

# CYTK Terms of Use and End User License Agreement [DRAFT]

**Last Updated: February 3, 2020**

This is an agreement between you and CYTK, LLC ("CYTK"). Before using CYTK, please read these CYTK Terms of Use, including the CYTK Privacy Policy, and the other applicable rules, policies, and terms posted through your CYTK-Enabled Product (collectively, this "Agreement"). By using CYTK, you agree to be bound by the terms of this Agreement. If you do not accept the terms of this Agreement, then you may not use CYTK.

For the purpose of these CYTK Terms of Use:

"Auxiliary Product" means any product you can interact with or operate using CYTK, including software provided by third party service.

"CYTK App" means the application provided by CYTK and the related Software, settings, content, services, Third Party Services, support and other related services.

"CYTK-Enabled Product" means any product or application that enables access to CYTK services, including the CYTK App.

"CYTK Interactions" means all information related to your use of CYTK, including your inputs, responses provided to you through CYTK, information we receive in connection with Third Party Services and Auxiliary Products you use, and information and content you provide or receive through the CYTK App.

"Software" means all software that we make available to you for use in connection with CYTK.

"Subscription Holder" shall mean the company or individual who has subscribed and is paying the fees for use of the CYTK Enabled Services, and is represented by the Admin User.

"Admin User" means the user that represents the Subscription Holder and controls who can have access and use the CYTK Enabled Services on behalf of the Subscription Holder.

"Third Party Service" means any service or application provided by a third party that we make available to you for use on or through CYTK.

## **1. CYTK App**

**1.1. CYTK App Access.** A mobile device or a CYTK-Enabled Product and internet connection are required to access and use the CYTK App. Some CYTK services may not be available in all areas or on all mobile devices and may require separate subscriptions.

**1.2. CYTK's License to You.** CYTK grants you a single, non-exclusive, non-transferable, revocable and limited personal license to access and use the CYTK App. This license is conditioned on your continued compliance with the terms and conditions in this Agreement, your use of the CYTK App for the sole purpose of providing professional automotive repair services, and your payment of any applicable fees. You may not rent, lease, lend, sell, transfer, redistribute, or sublicense the CYTK App and, if you sell or otherwise transfer a device on which the application is installed to a third party, you must remove the CYTK App from such device before doing so. If you terminate your professional relationship with your automotive repair employer, you must immediately stop using the CYTK App and notify your administrator to remove you from the subscription. You may not copy, decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the CYTK App, any updates, content, data or any part thereof.

**1.3. Your License to CYTK.** Any CYTK Interactions, including any communications, data, or material of any kind that you email, post, or otherwise transmit to CYTK using the CYTK App, will become the property of CYTK. You hereby grant a license to CYTK to use any ideas, concepts, know-how, or techniques contained in your CYTK Interactions for any purpose including, but not limited to, developing and marketing products using such information.

**1.4. Electronic Signatures.** You agree to be bound by any affirmation, assent, or agreement you transmit to CYTK using the CYTK App, including but not limited to any consent you give to receive communications from CYTK solely through electronic transmission. You agree that, when in the future you click on an “I agree,” “I consent” or other similarly worded “button” or entry field in the CYTK App, your agreement or consent will be legally binding and enforceable and the legal equivalent of your handwritten signature.

**1.5. Carrier Charges.** Your carrier’s data rates may apply to your use of the CYTK App.

## **2. Your Use of CYTK Services**

**2.1. Use of the Software.** You may use the Software only on or through the CYTK App, CYTK-Enabled Devices, or Auxiliary Products and solely for the purposes of enabling you to use CYTK services in the course of providing professional automotive repair services. You will not use any electronic communication feature of the CYTK App for any purpose that is unlawful, tortious, abusive, intrusive on another’s privacy, harassing, libelous, defamatory, embarrassing, obscene, threatening, or hateful. You will not use the CYTK App to upload, post, reproduce, or distribute any information, software, or other material protected by copyright or any other intellectual property right (as well as rights of publicity and privacy). You will not collect or store personal data about other individuals, including other users of the CYTK App. You will not use the CYTK App to upload, post, email, or otherwise transmit any advertising or promotional materials, including without limitation, “junk mail,” “surveys,” “spam,” “chain letters,” “pyramid schemes,” or any other form of solicitation or unauthorized communication. You will not upload, post, email, or otherwise transmit any material that contains viruses or any other computer code, files, or programs which might interrupt, limit, or interfere with the functionality of any computer software or hardware or telecommunications equipment. You will not alter or copy, in any form or medium all or any part of the data contained in the CYTK app (except for data located on an individual, vehicle-by-vehicle, lookup basis). You will not sublicense, transfer, distribute, provide, copy or otherwise disclose, or make available the CYTK App, or any digital content contained therein, to any third parties, online services, web services, or other categories of communication over the Internet. You will not use the CYTK App for purposes other than providing professional automotive repair services. You will not use the CYTK App after the termination of your employment with the Subscription Holder until such time that you procure your own subscription or are added to a subsequent employer’s subscription. You will not create any derivative work from, adaptation of, or vehicle publications from the CYTK App or any digital content contained therein, whether in electronic, printed or any other format. You will not use the CYTK App or any digital content contained therein for developing or creating a collision estimate. You will not use the CYTK App when you are driving a motor vehicle or operating machinery, even if doing so is legally permitted in your location.

