

Kinvey, LLC (“Kinvey”, “we”, “us”, or “our”) offers a backend as a service platform that makes it easy for developers and enterprises to setup, use and operate a cloud backend for mobile and tablet applications (“Apps”), and a number of related services (collectively, any such services, the “Services”).

This End User License Agreement and Terms of Service (the “EULA”) together with the Terms of Use for our website (the “Site”) located at <https://www.kinvey.com/terms-of-use> and our Privacy Policy located at <https://www.kinvey.com/privacy> (collectively, the “Terms”), form a binding agreement between you and us when you use or access the Services, including the ones we call “Developer” and “Startup” or develop an App on behalf of someone else (each a “Facilitating Developer”) (collectively, any Facilitating Developer and subscriber, a “Customer”, “you” or “your”). You refers to the person accessing or using the Services, or, if the Services are being used on behalf of an organization, such as but not limited to an employer or someone designated, “you” means such organization. In the latter case, the person accessing or using the Services represents and warrants that he or she has the authority to do so and to bind such organization to these Terms. The Terms limit our liability and obligations to you, impose certain obligations on you, allow us to suspend or terminate your access to and use of the Services, and provide you with other important information with respect to the provision of the Services and your use thereof.

The Terms are subject to occasional revision. If we make any material changes, we may notify you by sending you an e-mail to the last e-mail address you provided to us (if any) and / or by prominently posting notice of the changes on our Site. Any changes to the Terms will be effective upon the earlier of thirty (30) calendar days following our dispatch of an e-mail notice to you (if applicable) or thirty (30) calendar days following our posting of notice of the changes on our Site. These changes will be effective immediately for new users of the Services. You are responsible for providing us with your most current e-mail address. In the event that the last e-mail address that you have provided us is not valid, or for any reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice. We encourage you to periodically review the Terms to be informed with respect to your and Kinvey’s rights and obligations with respect to the Services. Continued use of the Services following notice of such changes will indicate your acknowledgement of such changes and agreement to be bound by the new, modified Terms.

PLEASE READ THE TERMS CAREFULLY. YOU AGREE THAT BY REGISTERING AS A USER, BY ACCESSING OR USING THE SERVICES OR BY DOWNLOADING ANY KINVEY SOFTWARE (WHETHER FROM THE SITE OR FROM A THIRD PARTY WEBSITE HOSTING SUCH SOFTWARE) YOU ARE BOUND BY THE TERMS.

IF YOU DO NOT WISH TO BE BOUND BY THE TERMS, YOU MAY NOT ACCESS OR USE THE SERVICES. IF YOU DO NOT WANT TO BE BOUND BY THE TERMS, DO NOT CONCLUDE THE REGISTRATION PROCESS AND DO NOT ACCESS, VIEW, DOWNLOAD OR OTHERWISE USE THE SERVICES OR THE KINVEY SOFTWARE. BY COMPLETING THE REGISTRATION PROCESS YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THAT YOU AGREE TO BE BOUND BY ALL OF ITS PROVISIONS.

YOU ALSO AGREE TO THE USE OF ELECTRONIC COMMUNICATIONS (WE DON’T USE PAPER!) IN ORDER TO ENTER INTO THIS AGREEMENT AND TO THE ELECTRONIC DELIVERY OF NOTICES AS DESCRIBED BELOW.

1. REGISTRATION. When you register to use the Services, we will ask for your name, email address and other related information and assuming we don’t find the information you provide to be of concern, we will create an account (“Account”) for you. As part of the registration process you (or we at your request) will create a user ID and password for each of your developers and / or other admin users (collectively “Admin Users”) and provide security protocols, policies, network links and connections for each (the “Access Credentials”). Anything your employees and agents do, as Admin Users, will be considered your act or omission, and so when we say in these Terms “you” will do this or “you” won’t do that, we mean you and your Admin Users will do this or you and your Admin Users won’t do that. Here is an example: the information you provide to us, as part of the registration process must be true, accurate, current and complete. If we believe or suspect that your information is not true, accurate, current or complete, we may deny or terminate your access to the Services (or any portion thereof). (See, we said “you”, with the understanding that “you” includes your Admin Users.)

3. ELIGIBILITY; TYPES OF ACCOUNTS; FEES AND PAYMENT. To be eligible to use the Services, you must meet the following criteria and represent and warrant that you: (1) are 18 years of age or older; (2) are not currently restricted from the Services, (3) are not a competitor of Kinvey or are not using the Services for reasons that are in competition with Kinvey; (4) have full power and authority to enter into this EULA and the Terms and doing so will

not violate any other agreement to which you are a party; (5) will not violate any rights of Kinvey, including intellectual property rights such as copyright or trademark rights; (6) will comply with the Terms as the same may be amended from time to time; and (7) agree to provide at your cost all equipment, software, and internet access necessary to use the Services.

