

**Effective: November 1<sup>st</sup>, 2022**

These Customer Terms of Service (the “**Customer Terms**”) describe your rights and responsibilities when using the Mudstack online workspace storage and collaboration tools and platform (the “**Services**”). Please read them carefully. If you are a Customer (defined below), these Customer Terms govern your access and use of our Services. If you are being invited to a Workspace as a User (as defined below), the [User Terms of Service](#) (the “**User Terms**”) supplement these Customer Terms and are incorporated herein by reference.

These Customer Terms, the User Terms and any Order Form(s) (defined below) together form a binding agreement between Customer and Mudstack (the “**Agreement**”) and govern your access and use of the Services. “**We**,” “**our**” and “**us**” or “**Mudstack**” refers to Mudstack, Inc., a Delaware corporation.

By using, accessing or browsing the Services, you are agreeing to be bound by these Customer Terms governing your use of the Services. If you are using the Services on behalf of an organization, you are agreeing to these Customer Terms for that organization and promising to us that you have the authority to bind that organization to these Customer Terms (in which event, “**you**” and “**your**” will refer to that organization). In order to use the Service, you must be legally permitted to accept these Customer Terms.

1. Definitions. The following are defined terms used in these Customer Terms and the User Terms:

a. “Account” means your Services account or accounts through which your designated Account Administrator creates and manages one or more Workspaces.

b. “Account Administrator” means the person authorized by you to create, organize and manage your Account and all of its Workspaces, including the ability to (i) create one or more Workspaces, (ii) invite, add and/or remove Users, (iii) create and manage User access permissions, including Workspace Administrators, (iv) upload, modify, download, delete, comment upon and otherwise manage Workspaces and their respective Libraries, and (v) make all decisions and take any other actions necessary to manage your Account including termination of your Account and deletion of all data stored within your Account. If you are an individual agreeing to these Customer Terms on your personal behalf, you are the initial Account Administrator. If you are an individual agreeing to these Customer Terms on behalf of an entity, the entity you represent is the Owner of your Account and you are the initial Account Administrator. All Account Administrators are also considered to be a Collaborator on the Workspaces within the managed Account.

c. “Annual Plan” as defined in Section 23.b. of these Customer Terms.

d. “Collaborator” means one or more individuals authorized by a Workspace Administrator to access Libraries and/or Data within one or more Workspace(s), including the ability to organize, upload, modify, download, delete, comment upon and otherwise manage your Libraries and Data within such Workspace(s).

e. “Contractor” means an individual authorized by a Workspace Administrator to access specified Data for the limited purpose of uploading, modifying, downloading, deleting, commenting upon and otherwise managing the specified Data.

f. “Customer” means the person or organization registering your Account(s) and acting as the Owner of the Account(s) governed by the Agreement. If you register for an Account using your organization’s email domain, your organization is Customer. If your Account(s) are being set up by

someone who is not formally affiliated with an organization, “Customer” is the individual creating the Account. Customer is also referred to herein as “you”, “your” and terms of similar meaning.

- g. “Data” means your assets, files and associated meta data stored within your Account(s).
- h. “Exploratory Plan” as defined in Section 20.a. of these Customer Terms.
- i. “Exploratory Term” as defined in Section 20.a. of these Customer Terms.
- j. “Feedback” as defined in Section 16.b. of these Customer Terms.
- k. “Fees” as defined in Section 21 of these Customer Terms.
- l. “Library” or “Libraries” are groups of Data organized within a Workspace by any grouping mechanism chosen by the applicable User.
- m. “Monthly Plan” as defined in Section 23.a. of these Customer Terms.
- n. “Order Form” means an on-line or paper Order Form accepted (by click through) and/or signed (via electronic or paper signature) by you and us describing the Services purchased by you under the Agreement.
- o. “Owner” means you, as the owner of one or more Accounts.
- p. “Paid Plan” as defined in Section 20.d. of these Customer Terms.
- q. “Personal Information” has the meaning set forth in the Privacy Policy.
- r. “Privacy Policy” as defined in Section 3 below.
- s. “Site” as defined in Section 2 of these Customer Terms.
- t. “Personal Plan” as defined in Section 20.b. of these Customer Terms.
- u. “Subscription Period” means the period for which you elect to use Services under a Paid Plan as set forth in Section 23 of these Customer Terms. The Subscription Period for Personal Plans will be month-to-month. The Subscription Period for Exploratory Plans is the applicable Exploratory Term.
- v. “Third Party Materials” means any files, content, designs, models, data sets, project information, materials, documents, computer programs or similar material (including, without limitation, any modules and components, functions and features of a computer program), media, audio, images, names, email addresses, comments, notes, links and other content, data, information, applications and services made available to you and/or your Users by any third party (including any of your Users) through or in connection with the Services, the Site or any other website owned or operated by or for Mudstack.
- w. “Users” means, collectively or individually, as applicable, those persons authorized by you to access and/or manage your Account, Workspace(s) and/or Libraries within your Workspace(s), including Account Administrators, Workspace Administrators, Collaborators, Contractors and Viewers.
- x. “Viewer” means one or more individuals authorized by a Workspace Administrator to view and download all Data and comments within a Library and/or Workspace.

