

# Terms of Use

Last Updated: Mar 7, 2019

## I. INTRODUCTION

This Terms of Service Agreement (“Agreement”) is an agreement between you (“you” or “user”) and gavinvsb (“the Organization,” “we,” or “us”). This Agreement governs your access and use of the web pages, interactive features, applications, widgets and their respective contents at gavinvsb.github.io (collectively, the “Services”) (the “Services”). By using the Services, you agree to be bound by the terms and conditions contained in this Agreement. If you do not agree to the terms and conditions contained in this Agreement, you may not access or otherwise use the Services

We may, in our sole discretion, modify this Agreement with or without notice to you. The “Last Updated” date at the top of this Agreement will indicate when the latest modifications were made. By continuing to access and use the Services after this Agreement has been modified, you are agreeing to such modifications. Therefore, you should review this Agreement prior to each use of the Services. In addition, when using particular services or features, you shall be subject to any posted guidelines or policies applicable to such services, features or purchases that may be posted from time to time. All such guidelines or policies are hereby incorporated by reference into this Agreement.

If you are under the age of eighteen (18), you represent that you are either an emancipated minor, or have obtained the legal consent of your parent or legal guardian to enter into this Agreement, submit content, participate through the Services and fulfill the obligations set forth in this Agreement.

PLEASE READ THE AGREEMENT CAREFULLY BEFORE USING THE SERVICE. THIS AGREEMENT INCLUDES AN AGREEMENT TO MANDATORY ARBITRATION, WHICH MEANS THAT YOU AGREE TO SUBMIT ANY DISPUTE RELATED TO THE SERVICE TO BINDING INDIVIDUAL ARBITRATION RATHER THAN PROCEEDING IN COURT. THE DISPUTE RESOLUTION/ARBITRATION PROVISION ALSO INCLUDES A CLASS ACTION WAIVER, WHICH MEANS THAT YOU AGREE TO PROCEED WITH ANY DISPUTE INDIVIDUALLY AND NOT AS PART OF A CLASS ACTION. THIS AGREEMENT ALSO INCLUDES A JURY WAIVER.

## II. CONNECTIVITY, COMMUNICATIONS, PRIVACY

Normal carrier charges and taxes may apply to any content you obtain from the Services through your cell phone or mobile device. The Organization is not responsible for any surcharges you incur from your cell phone or internet service provider as a result of the use of the Services.

You expressly agree that, as part of the Services, you may receive communications by email. You may stop receiving emails by clicking the unsubscribe links contained in such emails or by emailing your request to opt out to [info@gavinvsb.github.io](mailto:info@gavinvsb.github.io).

Use of the Services is subject to the terms of our Privacy Policy, which is hereby incorporated into and made part of this Agreement. Please carefully review our Privacy Policy. By using the Services, you

acknowledge that you have read, and you agree to be bound by, the terms of our Privacy Policy. We reserve the right, and you authorize us, to use information regarding your use of the Services and any other personal information provided by you in accordance with our Privacy Policy. You further acknowledge and agree that any disputes related to the Privacy Policy, including any breaches in security or privacy, will be subject to the limitations on liability and dispute resolution provisions contained in this Agreement.

### **III. COPYRIGHT; TRADEMARKS**

You acknowledge that all materials on the Services, including the Services' design, graphics, text, sounds, pictures, videos, software and other files and the selection and arrangement thereof (collectively, "Materials"), are the property of the Organization or its licensors, and are subject to and protected by United States and international copyright and other intellectual property laws and rights. You will not obtain any ownership interest in the Materials or the Services through this Agreement or otherwise. All rights to Materials not expressly granted in this Agreement are reserved to their respective copyright owners. Except as expressly authorized by this Agreement or on the Services, you may not copy, reproduce, distribute, republish, download, perform, display, post, transmit, exploit, create derivative works or otherwise use any of the Materials in any form or by any means, without the prior written authorization of the Organization or the respective copyright owner. The Organization authorizes you to view and download the Materials only for personal, non-commercial use, provided that you keep intact all copyright and other proprietary notices contained in the original Materials. You may not modify or adapt the Materials in any way or otherwise use them for any public or commercial purposes. The trademarks, service marks, trade names, trade dress and logos (collectively, "Marks") contained or described on the Services (including, without limitation, any marks associated with any products available on the Service) are the sole property of the Organization and/or its licensors and may not be copied, imitated or otherwise used, in whole or in part, without the prior written authorization of the Organization and/or licensors. In addition, all page headers, custom graphics, button icons and scripts are Marks of the Organization and may not be copied, imitated or otherwise used, in whole or in part, without the prior written authorization of the Organization. The Organization will enforce its intellectual property rights to the fullest extent of the law.