Kinvey offers both a restricted free “Developer” account (“Free Account”) and a paid premium “Startup” account (“Premium Account”). More information on the types of accounts that Kinvey offers and the costs involved can be found <https://www.kinvey.com/pricing>. Please read this document in its entirety regarding account restrictions. Kinvey reserves the right, at any time, to change or impose fees for access to and use of the Services or any element thereof.

If you subscribe to a Premium Account, you agree to Kinvey storing your payment card information. You also agree to pay the applicable fees for the Premium Account (including, without limitation, periodic fees for premium accounts) as they become due plus all related taxes, and to reimburse us for all collection costs and interest for any overdue amounts. Your obligation to pay fees continues through the date you cancel your subscription. We may take up to sixty (60) days to debit or charge your payment method, but we reserve the right to charge or debit your payment method each month within ninety (90) days of the end of the month in which the Services were delivered. By providing Kinvey with your payment card information or Pay Pal account authorization you authorize us to charge or debit your payment method the applicable fees in accordance with the applicable payment schedule. You agree to immediately notify us of any change in your payment information. If we are unable to receive payment of the applicable amount (e.g., your payment method has expired and has not been replaced), we may suspend or terminate your access to the Services and this EULA. Kinvey reserves the right at any time to change our billing methods, either immediately upon posting on the Website or by e-mail delivery to you. All fees and charges are nonrefundable and there are no refunds or credits for partially used periods. You may cancel your Premium Account as set forth on our customer support webpage at <https://support.kinvey.com/>.

You agree to pay any and all sales, use, excise and other taxes applicable to your use of the Services (other than taxes on Kinvey’s income), if any. To the extent that we have nexus with the taxing jurisdiction in which you are located, we may collect any applicable tax from you. You authorize us to charge or debit your payment method the applicable tax in conjunction with your payment of the associated fees.

**4. USE OF THE SERVICES; YOUR ACCOUNT; TERMINATION.** In using the Services, you must abide by the Terms, use the Services in accordance with the Terms any documentation or policies we make available to you, and comply with applicable local, state, national and foreign laws, including those related to data privacy and intellectual property. You may not use your Account in a misleading or unlawful manner, including in a manner intended to trade on the name or reputation of others.

You are responsible for safeguarding the Access Credentials that you use to access the Services and agree to keep your Access Credentials secure and confidential. You also agree that, unless in relation to a third party that may have made available to you in connection with your use of the Services or otherwise through the Services a Software (as defined in Section 6 below), your Admin Users (1) will not provide their Access Credentials to anyone else; (2) not permit others to use your account; and (3) refrain from using other users’ accounts. You will refrain from charging anyone for access to any portion of the Services, your account, or any information therein. You acknowledge that if you wish to protect your transmission of data and/or files to Kinvey, it is your responsibility to use a secure encrypted connection to communicate with and/or utilize the Services.

We rely on the Access Credentials as a method to differentiate one user from another. If someone else is using your Access Credentials, we will assume they are you and we’ll give them access. (Don’t forget, “you” includes your Admin Users for whom you are responsible). You will be responsible for all activity carried out under your Account using Access Credentials made available to you and anything that happens through your account, whether or not you have authorized such activities or actions, until you close your account or prove that your account security was compromised due to no fault of your own. If you know or suspect that someone has gained unauthorized access to Access Credentials made available to you, you agree to immediately let us know. We’ll turn off the compromised Access Credentials and issue new Access Credentials. We reserve the right to take any action we deem necessary or reasonable to ensure the security of the Services and your Account, including terminating your access or the access of any of your Admin Users or App Users, changing passwords, or requesting additional information to authorize activities related to your Account. In no event and under no circumstances will we be held liable to you for any liabilities or damages resulting from or arising out of: (i) any action or inaction on our part under this provision, (ii) any compromise of the confidentiality of your Account, and (iii) any unauthorized access to or use of your Account.