y. “Workspace” means an on-line data storage space provided through the Services, through which you organize and store Data to be accessed and used by your Users as described in these Customer Terms and the User Terms. Each Account will have one or more Workspaces.

z. “Workspace Administrator” means a person authorized by your Account Administrator to create, organize and manage one or more of your Workspaces, including, within such Workspace(s), the ability to (i) invite, add and/or remove Users, (ii) create and manage User access permissions, (iii) upload, modify, download, delete, comment upon and otherwise manage Libraries and Data, and (iv) take any other actions to manage the authorized Workspace(s). If your Account Administrator has not authorized any Workspace Administrator(s), your Account Administrator will also be your Workspace Administrator.

2. Changes to these Customer Terms. We reserve the right to change these Customer Terms from time-to-time. We will post the most current version of these Customer Terms at [www.mudstack.com](http://www.mudstack.com) (the “Site”). If we make material changes to these Customer Terms, we will notify you via the Services and/or by email to the address associated with your Account. If you do not accept the changes, you must stop using and cancel your account by emailing [support@mudstack.com](mailto:support@mudstack.com). Your continued use of our Services after we publish or send a notice about our changes to these Customer Terms means that you are consenting to the updated terms.

3. Privacy. To provide the Services, we collect certain information about you. We use and protect that information as described in our Privacy Policy (<https://mudstack.com/privacy-policy>)(the “Privacy Policy”). You acknowledge your use of the Services is subject to our Privacy Policy and understand that it identifies how we collect, store, and use certain information.

4. Your Account. To establish an Account, you will need to complete a registration form and designate a user ID and password. When registering your Account you must: (a) provide true, current and complete information about yourself on the registration form and (b) maintain such information so it continues to be true, current and complete. You may not share, loan or transfer your ID or password. If you become aware of any unauthorized use of the Services or your Account, or have any questions about your Account please contact Mudstack Support via [support@mudstack.com](mailto:support@mudstack.com)

5. Your Data; Ownership of Data; Access, Retention and Security.

a. You maintain responsibility for Data stored, accessed, downloaded or otherwise processed through use of the Services by you and/or your Users (collectively referred to herein as “your Data”). The Services permit you to share your Data with your Users. You understand that your Users may be able to download, reproduce, manipulate, distribute, display, transmit, create derivative works of or otherwise process or communicate your Data. The Services may also permit your Users to upload Data to your Account. All Data stored in your Account, whether created by you, your Users or a third-party is considered your Data for purposes of this Agreement. You acknowledge and agree that: (1) you will evaluate and bear all risks associated with your Data, including without limitation Data stored, accessed, downloaded or otherwise processed by your Users; and (2) under no circumstances will we be liable in any way for your Data or your use of the Services.

b. We do not own your Data and have no right to use your Data other than as set forth in this Agreement and the Privacy Policy. Ownership and rights of use with respect to your Data as between you, your Users and third parties will be established by you, your Users and such third parties. We will have no liability regarding use or ownership of your Data by any person or entity and will not be responsible to you or any third-party with respect to your use, your Users’ use or any third-party’s use of

your Data. You agree that your Data and your and your Users' conduct in using the Services will comply with all applicable laws, rules and regulations and the terms of this Agreement.

c. Our personnel will not access your Data except (a) as part of providing, maintaining, securing or modifying the Services, (b) at your request or with your consent as part of addressing or preventing a service, support or technical issue, or (c) in connection with legal obligations or proceedings. Our use of your Personal Information will be as set forth in the Privacy Policy. You are encouraged to practice effective data retention and security practices with respect to your Data.

