

## NETNOLOGY CUSTOMER TERMS AND CONDITIONS

Last Updated – December 15, 2017

This Netnology Customer Terms and Conditions (the “Terms and Conditions”) contains the terms and conditions which control Netnology’s provision of software and infrastructure services, via the Netnology website(s), and any other products, deliverables, and services (collectively, the “Netnology Solutions and Service”) to be provided by Netnology to you or the entity you represent (“you”). The Netnology Solutions and Service is owned and operated by Netnology, LLC., a Delaware corporation (“Netnology”, “we” or “us”). The Terms and Conditions take effect when you click an “I Accept” button or similar check box presented with these Terms and Conditions or, if earlier, when you use any part of the Netnology Solutions and Service.

PLEASE READ THE TERMS AND CONDITIONS CAREFULLY. BY ACCESSING OR USING ANY PART OF THE Netnology SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND TO ALL THE TERMS OF THE TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, EXIT THIS PAGE AND DO NOT ACCESS OR USE THE NETNOLOGY SERVICE. USE OF THE Netnology SERVICE IS EXPRESSLY CONDITIONED UPON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS.

You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into the Terms and Conditions for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity.

**1. Updates to Terms and Conditions; Integration.** We may, in our sole discretion, modify the Terms and Conditions either via email, by posting notice on any part of the Netnology Solutions and Service and which may include an “I Accept” button or similar check box. The “Last Updated” date at the top the Terms and Conditions indicates when the latest modifications were made to the Terms and Conditions. By continuing to access and use the Netnology Solutions and Service, even if you do not click or check an “I Accept” button, you agree to any such modifications. Therefore, you are responsible for reviewing and should become familiar

with any such modifications. We recommend that you review the Terms and Conditions prior to each use of the Netnology Solutions and Service. In addition, when using particular services or features on the Netnology Solutions and Service, you will be subject to any posted guidelines or policies applicable to such services or features that may be posted from time to time, including but not limited to the Privacy Policy as noted below. All such guidelines or policies are hereby incorporated by reference into these Terms and Conditions.

**2. Privacy Policy.** Use of the Netnology Solutions and Service is subject to the terms of our Privacy Policy found at [www.netnology.io/privacy-policy](http://www.netnology.io/privacy-policy), which is hereby incorporated into and made part of these Terms and Conditions. Please carefully review our Privacy Policy. By using or accessing the Netnology Solutions and Service, you agree to be bound by the terms of our Privacy Policy.

**3. Intellectual Property.** You acknowledge that the Netnology Solutions and Service, including the design, infrastructure, software, website(s), graphics, text, sounds, pictures, and other files and the selection and arrangement thereof (collectively, "Materials"), are the property of Netnology and/or its licensors, and are subject to and protected by United States and international copyright and other intellectual property laws and rights. All rights to Materials not expressly granted in these Terms and Conditions are reserved to their respective copyright owners. Netnology authorizes you to view, download and/or print the Materials only for personal, non-commercial use, provided that you keep intact all copyright and other proprietary notices contained in the original Materials. Except as expressly authorized by the Terms and Conditions, you may not copy, reproduce, distribute, republish, download, perform, display, post, transmit, scrape, copy, exploit, create derivative works or otherwise use any of the Materials in any form or by any means, without the prior written authorization of Netnology or the respective copyright owner. In an absence of a written agreement, you may not modify or adapt the Materials in any way or otherwise use them for any public or commercial purposes. The trademarks, service marks, trade names, trade dress and logos (collectively, "Marks") contained or described at the Netnology Solutions and Service are the sole property of Netnology and/or its licensors and may not be copied, altered or otherwise used, in whole or in part, without the prior written authorization of Netnology and/or its licensors. Netnology reserves the right to enforce its intellectual property rights to the fullest extent of the law.

For the avoidance of doubt, your use of the Netnology Solutions and Service is solely and exclusively under the limited license granted herein and you will not obtain any ownership interest therein through these Terms and Conditions or otherwise. As between you and us, we or our affiliates or licensors own and reserve all right, title, and interest in and to the Netnology Solutions and Service. We grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to access and use the Netnology Solutions and Service solely in accordance with these Terms and Conditions. Except as provided by the preceding sentence, you obtain no rights under these Terms and Conditions from us or our licensors to the Netnology Solutions and Service, including any related intellectual property rights. All trademarks, service marks, trade names, domain names, slogans, logos, and other indicia of origin that appear on or in connection with any aspect of the Netnology Solutions and Service are either the property of Netnology, its affiliates or licensors. Netnology retains the right to rescind and terminate the limited license granted hereunder at any point, for any reason. All rights not expressly granted herein by Netnology to you are fully reserved by Netnology, its advertisers and licensors. If you provide Netnology with any suggested improvements to the Netnology Solutions and Service (“Suggestions”), we will own all right, title, and interest in and to the Suggestions, even if you have designated the Suggestions as confidential. We will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to us all right, title, and interest in and to the Suggestions and agree to provide us any assistance we may require to document, perfect, and maintain our rights in the Suggestions.

