



PLEASE REVIEW THIS AGREEMENT CAREFULLY AS IT DETAILS IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, CERTAIN RESTRICTIONS AND LIMITATIONS AND EXCLUSIONS TO OUR LIABILITY. IT IS INTENDED TO BE A LEGALLY BINDING AGREEMENT. BY SIGNING THE TORCH.AI STATEMENT OF WORK, AND/OR RECEIVING SERVICES FROM TORCH.AI, WHETHER DIRECTLY OR THROUGH ANY SERVANT OR AGENT: (1) YOU ACKNOWLEDGE THIS IS A LEGALLY BINDING AGREEMENT, (2) YOU ACKNOWLEDGE THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS, AND (3) YOU AGREE TO BE BOUND BY ALL SUCH TERMS AND CONDITIONS AS A PARTY TO THIS AGREEMENT AND, IF YOU ARE AN EMPLOYEE OR AGENT, YOU CONFIRM, REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO BIND YOUR EMPLOYER OR PRINCIPAL.

CURRENT AS OF AUGUST 23, 2022

SERVICES TERMS AND CONDITIONS

These Services Terms and Conditions (the “*Agreement*”) are entered into between Torch Research, LLC d/b/a Torch.AI (“*Torch.AI*”) and the company identified on the Torch.AI Statement of Work (“*Client*”).

1. Definitions. In this Agreement the following terms will have the following meanings:

- 1.1. “Confidential Information” means all non-public information, materials, software, programs, tools, product specifications and data, business plans and strategies, financial information, the terms and conditions of this Agreement, as well as non-public information of a party’s clients, affiliates and stakeholders, disclosed or submitted, whether directly or indirectly, by one party of this Agreement to the other that is marked or otherwise designated as confidential or proprietary, or of such a nature that a reasonable person would believe it to be confidential or proprietary. “Confidential Information” does not include information (a) publicly available through no breach of this Agreement; (b) rightfully acquired from a third party having a bona fide right to disclose or make the same available; or (c) independently developed or previously known by a party.
- 1.2. “Deliverables” means the specific materials or other deliverables, that are provided by Torch.AI to Client as a result of performing the Services and which are specified in a Statement of Work. Deliverables do not include software, programs or tools that Torch.AI uses in performance of its obligations under this Agreement.
- 1.3. “Personnel” means Torch.AI employees or subcontractors.
- 1.4. “Services” means those services to be provided by Torch.AI as specified in the applicable Statement of Work.
- 1.5. “Statement(s) of Work” or “SOW” means a separate agreement containing a written description of the scope of Services and Deliverables to be provided by Torch.AI and signed by both parties.

2. Services. Torch.AI will perform the Services and provide the Deliverables as set forth in one or more Statement of Work.

3. Obligations.

- 3.1 Torch.AI. Torch.AI shall designate employees that it determines, in its sole discretion, to be capable of filling the following positions. Torch.AI shall also designate a primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the “*Torch.AI Contract Manager*”).
- 3.2 Client. Client shall:
 - 3.2.1 Designate one of its employees or agents to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the “*Client Contract Manager*”), with such designation to remain in force unless and until a successor Client Contract Manager is appointed.
 - 3.2.2 Require that the Client Contract Manager respond promptly to any reasonable requests from Torch.AI for instructions, information, or approvals required by Torch.AI to provide the Services.
 - 3.2.3 Cooperate with Torch.AI in its performance of the Services and provide access to Client’s premises, employees, contractors, and equipment as required to enable Torch.AI to provide the Services.

4 Fees and Payment Terms.

- 4.1 Fees and Payment. Client agrees to pay Torch.AI in accordance with the terms set forth in the applicable Statement of Work. Client will pay all undisputed invoices within thirty (30) days of receipt. Fees do not include, and Client will pay, any and all sales, use, value added, excise and other taxes imposed in connection with the Services or Deliverables, by any federal or state authority, excluding taxes based on Torch.AI's net income.
- 4.2 Expenses. Client shall reimburse Torch.AI for all reasonable expenses incurred in accordance with the Statement of Work or if such expenses have been pre-approved, in writing by the Client Contract Manager.
- 4.3 Late Fees. All undisputed invoices shall bear interest at the lesser of (a) the rate of 1.5% per month and (b) the highest rate permissible under applicable law, calculated daily and compounded monthly. Client shall also reimburse Torch.AI for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Torch.AI does not waive by the exercise of any rights hereunder), Torch.AI shall be entitled to suspend the provision of any Services if Client fails to pay any undisputed fees when due hereunder and such failure continues for five days following written notice thereof.