You may terminate your account and your use of the Services by emailing [support@kinvey.com](mailto:support@kinvey.com). Kinvey may terminate your account and your use of the Services as described in this EULA. Upon any such termination, this EULA and all rights granted to you under this EULA will immediately terminate, and you will (a) immediately cease using the Services, and (b) pay all fees for amounts incurred prior to termination. Upon any termination, Kinvey will have the right to terminate your account and delete any and all Apps, Content, data and any other information or materials associated with your account or your use of the Services and Kinvey will not be liable to you or any third party (including, without limitation, App Users) for any termination of access to the Services or Apps, or deletion of Apps or Content and any other information or materials associated with your account or your use of the Services. The following sections of this EULA will survive termination: this paragraph and Sections 5 and 12 through 20, as well as any obligations to pay outstanding fees, other limitations on liability expressly provided, and any licenses that are expressly stated to be perpetual or survive this Agreement.

5. OWNERSHIP. You understand and acknowledge that the software, code, tools, libraries, links, proprietary methods and systems, know-how, and other technology used to provide the Services or made available to you as part of the Services (collectively, "Our Technology"): (i) copyrighted by us and/or our licensors under United States and international copyright laws; (ii) subject to other intellectual property and proprietary rights and laws; and (iii) owned by us or our licensors. Except as expressly provided in the documentation accompanying the Services, Our Technology may not be copied, modified, reproduced, republished, posted, displayed, transmitted, sold, offered for sale, or redistributed in any way, and you may not make any derivative works of our Technology, without our prior written permission. You must abide by all copyright notices, information, or restrictions contained in or attached to any of Our Technology. Nothing in these Terms grants you any right to receive delivery of a copy of Our Technology or to obtain access to Our Technology except as generally and ordinarily permitted through the Services according to this EULA.

In the event that you provide us any ideas, thoughts, criticisms, suggested improvements or other feedback related to the Our Technology (collectively "Feedback"), including in response to any product plans or roadmaps we share with you, you hereby grant to Kinvey a worldwide, royalty-free, fully paid, perpetual, irrevocable license to use, reproduce, modify, translate, distribute, perform, display, import, sell, license, offer for sale, make, have made and otherwise exploit the Feedback in any form, media, or technology, whether now known or hereafter developed, and to allow others to do the same without restriction or obligation of any kind, on account of confidential information, intellectual property rights or otherwise, and may incorporate into its services any service, product, technology, enhancement, documentation or other development ("Improvement") incorporating or derived from any Feedback with no obligation to license or to make available the Improvement to you or any other person or entity. This is true whether you provide the Feedback on the Site or through any other method of communication with us, unless we have entered into a separate agreement with you that provides otherwise.

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i. License Restrictions. You shall not use, access, download or install any Software that is accompanied by or includes a license agreement unless you agree to the terms of such license agreement. Unless the accompanying license agreement expressly allows otherwise, any copying or redistribution of the Software is prohibited, including any copying or redistribution of the Software to any other server or location, or redistribution or use on a service bureau basis. If there is any conflict between this EULA and the license agreement, the license agreement shall take precedence in relation to that Software; provided, however, that if no license agreement accompanies use of the Software, use of the Software will be governed by this EULA and the following license grant: subject to your compliance with the EULA, the Company grants you a non-assignable, non-transferable, non-sublicensable, revocable, non-exclusive license to use the Software for the sole purpose of enabling you to use the Services in the manner permitted by this EULA.

ii. Open Source. Some Software or components embedded or incorporated therein may be offered under an open source license (such as the GNU General Public License, the GNU Lesser General Public License, the Apache License, the Berkeley Software Distribution License, and the Sun Public License) that we will make available to you. Such software is licensed separately pursuant to the terms and conditions of its respective open-source software licenses. You agree to comply with the terms and conditions of such open-source software license agreements. You will have only such rights and/or licenses, if any, to use and distribute the open source license as are set forth in the relevant agreements listed on the "about" page of the Software.

iii. Pre-Release. If the Software is a pre-release version, then, notwithstanding anything to the contrary included within an accompanying license agreement, you are not permitted to use or otherwise rely on the Software for any commercial or production purposes.

7. RIGHT OF ACCESS; RESTRICTIONS; CODE; CHANGES. On the condition that you comply with all your obligations under the Terms, Kinvey hereby grants to you a limited, revocable, non-exclusive, non-transferable, non-sublicensable right to access through a generally available web browser or mobile device or application (but not through scraping, spidering, crawling or other technology or software used to access the Services without the express written consent of Kinvey) and use the Services, solely for purposes of developing Apps and setting up and maintaining a cloud backend for your Apps in accordance with the Terms. Any other use of the Services is strictly prohibited and a violation of the Terms. We reserve all rights not expressly granted in this EULA.