Some of the company and product names, logos, brands, and other trademarks featured or referred to within the Netnology Solutions and Service may not be owned by us, and are the property of their respective trademark holders. These trademark holders are not affiliated with, nor do they sponsor or endorse Netnology and/or the Netnology Solutions and Service. If you would like support for the Netnology Solutions and Service other than the support we generally provide to other users of the Netnology Solutions and Service without charge, you may contract with us pursuant to a separate written agreement for such support.

**4. Third Party Sites.** Links provided via the Netnology Solutions and Service to third party websites and services are provided only as a convenience. If you use these links, you may leave the Netnology Solutions and Service. Netnology does not control nor endorse any such

third party websites or services. You agree that the Netnology Parties, as defined below, will not be responsible or liable for any content, goods or services provided by such third party websites or for your use or inability to use such third party websites. You will use such links at your own risk. Your interactions with organizations and/or individuals found on or through the Netnology Solutions and Service, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You are advised that other websites on the Internet, including third party websites linked from the Netnology Solutions and Service, might contain material or information: that some people may find offensive or inappropriate; that is inaccurate, untrue, misleading or deceptive; or that is defamatory, libelous, infringing of others' rights or otherwise unlawful. Netnology expressly disclaims any responsibility for the content, legality, decency or accuracy of any information, and for any products and services, that appear on any third party website.

**5. Use of the Netnology Solutions and Service.** You may be required to establish an account in order to use the Netnology Solutions and Service and/or take advantage of certain features. If so, you agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the Netnology Solutions and Service; and (b) as permitted, maintain and promptly update such information. If you provide any information that is false, inaccurate or outdated, or Netnology has reasonable grounds to suspect that such information is false, inaccurate or outdated, Netnology has the right to suspend or terminate your account and prohibit any and all current or future use of the Netnology Solutions and Service by you. You are responsible for maintaining the confidentiality of the password and account, and are fully responsible for all activities that occur under your account. Your account is meant to be private and you shall not share accounts for any reason. You agree to immediately notify us of any unauthorized use of your password or account or any other breach of security. You agree to be responsible for all charges resulting from the use of your account via the Netnology Solutions and Service, including charges resulting from unauthorized use of your account.

You agree to use the Netnology Solutions and Service only for lawful purposes and that you are responsible for your use of and communications and content via the Netnology Solutions and Service. You agree not to transmit any unlawful, infringing, threatening, harassing, defamatory, vulgar, obscene, profane, indecent, offensive, hateful or otherwise objectionable material of any

kind, including any material that encourages criminal conduct or conduct that would give rise to civil liability, infringes upon others' intellectual property rights, impersonates any individual or entity, or otherwise violates any applicable law. You agree not to use the Netnology Solutions and Service in any manner that interferes with its normal operation or with any other user's use of the Netnology Solutions and Service.

You may not do any of the following while accessing or using the Netnology Solutions and Service: (i) access, tamper with, or use non-public areas of the Netnology Solutions and Service, our computer systems, or the technical delivery systems of our providers; (ii) probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures; (iii) access or search or attempt to access or search the Netnology Solutions and Service by any means other than through our currently available, published interfaces that are provided by us, unless you have been specifically allowed to do so in a separate agreement with us; (iv) forge any TCP/IP packet header or any part of the header information in any email or posting, or in any way use the Netnology Solutions and Service to send altered, deceptive or false source-identifying information; or (v) interfere with, or disrupt, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, mail-bombing the Netnology Solutions and Service, or otherwise creating an undue burden on the Netnology Solutions and Service.

You may not use manual or automated software, devices, or other processes to "crawl," "scrape," or "spider" any page of the Netnology Solutions and Service nor may you modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Netnology Solutions and Service. You will not decompile, reverse engineer, or otherwise attempt to obtain the source code of any part of the Netnology Solutions and Service. You may not access or use the Netnology in a way intended to avoid incurring fees or exceeding usage limits or quotas, or resell or sublicense the Netnology Solutions and Service.

