

# Flurry Analytics Terms of Service

Last Updated: April 20, 2014

## Acceptance of Terms

Flurry welcomes you. By checking the "Terms and Conditions" box in our account sign-up, or registering for Flurry's Analytics Service (as defined below), you agree that you have read, understand, and accept the terms and conditions described below (the "Terms of Service") and you agree to be bound by these Terms of Service and all terms, policies and guidelines incorporated in the Terms of Service by reference, including, but not limited to, Flurry's Privacy Policy located at <http://www.flurry.com/privacy-policy.html> ("Privacy Policy") (or such other URL that Flurry may provide from time to time) (collectively, the "Agreement"). If you do not agree to this Agreement, you should not use the Services (as defined below) in any way. The Services are offered to you conditioned on your acceptance without modification of this Agreement, including without limitation, Flurry's right to use all data collected and analyzed by the Services.

The User Acquisition Analytics Service (as defined below) may be used in conjunction with the Analytics Service, and to the extent you use the User Acquisition Analytics Service in conjunction with the Analytics Service (each a "Service" and together, the "Services"), you shall be obligated to the terms and conditions applicable to the User Acquisition Analytics Service and described herein.

The Services are available only to individuals who are at least 18 years old and to companies that are appropriately licensed and otherwise legally permitted to conduct business. You represent and warrant that (a), if you are an individual, you are at least 18 years old, and (b) if you are a company, you are appropriately licensed and is legally permitted to conduct business.

## Modification of Agreement

Flurry reserves the right to change or modify any of the terms and conditions contained in this Agreement at any time, in its sole discretion, by posting changes at <http://www.flurry.com> or such other URL that Flurry may provide from time to time). Your continued use of any part of the Services following the posting of such changes or modifications will constitute your acceptance of such changes or modifications.

## Description and Use of the Services

- **Analytics Service**

The "Analytics Service" means, collectively, the "Software", the "Analytics Reports" and the "Documentation", all as defined below in this Agreement. Under this Agreement, Flurry may allow you to access the Analytics Service by using Flurry's analytics site code (the "Agent") and any fixes, updates and upgrades provided to you, provided that you have an active Flurry account. In addition, Flurry may provide you with on-line access to a variety of analytics reports (the "Analytics Reports") generated by Flurry's processing code and any fixes, updates and upgrades. The Agent and Flurry's processing code are defined collectively herein as "Software". The processing code analyzes the data collected by the Agent. This data concerns the characteristics and activities of end users of your applications.

- **User Acquisition Analytics Service**

The "User Acquisition Analytics Service" means the service and Platform that allows you to track clicks and installs of your applications, and that attributes installs and other conversions from traffic acquisition sources such as third-party ad networks, email campaigns, mobile web campaigns or other traffic source, some of which can support third-party URLs, and any UAA Reports or Documentation (each as defined herein). You must use the Analytics Service in conjunction with the User Acquisition Analytics Service. In order to use the User Acquisition Analytics Service, you must (i) integrate the Software into your application and (ii) integrate a tracking URL provided by Flurry into your media campaigns, in some cases (collectively with the Software, the "Platform"), or instruct your advertising partners ("Ad Partners") to initiate callbacks to Flurry in lieu of a tracking URL.

## **Fees and Payment**

Each Service is provided to you free of charge. Flurry may change its fees and payment policies for any Service from time to time. The changes will be posted at <http://www.flurry.com> (or such other URL that Flurry may provide from time to time).

## **Incidental Costs Associated with Use of the Services**

You agree that you are solely liable for all costs, fees, and other expenses resulting from your use of the Services. This specifically includes, but is not limited to, incidental costs incurred by you in connection with your use of the Services, including, but not limited to, costs owed to your cell phone carrier or mobile provider, fees owed to your Ad Partners, monthly cell phone coverage fees, data plan costs, and any other additional fees incurred from your cell phone carrier or mobile provider.