### **IV. LINKS; THIRD PARTY WEBSITES**

Links on the Services to third party websites may be provided as a convenience to you. If you use these links, you will leave the Services. Your dealings with third parties through links to such third party websites are solely between you and such third parties. You agree that the Organization and its Affiliated Parties will not be responsible or liable for any content, goods or services provided on or through these outside websites or for your use or inability to use such websites. You use these links at your own risk. You are advised that other websites on the Internet, including third party websites linked from the Services, might contain material or information that some people may find offensive or inappropriate; or that is inaccurate, untrue, misleading or deceptive; or that is defamatory, libelous, infringing of others' rights or otherwise unlawful. The Organization expressly disclaims any responsibility for the content, legality, decency or accuracy of any information, and for any products and services, that appear on any third party website or application.

Without limiting the foregoing, your correspondence or business dealings with, participation in promotions of or purchases from third-parties found on or through the use of the Services, including payment for and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such third party. You agree that the Organization and its Affiliated Parties shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such third parties on the Services.

## **V. DISCLAIMER; LIMITATION OF LIABILITY**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES AND THE MATERIALS CONTAINED HEREIN ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE ORGANIZATION AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES AND OTHER REPRESENTATIVES AND THE ORGANIZATION’S VENDORS AND BUSINESS PARTNERS (COLLECTIVELY, “THE ORGANIZATION AND ITS AFFILIATED PARTIES”). EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE ORGANIZATION AND ITS AFFILIATED PARTIES MAKE NO WARRANTY THAT (I) THE SERVICES WILL MEET YOUR REQUIREMENTS, (II) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (III) THE INFORMATION THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, (IV) THE QUALITY OF ANY SERVICES, INFORMATION, OR OTHER MATERIAL OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS, AND (V) ANY ERRORS IN THE SERVICES WILL BE CORRECTED. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, YOUR MOBILE DEVICE, OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE ORGANIZATION AND ITS AFFILIATED PARTIES ON OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

ALL SERVICES OBTAINED ON OR THROUGH THE SERVICE ARE SUBJECT ONLY TO ANY APPLICABLE WARRANTIES OF THEIR RESPECTIVE DISTRIBUTORS AND/OR SUPPLIERS, IF ANY. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, THE ORGANIZATION AND ITS AFFILIATED PARTIES DISCLAIM ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, ANY IMPLIED WARRANTIES, WITH RESPECT TO THE SERVICES LISTED ON OR THROUGH THE SERVICES.

THE ORGANIZATION AND ITS AFFILIATED PARTIES SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING OUT OF, IN CONNECTION WITH, OR RELATING TO THE USE OF OR INABILITY TO USE THE SERVICES, INCLUDING ANY LIABILITY (I) AS A PUBLISHER OF INFORMATION; (II) FOR ANY INCORRECT OR INACCURATE INFORMATION; (III) FOR ANY UNAUTHORIZED ACCESS TO OR DISCLOSURE OF YOUR TRANSMISSIONS OR DATA; (IV) FOR STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICES; OR (VI) FOR ANY OTHER MATTER RELATING TO THE SERVICES OR ANY THIRD PARTY WEBSITE. THIS IS A COMPREHENSIVE LIMITATION OF LIABILITY THAT APPLIES TO ALL DAMAGES OF ANY KIND, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOOD WILL, LOSS OF USE, LOSS OF DATA, COST OF PROCURING SUBSTITUTE SERVICES OR INFORMATION, LITIGATION OR THE LIKE), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF AN INDIVIDUAL ADVISES OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY SET FORTH HEREIN ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THE ORGANIZATION AND YOU. THE INFORMATION AND SERVICES OFFERED ON AND THROUGH THE SERVICES WOULD NOT BE PROVIDED WITHOUT SUCH LIMITATIONS. NOTWITHSTANDING THE FOREGOING, THE SOLE AND ENTIRE MAXIMUM LIABILITY OF THE ORGANIZATION AND AFFILIATED PARTIES FOR ANY REASON, AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CAUSE OR CLAIM WHATSOEVER, SHALL BE LIMITED TO THE AMOUNT PAID BY YOU FOR ANY INFORMATION OR SERVICE PURCHASED BY YOU FROM THE ORGANIZATION ON THE SERVICES. YOU ACKNOWLEDGE AND AGREE THAT IF YOU HAVE NOT PAID THE ORGANIZATION ANY AMOUNTS FOR ANY INFORMATION OR SERVICE PRIOR TO THE DATE ON WHICH YOU FIRST ASSERT ANY CLAIM, YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH THE ORGANIZATION IS TO STOP USING THE SERVICES.

SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. ACCORDINGLY, SOME OF THE ABOVE DISCLAIMERS AND LIMITATIONS MAY NOT APPLY TO YOU. IN SUCH JURISDICTIONS, THE EXCLUSIONS AND LIABILITY ARE LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW.

## **VI. INDEMNIFICATION**

You agree to indemnify, defend and hold harmless the Organization and its Affiliated Parties against all claims, demands, causes of action, losses, expenses, damages and costs, including any reasonable attorneys' fees, resulting or arising from or relating to your use of the Services, your breach of this Agreement, your infringement or violation of any rights of another, or termination of your access to the Services.

## **VII. SERVICE USAGE; TERMINATION OF USAGE**

If you provide information on the Services, you agree to provide true, accurate, current and complete information about yourself as prompted by the Services. If you provide any information that is false, inaccurate, outdated or incomplete, or the Organization has reasonable grounds to suspect that such information is false, inaccurate, outdated or incomplete, the Organization has the right to prohibit any and all current or future use of the Services (or any portion thereof) by you.

You agree to use the Services only for lawful purposes, and that you are responsible for your use of the Services. You agree not to use the Services in any manner that interferes with its normal operation or with any other user's use and enjoyment of the Services.

You further agree that you will not access the Services by any means except through the interface provided by the Organization for access to the Services. Running or displaying the Services or any information or material displayed on the Services in frames or through similar means on another website or application without the prior written authorization of the Organization is prohibited. Any permitted links to the Services must comply with all applicable laws, rules, and regulations.

The Organization makes no representation that Materials contained on the Services or products described or offered on the Services are appropriate or available for use in jurisdictions outside the United States, or that this Agreement complies with the laws of any other country. Visitors who use the Services and reside outside the United States do so on their own initiative and are responsible for compliance with all laws, if and to the extent local laws are applicable. You agree that you will not access the Services from any territory where its contents are illegal, and that you, and not the Organization and its Affiliated Parties, are responsible for compliance with applicable local laws.

This Agreement is effective unless and until terminated by either you or the Organization. You may terminate this Agreement at any time, provided that you discontinue any further use of the Services. The Organization also may terminate or suspend this Agreement, at any time, without notice, and accordingly deny you access to the Services, for any reason, including without limitation, if in the Organization's sole discretion you fail to comply with any term or provision of this Agreement or your use is harmful to the interests of another user or the Organization and its Affiliated Parties. Upon any termination of the Agreement by either you or us, you must destroy all materials downloaded or otherwise obtained from the Services, as well as all copies of such materials, whether made under the Agreement or otherwise.

The Organization reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice. Except as otherwise expressly stated in this Agreement, you agree that the Organization and its Affiliated Parties shall not be liable to you or to any third party for any modification, suspension or discontinuation of the Services.

You agree that the Organization may terminate or suspend your access to all or part of the Services, without notice, for any conduct that the Organization, in its sole discretion, believes is in violation of this Agreement or any applicable law or is harmful to the interests of another user or the Organization and its Affiliated Parties.

Sections V-XI shall survive any termination of this Agreement.