Your use of the Services are limited by the usage restrictions set forth in on our website at the time you subscribe to the Services, and any use of the Services in ways that exceed the usage restrictions will be a breach of this EULA. You may have the ability to create and upload onto the Services certain software code and integration scripts (expressly excluding any of Our Technology, the "Code"). Subject to the terms and conditions of this Agreement, you hereby grant Kinvey a non-exclusive license to inspect the Code to ensure its compliance with our Services and to use and modify the Code as necessary or desired to provide and improve the Services. We may modify or disable any Code at our discretion. You represent and warrant that the Code will not contain any open source software that is governed by a license that imposes a requirement or condition that any Kinvey software: (A) be disclosed or distributed in source code form; (B) be licensed for the purpose of making modifications or derivative works; or (C) be redistributable at no charge.

You have the right to access and use the Services as they exist on any given day and Kinvey has no other obligation with respect to updating, improving, maintaining, or making available the Services. Further, Kinvey may update, modify, revise, replace, refuse access to, suspend or discontinue the Services, partially or entirely, or change and modify prices for all or part of the Services in Kinvey's sole discretion. All of these changes shall be effective upon their posting on our site or by direct communication to you unless otherwise noted. If you object to any such changes, your sole recourse will be to cease use of the Services. Continued use of the Services following notice of any such changes will indicate your acknowledgement of and agreement to such changes. You agree that we, in our sole discretion, may immediately terminate your access to the Services at any time, for any reason. **YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY TERMINATION OF YOUR ACCESS TO THE SERVICES OR FOR ANY CHANGES WE MAY MAKE.**

8. RULES REGARDING APPS AND CONTENT. When we refer to your "Content," we mean Code, data uploaded from data sources, and all other software code, web pages, text, videos, images, audio clips, photos, graphics, advertisements, sponsorships and/or other types of content or data posted to our forums or provided or uploaded by you, Admin Users or App Users whether through the Site, Services or any App, and all information collected by your App.

You are responsible for any Content submitted and made available through the Services and/or your App. You will be entirely responsible for each individual item of Content provided by you, Admin Users or App Users through the Services, and, as between you and us, you retain ownership and any intellectual property rights in such Content. You will, at your own expense, obtain all third party licenses, consents and / or permissions that may be necessary or appropriate with respect to such Content to enable each party to exercise its rights and perform its obligations under this EULA. This means that you will secure any such rights from App Users through a separate terms of service as further defined in Section 10 below. You hereby grant us a hereby grant Kinvey a world-wide, royalty free, fully paid up, irrevocable, perpetual, transferable, sublicenseable license, under all of your intellectual property rights, to use, copy, transmit, publicly display, publicly perform, create compilations including, create derivative works of, and distribute such Content (including your Apps) to publish and promote such Content (including your Apps) for the purposes of performing the Services and to permit our third party service providers and vendors to exercise our rights on our behalf in connection with our provision of the Services. Such licenses shall apply with respect to any form, media, or technology now known or later developed.

You represent and warrant that the Apps and the Content:

- will not and does not infringe the copyright, trademark, trade secret, or other intellectual property or proprietary right of others;

- will not and does not violate the privacy, publicity, or other rights of third parties or any other law, statute, ordinance or regulation;
- is not and will not be false, inaccurate or misleading;
- is not and will not be in violation of any applicable industry self-regulatory standards;
- will not and does not violate your own privacy policy or collect information from App Users in any manner to which such App Users have not consented;
- is not and will not become unlawful, tortious, fraudulent, defamatory, harmful to minors, obscene, pornographic, or offensive as determined by us in our sole discretion;
- will not promote bigotry, racism, hatred or harm against any individual or group as determined by us in our sole discretion;
- will not and does not misrepresent the source of the Content;
- will not and does not disclose or provide information protected under any law, agreement or fiduciary relationship, including but not limited to proprietary or confidential information of others;
- will not and does not misrepresent your identity in any way;
- will not and does not contain any viruses, Trojan horses, spyware, malware, worms, time bombs, cancelbots, or other disabling devices or other harmful component intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information;
- will not and does not advocate or encourage any illegal activity;
- will not violate, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; or
- will not and does not have the potential to create liability for us, or cause us to violate any applicable laws, rules, regulations or guidelines, or cause us to violate the requirements of our third party service providers or vendors or result in any suspension of the Services.