## **Registration**

To register for the Analytics Service, you must complete the registration process at <http://www.flurry.com> (or such other URL that Flurry may provide from time to time) by providing Flurry with current, complete and accurate information. Upon registration for the Analytics Services, you will be required to provide Flurry with your email password and user name. You understand that you are solely responsible for maintaining the confidentiality of your password and that you shall be solely and fully responsible for all activities that occur under your username and password. Flurry shall not be responsible for any loss, claim or other liability that may arise from the unauthorized use of any password. You agree to immediately notify Flurry of any unauthorized use of your password or username or any other breach of security. If a password is lost or stolen, it is the user's responsibility to change the password, and immediately notify Flurry, so that your account remains both secure and functional.

To use the User Acquisition Analytics Service, you must register for the Analytics Service and then follow the instructions provided to you in your Flurry account portal.

## **Reports and Results**

Subject to the terms and conditions of this Agreement, you may remotely access, view and download the Analytics Reports and User Acquisition Analytics Reports ("UAA Reports" and together with the Analytics Reports, the "Reports"), which will be stored at <http://www.flurry.com> (or such other URL that Flurry may provide from time to time). Flurry shall own and retains all right, title and interest in and to Reports and all other results, data and/or information provided to you through the service (collectively, "Results"). You may use the Reports only in connection with your use of the Services pursuant to this Agreement and not for any other purpose.

## Representations and Warranties

You represent and warrant to Flurry that: (i) you are the owner of each application you designate in connection with the use of the Services or that you are legally authorized to act on behalf of the owner of such application for the purposes of this Agreement; (ii) you have all necessary right, power and authority to enter into this Agreement and to perform the acts required of you hereunder and to permit Flurry to perform the Services contemplated under this Agreement; (iii) your use of the Services, the delivery and performance by you of the terms and conditions under this Agreement, and, if applicable, Flurry's use of the data received from your Ad Partners does not and will not conflict with or violate any agreement or other instrument with a third party applicable to you or otherwise infringe upon the rights of any third party; (iv) you have complied and will continue to comply with all applicable laws, statutes, ordinances, and regulations (including, without limitation, any relevant data protection or privacy laws); (v) you will comply with and have any and all consents, authorizations and clearances from end users of your applications and, if applicable, your Ad Partners to allow Flurry to collect, store, and use User Data (as defined herein) from your end users and, as applicable, your Ad Partners; and (vi) you will at all times comply with all applicable Flurry policies.

## Limited License

You are hereby granted a nonexclusive, limited, non-transferable, revocable and non-sublicensable license to install, use, copy and distribute the Agent solely as necessary to use the Services and Platform pursuant to this Agreement for applications that you own and control. Your use of the Software, Platform and accompanying documentation ("Documentation") is subject to this Agreement and does not include: (i) any resale, lease, rental, assignment or other transfer of rights of the Software, Platform or Documentation; (ii) the distribution, public performance or public display of the Software, Platform or Documentation (except as expressly set forth above with respect to the Agent); (iii) modification, revision, creation of derivative works from or otherwise making any derivative uses of the Software, Platform or Documentation or any information or content therein; (iv) decompilation, reverse engineering or otherwise attempting to derive the source code for the Software (except to the extent applicable laws specifically prohibit restriction of such activities); or (v) any use of the Software, Platform or Documentation other than for its intended purpose. Flurry hereby reserves all rights not expressly granted herein. Any use of the Software, Platform or Documentation other than as specifically authorized herein, without the prior written permission of Flurry, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws, including, without limitation, copyright and trademark and other intellectual property laws.

You hereby grant to Flurry the limited right to use your company name, trademarks, service marks and/or logos to identify you as a customer of Flurry in its press releases, marketing publications or websites.