All licenses granted to you hereunder are conditional on your continued compliance with these Terms and Conditions, and will immediately and automatically terminate if you do not comply with any term or condition of these Terms and Conditions. During and after your use of the Netnology Solutions and Service, you will not assert, nor will you authorize, assist, or encourage any third party to assert, against us or any of our affiliates, customers, vendors, business

partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Netnology Solutions and Service you have used.

You further agree that you will not access the Netnology Solutions and Service by any means except through the interface provided by Netnology for access to the Netnology Solutions and Service. Creating or maintaining any link from another application to any page at the Netnology Solutions and Service without the prior authorization of Netnology is prohibited. Running or displaying the Netnology Solutions and Service, or any information or material displayed via the Netnology Solutions and Service in frames or through similar means on another website or application without the prior authorization of Netnology is prohibited. Any permitted links to the Netnology Solutions and Service must comply with all applicable laws, rule and regulations.

Netnology makes no representation that Materials contained, described or offered via the Netnology Solutions and Service are accurate, appropriate or available for use in jurisdictions outside the United States, or that these Terms and Conditions comply with the laws of any other country. Persons or entities who use the Netnology Solutions and Service and reside outside the United States do so on their own initiative and are responsible for compliance with all applicable law. You agree that you will not access the Netnology Solutions and Service from any territory where its contents are illegal, and that you, and not the Netnology Parties, are responsible for compliance with applicable law.

**6. Content.** You are solely responsible for the development, content, operation, maintenance, and use of any software (including machine images), data, text, audio, video, images or other content that you or any end user run, cause to interface, or upload to the Netnology Solutions and Service via your account or otherwise transfer, process, use or store in connection with your account (collectively, "Content"), including without limitation: (a) the technical operation of Content, including ensuring that calls you make to the Netnology Solutions and Service are compatible with then-current APIs for the Netnology Solutions and Service; (b) compliance of Content with these Terms and Conditions; (c) any claims relating to Content; and (d) properly handling and processing notices sent to you (or any of your affiliates) by any person claiming that Content violates such person's rights, including notices pursuant to the Digital Millennium Copyright Act. You represent and warrant to us that: (a) you or your

licensors own all right, title, and interest in and to Content; (b) you have all rights in Content necessary to grant the rights contemplated by these Terms and Conditions; and (c) none of the Content or end users' use of Content or the Netnology Solutions and Service will violate applicable law or these Terms and Conditions. As between you and us, you or your licensors own all right, title, and interest in and to Content.

**7. Security and Backup; End User Violations.** You are responsible for properly configuring and using the Netnology Solutions and Service and taking your own steps to maintain appropriate security, protection and backup of Content, which may include the use of encryption technology to protect Content from unauthorized access and routine archiving of Content. Login credentials and private keys generated by the Netnology Solutions and Service are for your internal use only and you may not sell, transfer or sublicense them to any other entity or person, except that you may disclose your private key to your agents and subcontractors performing work on your behalf. You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to these Terms and Conditions, Content or use of the Netnology Solutions and Service. You are responsible for end users' use of Content and the Netnology Solutions and Service. You will ensure that all end users comply with your obligations under these Terms and Conditions and that the terms of your agreement with each end user are consistent with these Terms and Conditions. If you become aware of any violation of your obligations under these Terms and Conditions by an end user, you will immediately terminate such end user's access to the Netnology Solutions and Service.

**8. Fees and Payment.** Unless otherwise agreed to in writing, we calculate and bill fees and charges monthly. We may bill you more frequently for fees accrued if we suspect that your account is fraudulent or at risk of non-payment. You will pay us the applicable fees and charges for use of the Netnology Solutions and Service using one of the payment methods we support. All amounts payable will be made without setoff or counterclaim, and without any deduction or withholding. All fees and charges for the Netnology Solutions and Service are non-refundable. Fees and charges for any new Netnology Solutions and Service or new feature of the Netnology Solutions and Service will be effective when we post updated fees and charges unless we expressly state otherwise in a notice. We may increase or add new fees and charges for any existing Netnology Solutions and Services by giving you at least thirty (30) days' advance notice.