#### 6. Data Access; Account Administration.

a. You are responsible for the administration of access to your Data by your Users including granting and terminating access to your Account. You acknowledge that in some cases, your Users may have the ability to download, copy or transfer your Data outside of the Services and suspending or terminating access will not delete or inhibit access to Data that was earlier downloaded or transferred. We have no control over and shall have no liability for any damages resulting from the use or misuse by any third-party of your Data that you choose to share, directly or indirectly, through the Services. **IF YOU CHOOSE TO SHARE YOUR DATA OR MAKE YOUR DATA AVAILABLE IN YOUR ACCOUNT OR OTHERWISE IN CONNECTION WITH YOUR AND/OR YOUR USERS' USE OF THE SERVICES, YOU DO SO AT YOUR OWN RISK.**

b. Your Account Administrator has ultimate control of your Account. The initial Account Administrator for each Customer is established upon initial registration of the Account. If Customer is an organization, Customer may re-assign the Account Administrator role within its Account. You acknowledge and agree that, in such cases, we may rely on representations by persons communicating from an e-mail account using the Customer domain name claiming to be an authorized representative of Customer (a "Customer Representative"). We may attempt to confirm the authority of such Customer Representative to assign a new Account Administrator, including authentication by the existing Account Administrator, however, under no circumstances will we have liability to you for failure to do so or complying with instructions provided by the Customer Representative.

c. ***On our free Personal Plan, all Users have the same access and authority as the Account Administrator other than the ability to terminate or upgrade the Account.*** On our paid Services, the Account Administrator has the authority to set User roles such as Workspace Administrator, Collaborator, Contractor and Viewer, and to set the permissions for each such role.

#### 7. Data Storage; Compliance with Privacy Laws.

a. **Data Storage.** You acknowledge that we may use third-party service providers in connection with the Services, including without limitation the use of cloud computing service providers which may transmit, maintain and store your Data using third-party computers and equipment in locations around the globe.

b. **Privacy Laws.** You acknowledge and agree that you and your Users are responsible for compliance with all applicable privacy and data protection laws related to Personal Information contained within your Data, including any applicable requirements related to notice, consent, transfer (including cross-border transfer), disclosure, and use of Personal Information in connection with the Service, including as described in the Privacy Policy. Without limiting the foregoing, you will ensure that you and your Users have obtained consents, to the extent necessary, to provide Personal Information to be transferred to, collected, stored, used and otherwise processed by the Services. You further acknowledge that any data storage functionality associated with the Services is not intended for the storage of social

security numbers, credit or debit card numbers, financial account numbers, driver's license numbers, medical information, health insurance information, sensitive data about personal characteristics such as race, religion, or sexual orientation, or other personal data that may pose a risk of harm to the individual if improperly disclosed (collectively, "Sensitive Personal Information"). You agree not to, and to ensure that your Users do not, upload or otherwise submit any Sensitive Personal Information in connection with your and their use of the Services and further agree that we will have no responsibility or liability with respect to any such Sensitive Personal Information that is processed, transmitted, disclosed, or stored in connection with your or your Users' use of the Services. You will ensure that your Users are aware of the obligations contained in this Section.

8. Consent to Electronic Communications and Solicitation. By registering for an Account, you understand and consent to us sending you (including via email) information regarding the Services, such as: (a) notices about your use of the Services, including notices of violations of use; (b) updates to the Services and new features or products; (c) administrative messages and other information; and (d) advertising, marketing, and other materials regarding our products and services. You may choose to opt-out of receiving advertising and marketing materials by unsubscribing from such communications by following the instructions in the message. Notices emailed to you will be considered given and received when the email is sent. If you do not consent to receive notices regarding your use of the Services electronically, you must stop using the Services.

9. Availability of Third-Party Materials. Third-Party Materials may be made available to you, directly or indirectly, through the Services (including Third-Party Materials shared by your Users through their use of the Services or by any other means). In some cases, such Third-Party Materials may appear to be a feature or function within, or extension of, the Services. Accessing such Third-Party Materials may cause your computer or other device, without additional notice, to communicate with a third-party website—for example, for purposes of providing you with additional information, features and functionality. Such connectivity or access to third-party websites or Third-Party Materials is governed by the terms (including the disclaimers and notices) found on such sites or otherwise associated with the Third-Party Materials and access to and use of Third-Party Materials may require assent to separate terms and/or payment of additional fees. You agree that any viewing, use or access of Third-Party Materials by You or your Users is at your sole risk. Under no circumstances will we be liable for any loss or damage caused by your or your Users' viewing, use or reliance on Third-Party Materials. Any dealings between you and/or your Users and any Third-Party in connection with such Third-Party Materials, including, without limitation, such Third-Party's privacy policies, use of Personal Information, delivery of and payment for goods and services, and any other terms associated with such dealings, are solely between you, your Users and such Third-Party. We may at any time, for any reason, modify or discontinue the availability of any Third-Party Materials.

10. Deleting Your Data from Inactive Sites. In addition to our rights to delete your Data upon expiration or termination of this Agreement under Section 14 (Termination), we have the right (but not the obligation) to delete inactive sites or accounts or purge related content (and all backups thereof), without further notice and without liability for deletion or failure to store such content. ***We shall have no responsibility or liability for deletion based on your settings or your or your Users' actions or inactions or for any failure to delete your Data.***

11. Copyright Complaint and Removal Policy. We respect the intellectual property of others and will respond to notices of alleged copyright infringement that comply with applicable law. We reserve the right to delete or disable your Data alleged to violate copyright laws or these Customer Terms and reserve the right to terminate the Account(s) of violators. If you believe there has been a violation of your intellectual property rights, please contact us at [support@mudstack.com](mailto:support@mudstack.com).