## Privacy and Information Collection

As a condition of your access to the Services, you agree that Flurry has the right, for any purpose, to collect, retain, use, and publish in an aggregate manner, subject to the terms of its Privacy Policy located **here** (or such other URL that Flurry may provide from time to time), information collected in your use of the Services, including without limitation, with respect to the Analytics Service, characteristics and activities of end users of your applications, and, with respect to the User Acquisition Analytics Service, the characteristics and activities of your applications, customers, campaigns, and marketing efforts (collectively, the "User Data"). Unless you are a publisher using Flurry for Publishers, Flurry will not disclose to any third parties any User Data collected by the Services from your applications that is specifically attributable to you, your applications or your customers; provided that Flurry may disclose to your Ad Partners certain User Data necessary for your use of the User Acquisition Analytics Service. If you are using Flurry for Publishers, please review the terms of service for Flurry for Publishers for disclosure of User Data to advertisers. You will not (and will not allow any third party to) use the Services

to track or collect personally identifiable information of end users, nor will you (or will you allow any third party to) associate any data gathered from your application(s) with any personally identifying information from any source as part of your use (or such third parties' use) of the Services. You agree that you have and will abide by a privacy policy that complies with all applicable laws and industry standards and that you will comply with all applicable laws relating to the collection of information from end users of your applications.

You agree that Flurry may use any User Data it receives from your Ad Partners in connection with the User Acquisition Analytics Service. Your agreements with your Ad Partners shall not prohibit you from (i) inserting the User Acquisition Analytics tracking URL in your advertisements or other marketing campaigns and (ii) permitting Flurry to use the User Data it receives from your Ad Partners.

You must post a privacy policy. That policy must (i) provide notice of your use of a tracking pixel, agent or any other visitor identification technology that collects, uses, shares and stores data about end users of your applications (whether by you, Flurry or your Ad Partners) and (ii) contain a link to Flurry's Privacy Policy and/or describe Flurry's opt-out for the Analytics Service to your end users in such a manner that they can easily find it and opt-out of the Analytics Service tracking. The opt-out is specific to Flurry activities and does not affect the activities of other ad networks or analytics providers that you use. If an end user opts-out, Flurry will stop tracking data for the device identified by the provided MAC address and/or device identifier going forward. The Analytics Service tracking will stop across all applications within the Flurry network. You agree to obtain all end-user consents required by applicable law before you use the Services.

You agree that you will not use any Service in connection with any application labeled or described as a "Kids" or "Children" application and will not use any Service (i) in connection with any application, advertisement or service directed towards children, (ii) to collect any personal information from children or (iii) request or permit any Ad Partner to transmit any personal information from children to Flurry.

## **Confidential Information**

"Confidential Information" includes any proprietary data and any other information disclosed by one party to the other in writing and marked "confidential" or disclosed orally and, within ten business days, indicated in writing as "confidential". Notwithstanding the foregoing, Confidential Information will not include any information that is or becomes publicly known, which is already in the receiving party's possession prior to disclosure by a party or which is independently developed or collected by the receiving party without the use of Confidential Information. Neither party will use or disclose the other party's Confidential Information without the other's prior written consent except for the purpose of performing its obligations under this Agreement or if required by law, regulation or court order. Upon termination of this Agreement, the parties will promptly either return or destroy all Confidential Information and, upon request, provide written certification of such.

## **Indemnity**

You agree to indemnify, defend and hold harmless Flurry, its employees, officers and directors, or users from and against any and all claims, liabilities, penalties, settlements, judgments, fees (including reasonable attorneys' fees) arising from (i) any information that you or anyone using your account may submit or access in the course of using the Services; (ii) your breach of any representation or warranty in, or violation of the terms of this Agreement or any agreement or other instrument with a third party applicable to you; (iii) any violation or failure by you or, if you use the User Acquisition Analytics Service, your Ad Partners to comply with all laws and regulations in connection with your use of the Services, whether or not described herein; (iv) any disputes between you and your customers, Ad Partners,

advertisers, third-party ad networks, or publishers; and (v), if you use the User Acquisition Analytics Service, Flurry's receipt of any data from your Ad Partners.

## **Third Parties**

If you use the Services on behalf of any third party, you represent and warrant that you are authorized to act on behalf of, and bind to this Agreement, that third party. You shall ensure that each third party is bound by and abides by the terms of this Agreement. You agree to indemnify, hold harmless and defend Flurry and its parents, subsidiaries, affiliates, officers and employees, at your expense, against any and all third-party claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) incurred by Flurry, arising out of or relating to (i) any representations and warranties made by you concerning any aspect of the Services; (ii) any claims made by or on behalf of any third party pertaining directly or indirectly to your use of the Services; (iii) violations of your obligations of privacy to any third party; and (iv) any claims with respect to acts or omissions of third parties in connection with the Services.