We may charge you interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments. All fees and charges payable by you are exclusive of applicable taxes and duties, including VAT and applicable sales tax. You will provide us any information we reasonably request to determine whether we are obligated to collect VAT from you, including your VAT identification number. If you are legally entitled to an exemption from any sales, use, or similar transaction tax, you are responsible for providing us with legally-sufficient tax exemption certificates for each taxing jurisdiction. We will apply the tax exemption certificates to charges under your account occurring after the date we receive the tax exemption certificates. If any deduction or withholding is required by law, you will notify us and will pay us any additional amounts necessary to ensure that the net amount that we receive, after any deduction and withholding, equals the amount we would have received if no deduction or withholding had been required. Additionally, you will provide us with documentation showing that the withheld and deducted amounts have been paid to the relevant taxing authority.

**9. Termination; Suspension.** You may terminate your use of the Netnology Solutions and Service at any time. You agree that Netnology may immediately terminate or suspend your access to all or part of the Netnology Solutions and Service, with or without notice, in our reasonable discretion, including without limitation if you are in breach of these Terms and Conditions (including any payment obligations) or have ceased to operate in the ordinary course of business, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding. We may terminate these Terms and Condition for any reason by providing you thirty (30) days' notice. Any post-termination assistance from us is subject to mutual agreement by you and us. If we suspend your right to access or use any portion or all of the Netnology Solutions and Service, you remain responsible for all fees and charges you have incurred through the date of suspension, you remain responsible for any applicable fees and charges for any portion of the Netnology Solutions and Service to which you continue to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension, and you will not be entitled to any service credits.

**10. Changes.** Netnology reserves the right to modify or discontinue the Netnology Solutions and Service (or any part thereof). We will notify you of any material change to the Netnology



Solutions and Service. We may change, discontinue or deprecate any application program interfaces (“APIs”) for the Netnology Solutions and Service from time to time but will use commercially reasonable efforts to continue supporting the previous version of any API changed, discontinued, or deprecated for twelve (12) months after the change, discontinuation, or deprecation (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) is needed to comply with the law or requests of governmental entities).

**11. Representations.** You expressly represent, warrant, and/or acknowledge that:

a. Netnology does not warrant or guarantee the suitability or availability of any Material, including without limitation any products or services, found through the Netnology Solutions and Service.

b. Netnology does not screen the authenticity or quality of any Material or any provider of Material, including without limitation any products or services found through the Netnology Solutions and Service.

c. Netnology makes no representations or promises regarding any Material, and that many of the Material provided via the Netnology Solutions and Service may be owned or licensed by third parties.

d. Netnology is not a party to any transaction between you and any third party provider of products or services via the Netnology Solutions and Service. Any dispute shall be resolved between yourself and the provider of such products or services.

**12. Data Privacy and Security.** Without limiting Section 13 or your obligations under Sections 6 and 7, we will implement reasonable and appropriate measures designed to help you secure Content against accidental or unlawful loss, access or disclosure. We participate in the safe harbor programs described in the Privacy Policy, if applicable. You consent to our collection, use and disclosure of information associated with the Netnology Solutions and Service in accordance with our Privacy Policy, and to the processing of Content in, and the

transfer of Content into, the NETNOLOGY Service.

### **13. Warranties, Disclaimers and Limitations of Liability.**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

YOUR USE OF THE NETNOLOGY SOLUTIONS AND SERVICE IS AT YOUR SOLE RISK. THE NETNOLOGY SOLUTIONS AND SERVICES AND THE ASSOCIATED MATERIALS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, NETNOLOGY, ITS PARENT, SUBSIDIARY AND OTHER AFFILIATED COMPANIES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND OTHER REPRESENTATIVES (COLLECTIVELY, THE "NETNOLOGY PARTIES"), EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OR TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE NETNOLOGY PARTIES MAKE NO WARRANTY THAT: (I) THE NETNOLOGY SOLUTIONS AND SERVICES WILL MEET YOUR REQUIREMENTS; (II) THE NETNOLOGY SOLUTIONS AND SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE, OR OTHERWISE NOT LOST OR DAMAGED; (III) INFORMATION THAT MAY BE OBTAINED VIA THE NETNOLOGY SOLUTIONS AND SERVICES WILL BE ACCURATE OR RELIABLE; (IV) THE QUALITY OF ANY AND ALL PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL, INCLUDING ALL GOODS AND SERVICES, OBTAINED OR PURCHASED BY YOU DIRECTLY OR INDIRECTLY THROUGH THE NETNOLOGY SOLUTIONS AND SERVICES WILL MEET YOUR EXPECTATIONS OR NEEDS; AND (V) ANY ERRORS IN THE NETNOLOGY SOLUTIONS AND SERVICES WILL BE CORRECTED.