5 Dispute Resolution. In the event a dispute arises under this Agreement, the parties will negotiate in good faith to resolve the dispute within a period of thirty (30) days. If the parties are unable to resolve the dispute, the dispute will be escalated to the appropriate senior level executives of both parties. The executives will negotiate in good faith to promptly resolve the dispute but no later than thirty (30) days from the date of escalation.

6 Warranties

- 6.1 Services Warranty. Torch.AI warrants to Client that the Services and Deliverables will be (a) performed in a competent, workmanlike and professional manner by Personnel with the appropriate skill, competence and experience to perform such Services; and (b) in accordance with each applicable Statement of Work.
- 6.2 Remedy. Torch.AI's sole and exclusive liability and Client's sole and exclusive remedy for a breach of this warranty shall be for Torch.AI to use commercially reasonable efforts to re-perform the applicable Services and correct the deficiencies without charge. If Torch.AI cannot cure such breach within a reasonable time, not to exceed thirty (30) days, Client may, at its option, terminate the Agreement by providing written notice.
- 6.3 The foregoing remedy shall not be available unless Client provides written notice of such breach within 30 days after delivery of such Service or Deliverable to Client.
- 6.4 TORCH.AI MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN THIS **Error! Bookmark not defined.**6.1 ABOVE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

7 Limitation of Damages and Liability.

- 7.1 LIMITATION ON DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT OR A STATEMENT OF WORK, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 7.2 LIMITATION ON CUMULATIVE LIABILITY. NEITHER PARTY'S AGGREGATE LIABILITY FOR ANY COSTS, EXPENSES, OR ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON, OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED UPON BREACH OF CONTRACT, TORT, WARRANTY, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, WILL EXCEED THE TOTAL AMOUNT OF FEES PAID OR PAYABLE TO TORCH.AI PURSUANT TO THIS AGREEMENT UNDER THE APPLICABLE SOW DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE ACTION. THE FOREGOING SHALL NOT APPLY IN CASES OF WILLFUL DEFAULT AND FRAUD.

- 8 Intellectual Property. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, “**Intellectual Property Rights**”) in and to all documents, work product and other materials that are delivered to Client under this Agreement or prepared by or on behalf of Torch.AI in the course of performing the Services, shall be owned by Torch.AI. Torch.AI hereby grants Client a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive, non-transferable, non-sublicensable, fully paid-up, royalty-free and perpetual basis solely to the extent necessary to enable Client to make reasonable use of the Deliverables and the Services.
- 9 Confidentiality. Each party acknowledges that while performing its obligations under this Agreement it may have access to the other party’s Confidential Information and that it may use such Confidential Information only for the purposes permitted under this Agreement. Each party agrees to secure and protect the other party’s Confidential Information using the same standard of care, but in no event less than reasonable care, that it uses to protect its own Confidential Information. Each party agrees to require their respective employees, agents, attorneys, and independent contractors who have a need to access Confidential Information to be bound by confidentiality obligations sufficient to protect the Confidential Information. Either party may disclose the other party’s Confidential Information to the extent required by applicable law or regulation, provided that it notifies the other party in writing as soon as practicable prior to such disclosure. Confidential Information disclosed pursuant to legal obligations will remain confidential for all other purposes. The parties expressly acknowledge and agree that a threatened or actual violation of this Section 9 (Confidentiality) or of Section 8 (Intellectual Property) may cause irreparable injury to Torch.AI for which Torch.AI will not have an adequate remedy at law. Therefore, in the event of such an actual or threatened violation by Client, Torch.AI will be entitled to seek temporary or permanent injunctive relief or other equitable remedies, in each case without the posting of any bond or other security. Nothing in this paragraph will be construed as preventing either party from pursuing any and all remedies available at law for threatened or actual violation of any provision of this Agreement.
- 10 Term and Termination.
- 10.1 Term. The term of this Agreement is one hundred twenty (120) days from the Effective Date (“**Term**”). This Agreement may only be renewed upon mutual written agreement of the parties. Upon termination, Client agrees to immediately return all of Torch.AI’s Confidential Information, and in the event such return is not possible, Client will provide certification as to the destruction of all Confidential Information.
- 10.2 Termination for Cause. If either party is in default of any of its material obligations hereunder, and has not cured within thirty (30) days of receipt of written notice of default from the other party, then the non-defaulting party may terminate the Agreement upon written notice to the defaulting party. In the event Torch.AI terminates due to Client’s breach, Torch.AI will only be liable for payment of Services and Deliverables received and accepted.
- 10.3 Termination Without Cause. Either party may terminate any SOW or this Agreement, in whole or in part, by providing ten (10) days’ advance written notice. Client will, within thirty (30) days of the effective date of termination or cancellation, pay Torch.AI for its Services rendered under the applicable SOW prior to the date of termination.
- 11 Notice. Each Party’s contact details for notices under this Agreement are set forth in the SOW. Either Party may from time to time change its address or designee for notification purposes by providing the other Party with written notice of such new address or designee. Unless otherwise provided, notices provided under this Agreement must be in writing and delivered by (a) certified mail, return receipt requested, (b) hand delivered, (c) e-mail, or (d) delivery by a reputable overnight carrier service. In the case delivery by e-mail the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (d). The notice will be deemed given on the day the notice is received. Notices must be delivered to the following addresses or at such other addresses as may be later designated by notice:
- 12 Survival. In the event of any termination or expiration of this Agreement, the provisions related to Payment, Warranty, Limitation Damages and Liability, Intellectual Property, and Confidentiality will survive and continue in effect and be binding upon the parties and their legal representatives, heirs, successors and assigns.
- 13 Miscellaneous.
- 13.1 Applicable Law; Jurisdiction. This Agreement shall be governed by and shall be construed, interpreted, and enforced in accordance with the laws of the State of Kansas, without reference to principles of conflicts of law. The parties agree that the sole and exclusive venue for any disputes arising hereunder shall be in a Johnson County, Kansas District Court.
- 13.2 Independent Contractor. Torch.AI and Client intend at all times to be independent contractor. Nothing contained herein will be construed to create or imply a partnership, joint venture, and principal-agent or employment relationship between