The User Acquisition Analytics Service and Platform may include hyperlinks to third-party websites or resources. Flurry has no control over any third-party websites or resources. You acknowledge and agree that Flurry (i) is not responsible for the availability of or access to any such third-party websites or resources, (ii) does not endorse you, your products or services, or any advertising, products or other materials available on or from such third-party websites or resources, and (iii) is not liable for any loss or damage which you may have incurred as a result of the availability of any third-party website or resources, or lack thereof, or your reliance on the accuracy or completeness of any advertising, products or other resources from such third-parties.

End-users of your products and services, or on whose computer platform you install the Platform, or with whom you perform any other transactions involving the Platform are solely your customers and not customers of Flurry. You are solely responsible for and Flurry has no obligation to monitor or edit, any ads and related URLs, content and subject matter, editorial, text, graphic, audiovisual, and any other information you make available in connection with the User Acquisition Analytics Service. You are solely responsible for all matters related to your Ad Partners, advertisers, third-party ad networks, publishers, and your customers, including without limitation, handling all support services, billing and payment, and any other transactions, inquiries and disputes of any type or nature.

## **Disclaimer of Warranties and Limitation of Liability**

The information and services included in or available through the Services, including the Reports, may include inaccuracies or typographical errors. Flurry may make improvements and/or changes in the Services at any time, with or without notice. You specifically agree that Flurry shall not be responsible for unauthorized access to or alteration of the User Data or data from your applications.

FLURRY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY REGARDING THE SERVICES TO THE FULL EXTENT PERMITTED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE SERVICES ARE PROVIDED "AS-IS" AND WITHOUT WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF PERFORMANCE OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. FURTHER, FLURRY DOES NOT MAKE, AND HAS NOT MADE, ANY REPRESENTATION OR WARRANTY THAT THE SERVICES ARE ACCURATE, COMPLETE, RELIABLE, CURRENT, ERROR-FREE, OR VIRUS-FREE OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED. SOME STATES DO NOT ALLOW EXCLUSION OF AN IMPLIED WARRANTY, SO THIS DISCLAIMER MAY NOT APPLY TO YOU.

IN NO EVENT WILL FLURRY, ITS SUBSIDIARIES, AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS (COLLECTIVELY, THE “FLURRY PARTIES”), BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY UNDER ANY THEORY FOR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, LOST INCOME, REVENUE OR PROFITS, LOST OR DAMAGED DATA, OR OTHER COMMERCIAL OR ECONOMIC LOSS, ARISING OUT OF THIS AGREEMENT OR THE SERVICES, EVEN IF FLURRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE FORESEEABLE. THE FLURRY PARTIES’ AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT OR THE SERVICES WILL NOT EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100) OR THE AMOUNT YOU HAVE PAID US IN THE PAST TWELVE MONTHS. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, THE FLURRY PARTIES’ LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

## **Other Restrictions**

You shall not, directly or indirectly, take or authorize or encourage any third party to take any fraudulent action in the use of the Services, including without limitation, click fraud or fraudulent downloads, nor shall you engage in any activity that interferes with, disrupts or interacts in an unauthorized manner with the Services or Platform (or servers and networks which are connected to the Platform), including but not limited to use of robots, scrapers or other automated query tools and/or computer generated search requests. Flurry may terminate your account at any time for any reason, including without limitation, such fraudulent or unauthorized activity, in its sole discretion.

## **International Use; Export Controls**

Software available in connection with the Services and the transmission of applicable data, if any, is subject to United States export control laws. No Software may be downloaded from the Services or otherwise exported or re-exported in violation of the export control laws of the United States.