12. **Confidential Information.** During your use of the Services, we may share with you information that is confidential, sensitive or should be kept secret. For example, if we tell you about our product roadmaps, product designs and architecture, technology and technical information, provide you with security audit reviews, business and marketing plans, or share with you our business processes, these should always be considered confidential to us. Similarly, we agree that your Data, credit card/banking information and information contained in your Account is confidential to you. Also, if either of us provide any documents to the other that are labeled “confidential” (or something similar), or provide information (either in writing or verbal) that is of a type that a reasonable person should understand to be confidential such information is to be treated as confidential information. However, if you tell us information that: (a) we already know at the time you tell us; (b) was told to us by a third-party who had the right to tell us; (c) is generally available to the public; or (d) was independently developed by us without using any of your confidential information, then that information will not be considered confidential. The same goes for information that we tell you that falls into any of these categories. Lastly, we both agree that: (i) we will treat each other’s information with the same degree of care that we treat our own confidential information; (ii) will use each other’s confidential information only in connection with these Customer Terms and provision or use of the Services, as applicable; (iii) only share the information with others who have a need to know and who have agreed in writing to treat it as confidential (as we’ve outlined in this section); and (iv) not share the information with any third-party except as allowed in these Terms or through the Services. Your decision to share your confidential information with your Users or any other third-party through your use of the Services will be considered disclosure by you, not us. Confidential information will always remain the property of its owner.

13. **Acceptable Use Policy.** You agree you and your Users will not, nor will you or they encourage others or assist others to, harm the Services or use the Services to harm others. For example, you and your Users must not use the Services to harm, threaten, or harass another person, organization or Mudstack and/or to build a similar service or website. You and your Users must not: (a) damage, disable, overburden, or impair the Services (or any network connected to the Services); (b) resell or redistribute the Services or any part of it; (c) use any unauthorized means to modify, reroute, or gain access to the Services or attempt to carry out these activities; (d) use any automated process or service (such as a bot, a spider, or periodic caching of information stored by us) to access or use the Services; (e) use the Services beyond the features allocation and amounts provided in your Services plan; (f) remove, alter, or obscure any copyright, trademark, confidentiality or other proprietary notices, labels, or marks from or within the Services or modify, translate, adapt, arrange, or create derivative works based on the Services; (g) decompile, disassemble or otherwise reverse engineer the Services, or determine or attempt to determine any source code, algorithms, methods, or techniques used or embodied in the Services; (h) utilize any equipment, device, software, or other means to (or designed to) circumvent or remove any form of technical protection used by us in connection with the Services; (i) use the Services to, and/or cause us to, violate any law or distribute any malware or malicious computer code, programs or related content; (j) use the Services to communicate any message or material that is defamatory, harassing, libelous, threatening, or obscene; (k) use the Services in a way that violates or infringes upon the intellectual property rights or the privacy or publicity rights of any person or entity; (l) distribute, post, share information, data or related content illegally or without permission; (m) use the Services to disseminate or promote terrorism or terrorist activities; or (n) use the Services to disseminate material that may infringe upon legally protected social rights and freedoms of a person(s) (collectively, ‘human rights’) and/or as defined by domestic and public international laws and/or other legal norms. As part of our efforts to protect the Services, protect our customers, or to stop you and/or your Users from breaching these Customer Terms, we retain the right to block or otherwise prevent delivery of any type of file, email or other communication to or from the Services. We also reserve the right to deactivate, change and/or require you to change your Account user ID or password, and those of your Users, as well as and any URLs or links, you may obtain through the Services. You also agree that if you learn of any unauthorized or unacceptable use of any Account, Data or the Services, you will promptly contact Mudstack Support

[support@mudstack.com](mailto:support@mudstack.com) and take all reasonable steps to cooperate with US and assist in the termination of such use.