**2.2. CYTK Interactions.** You control your CYTK Interactions, including any CYTK Interactions generated by your voice or touch (tap or swipe). CYTK streams audio to the cloud when you interact with CYTK. CYTK processes and retains your CYTK Interactions, such as your voice inputs, searches, and activities in the cloud to provide, personalize, and improve communications using the CYTK App. This data may not always be encrypted. You acknowledge that there is a risk that data, including email, electronic communications, and personal data, may be accessed by unauthorized third parties when communicated between you and CYTK or between you and other parties. CYTK and its affiliates and agents are permitted, but not obligated, to review or retain your CYTK Interactions. CYTK may monitor your CYTK Interactions to evaluate the quality of service you receive, your compliance with the Agreement, the security of the CYTK App, or for other reasons. You agree that such monitoring activities will not entitle you to any cause of action or other right with respect to the manner in which CYTK or its affiliates or agents monitor your CYTK Interactions and enforces or fails to enforce the terms of the Agreement. In no event will CYTK or any of its affiliates or agents be liable for any costs, damages, expenses, or any other liabilities incurred by you as a result of monitoring activities by CYTK or its affiliates or agents of your services.

3. **Your Use of Motor Database.** CYTK allows you access to information it has licensed from MOTOR Information Systems (the "MOTOR Information") and by accessing such information, you agree to comply with the following terms and conditions:

**3.1. License Grant.** MOTOR hereby grants to you a non-transferable, non-exclusive, limited license to access and use the MOTOR Information contained within the CYTK App on a vehicle-by-vehicle look-up basis.

**3.2. Restrictions on Use of MOTOR Information.** You agree that you shall not, and shall not permit any third party, to directly or indirectly (i) alter or copy in any form or medium all or any part of the MOTOR Information (except for data located on an individual, vehicle by vehicle, lookup basis), nor make any MOTOR Information part of any electronic retrieval system; (ii) create any derivative work from, or adaptation of, the MOTOR Information; (iii) lease, license, sell, or otherwise publish, communicate, distribute or display to any third party in any form or medium all or any part of the MOTOR Information; (iv) create any publications, in electronic, printed or other format, based in whole or in part on data from the MOTOR Information, alone or in combination with any other data; (v) download the MOTOR Information (other than the data obtained on a vehicle-by-vehicle look-up basis) or transmit the MOTOR Information electronically by any means; (vi) remove any product identification, copyright, trademark or other notice from the MOTOR Information or documentation; or (vii) reverse engineer, reverse assemble, or reverse compile the MOTOR Information.

**3.3. Ownership/Confidentiality.** You agree that the MOTOR Information is the confidential information of MOTOR, and that MOTOR owns or is the subscriber of all rights in the MOTOR Information, including without limitation all copyright and other proprietary rights. You agree to keep confidential and use your best efforts to prevent and protect the MOTOR Information from unauthorized disclosure or use.

#### 4. **Third Party Services; Third Party Products.**

**4.1. Hyperlinks.** The CYTK App may contain links to other sites. CYTK does not control such other sites, and CYTK and its affiliates and agents make no representations whatsoever concerning the content, accuracy, security or privacy of those sites. The fact that CYTK has provided a link to a site is not an endorsement, authorization, sponsorship, or affiliation with respect to such site, its owners or its providers. There are risks in using any information, software, or products found on the Internet, and CYTK cautions you to make sure you understand these risks before retrieving, using, relying upon, or purchasing anything via the Internet. You agree that under no circumstances will you hold CYTK or its affiliates or agents liable for any loss or damage caused by use of or reliance on any content, goods, or services available on other sites.

**4.2. Third Party Services.** If you use a Third Party Service, we may exchange related information with that service, such as information about your Auxiliary Products or the content of your requests. Your use of any Third Party Service is subject to this Agreement and any third party terms applicable to such Third Party Service. If you do not accept the third party terms applicable to a Third Party Service, do not use that Third Party Service. When using a Third Party Service, you are responsible for any information you provide to the third party. CYTK has no responsibility or liability for Third Party Services. Publishers of Third Party Services may change or discontinue the functionality or features of their Third Party Service.

**4.3. Third Party Products.** CYTK-Enabled Products and Auxiliary Products may include third party products that CYTK does not manufacture or develop. CYTK may automatically update the firmware for certain CYTK-Enabled Products on behalf of the applicable manufacturer. CYTK has no responsibility or liability for such third party products or manufacturer-provided firmware.