## **Modifications to and Termination of the Services**

Flurry reserves the right to discontinue offering the Services or to modify the Services at any time in its sole discretion. If you are dissatisfied with any aspect of the Services at any time, your sole and exclusive remedy is to cease using it. Notwithstanding anything contained in this Agreement to the contrary, Flurry may also, in its sole discretion, terminate or suspend your access to the Services at any time. Upon any termination of this Agreement, Flurry will cease providing the Services, and you will delete all copies of Flurry's analytics site code from your applications and certify thereto in writing to Flurry within five (5) business days of such termination.

## **Waiver and Severability**

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect. Flurry's acquiescence in the breach of a provision of this Agreement or failure to act upon such breach does not waive Flurry's right to act with respect to subsequent or similar breaches. Likewise, the delay or failure of Flurry to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.

## **Choice of Law and Forum**



This Agreement and the relationship between you and Flurry shall be interpreted in accordance with the laws of the State of California without regard to conflict of laws principles. Subject to the arbitration provisions below, you and Flurry hereby agree to submit exclusively, to the personal jurisdiction of the state courts with jurisdiction over San Francisco, California and/or the U.S. District Court for the Northern District of California.

## **Binding Arbitration**

Certain portions of this Section are deemed to be a “written agreement to arbitrate” pursuant to the Federal Arbitration Act. You and Flurry agree that we intend that this Section satisfies the “writing” requirement of the Federal Arbitration Act.

You or Flurry may elect to have any controversy, allegation or claim arising out of or relating to this Agreement, the Services or the User Data, including but not limited to claims for indemnification, contribution, or cross-claims in a pending action involving one or more third parties (collectively, a “Dispute”) finally and exclusively resolved by binding arbitration before a sole arbitrator under the rules and regulations of the American Arbitration Association. If an in-person arbitration hearing is required, then it will be conducted in San Francisco, California; but if the applicable arbitration rules or laws require the arbitration to be conducted in the “metropolitan statistical area” (as defined by the U.S. Census Bureau) where you are a resident at the time the Dispute is submitted to arbitration, Flurry shall have the right to elect to proceed to arbitration in such location. All parties to the arbitration will have the right, at their own expense, to be represented by an attorney or other advocate of their choosing. You and Flurry will pay the administrative and arbitrator’s fees and other costs in accordance with the applicable arbitration rules; but if applicable arbitration rules or laws require Flurry to pay a greater portion or all of such fees and costs in order for this Section to be enforceable, then Flurry will have the right to elect to pay the fees and costs and proceed to arbitration.

TO THE FULLEST EXTENT PERMITTED BY LAW, YOU AGREE THAT (I) NO ARBITRATION SHALL BE JOINED WITH ANY OTHER; (II) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE ARBITRATED ON A CLASS-ACTION BASIS OR TO UTILIZE CLASS ACTION PROCEDURES; AND (III) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC OR ANY OTHER PERSONS.

YOU AGREE TO WAIVE YOUR RIGHT TO A JURY TRIAL AND UNDERSTAND THAT, ABSENT THIS PROVISION, YOU WOULD HAVE THE RIGHT TO SUE IN COURT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IF YOU OR FLURRY WANTS TO ASSERT A DISPUTE AGAINST THE OTHER, THEN YOU OR FLURRY MUST COMMENCE IT WITHIN ONE (1) YEAR AFTER THE DISPUTE ARISES – OR IT WILL BE FOREVER BARRED.

In the event either you or Flurry elects arbitration, for any Dispute where the total amount of the award sought is less than \$10,000 USD, the party requesting relief may further elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration through an established alternative dispute resolution (“ADR”) provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (i) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, and the specific manner shall be chosen by the party initiating the arbitration; (ii) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (iii) any judgment on the award rendered by the arbitrator shall be final and may be entered in any court of competent jurisdiction.

## **Entire Agreement**

This Agreement constitutes the entire agreement between you and Flurry and governs your use of the Services, superseding any prior agreements between you and Flurry with respect to the Services.

## **Survival**

The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance hereof by the Parties hereunder, including but not limited to the provisions relating to Indemnity, Disclaimer of Warranties and Limitation of Liability, shall so survive the completion of the performance, cancellation or termination of this Agreement.