THE NETNOLOGY PARTIES SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING OUT OF, IN CONNECTION WITH OR RELATING TO THE USE OF OR INABILITY TO USE THE NETNOLOGY METHODOLOGY OR SERVICE, INCLUDING ANY LIABILITY: (I) FOR ANY TERMINATION OR SUSPENSION OF THESE TERMS OF CONDITIONS OR THE NETNOLOGY SOLUTIONS AND SERVICES, INCLUDING ANY UNSCHEDULED DOWNTIME; (II) FOR ANY INCORRECT OR INACCURATE

INFORMATION OR ANY 'BUG' OF THE NETNOLOGY SOLUTIONS AND SERVICES; (III) FOR ANY UNAUTHORIZED ACCESS TO OR DISCLOSURE OF YOUR TRANSMISSIONS, DATA OR CONTENT, INCLUDING ANY LOSS OR FAILURE TO STORE ANY OF YOUR TRANSMISSIONS, DATA OR CONTENT; (IV) FOR STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON OR VIA THE NETNOLOGY SOLUTIONS AND SERVICES; (V) FOR ANY DISPUTES BETWEEN USERS OF THE NETNOLOGY SOLUTIONS AND SERVICES OR BETWEEN A USER OF THE NETNOLOGY SOLUTIONS AND SERVICES AND A THIRD PARTY; OR (VI) FOR ANY OTHER MATTER RELATING TO THE NETNOLOGY SOLUTIONS AND SERVICES OR ANY THIRD PARTY. THIS IS A COMPREHENSIVE LIMITATION OF LIABILITY THAT APPLIES TO ALL DAMAGES OF ANY KIND, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE OR DATA), COST OF PROCUREMENT OF SUBSTITUTE GOODS, PRODUCT LIABILITY OR OTHERWISE, EVEN IF AN INDIVIDUAL ADVISES THE NETNOLOGY PARTIES OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY SET FORTH HEREIN ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN NETNOLOGY AND YOU. THE PRODUCTS, INFORMATION AND SERVICES OFFERED ON AND THROUGH THE NETNOLOGY SOLUTIONS AND SERVICES WOULD NOT BE PROVIDED TO YOU WITHOUT SUCH LIMITATIONS.

NOTWITHSTANDING THE FOREGOING, THE SOLE AND ENTIRE MAXIMUM LIABILITY OF THE NETNOLOGY PARTIES FOR ANY REASON, AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CAUSE OR CLAIM WHATSOEVER, SHALL BE LIMITED TO THE FEES ACTUALLY PAID BY YOU DIRECTLY TO NETNOLOGY FOR THE NETNOLOGY SOLUTIONS AND SERVICES IN THE TWELVE MONTHS PRIOR TO SUCH CAUSE OR CLAIM.

SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. ACCORDINGLY, SOME OF THE ABOVE DISCLAIMERS AND LIMITATIONS MAY NOT APPLY TO YOU.

If you are a California resident, you shall and hereby do waive California Civil Code Section

1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

**14. Indemnification.** You agree to indemnify, defend and hold harmless the Netnology Parties against all claims, demands, causes of action, losses, expenses, damages and costs (including any reasonable attorneys' fees), resulting or arising from or relating to your use or an end users' use of the Netnology Solutions and Service, including without limitation any activity related to your account, any Content that submitted to, transmitted or stored through the Netnology Solutions and Service, a dispute between you and an end user, breach of these Terms and Conditions or any applicable law, infringement or violation of any rights of another, or termination of your access to the Netnology Solutions and Service. If we or our affiliates are obligated to respond to a third-party subpoena or other compulsory legal order or process described above, you will also reimburse us for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to the third party subpoena or other compulsory legal order or process at our then-current hourly rates. We reserve the right to assume, at our sole expense, the exclusive defense and control of any such claim or action and all negotiations for settlement or compromise, and you agree to fully cooperate with us in the defense of any such claim, action, settlement or compromise negotiations, as requested by us.

**15. Applicable Law and Jurisdiction.** Your use of the Netnology Solutions and Service is governed by and will be enforced under the laws of the State of California without regard to its conflict of law provisions. You agree to submit to the personal and exclusive jurisdiction of the courts located within Sacramento, California. You agree that printed copies of any and all agreements and/or notices in electronic form are admissible in any legal or regulatory proceedings. Any controversy, claim, suit, injury or damage arising from or in any way related to the Netnology Solutions and Service or these Terms and Conditions shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association then in effect and before a single arbitrator chosen by Netnology. Any such controversy, claim, suit, injury or damage shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any controversy, claim, suit, injury or damage of any other party. Netnology may seek any interim or preliminary relief from a court of competent jurisdiction in any state, federal

or notation court necessary to protect its rights pending the completion of arbitration. Each party shall assume its own costs of arbitration. IN ANY CLAIM, ACTION OR PROCEEDING TO ENFORCE ANY RIGHT OR OBLIGATION OF THE PARTIES UNDER THE TERMS AND CONDITIONS INCLUDING, WITHOUT LIMITATION, RELATING TO YOUR USE OF THE Netnology SERVICE, YOU HEREBY WAIVE ANY RIGHT YOU MAY NOW HAVE OR HEREAFTER POSSESS TO A TRIAL BY JURY. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