14. Suspension and Termination of Services. We reserve the right to suspend or terminate your and/or any of your User(s)' access to the Services at any time in our sole discretion or disable any or your Data if (a) you or any of your Users are in breach of these Customer Terms; or b) your or any of your Users' use of the Services could cause a risk of harm or loss to us or our other customers; or c) we decline to renew your Services at the end of any Subscription Period. When reasonable and as permitted by law, we will provide you reasonable advance notice of this change as well as an opportunity to correct any actions that led to our decision. We will not be able to provide this advance notice if you or any of your Users are in material breach of these Customer Terms (or the User Terms), or if such notice would lead to civil or criminal liability for us, or if providing notice would compromise our ability to provide the Services to our other customers. For the avoidance of doubt, we may still make a determination that we do not want to continue offering you access to the Services at any time for any or no reason. You understand that if your account is suspended or terminated, you may no longer have access to your Data that is stored in your Account. Upon termination you may request access to your Data, which we will make available, except in cases where we have terminated your Account due to your or your User(s) violation of these Customer Terms (or the User Terms). You must make such request within fourteen (14) days following termination otherwise, any of your Data stored in your Account may not be retrievable and we will have no obligation to maintain your Data stored in your account after this fourteen (14) day period. Note, however, that any of your Data that your or your Users choose to delete, at any time, may no longer be accessible to us, or you, in your Account. **YOU ARE SOLELY RESPONSIBLE FOR YOUR AND YOUR USERS' DELETION OF YOUR DATA AND WE WILL HAVE NO LIABILITY TO YOU FOR YOUR OR YOUR USERS' INABILITY TO ACCESS DATA FOLLOWING ITS DELETION.**

15. Updates to the Services. We may make necessary deployments of changes, updates or enhancements to the Services at any time. We may also add or remove functionalities or features, or we may suspend or stop the Services altogether.

16. Mudstack Proprietary Rights; Feedback.

a. **Proprietary Rights.** You acknowledge and agree that Mudstack and its licensors own all right, title, and interest (including, without limitation, patents, copyrights, trademarks, trade secrets, and all other intellectual property rights) in and to the Services and any and all information, data or materials provided or used in connection with, or generated by, the Services (excluding your Data or your or your Users' Third-Party Materials). You agree not, and to cause your Users not to, take any action to jeopardize, encumber, limit, or interfere in any manner with Mudstack's or its licensors' ownership and rights with respect thereto. We do not grant you or your Users any right to use our trademarks, trade names, or logos. You and your Users have only the limited rights to use the Services as are expressly granted to you under these Customer Terms and no other rights are granted or conveyed, or shall be deemed to be granted conveyed, whether by implication, estoppel, or otherwise.

b. **Feedback.** We may seek, and/or you and your Users may provide suggestions or recommendations concerning potential changes to or improvements of the Services, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"). We are free to use such Feedback and you and your Users hereby assign to us on your and your User(s)' behalf, and on behalf of any of your and/or your User(s)' employees, contractors and/or agents, all right, title, and interest in, and we are free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback,



17. Indemnification and Warranties.

a. **Indemnification.** You shall, at your sole expense and to the fullest extent permitted by law, indemnify, defend (at our request), and hold us harmless against any and all losses, liabilities, expenses (including reasonable attorneys' fees) suffered or incurred by us by reason of any claim, suit or proceeding ("Claim") arising out of or in connection with: (1) your Data or you or any of your Users' use of your Data, including, without limitation, any assertion that your Data or the use thereof may infringe any copyright, trademark, or other intellectual property or other rights of any individual or entity, or are a misappropriation of any individual or entity's trade secret, or contain any libelous, defamatory, disparaging, pornographic, or obscene materials or use thereof caused death or bodily injury or damage to the real or tangible property of any third party; (2) any breach of or failure by you or your Users to comply with these Customer Terms; or (3) use of the Services by you, your Users or anyone else who accesses the Services through you. If requested by us to defend a Claim, you will not agree to any settlement without our prior written consent, and you shall have the right to participate, at your own expense, in the defense of any Claim with counsel of your choosing.

b. **Warranties.** You acknowledge and agree that (1) you and your Users have the requisite rights to submit, develop and use your Data in connection with the Services; (2) your Data does not infringe or misappropriate any intellectual property or proprietary right of any third party or violate any applicable laws, rules or regulations; (3) your Data is not subject to any restriction on disclosure, transfer, download, export or re-export under any applicable law, rule or regulation; and (4) any information you or your Users provide in connection with your and your Users' registration for, or use of, the Services is and shall remain true, accurate, and complete, and that you and your Users will maintain and update such information regularly.

18. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITIES; RELEASE; BENEFIT OF THE BARGAIN.

a. **Warranty Disclaimer.** THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." WE MAKE NO, AND HEREBY DISCLAIM ALL, REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, WITH RESPECT TO THE SERVICES, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. YOUR AND YOUR USERS' USE OF THE SERVICES IS AT YOUR OWN AND THEIR OWN DISCRETION AND RISK. WE DO NOT WARRANT THAT ANY USE OF OR ACCESS TO THE SERVICES WILL BE ERROR-FREE, COMPLETE, SECURE OR THAT YOUR DATA WILL NOT BE OTHERWISE LOST OR DAMAGED OR MEET YOUR REQUIREMENTS OR EXPECTATIONS; THAT OPERATION OR AVAILABILITY OF THE SERVICES WILL BE UNINTERRUPTED; OR THAT ERRORS OR FAILURES WILL BE CORRECTED OR REMEDIED. WE DO NOT WARRANT THAT THE SERVICES WILL PERFORM IN ANY PARTICULAR MANNER. WITHOUT LIMITATION OF THE GENERALITY OF THE FOREGOING, YOU AND YOUR USERS ACKNOWLEDGE AND AGREE THAT YOU AND YOUR USERS ARE SOLELY RESPONSIBLE FOR (AND WE ASSUME NO RESPONSIBILITY AND WILL HAVE NO LIABILITY OF ANY KIND FOR) (1) THE DECISIONS THAT YOU AND YOUR USERS MAY MAKE REGARDING THE SERVICES; (2) YOUR AND YOUR USERS' USE OF THE SERVICES INCLUDING ANY CONTENT, DATA, INFORMATION, OR OTHER MATERIAL ACCESSED BY YOU OR YOUR USERS IN CONNECTION WITH THE SERVICES INCLUDING, WITHOUT LIMITATION, IMPACT TO YOUR OR THEIR COMPUTER



SYSTEMS OR LOSS OF DATA; OR (3) ANY EFFECTS ON YOUR OR THEIR BUSINESS THAT MAY RESULT FROM SUCH USE. WE MAKE NO WARRANTIES TO ANY THIRD PARTY. WE DO NOT REPRESENT OR WARRANT THAT THE SERVICES ARE OR WILL BE APPROPRIATE OR AVAILABLE FOR USE IN ANY PARTICULAR JURISDICTION. This Section will be enforceable to the maximum extent allowed by applicable law. No information or advice (whether written, oral or otherwise) provided by us or our representatives will create any warranty or in any way affect the disclaimers of warranty or limitations of liability expressly provided in these Customer Terms.

b. **Functionality Limitations.** THE SERVICES ARE NOT A SUBSTITUTE FOR YOUR OR YOUR USERS' JUDGMENT (INCLUDING PROFESSIONAL JUDGMENT) OR INDEPENDENT TESTING, DESIGN, ESTIMATION OR ANALYSIS, AS APPLICABLE. DUE TO THE LARGE VARIETY OF POTENTIAL APPLICATIONS FOR THE SERVICES, THEY HAVE NOT BEEN TESTED IN ALL SITUATIONS UNDER WHICH THEY MAY BE USED AND MAY NOT ACHIEVE THE RESULTS YOU OR YOUR USERS DESIRE. FURTHER TO THE OTHER LIMITATION ON OUR LIABILITY SET FORTH IN THESE CUSTOMER TERMS, WE SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR ANY RESULTS OR OUTPUT OBTAINED OR OTHERWISE VIEWED THROUGH THE SERVICES OR ANY MATERIALS DEVELOPED BY YOU OR YOUR USERS IN CONNECTION WITH YOUR RESPECTIVE USE OF THE SERVICES. YOU ARE RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT AND CONTROL OF USE OF THE SERVICES BY YOUR USERS. THIS RESPONSIBILITY INCLUDES, BUT IS NOT LIMITED TO, THE DETERMINATION OF APPROPRIATE USES FOR THE SERVICES AND THE SELECTION OF THE SERVICES AND OTHER PROGRAMS TO ACHIEVE YOUR AND YOUR USERS' INTENDED RESULTS. YOU ARE ALSO RESPONSIBLE FOR ESTABLISHING THE ADEQUACY OF INDEPENDENT PROCEDURES FOR TESTING THE RELIABILITY, ACCURACY AND COMPLETENESS OF THE SERVICES, YOUR DATA AND/OR MATERIALS DEVELOPED BY YOU AND YOUR USERS IN CONNECTION WITH YOUR RESPECTIVE USE OF THE SERVICES (IF ANY), INCLUDING THE DEVELOPMENT, STORAGE, MANIPULATION, PROCESSING AND OTHER USES OF YOUR DATA BY YOU AND YOUR USERS USING THE SERVICES. THERE ARE NO SERVICE LEVEL AGREEMENTS MADE IN CONNECTION WITH THE SERVICES UNLESS OTHERWISE SPECIFICALLY AGREED TO BY US, IN WRITING.

