

## **SYMPHONY COMMUNICATION SERVICES, LLC BUSINESS USER TERMS AND CONDITIONS**

WELCOME TO SYMPHONY! PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE ACCESSING AND USING SYMPHONY'S CLOUD-BASED COMMUNICATION SERVICE WHICH PROVIDES A SECURE, EFFICIENT AND ROBUST ECOSYSTEM FOR HIGH-VALUED INFORMATION EXCHANGE (THE "**SYMPHONY SERVICES**").

THESE TERMS AND CONDITIONS (THE "**TERMS**") GOVERN YOUR USE OF THE SYMPHONY SERVICES OFFERED BY SYMPHONY COMMUNICATION SERVICES, LLC, A DELAWARE LIMITED LIABILITY COMPANY ("**SYMPHONY**").

The Symphony Services are available for your use only on the condition that you agree to the terms and conditions set forth below, all with the intention to form a legally binding agreement. By clicking "Accept", accessing or using the Symphony Services, you have indicated that you are at least 18 years of age or older, understand these Terms and accept all its terms. If you are an employee, consultant or contractor using the Symphony Services on behalf of or as part of your work for a company or other entity (the "**Company**") that has entered (or an affiliate of which has entered) into a separate agreement with Symphony (the "**Services Agreement**"), you represent that you are an "**Authorized User**" authorized by such Company to use the Symphony Services and, in such case, references to Services Agreement in these Terms shall be deemed to refer to the Services Agreement between Symphony and such Company (or an affiliate thereof, as applicable), as may be amended from time to time.

### **1. SYMPHONY SERVICES**

**1.1 Authorized User Access Information.** To access the Symphony Services, you will be required to create an account with Symphony or the Company will create an account for you. You will receive a login ID and password via email from Symphony or from the Company, or the Company may opt in for a single sign-on feature, enabling you to access the Symphony Services by signing on through your work credentials (the "**Authorized User Access Information**"). You agree to keep confidential your login IDs or passwords. If a login ID or password is disclosed to any third party or otherwise compromised, you agree to notify Symphony or the appropriate Symphony representative at your Company promptly upon becoming aware of the foregoing. SYMPHONY SHALL NOT BE RESPONSIBLE FOR ANY USE OR MISUSE OF YOUR AUTHORIZED USER ACCESS INFORMATION RESULTING FROM YOUR OR THE COMPANY'S FAILURE TO SECURE YOUR LOGIN ID OR PASSWORD.

**1.2 Grant of License.** Subject to your compliance with the terms and conditions of these Terms, Symphony grants you a non-exclusive, worldwide, non-transferable, and non-sublicensable license to access and use the Symphony Services.

**1.3 Consent.** By accepting these Terms, you acknowledge and consent to the following:

- (a) The collection and use by Symphony, its agents or affiliates, of your personally identifiable information ("**PII**"), whether provided directly by you or by the Company on your behalf, as required to create an account and provide the Symphony Services as described in these Terms and, where applicable, in accordance with the Services Agreement; and
- (b) To the monitoring, storage and access to messages which you post, send or receive (including voice or video chat messages) or any other information or text, audio or video communication exchange ("**Posted Data**") created by you or sent to your Account, by the Company, and where such Posted Data is sent to an Account of an Authorized User of a third party, to the monitoring, storage and access to such Posted Data by that third party.

**1.4 Acceptable Use Policy.** You will be solely responsible for the accuracy, propriety, quality, integrity and legality of all your Posted Data. By accessing or using the Symphony Services, you agree to:

- (a) subject to any conditions, restrictions or constraints imposed on you by the Company, use commercially reasonable efforts to prevent unauthorized access to or use of the Symphony Services and notify Symphony of any such unauthorized access or use promptly upon becoming aware of such access or use;
- (b) not use the Symphony Services or the third-party applications included in or available through the Symphony Services to engage in illegal, fraudulent or other wrongful conduct, including, but not limited to, (a) distributing defamatory, obscene or unlawful Posted Data or content or Posted Data or content that promotes bigotry, racism, misogyny or religious or ethnic hatred, (b) transmitting any information or data that infringes any intellectual property rights of any third party or that is otherwise libelous, unlawful, or tortious, (c) stalking, harassment, or threatening others with violence or abuse, or (d) violation of any applicable law;
- (c) not use the Symphony Services or the third-party applications included in or available through the Symphony Services to send abusive commercial solicitation, such as “junk” messages, spam and pyramid schemes to other users of the Symphony Services without their consents.
- (d) not make the Symphony Services available to anyone other than you;
- (e) not transfer, distribute, sell, resell, lease, sublease, license, or sub-license access to the Symphony Services or the third-party applications included in or available through the Symphony Services;
- (f) not create, modify, distribute, transmit, display, or perform derivative works based on the Symphony Services or any third-party content included in or available through the Symphony Services;
- (g) not copy, frame or mirror any part or content of the Symphony Services or any third-party content or applications included in or available through the Symphony Services;
- (h) not disassemble, decompile or otherwise reverse engineer the Symphony Services or the third-party applications included in or available through the Symphony Services;
- (i) not use the Symphony Services or any third-party content, services or applications included in or available through the Symphony Services to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs;
- (j) not intentionally interfere with or disrupt the integrity or performance of the Symphony Services or third-party data, services or applications contained therein;
- (k) not attempt to gain unauthorized access to the Symphony Services or to any third-party services, content or applications included in or available through the Symphony Services or their related systems or networks;
- (l) not enable others to violate any of these Terms; and
- (m) not make the functionality of the Symphony Services, or of any third-party applications included in or available through the Symphony Services, available to multiple users through any means, including, without limitation, through any hosting, application services provider, service bureau, outsourced or value-added basis or any other type of services;