the parties. Neither party will have any right, power, or authority to act on behalf of nor will bind the other party in any manner whatsoever, and neither party will represent that it has such right, power or authority.

- 13.3 Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings of the parties. The terms and conditions of this Agreement will also supersede all pre-printed terms and conditions contained in any purchase order or other business form submitted by any party to the other relating to the subject matter of this Agreement. In the event of a conflict between a provision within the body of this Agreement, and a provision within an exhibit or Statement(s) of Work, this Agreement will control. In the event that a Statement of Work provides terms that are supplemental or additive to those terms in the Agreement, then the Statement of Work will control.
- 13.4 Amendment. This Agreement, including any Statement of Work may not be changed or amended except by writing, signed by authorized representatives of both parties.
- 13.5 Assignment. Client may not assign any of its rights under this Agreement without the prior written consent of Torch.AI, which shall not be unreasonably withheld or delayed. This Agreement is binding upon and enforceable by each party's permitted successors and assignees.
- 13.6 No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.
- 13.7 Waiver. No delay or failure by either party to exercise or enforce at any time any right or provision of this Agreement will be considered a waiver thereof or of such party's right thereafter to exercise or enforce each and every right and provision of this Agreement. A waiver to be valid must be in writing.
- 13.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which will constitute but one and the same document.
- 13.9 Severability. If any provision of this Agreement will be held illegal, invalid or unenforceable, in whole or in part, it is to that extent deemed to be omitted and the legality, validity and enforceability of all other provisions of this Agreement will not be affected thereby.
- 13.10 Force Majeure. No party shall be liable or responsible to the other party, or be deemed to be in breach of this Agreement for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments), when such failure or delay is caused by or resulted from acts of God, war, government regulation, pandemic, epidemic, terrorism, disaster, fire, civil disorder or any other emergency beyond the parties' reasonable control, making it inadvisable or illegal for a party to perform its obligations under this Agreement. The impacted party shall give notice of a force majeure and shall use diligent efforts to end the failure or delay as soon as reasonably practicable. In the event the failure or delay remains uncured for a period of thirty (30) days, the other party may thereafter terminate this Agreement upon written notice.
- 13.11 Construction. The headings are for reference purposes only and will not be considered in construing this Agreement. In construing or interpreting this Agreement, the word "or" will mean either or both, and the word "include" or "including" will not be limiting or exclusive. This Agreement will be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and ambiguities will not be interpreted against the drafting party.