c. **Limitation of Liability.** TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY, (1) IN NO EVENT WILL WE BE LIABLE TO YOU OR YOUR USERS HEREUNDER FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR ANY OTHER DAMAGES OF LIKE KIND WHATSOEVER (HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR OTHERWISE), INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR OTHER COVER, OR ANY OTHER SIMILAR COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, NOR WILL WE BE LIABLE FOR ANY DAMAGES WHATSOEVER RESULTING FROM A FORCE MAJEURE OR AN ACT OF A THIRD PARTY; AND (2) OUR TOTAL CUMULATIVE COLLECTIVE LIABILITY FOR ALL COSTS, LOSSES OR DAMAGES FROM ALL CLAIMS, ACTIONS OR SUITS HOWEVER CAUSED OR ARISING FROM OR IN RELATION TO THE SERVICES SHALL NOT EXCEED (a) ALL AMOUNTS PAID OR DUE FROM YOU FOR ACCESS TO THE SERVICES GIVING RISE TO THE CLAIM DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE CLAIM (NO MATTER WHEN PAYMENTS WERE ACTUALLY MADE), OR (b) ONE HUNDRED DOLLARS (\$100), WHICHEVER IS GREATER. IN COUNTRIES WHERE THE ABOVE TYPES OF EXCLUSIONS AND LIMITATIONS AREN'T

ALLOWED, WE'RE RESPONSIBLE TO YOU AND YOUR USERS, IN THE AGGREGATE, ONLY FOR LOSSES AND DAMAGES THAT ARE A REASONABLY FORESEEABLE RESULT OF OUR FAILURE TO USE REASONABLE SKILL AND CARE OR OUR BREACH OF OUR CONTRACT WITH YOU. NOTHING IN THESE CUSTOMER TERMS AFFECTS CONSUMER RIGHTS THAT CANNOT BY LAW BE WAIVED OR LIMITED BY ANY CONTRACT OR AGREEMENT.

d. **Basis of the Bargain.** The parties agree that releases, waivers, warranty disclaimers, limitations of liability and indemnities in these Customer Terms are a fundamental basis of the bargain between you, your Users and us, and are a material part of the consideration received by us for the provision of the Services under these Customer Terms, and we would not have entered into these Customer Terms and provided the Services in the absence of such releases, waivers, warranty disclaimers, limitations of liability and indemnities.

#### 19. Dispute Resolution and Governing Law.

a. You and your Users must comply with all domestic and international export laws and regulations that apply to your and their respective use of the Services. These laws include restrictions on destinations, end users, and end use.

b. These Customer Terms and the Agreement will be governed by the laws of the State of Georgia, U.S.A. regardless of conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods, the Uniform Commercial Code, the Uniform Computer Information Transactions Act, and any law effectuating these conventions do not apply to these Customer Terms. We both agree that all of these claims can only be litigated in the federal or state courts in Atlanta, Georgia, USA and we each agree to personal jurisdiction in those courts. However, you agree that we can apply for injunctive remedies in any jurisdiction.

c. To the extent that the following provision is not in conflict with applicable law, you and your Users may only resolve disputes with us on an individual basis and may not bring a claim or proceed in a group arbitration proceeding as a plaintiff or a class member in a class, consolidated, or representative action.

#### 20. Personal Plans; Beta Services; Paid Plans.

a. **Personal Plan.** Our Personal Plan is the free version of our Services with many of the features of the Paid Plan Services plan (the "Personal Plan"). Account and Workspace registration and structuring is similar to the Paid Plan, but storage space per User as well as the aggregate number of Users that can be added to a Personal Plan are limited in the manner communicated to you upon registration for your Personal Plan. *Further, under the Personal Plan, all Users have full access to view, download, manipulate, manage and delete all of your Data to the same extent as the Account Administrator with the exception of being able to terminate the Account.*

b. **Beta Services.** We will also offer new features and services under development to you and your Users which will be labeled as "beta services" (the "Beta Services"). You and Your Users acknowledge and agreed that Beta Services are offered "As Is" with no warranty whatsoever and that we will have no liability to you or your Users whatsoever in connection with your respective use of any Beta Services.

c. **Paid Plans.** Our paid Services plans ("Paid Plans") offer a variety of Services enhancements including increased storage, Users and the ability to set a variety of User roles and

permissions. Subscription and payment terms for our Paid Plans are set forth below with pricing and features communicated on our Site and at the time of registering your Paid Plan Account.

d. All use of Personal Plans, Beta Services and Paid Plans by you and your Users are subject to these Customer Terms.