provided that the foregoing shall not prohibit you from using the Symphony Services in the course of providing services to your customers, if applicable. As Symphony continues to develop and improve the

Symphony Services, Symphony reserves the right to modify the Symphony Services at any time and, where applicable, in the manner consistent with the Services Agreement. In addition, unless otherwise specifically permitted by Symphony in writing, you may not access the Symphony Services for the purposes of monitoring their availability, performance or functionality, or for any benchmarking against third-party services or competitive purposes.

**1.5 Privacy Policy.** Symphony's Privacy Policy can be found at [www.symphony.com](http://www.symphony.com) and governs how Symphony collects, uses and discloses information from its users. By accessing or using the Symphony Services, you expressly consent to Symphony's use of your personal information and data that is posted or uploaded into the Symphony Services by you or the Company, such as name, title, job description, location, email alias, email address and any other information about you or that can be used to identify you ("**Profile Data**") in accordance with the Privacy Policy. The terms and conditions set forth in Symphony's Privacy Policy can be changed by Symphony in its sole discretion and those changes become effective upon posting. It is your responsibility to review the Privacy Policy for changes thereto.

**1.6 DMCA.** Symphony respects the intellectual property of others and asks that you do too. Symphony's policy is to terminate in appropriate circumstances users who repeatedly infringe the rights of copyright holders.

**1.7 Links to Third Party Websites or Resources.** The Symphony Services may contain links to third-party websites or resources. Symphony provides these links only as a convenience and, to the extent permitted by applicable law, is not responsible for the content, products or services on or available from those websites or resources or links displayed on such websites. You acknowledge your responsibility for and assume all risk arising from, your use of any third-party websites or resources.

## **2 OWNERSHIP**

**2.1 Ownership of Symphony Services.** Subject to the limited rights expressly granted hereunder, Symphony reserves all rights, title and interest in and to the Symphony Services including all related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.

**2.2 Ownership of your Posted Data.** As between Symphony and you, you exclusively own all rights, title and interest in and to all of your Posted Data and Symphony acknowledges it will not acquire any rights in Posted Data other than with respect to your approved use of your Profile Data in accordance with Section 1.5 above. By making your Posted Data available through the Symphony Services you hereby grant to Symphony a non-exclusive, transferable, sublicensable, worldwide, royalty-free license to use and distribute your Posted Data in connection with operating and providing the Symphony Services to the Company and for use by you.

**2.3 Feedback.** You may, at your option, provide Symphony with feedback, comments, and suggestions for improvements to the Symphony Services (collectively, "**Feedback**"). You hereby grant to Symphony a non-exclusive, worldwide, perpetual, irrevocable, fully paid-up, royalty-free, sublicensable and transferable license to any Feedback under any and all intellectual property rights that you own or control.

**3 NO WARRANTY.** EXCEPT, WHERE APPLICABLE, AS SET FORTH IN THE SERVICES AGREEMENT, THE SYMPHONY SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. SYMPHONY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM SYMPHONY OR ELSEWHERE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.

**4 LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE SET FORTH IN THE SERVICES AGREEMENT (IF APPLICABLE), UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY WILL SYMPHONY BE LIABLE TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR THE USE OR OPERATION OF THE SYMPHONY SERVICES, DAMAGES ARISING FROM ANY LOSS OF DATA, LOSS OF PROFITS, LOST SALES OR BUSINESS INTERRUPTION OF ANY CHARACTER, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF SYMPHONY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SYMPHONY BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY DAMAGES IN EXCESS OF THE FEES PAID BY YOU TO SYMPHONY (WHERE APPLICABLE, NOT INCLUDING ANY FEES PAID BY YOUR EMPLOYER UNDER A SERVICES AGREEMENT) FOR USE OF THE SYMPHONY SERVICES IN THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO ANY LIABILITY.