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9. GENERAL RULES OF CONDUCT. It is our goal to make access to our Services a good experience for all of our customers and their users. You agree not to, and represent and warrant that you will not and your Admin Users and App Users will not:

- Use, reproduce, adapt, alter, modify, improve, translate, sell, resell or exploit any portion of the Services or your use of the Services, for any purpose other than that for which the Services are being provided to you;
- Conduct or promote any illegal activities while using the Services;
- Attempt to probe, scan, or test the vulnerability of any system or network associated with the Services or breach any security or authentication measures;
- Attempt to reverse engineer or jeopardize the correct functioning of the Services, or otherwise attempt to derive the source code of the software (including the tools, methods, processes, and infrastructure) that enables or underlies the Services;
- Promote or advertise any item, good or service that: (i) violates any applicable federal, state, or local law or regulation, (ii) violates the terms of service of any website upon which the Content is viewed, or (iii) Kinvey determines, in its sole discretion, is inappropriate to be promoted through the Services;

- Collect, use or disclose data from App Users, or otherwise operate, in any way violating applicable laws, rules, regulations, guidelines, industry self-regulatory standards or your own privacy policy;
- Attempt to gain access to secured portions of the Services to which you do not possess access rights;
- Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending malicious code, overloading, flooding, spamming, or mail-bombing the Services; or plant malware on Kinvey's computer systems, those systems of Kinvey's third party service providers or vendors, or otherwise use the Service to attempt to upload and/or distribute malware;
- Upload or transmit any form of virus, worm, Trojan horse, or other malicious code;
- Use the Services to generate unsolicited email advertisements or spam;
- Use the Services to stalk, harass or harm another individual; use any high volume automatic, electronic or manual process to access, search or harvest information from the Services (including without limitation, robots, spiders or scripts);
- Interfere in any way with the proper functioning of the Services or interfere with or disrupt any servers or networks connected to the Services, or disobey any requirements, procedures, policies or regulations of networks connected to the Services; or
- Impersonate any person or entity, or otherwise misrepresent your affiliation with a person or entity.

Kinvey has the right to investigate and prosecute violations of any of the above, including intellectual property rights infringement and security concerns, to the fullest extent of the law and may involve and cooperate with law enforcement authorities in prosecuting users who violate these restrictions.

10. TERMS APPLICABLE FOR APPS THAT HAVE CONSUMER APP USERS; APP TERMS OF SERVICE; PRIVACY. This Section 10 is applicable only to Apps that have Consumer App Users. "Consumer App Users" are App Users who are not your employees, independent contractors or agents.

- (a) App Terms of Service. This section governs the relationship between Customers and Kinvey. This section does not govern the relationship between you and Consumer App Users of your App. You agree that each App made available to Consumer App Users will have a terms of service that disclaim any of Kinvey's liability and damages (including all direct, consequential, incidental, indirect, special and punitive damages) for the Consumer App User's use or inability to use the App. As you are responsible for the acts and omissions of your Consumer App Users under these Terms, we also recommend that any such terms of service contain provisions similar to those in Sections 4, 5, 8 and 9. You are responsible for supporting your App Users.
- (b) Kinvey's Privacy Policy. Kinvey's information collection, use and disclosure practices with respect to personal information and Consumer App User information provided to us through your Apps are described more fully in our Privacy Policy. You grant us a non-exclusive, perpetual, worldwide, fully paid up, royalty free, and irrevocable right and license to collect, use and disclose the information as provided in our Privacy Policy.
- (c) Your Privacy Policy. In conformance with applicable law and industry self-regulation, each of your Apps made available to consumers should make the appropriate disclosures regarding information (including personal information and any information collected from third party data providers) that the App collects, how it is used and how it is disclosed. These disclosures should include how Kinvey will use the personal information collected in your App as described in Kinvey's Privacy Policy. You acknowledge that, in conformance with applicable law or industry standards, your App may not collect certain types of sensitive information from App Users without an opt-in by such App Users, including, without limitation, information about children and adolescents, medical information, financial information and account numbers, Social Security numbers, sexual orientation information, government-issued identifiers, and precise geographic location.

11. THIRD PARTY SERVICES, CONTENT AND OTHER WEBSITES. Content, software or services provided by third parties may be made available to you through or in connection with the Services. For instance, you may be able to integrate your App with third party data sources or third party libraries. Your use of any third party content, software or services is governed by the terms of the applicable service provider or licensor, not this EULA. By accessing the third party content, software or services, you agree to comply with the applicable terms and acknowledge, that you, and not Kinvey, are party to such terms. In order to properly integrate your App with a third party service, Kinvey may require that you disclose to Kinvey your API key. You represent and warrant that providing the API key to Kinvey is not a breach of your agreement with the third party service provider. Kinvey will use the API key solely on your behalf to communicate with the third party service provider and in no event will Kinvey be construed to be a party to any third party provider terms.