**16. Import and Export Compliance.** In connection with these Terms and Conditions, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the Netnology Solutions and Service, including your transfer, processing and storage of Content, the provision of Content to end users, and the applicable region in which any of the foregoing occur.

**17. U.S. Government Rights.** The Netnology Solutions and Service is provided to the U.S. Government as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data” with the same rights and restrictions generally applicable to the Netnology Solutions and Service. If you are using the Netnology Solutions and Service on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Netnology Solutions and Service. The terms “commercial item” “commercial computer software,” “commercial computer software documentation,” and “technical data” are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

**18. Confidential Information.** You may use Netnology Confidential information only in connection with your use of the Netnology Solutions and Service as permitted under these Terms and Conditions. You will not disclose Netnology Confidential Information during the your use of the Netnology Solutions and Service and at any time during the 5 year period following the end of any such use. You will take all reasonable measures to avoid disclosure,

dissemination or unauthorized use of Netnology Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature. You will not issue any press release or make any other public communication with respect to these Terms and Conditions or your use of the Netnology Solutions and Service. You will not misrepresent or embellish the relationship between us and you (including by expressing or implying that we support, sponsor, endorse, or contribute to you or your business endeavors), or express or imply any relationship or affiliation between us and you or any other person or entity except as expressly permitted by these Terms and Conditions. For purposes of these Terms and Conditions, "Netnology Confidential Information" means all nonpublic information disclosed by us, our affiliates, business partners or our or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential, including: (a) nonpublic information relating to our or our affiliates or business partners' technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that we are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between you and us or our affiliates. Netnology Confidential Information does not include any information that: (i) is or becomes publicly available without breach of these Terms and Conditions; (ii) can be shown by documentation to have been known to you at the time of your receipt from us; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by you without reference to the Netnology Confidential Information.

**19. Miscellaneous.** These Terms and Conditions constitute the entire agreement between Netnology and each user of the Netnology Solutions and Service with respect to the subject matter of these Terms and Conditions and supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the subject matter of these Terms and Conditions.

If any provision of these Terms and Conditions shall be deemed unlawful, void or for any reason unenforceable by a court of competent jurisdiction, the validity and enforceability of any remaining provisions will not be affected. Any terms that by their general nature survive the termination of these Terms and Conditions shall survive.

The failure of the Netnology Parties to insist upon strict adherence to any term of these Terms and Conditions shall not constitute a waiver of such term and shall not be considered a waiver or limit that party's right thereafter to insist upon strict adherence to that term or any other term contained in these Terms and Conditions. You may not assign your obligations or rights hereunder to another entity or individual. We may transfer, assign or delegate these Terms and Conditions and its rights and obligations without your consent.

These Terms and Conditions do not create any third party beneficiary rights in any individual or entity that is not a party to these Terms and Conditions.

We shall have no liability to you hereunder if we are prevented from or delayed in performing our obligations, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of us or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

We and you are independent contractors. No agency, partnership, joint venture, or employment is created as a result of these Terms and Conditions and you do not have any authority of any kind to bind us in any respect whatsoever.

We may provide any notice to you by posting a notice via the Netnology Solutions and Service or sending a message to the email address then associated with your account. Notices we provide via the Netnology Solutions and Service will be effective upon posting and notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email. To give us notice, you must contact us by personal delivery, overnight courier or registered or certified mail to Netnology LLC., 6203 San Ignacio Ave, Suite 110, San Jose, CA 95119. We may update the address for notices to us by posting a notice on the Netnology Solutions and

Service. Notices provided by personal delivery will be effective immediately. Notices provided by overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent. All communications and notices pursuant to these Terms and Conditions must be in the English language.

No action arising out of these Terms and Conditions or your use of the Netnology Solutions and Service, regardless of form or the basis of the claim, may be brought by you more than one (1) year after the cause of action has arisen (or if multiple causes, from the date the first such cause arose).