## **5 CONFIDENTIAL INFORMATION**

**5.1 Definition.** “**Confidential Information**” means information or data supplied in confidence by or on behalf of one party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), or acquired by the Receiving Party pursuant to these Terms. Confidential Information includes all information that is marked as confidential or that a reasonable person should consider confidential in the context of its disclosure or due to the nature of the information itself, and may include technical and non-technical information, intellectual property rights, know-how, designs, techniques, plans, forecasts, projects, analyses, financial information and fee structures, or any other information relating to any research project, work in process, future development, marketing or business plans or financial or personnel matters relating to either party.

**5.2 Exclusions.** The obligations and restrictions set forth in this Section 5 will not apply to any information that: (i) is or has become publicly available other than through an act or omission of the Receiving Party in breach of these Terms; (ii) was provided to the Receiving Party by a third party who was not under an obligation of confidentiality to the Disclosing Party; (iii) was in the possession of the Receiving Party at the time of the disclosure; or (iv) was independently developed by the Receiving Party.

**5.3 Use and Disclosure Restrictions.** The Receiving Party will maintain all Confidential Information of the Disclosing Party in confidence and will safeguard such Confidential Information with the same care as (i) in your case, with which you protect the comparable Confidential Information of the Company (if applicable, and if not so applicable, your Confidential Information) and (ii) in Symphony’s case, with which Symphony protects the comparable Symphony Confidential Information, but in no case with less than a reasonable degree of care. The Receiving Party will: (a) to the extent the Receiving Party is an employee, consultant or contractor using the Symphony Services on behalf of or as part of the Receiving Party’s work for the Company, only disclose the Disclosing Party’s Confidential Information to (where applicable) those of Company’s employees, directors, officers or agents (or those of its respective affiliates) on a need-to-know basis to perform obligations and exercise such Receiving Party’s rights under these Terms, and (b) only use the Disclosing Party’s Confidential Information to perform such Receiving Party’s obligations or exercise such Receiving Party’s rights under these Terms and in accordance with applicable data privacy laws. The provisions of this Section 5.3 shall remain in effect for a period of three (3) years after the expiration or termination of these Terms.

**5.4 Permitted Disclosures.** Subject to, (i) in your case, any Company policy (if and where applicable) which governs provision of Confidential Information to third parties and (ii) in case of Symphony, the provisions of the Services Agreement which govern provision of Confidential Information to third parties, a Receiving Party may provide the Confidential Information to a Governmental Authority if: (a) such Confidential Information is required to be filed with or disclosed to any Governmental Authority, or (b) the Receiving Party is requested to do so by such Governmental Authority and such

Governmental Authority has regulatory authority over such Receiving Party. In each such event, the Receiving Party will promptly notify the Disclosing Party of the intended disclosure, so that the Disclosing Party may take any actions available to such Disclosing Party to file an objection to the intended disclosure with the applicable Governmental Authority, or seek to prevent it through judicial process or similar means. Notwithstanding the foregoing, notice and an opportunity to object will not be required where prohibited by applicable law or if the intended disclosure is to a Governmental Authority with supervisory authority over the Receiving Party, which disclosure will be permitted without any requirement of notice to any person or entity. In each such event, the Receiving Party will take the same action with respect to preserving the confidentiality of Confidential Information (by way of example only, by requesting confidential treatment) as such Receiving Party would take (A) in your case, with respect to the comparable Confidential Information of the Company (if applicable, and if not so applicable, your Confidential Information) and (B) in Symphony's case, with respect to the comparable Symphony Confidential Information. For the purposes of these Terms, the term **"Governmental Authority"** means any nation or government, any state or other political subdivision thereof, and any supra-national, governmental, federal, state, provincial, local governmental or municipal entity or authority and any self-regulatory organization with the meaning of the U.S. Securities Exchange Act of 1934 or any equivalent foreign statute.

## 6 TERM AND TERMINATION

**6.1 Term.** These Terms commence on the date that you first access or use the Symphony Services and will continue in effect for the term of the applicable subscription period under any Services Agreement between Symphony and the Company (if applicable) or until otherwise terminated by you or Symphony. Upon termination of these Terms for any reason, you will cease your use of the Symphony Services.