In all cases, Kinvey is not responsible for the accuracy, legality, currency, suitability or quality of content, software or services or the privacy or other practices of such third parties. Further, you understand that by using the Services, or if you use Apps that are developed and / or hosted by Kinvey, you may be exposed to third-party websites, content or Apps that you find offensive, indecent or otherwise objectionable. We make no warranty, representation, endorsement, or guarantee regarding, and accept no responsibility for, the quality, content, nature or reliability of the websites, products, services or Apps accessible by hyperlink or otherwise from the Services. We provide these links for your convenience only and we do not control such websites or Apps. Our use of third party services to power the Services, and our inclusion of links to such websites, does not imply any endorsement of the services or materials on such third party websites or any association with their operators. We assume no responsibility for unintended, objectionable, inaccurate, misleading, or unlawful content made available by other users, advertisers, and other third parties or violation of any third party rights related to such content. YOU AGREE THAT IN NO EVENT WILL WE BE LIABLE TO YOU IN CONNECTION WITH ANY APPS HOSTED BY THE SERVICES OR THE CONTENT, SOFTWARE, SERVICES OR PRACTICES OF ANY THIRD PARTY.

12. CONFIDENTIAL INFORMATION. The confidential information ("CI") of Kinvey will mean any and all technical and non-technical information disclosed by Kinvey to you during the term of your subscription to the Services that is either identified by Kinvey as confidential or that a reasonable person would understand to be confidential. For purposes of clarification, you agree that Our Technology, and information about Our Technology, will be deemed CI of Kinvey. CI may include without limitation: (a) trade secrets, inventions, ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs, and techniques; (b) information regarding products, plans for research and development, roadmaps, marketing and business plans, budgets, financial statements, contracts, prices, suppliers, and customers; and (c) information regarding the skills and compensation of Kinvey employees, contractors, and other agents. You agree that you will: (i) hold in strict confidence and not disclose to any third party, any CI of Kinvey, except as specifically approved in writing by Kinvey; (ii) protect such CI with at least the same degree of care that you use to protect your own highly confidential CI, but in no case less than a reasonable degree of care; (iii) use CI for no purpose other than as specifically authorized herein; (iv) if you are an entity, limit access to the CI to those employees or authorized representatives having a need to know who have signed confidentiality agreements substantively as protective of Kinvey CI as these terms; and (v) immediately notify Kinvey upon discovery of any loss or unauthorized disclosure of CI. You will not reproduce CI in any form except as required to exercise your rights under these terms. Any copy of any CI remains the property of Kinvey and will contain all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by Kinvey. All CI will remain the property of Kinvey. Upon written request of Kinvey, you will promptly return to Kinvey all documents and other tangible materials containing any CI.

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OR ACCESSING ANY INFORMATION, CONTENT, CODE OR OTHER MATERIAL THROUGH THE SERVICES, INCLUDING, WITHOUT LIMITATION, FOR HARM CAUSED BY VIRUSES, MALICIOUS CODE OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES. You understand and agree that you will be solely responsible for any damage to your computer or loss of data that results from the use of or download of any material, content, or code from the Services. No advice or information, whether oral or written, obtained by you from us through the Services or otherwise will create any warranty, representation or guarantee not expressly stated in this EULA.

Some states do not allow exclusion of implied warranties, so these exclusions may not apply in individual cases. You may have additional rights that vary from state to state. To the extent that we may not, as a matter of applicable law, disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such applicable law. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KINVEY'S LIABILITY UNDER ANY IMPLIED OR STATUTORY WARRANTY, CONDITION, TERM, REPRESENTATION, UNDERTAKING OR GUARANTY WHICH CANNOT BE LEGALLY EXCLUDED IS LIMITED IN RESPECT OF THE SERVICES TO SUPPLYING THE SERVICES AGAIN.

