR BREACH OF WARRANTY, BREACH OF CONTRACT OR TORT (INCLUDING NEGLIGENCE).

8.6. Release. You forever release, discharge, and covenant not to sue the TowerIQ Parties from any and all liability, claims, actions, and expenses that may arise, whether caused by the negligence of the TowerIQ Parties or otherwise, in connection with your use of the Service or your interaction with any party through or as a result of the Service. In other words, you cannot sue the TowerIQ Parties if anything happens to you or your property from using the Service or interacting with any party through the Service. You agree that the provisions in this Section will survive any termination of your account(s), the Service, or this Agreement.

9. Indemnification. You agree to defend, indemnify and hold harmless the TowerIQ Parties from and against all liability, claims, actions and expenses, including attorneys' fees and costs, arising out of your use of the Service or your breach or alleged breach of any term, condition, obligation, representation or warranty in this Agreement. You agree that the provisions in this paragraph will survive any termination of your account(s) the Service, or this Agreement.

10. Third Party Sites and Products. We may include links to, or information about, third-party sites, services, or products, or integrate the Service with third-party services, which will be subject to terms of use and policies that differ from ours. Therefore, you should review the terms of use and privacy policies of all sites and services you link to from or are referred to by our Service. We do not endorse or take responsibility for these third party offerings, nor do we vet or take responsibility for third-party sites, services or products.

11. Governing Law/Waiver of Injunctive Relief.

11.1. This Agreement and all aspects of the Service will be governed by and construed in accordance with the internal laws of the U.S. and the Commonwealth of Massachusetts governing contracts entered into and to be fully performed in Massachusetts (thus, without regard to conflict of laws provisions) regardless of your location. With respect to any disputes or claims not subject to informal dispute resolution or arbitration (as set forth below), you agree not to commence or prosecute any action in connection therewith other than in the state or federal courts located in Boston, Massachusetts, and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in the state and federal courts located in Boston, Massachusetts.

11.2. You acknowledge that the rights granted and obligations made hereunder to TowerIQ are of a unique and irreplaceable nature, the loss of which will irreparably harm TowerIQ and which cannot be replaced by monetary damages alone, so that TowerIQ will be entitled to injunctive or other equitable relief (without the obligations of posting any bond or surety) in the event of any breach or anticipatory breach by you. You irrevocably waive all rights to seek injunctive or other equitable relief and agree to limit your claims to claims for monetary damages (if any).

11.3. To expedite resolution and control the cost of any dispute, controversy or claim related to this Agreement ("Dispute"), you and TowerIQ agree to first attempt to negotiate the resolution of any Dispute (except those Disputes expressly provided below) informally for at least thirty (30) days before initiating any arbitration or court proceeding. Such informal negotiations commence upon written notice from one person to the other. You will send such notice to support@mytoweriq.com.

11.4. Mandatory Arbitration. If you and TowerIQ are unable to resolve a Dispute through informal negotiations within 30 days, either you or TowerIQ may elect to have the Dispute (except those Disputes expressly excluded below) finally and exclusively resolved by binding arbitration. Any election to arbitrate by one party will be final and binding on the other. YOU UNDERSTAND THAT ABSENT THIS PROVISION, YOU WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. The arbitration will be commenced and conducted under the Streamlined Arbitration Rules and Procedures (the "Rules") of JAMS, which is available at the JAMS website www.jamsadr.com. The determination of whether a Dispute is subject to arbitration will be governed by the Federal Arbitration Act and determined by a court rather than an arbitrator. Your arbitration fees and your share of arbitrator compensation will be governed by the Rules. The arbitration may be conducted in person, through the submission of documents, by phone or online. The arbitrator will make a decision in writing, but need not provide a statement of reasons unless requested by a party. The arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so.

11.5. Notwithstanding the above, you and TowerIQ agree that arbitration will be limited to the Dispute between TowerIQ and you individually. To the full extent permitted by law, (a) no arbitration will be joined with any other; (b) there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilize class action procedures; and (c) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

11.6. You and TowerIQ agree that the following Disputes are not subject to the above provisions concerning informal negotiations and binding arbitration: (a) any Disputes seeking to enforce or protect, or concerning the validity of, any of TowerIQ's intellectual property rights; (b) any Dispute related to, or arising from, allegations of theft, piracy, invasion of privacy or unauthorized use; and (c) any claim for injunctive relief or to compel arbitration, stay proceedings pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator.

12. Waiver/Severability.

12.1. The failure of TowerIQ to require or enforce strict performance by you of any provision of this Agreement or to exercise any right under any provision of this Agreement will not be construed as a waiver or relinquishment of TowerIQ's right to assert or rely upon any such provision or right in that or any other instance.

12.2. You and TowerIQ agree that if any portion of this Agreement, except any portion of Section 11.4, is found illegal or unenforceable, in whole or in part by any court of competent jurisdiction, such provision will, as to such jurisdiction, be ineffective to the extent of such determination of invalidity or unenforceability without affecting the validity or enforceability thereof in any other manner or jurisdiction and without affecting the remaining provisions of this Agreement, which will continue to be in full force and effect. If Section 11.4 is found to be illegal or unenforceable then neither you nor TowerIQ will elect to arbitrate any Dispute falling within that portion of Section 11.4 found to be illegal or unenforceable and such Dispute will be decided by a court of competent jurisdiction within Boston, Massachusetts, and you and TowerIQ agree to submit to the personal jurisdiction of that court.

13. Term and Termination. This Agreement will remain in effect as long as your account is up-to-date and you remain in compliance with the terms hereof, unless it has been voluntarily suspended or terminated by you or TowerIQ. You may terminate this Agreement by destroying all Service-related materials obtained from the Service, TowerIQ or any other web site or source. The privileges granted to you under this Agreement will terminate immediately and automatically without notice from TowerIQ if, in our sole discretion, you fail to comply with any term or provision of this Agreement or for any reason in TowerIQ's sole discretion.

14. Miscellaneous. The information provided on the Service is not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject TowerIQ to any registration requirement within such jurisdiction or country. Accordingly, those persons who choose to access the Service from other locations do so on their own initiative and are solely responsible for compliance with local laws, if and to the extent local laws are applicable. Neither the course of conduct between the parties nor trade practice will act to modify this Agreement. TowerIQ may assign this Agreement to any party at any time without any notice to you. You may not assign this Agreement without TowerIQ's prior written consent. This Agreement (including the TowerIQ Privacy Policy) contains the entire understanding between you and TowerIQ, and supersedes all prior understandings between the parties concerning its subject matter, and cannot be changed or modified by you. The section headings used in this Agreement are for convenience only and will not be given any legal import. Upon TowerIQ's request, you will furnish TowerIQ with any documentation, substantiation or releases necessary to verify your compliance with this Agreement. You agree that this Agreement will not be construed against TowerIQ by virtue of having drafted it. You hereby waive any and all defenses you may have based on the electronic form of this Agreement and the lack of signing by the parties hereto to execute this Agreement.

15. Statute of Limitations. You and TowerIQ both agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or this Agreement (including the Privacy Policy) must be filed within ONE (1) YEAR after such claim or cause of action arose (or, if longer, within the shortest statute of limitations for such claim which the parties may establish by agreement) or the claim will be forever barred.

16. Questions. If you have any questions about this Agreement, its terms, your account or your rights hereunder, or if you have any complaints, please contact support@mytoweriq.com.