**6.2 Termination.** Where either your Company or Symphony terminates the Services Agreement or where you or your Company instruct Symphony to terminate your Account, you will cease to have rights to use the Symphony Services as an Authorized User (if applicable) or in your individual capacity from the effective date of such termination. You also acknowledge that certain PII may remain in archived/backup copies held by Symphony and/or the Company in accordance with the retention practices of Symphony or of the Company in accordance with such party's private policy or as otherwise required by law. In the absence of a Services Agreement, (a) you may terminate these Terms at any time by discontinuing your use of the Symphony Services and (b) Symphony may terminate these Terms immediately for any or no reason, without notice. Symphony may terminate these Terms immediately upon notice by email to you in the event of a material breach by you (as determined by Symphony in good faith) of these Terms. You acknowledge and agree that your Account may be subject to your Company's control and that your Company may restrict or terminate your access to the Symphony Services, and these Terms, at any time.

**6.3 Surviving Provisions.** Sections 2, 3, 4, 5, 6.1, 6.3, and 7 will survive the termination or expiration of these Terms for any reason whatsoever.

## 7 GENERAL

**7.1 Relationship of the Parties.** Nothing in these Terms will be construed to create a partnership, joint venture or agency relationship between the parties.

**7.2 Miscellaneous.** Neither party will have the power to bind the other or to incur obligations on the other's behalf without such other party's prior written consent. These Terms will be governed by and construed in accordance with the laws of the State of New York applicable to contracts to be performed wholly within such state. The United Nations Convention on Contracts for the International Sale of Goods will not apply. The following provision will only apply to you to the extent you are an employee, consultant or contractor using the Symphony Services on behalf of or as part of your work for a Company that has entered into a Services Agreement with Symphony: any action, dispute, claim or controversy, whether in contract or tort, statutory or common law, legal or equitable, or under any

law or regulation, now existing or hereafter arising under or in connection with, or in any way pertaining to, these Terms, will be resolved by arbitration in accordance with the arbitration provisions of the Services Agreement, mutatis mutandis, as if the references to the parties to the Services Agreement therein were references to you and Symphony. Neither party may assign or transfer these Terms or any rights granted hereunder, by operation of law or otherwise, without the other party's prior written consent, except that Symphony may transfer these Terms without consent (a) in connection with the assignment of the Services Agreement, (b) to a successor of all or substantially all assets of its business and (c) to an acquirer pursuant to any direct or indirect change in control of Symphony, including without limitation, pursuant to any merger, acquisition, consolidation, or other corporate restructuring in which Symphony participates. Any attempted assignment, delegation or transfer by any party in violation of the previous sentence will be null and void. Except as expressly set forth in these Terms, the exercise by either party of any of such party's remedies under these Terms will be without prejudice to such party's other remedies under these Terms or otherwise. Failure or delay by either party to enforce any provision of these Terms will not be deemed a waiver of future enforcement of that or any other provision. No amendment or modification to these Terms, nor any waiver of any rights hereunder, will be effective unless narrowly specified and assented to in writing by both parties. Any such waiver will not apply with respect to any repeated or continued violation of the same provision or any other provision. If a court of competent jurisdiction determines that any provision, covenant or condition of these Terms, or the application hereof to any person, entity or circumstance is deemed invalid or to any extent unenforceable, that wording insofar as it relates to that person, entity or circumstance will be deemed not to be included in these Terms, and the balance of these Terms will remain in full force and effect and continue to be binding upon the parties. Subject to Section 7.3, where applicable, these Terms constitute the entire and exclusive agreement between the parties with respect to the subject matter hereof and supersedes all prior communications, proposals, representations, agreements and understandings, whether written or oral, relating to its subject matter. Symphony may need to amend and update these Terms from time to time and when Symphony does so, Symphony will provide notice of such amendment or updates by informing your Company or by posting the modified Terms on its website or through the Services or other communications. It is important that you review the modified Terms because if you continue using the Symphony Services after Symphony posted the modified Terms, you are indicating that you agree to be bound by the terms of the modified Terms. If you do not agree to such amendments and updates, you will not be able to continue to use the Symphony Services.

**7.3 Conflict.** Notwithstanding any other provisions of these Terms, nothing in these Terms will limit or change the terms or conditions of the Services Agreement (where applicable). In the event of any conflict or inconsistency between these Terms and the Services Agreement, these Terms and the Services Agreement, shall be interpreted in such a manner as to give effect to both to the extent possible. In the event that it is not possible to so interpret any provision of these Terms and the Services Agreement, the applicable provision of the Services Agreement shall govern.

**7.4 Contact Information.** If you have any questions about these Terms or the Symphony Services, please contact Symphony at [sales@symphony.com](mailto:sales@symphony.com), 1117 S. California Avenue, Palo Alto, California 94304, USA.