15. LIMITATION OF LIABILITY. YOU ACKNOWLEDGE AND AGREE THAT WE ARE ONLY WILLING TO PROVIDE ACCESS TO THE SERVICES IF YOU AGREE TO CERTAIN LIMITATIONS OF OUR LIABILITY TO YOU AND TO THIRD PARTIES. YOU UNDERSTAND THAT TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL WE OR OUR OFFICERS, EMPLOYEES, DIRECTORS, AFFILIATES, AGENTS OR LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF REVENUES, PROFITS, GOODWILL, USE, DATA, OPPORTUNITIES; COSTS TO PROCURE SUBSTITUTE GOODS OR SERVICES; OR BUSINESS INTERRUPTIONS ARISING OUT OF OR RELATED TO THE SERVICES, HOWEVER CAUSED, WHETHER ARISING UNDER STATUTE, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR WHETHER SUCH DAMAGE WAS FORESEEABLE OR IN THE CONTEMPLATION OF THE PARTIES. WE WILL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM THE TRANSACTIONS BETWEEN YOU AND THIRD PARTIES OR FOR ANY INFORMATION APPEARING ON THIRD PARTY SITES OR ANY OTHER SITE MADE AVAILABLE TO YOU VIA THE SERVICES. YOU SPECIFICALLY ACKNOWLEDGE THAT KINVEY IS NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE, INFRINGING, HARMFUL, OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU. FURTHER, KINVEY WILL HAVE NO LIABILITY TO YOU OR TO ANY THIRD PARTY FOR ANY THIRD PARTY CONTENT UPLOADED ONTO OR DOWNLOADED OR THROUGH THE SERVICES, OR IF YOUR DATA IS LOST, CORRUPTED OR EXPOSED TO UNINTENDED THIRD PARTIES.

FREE ACCOUNT HOLDERS: YOU AGREE THAT THE AGGREGATE LIABILITY OF KINVEY TO YOU FOR ANY AND ALL CLAIMS ARISING FROM THE USE OF THE SERVICES IS LIMITED TO TWENTY (\$20) U.S. DOLLARS. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN KINVEY AND YOU.

PREMIUM ACCOUNT HOLDERS: YOU AGREE THAT THE AGGREGATE LIABILITY OF KINVEY TO YOU FOR ANY AND ALL CLAIMS ARISING FROM THE USE OF THE SERVICES IS LIMITED TO LESSER OF (X) THE AMOUNTS YOU HAVE PAID TO KINVEY DURING THE THREE MONTH PERIOD PRIOR TO THE DATE SUCH CLAIM AROSE AND (Y) ONE-HUNDRED (\$100) U.S. DOLLARS. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN KINVEY AND YOU.

WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES WILL WE OR OUR LICENSORS BE HELD LIABLE FOR ANY DELAY OR FAILURE IN PERFORMANCE RESULTING DIRECTLY OR INDIRECTLY FROM ACTS OF NATURE, FORCES, OR CAUSES BEYOND OUR REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, INTERNET FAILURES, COMPUTER EQUIPMENT FAILURES, TELECOMMUNICATION EQUIPMENT FAILURES, OTHER EQUIPMENT FAILURES, ELECTRICAL POWER FAILURES, STRIKES, LABOR DISPUTES, RIOTS, INSURRECTIONS, CIVIL DISTURBANCES, SHORTAGES OF LABOR OR MATERIALS, FIRES, FLOODS, STORMS, EXPLOSIONS, ACTS OF GOD, WAR, GOVERNMENTAL ACTIONS, ORDERS OF DOMESTIC OR FOREIGN COURTS OR TRIBUNALS, OR NON-PERFORMANCE OF THIRD PARTIES.



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

**16. INDEMNIFICATION.** You agree to indemnify, defend and hold harmless Kinvey, our parents, subsidiaries, affiliates, officers, directors, co-branders and other partners, employees, consultants and agents, from and against any and all claims, suits, proceedings, investigations, allegations, demands, damages, costs, expenses, amounts agreed to in settlement, losses and any and all other liabilities (including reasonable attorneys' fees and court costs) arising out of or resulting from: (i) your use of the Services or Software; (ii) your Content, Code, or Apps, or any information, data, content, software or materials that you use with the Services, including without limitation any violation, misappropriation, or infringement of a third party's intellectual property rights or rights of privacy or publicity; (iii) a breach or violation of this EULA or the Terms; (iv) a violation of any rights of any other person or entity; (v) your registration; (vi) any viruses, Trojan horses, worms, time bombs, spyware, malware, cancelbots or other similar harmful or deleterious programming routines input by you or your Content or Code into the Services or by any App; or (vii) based on any failure or alleged failure to comply with any applicable law, rule or regulation in connection with your Apps including, without limitation, all federal, state, local and foreign advertising, consumer privacy, and personal data protection laws and regulations.