## **VIII. APPLICABLE LAW; JURISDICTION; DISPUTE RESOLUTION**

(a) The Services are controlled and operated by the Organization from within the United States of America. The Organization makes no representations or warranties that the content or materials of the Services are appropriate or lawful in any foreign countries, or that any items or applications offered for sale or download through links on the Services will be available outside the United States. Those who choose to access the Services from other locations do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable.

(b) This Agreement shall be governed by the laws of the United States and the State of California, without giving effect to any conflict of laws principles that may provide the application of the law of another jurisdiction. The parties agree that any claim or dispute one party has against the other party arising under or relating to this Agreement (including claims in contract, tort, strict liability, statutory liability, or other claims) that is not resolved under Section VIII (c) of this Agreement must be resolved exclusively by a court of competent jurisdiction, federal or state, located in Los Angeles, California, and no other court. Each party agrees to submit to the personal jurisdiction of such courts and to accept service of process from them.

(c) This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California, as it is applied to agreements entered into and to be performed entirely within such state, without regard to conflict of law principles.

It is the Organization's goal that the Services meet your expectations. However, there may be instances when you have a problem or dispute that needs special attention. In those instances, the Organization is committed to working with you to reach a reasonable resolution that satisfies you; however, we can only do this if we know about and understand your issue. Therefore, for any problem or dispute that you may have with the Organization, you acknowledge and agree that you will first give the Organization an opportunity to resolve your problem or dispute. This includes you first sending a written description of your problem or dispute using the following email address:

[info@gavinvsb.github.io](mailto:info@gavinvsb.github.io).

You then agree to negotiate with the Organization in good faith about your problem or dispute. This should lead to resolution, but if for some reason your problem or dispute is not resolved satisfactorily within sixty (60) days after the Organization's receipt of your written description of it, you agree to the further dispute resolution provisions below.

You agree that the sole and exclusive forum and remedy for any and all disputes and claims that cannot be resolved informally and that relate in any way to or arise out of the Service or this Agreement, shall be final and binding arbitration, except to the extent that you have in any manner infringed upon or violated or threatened to infringe upon or violate the Organization's or any third party patent, copyright, trademark, trade secret, privacy or publicity rights, in which case you acknowledge that arbitration is not an adequate remedy at law and that injunctive or other appropriate relief may be sought by the Organization and/or the applicable third party(ies). You and we acknowledge that the

Agreement affects interstate commerce and that the Federal Arbitration Act and federal arbitration law apply to arbitrations under the Agreement (despite any other choice of law provision).

Arbitration under this Agreement shall be conducted by the American Arbitration Association (the “AAA”). For claims of less than \$75,000, the AAA’s Supplementary Procedures for Consumer-Related Disputes will apply; for claims over \$75,000, the AAA’s Commercial Arbitration Rules will apply. The AAA rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. Upon your filing of the arbitration demand, we will pay all filing, administration and arbitrator fees for claims that total less than \$75,000. For claims that total more than \$75,000, the payment of filing, administration and arbitrator fees will be governed by the AAA Commercial Arbitration Rules. You and we agree to pay our own other fees, costs, and expenses, including those for any attorneys, experts, and witnesses. An arbitrator may award on an individual basis any relief that would be available in a court, including injunctive or declaratory relief and attorneys’ fees. In addition, for claims under \$75,000 as to which you provided notice and negotiated in good faith with Organization as required above before initiating arbitration, if the arbitrator finds that you are the prevailing party in the arbitration, you will be entitled to a recovery of reasonable attorneys’ fees and costs. Except for claims determined to be frivolous, the Organization agrees not to seek an award of attorneys’ fees in arbitration even if an award is otherwise available under applicable law. As a limited exception to the agreement to arbitrate, you and we agree that you may take claims to small claims court, if your claims qualify for hearing by such court.

YOU HAVE A RIGHT TO OPT-OUT OF THIS ARBITRATION AGREEMENT. IF YOU DO NOT AGREE TO THIS MANDATORY ARBITRATION PROVISION WITH REGARD TO ANY PARTICULAR INTERACTION WITH THE SITE OR THE SERVICE, THEN WITHIN THIRTY (30) DAYS FROM THE DATE OF SUCH INTERACTION, YOU MAY OPT-OUT OF THIS PART OF THE AGREEMENT BY SENDING AN EMAIL TO [info@gavinvsb.github.io](mailto:info@gavinvsb.github.io). Any opt-out received after the thirty (30) day time period will not be valid and you must pursue your claim via arbitration pursuant to these Terms.