#### 5. **General**

**5.1. Information.** The Software will provide CYTK with information about your use of the CYTK App, your CYTK Interactions, and your CYTK Enabled Products and Auxiliary Products (such as device type, name, features, status, network connectivity, and location). We will handle any information we receive in accordance with the [CYTK Privacy Notice](#).

- 5.2. Functionality; Content.** We do not guarantee that CYTK or its functionality or content (including parts, component, or diagnostic information) is accurate, reliable, always available, or complete. CYTK has no responsibility or liability for the digital content.
- 5.3. Trademarks and Copyrights.** The CYTK App is owned by CYTK or its affiliates or agents, and is protected by United States copyright laws and international treaty provisions. All content, trademarks, services marks, trade names, logos, and icons are proprietary to CYTK or its affiliates or agents. Nothing contained in the CYTK App should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any trademark displayed in the CYTK App without the written permission of CYTK or such third party that may own the trademarks displayed in the CYTK App. Your use of the trademarks displayed in the CYTK App, or any other content in the CYTK App, except as provided herein, is strictly prohibited. Images displayed through the CYTK App are either the property of, or used with permission by, CYTK or its affiliates or agents. You are prohibited from using or authorizing the use of these images unless specifically permitted under the Agreement. Any unauthorized use of the images may violate copyright laws, trademark laws, the laws of privacy and publicity, or other regulations and statutes.
- 5.4. Geographic Restrictions.** CYTK is operated in the United States. We may restrict access to CYTK from other locations.
- 5.5. Termination.** Your rights under this Agreement will automatically terminate without notice if you fail to comply with any of its terms. In case of such termination, CYTK may immediately revoke your access to the CYTK App without refund of any fees. CYTK's failure to insist upon or enforce your strict compliance with this Agreement will not constitute a waiver of any of its rights.
- 5.6. Governing Law.** The Agreement, and all future agreements you shall enter into with CYTK, unless otherwise indicated on such other agreement, shall be governed by the law of the State of California, without regard to conflicts of law principles thereof. This is the case regardless of whether you reside or transact business with CYTK or any of its affiliates or agents in the State of California or elsewhere. You agree to submit to the personal and exclusive jurisdiction of the courts located within the county of San Francisco. If any part of this Agreement is unlawful, void, or unenforceable, that part will be deemed severable and will not affect the validity and enforceability of any remaining provisions.
- 5.7. Disclaimer of Warranties.** YOUR USE OF THE APPLICATION IS ENTIRELY AT YOUR SOLE RISK. THE APPLICATION IS PROVIDED BY CYTK ON AN "AS IS" BASIS. CYTK EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. CYTK MAKES NO WARRANTY THAT (i) THE APPLICATION WILL MEET YOUR REQUIREMENTS, (ii) THAT OPERATION OF THE APPLICATION WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, OR (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE APPLICATION WILL BE ACCURATE OR RELIABLE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM CYTK, OR THROUGH THE APPLICATION SHALL CREATE ANY WARRANTY REGARDING THE APPLICATION NOT EXPRESSLY STATED IN THIS AGREEMENT.
- 5.8. Limitation of Liability.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT NEITHER CYTK NOR ANY OF ITS LICENSORS OR SERVICE PROVIDERS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF CYTK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM THE USE OR THE INABILITY TO USE THE APPLICATION OR ANY OTHER MATTER RELATING TO THE APPLICATION. IN NO EVENT WILL OUR OR OUR LICENSORS' OR OUR SERVICE PROVIDERS' AGGREGATE LIABILITY WITH RESPECT TO ANY CLAIM ARISING FROM OR RELATING TO THIS AGREEMENT OR YOUR USE OF CYTK EXCEED FIFTY DOLLARS (\$50).

- 5.9. Indemnification.** You agree to indemnify and hold CYTK and its affiliates, agents, employees, service providers, and licensors harmless from any claim, demand, loss, costs, or expense, including attorneys' fees, made by any person arising out of your violation of this Agreement, state or federal laws or regulations, or any other person's rights, including but not limited to infringement of any copyright or violation of any proprietary or privacy right. Under no circumstances, including but not limited to a negligent act, will CYTK or its affiliates or agents be liable for any damages of any kind that result from the use of, or the inability to use, the CYTK App.
- 5.10. Miscellaneous.** This Agreement constitutes the entire agreement between you and CYTK regarding the CYTK App, and governs your use of the CYTK App, superseding any prior agreements between you and CYTK regarding the CYTK App. If any provision of this Agreement shall be held invalid under law, such invalidity shall not affect any other provision or provisions hereof which are otherwise valid. The failure of CYTK to enforce any provision in this Agreement shall not constitute a waiver of such provision or any other provision. We may change, suspend, or discontinue CYTK, or any part of it, at any time without notice. We may amend any of this Agreement's terms at our sole discretion by posting the revised terms on the.com website. Your continued use of CYTK after the effective date of the revised Agreement constitutes your acceptance of the terms.
- 5.11. Contact Information.** For help with CYTK or resolving other issues, please contact us by sending an email to [hello@CYTK.io](mailto:hello@CYTK.io).