**17. GOVERNING LAW; JURISDICTION.**

This EULA and the relationship between you and Kinvey shall be governed by the laws of the Commonwealth of Massachusetts without giving effect to any choice of laws principles that would require the application of the laws of a different country or state. You agree to submit to the personal and exclusive jurisdiction of the courts located within the Commonwealth of Massachusetts for the adjudication of any and all claims arising out of your use of the Site and your relationship with Kinvey, and you waive any objection thereto.

**18. ELECTRONIC COMMUNICATIONS.** We can only give you the benefits of our service by conducting business through the Internet, and therefore we need you to consent to our giving you Communications (defined below) electronically. This Section 18 informs you of your rights when receiving Communications from us electronically. For contractual purposes, you (i) consent to receive Communications from us in an electronic form; and (ii) agree that all terms and conditions, agreements, notices, documents, disclosures, and other communications ("Communications") that we provide to you electronically satisfy any legal requirement that such Communications would satisfy if they were in writing. Your consent to receive Communications and do business electronically, and our agreement to do so, applies to all of your interactions and transactions with us. The foregoing does not affect your non-savable rights. You may also receive a copy of this EULA at our website. You may withdraw your consent to receive Communications electronically by contacting us in the manner described below. If you withdraw your consent, from that time forward, you must stop using the Services. The withdrawal of your consent will not affect the legal validity and enforceability of any obligations or any electronic Communications provided or business transacted between us prior to the time you withdraw your consent. Please keep us informed of any changes in your email or mailing address so that you continue to receive all Communications without interruption.

**19. GENERAL TERMS.** You are responsible for compliance with all applicable laws, rules, regulations, guidelines and industry standards. This EULA is personal to you, and you may not transfer, assign or delegate your right and/or duties under these Terms to anyone else and any attempted assignment or delegation is void. You acknowledge that we may freely assign this EULA. You acknowledge that we have the right hereunder to seek an injunction, if necessary, to stop or prevent a breach of your obligations hereunder. The paragraph headings in this EULA, shown in boldface type, are included only to help make this EULA easier to read and have no binding effect. Any delay or failure by us to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision. No waiver by us will have effect unless such waiver is set forth in writing, signed by us; nor will any such waiver of any breach or default constitute a waiver of any subsequent breach or default. This EULA and the Terms constitute the complete and exclusive agreement between you and us with respect to the subject matter hereof, and supersede all prior oral or written understandings, communications or agreements. If for any reason a court of competent jurisdiction finds any provision of this EULA or the Terms, or portion thereof, to be unenforceable, that provision of this EULA and the Terms will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this EULA and the Terms will continue in full force and effect. Your use of the Services, including our Software, is subject to export and re-export control laws and regulations, including the United States Export Administration Regulations ("EAR") maintained by the United States Department of Commerce and sanctions programs maintained by the Treasury Department's Office of Foreign Assets Control. This Services and Software made available to you may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. You shall not — directly or indirectly — sell, export, re-export, transfer, divert, or otherwise dispose of any software or service to any end-user without obtaining the

required authorizations from the appropriate government authorities. You also warrant that you are not prohibited from receiving US origin products, including services or software. Kinvey and its licensors make no representation that the Services or Software is appropriate or available for use in other locations. If you use the Services or Software from outside the United States of America and/or the European Union, you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of Content through the Services or Software contrary to United States or European Union (including European Union Member States) law is prohibited. None of the Content, nor any information acquired through the Services or Software is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States Government or appropriate European body for such purposes.

Without limiting the foregoing, (i) you represent that you not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) you shall not permit Admin Users or App Users to access or use Services or Apps, respectively, in violation of any U.S. export embargo, prohibition or restriction. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. You shall pay on demand all of Kinvey's reasonable attorney fees and other costs incurred by Kinvey to enforce this EULA or to collect any fees or charges due Kinvey under this EULA following your breach of your payment obligations under this EULA. Where Kinvey has provided you with a translation of the English language version of the EULA, the Terms, and/or any other documentation, you agree that the translation is provided for your convenience only and that the English language versions will govern.

20. CONTACTING US; NOTICES; VIOLATIONS. If you have any questions or concerns about the Services, your registration, or anything else, please follow the Contact Us link on the Site, or send an e-mail to <mailto:sales@kinvey.com>. We may give notice to you by email, a posting on our website or your account, or other reasonable means. You must give notice to us in writing via email to <mailto:sales@kinvey.com> or as otherwise expressly provided. Please report any violations of this EULA to <mailto:sales@kinvey.com>.

21. FEDERAL GOVERNMENT END USE PROVISIONS. Kinvey provides the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Kinvey to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.