To the fullest extent permitted by applicable law, NO ARBITRATION OR OTHER CLAIM UNDER THIS AGREEMENT SHALL BE JOINED TO ANY OTHER ARBITRATION OR CLAIM, INCLUDING ANY ARBITRATION OR CLAIM INVOLVING ANY OTHER CURRENT OR FORMER USER OF THE SITE OR THE SERVICES, AND NO CLASS ARBITRATION PROCEEDINGS SHALL BE PERMITTED. In the event that this CLASS ACTION WAIVER is deemed unenforceable, then any putative class action may only proceed in a court of competent jurisdiction and not in arbitration.

WE BOTH AGREE THAT, WHETHER ANY CLAIM IS IN ARBITRATION OR IN COURT, YOU AND THE ORGANIZATION BOTH WAIVE ANY RIGHT TO A JURY TRIAL INVOLVING ANY CLAIMS OR DISPUTES BETWEEN US.

In no event shall any claim, action or proceeding by you related in any way to the Service or this Agreement be instituted more than one (1) year after the cause of action arose.

## **IX. SEVERABILITY; INTERPRETATION**

If any provision of this Agreement shall be deemed unlawful, void, or for any reason unenforceable by a court of competent jurisdiction, the validity and enforceability of any remaining provisions shall not be affected. When used in this Agreement, the term “including” shall be deemed to be followed by the words “without limitation.”

## **X. ENTIRE AGREEMENT**

This Agreement, including the Privacy Policy and other policies incorporated herein, constitutes the entire and only Agreement between the Organization and each user of the Services with respect to the subject matter of this Agreement and supersedes any and all prior or contemporaneous Agreements, representations, warranties and understandings, written or oral, with respect to the subject matter of this Agreement.

## **XI. MISCELLANEOUS**

The failure of the Organization and its Affiliated Parties to insist upon strict adherence to any term of this Agreement shall not constitute a waiver of such term and shall not be considered a waiver or limit that party’s right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

You agree that regardless of any statute or law to the contrary, any claim of cause of action arising from or relating to use of the Services or this Agreement must be filed within one (1) year after such claim or cause of action arose, or will be forever barred. The “Disclaimer; Limitation of Liability” provisions of this Agreement are for the benefit of the Organization and its Affiliated Parties as defined herein, and each of these individuals or entities shall have the right to assert and enforce these provisions directly against you on its own behalf.

## **XII. DMCA**

We comply with the Digital Millennium Copyright Act (“DMCA”) under United States copyright law. If you are a copyright owner and believe that any user-posted comment has infringed your rights, you may send a notice to our DMCA Designated Agent (listed below) of the claimed infringement. Before contacting us under the DMCA, please remember to carefully consider whether the use of your work is a fair use under established copyright principles, in keeping with First Amendment protected activities including criticism, commentary, news reporting, and education. The DMCA is not intended to limit fair use or legitimate freedom of expression.

To be legally effective, this notice must follow the DMCA procedures by including the following:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
2. Identification of the copyrighted work claimed to have been infringed, including title, author, and copyright registration, if any.
3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to



- permit the service provider to locate the material. Please provide the URL to help us identify the work.
4. Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
  5. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
  6. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Send the notice to our DMCA Designated Agent:

gavinvsb

DMCA Designated Agent

c/o gavinvsb, Inc.

1234 Address Street

City, CA 12345

Telephone: 123-456-7890

Email: [dmca@gavinvsb.github.io](mailto:dmca@gavinvsb.github.io)

### **XIII. CONTACT INFORMATION**

If you have any comments, questions, or complaints regarding this Agreement or the Services, or wish to report any violation of this Agreement, please contact us at [info@gavinvsb.github.io](mailto:info@gavinvsb.github.io). We will address any issue to the best of our abilities as soon as possible.

© 2021 All rights reserved.