21. Fees. If you subscribe for a Paid Plan, you agree to pay the fees as quoted to you when you register for the Paid Plan Services (“Fees”). We may calculate taxes payable by you based on the billing information that you provide us at the time of purchase. You are responsible for all charges related to using the Paid Plan Services (for example, data charges and currency exchange settlements). All Fees are payable in U.S. dollars at the amount quoted upon registration. We reserve the right to change our prices at any time, however, Paid Plan pricing increases will not go into effect until the next renewal of your Subscription Period following the pricing increase. After your Subscription Period ends, your use of the Services will be charged at the then-current Fee(s). If you don't agree to these changes, you must stop using the Services and cancel via email to [support@mudstack.com](mailto:support@mudstack.com) (with cancellation confirmation from a Mudstack representative). If you cancel, your Services end at the end of your current Subscription Period and no refunds for previously paid Services will be issued. If you do not cancel in accordance with these Customer Terms, the Subscription Period for your Services will automatically renew at the then-current price and the term length for the next Subscription Period will be the same as the term of the expiring Subscription Period. We will charge your credit card on file with us on the renewal date of each Subscription Period.

22. Billing/Payment. If you select a Paid Plan, you must provide us with current, complete, accurate and authorized payment method information (e.g. credit card information). You authorize us to charge your provided payment method for the Services you have selected and for any paid feature(s) that you choose. We may bill: (a) in advance; (b) at the time of purchase; (c) shortly after purchase; or (d) for automatically renewing Services, on a recurring basis. To the extent we have not received your payment, in order to bring your account up to date, we may bill you simultaneously for both past due and current amounts. If you do not cancel your Account, we may automatically renew your Service(s) and charge you for any renewal term. You understand that failure to pay any charges or fees may result in the suspension or cancellation of your Services.

23. Subscription Period. You may elect one of the following Paid Plan Subscription Periods and billing options (please note that there might be only one of these options available depending on the Services purchased):

a. A monthly Paid Plan (“Monthly Plan”). The subscription period for the Monthly Plan will be for one month beginning on the day of the month you initially register your Paid Plan Account and will automatically renew on the same day of each month (without the need to submit or execute a renewal order form) unless you cancel your Monthly Plan at least three (3) business days prior to the applicable renewal date. You will be billed on or about the same day each month until you cancel your Paid Plan.

b. An annual Paid Plan (“Annual Plan”). The subscription period for the Annual Plan will be for one year beginning on the day of the year you initially register your Account and will automatically renew on each anniversary of such date (without the need submit or execute a renewal Order Form) for additional periods equal to one (1) year unless you cancel at least three (3) business days prior to your renewal date. You will be billed annually on or about the same day each year until such time that you cancel your Paid Plan. Note that under the Annual Plan you will not be permitted to cancel, reduce the number of seats, or downgrade the Services you have selected until the anniversary date. **Be aware that you are committing to a one-year plan; if you are not certain, we recommend choosing the Monthly Plan.**

c. If you select the Monthly Plan, you can switch to an Annual Plan at any time. If you select an Annual Plan, you may not change to a Monthly Plan until the end of the one-year term of your Annual Plan.

d. Where required by law, you may have a legal right to cancel your Services subscription for a Paid Plan during the prescribed timeframe of your initial subscription period. If you are entitled to this right by law, your cancellation request will be processed within three (3) business days, and you will receive a prorated refund of any unused prepaid Fees.

#### 24. General Terms.

a. **Severability; Entire Agreement.** These Customer Terms apply to the maximum extent permitted by applicable law. If a court holds that we cannot enforce a part of these Customer Terms as written, you and we will replace those terms with similar terms to the extent enforceable under the applicable law, but the rest of these Customer Terms will remain in effect. The Agreement (including these Customer Terms) is the entire contract between you and us regarding your and your Users' use of the Services and supersedes any prior contract or oral or written statements regarding your and your Users' use of the Services, provided that your Users' use of the Services are also subject to the User Terms by and between us and your Users as in effect from time-to-time.

b. **Assignment and Transfer.** We may assign, transfer, or otherwise dispose our rights and obligations under this Agreement, in whole or in part, at any time without notice. You may not assign this Agreement or transfer any rights to use the Service, unless we provide written consent for you to do so.

c. **Independent Contractors; No Third-Party Beneficiaries.** Mudstack and you are not legal partners or agents; instead, our relationship is that of independent contractors. The Agreement is solely for your and our benefit. It is not for the benefit of any other person, except for permitted successors.

d. **Waiver.** The failure of either of us to insist upon or enforce strict performance of any of the provisions of the Agreement or to exercise any rights or remedies under the Agreement will not be construed as a waiver or relinquishment to any extent of such right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will remain in full force and effect, unless expressly waived in writing.

e. **Government Terms.** If Customer is a U.S. government entity or if this Agreement otherwise becomes subject to the Federal Acquisition Regulations (FAR), Customer acknowledges that elements of the Services constitute software and documentation and are provided as "Commercial Items" as defined at 48 C.F.R. 2.101, and are being licensed to U.S. government User as commercial computer software subject to the restricted rights described in 48 C.F.R. 2.101 and 12.212.