

LE FIVE

TERMS & CONDITIONS

Terms and Services

Unless you work for an organization that has a separate written agreement with us to use our services, these are the terms that apply to your use of our services. You should read them. If you don't agree to these terms, you shouldn't use our services.

Our services are generally intended for business or professional use only.

And, heads up, you should really check out Section 10 because it limits our liability to you if something goes wrong.

Also, if we get into a dispute, we'll have to figure it out in arbitration. Check out Section 14 for more details.

PLEASE REVIEW THESE TERMS CAREFULLY. ONCE ACCEPTED, THESE TERMS BECOME A BINDING LEGAL COMMITMENT BETWEEN YOU AND LE FIVE USA INC, LE FIVE WEST SACRAMENTO LLC, LE FIVE RANCHO CORDOVA LLC (commonly referred as “Le Five”). IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU SHOULD NOT ACCEPT THESE TERMS OR CREATE AN ACCOUNT AND YOU SHOULD NOT USE THE SERVICES (AS DEFINED BELOW).

THE SERVICES ARE INTENDED FOR BUSINESS USE OR USE IN CONNECTION WITH AN INDIVIDUAL'S TRADE, CRAFT, OR PROFESSION ONLY.

IMPORTANT NOTES:

THESE TERMS LIMIT OUR LIABILITY TO YOU. For more details, go to Section 10.



IN ADDITION, DISPUTES RELATED TO THESE TERMS OR THE SERVICES GENERALLY MUST BE RESOLVED BY A DISPUTE RESOLUTION PROCESS WHICH MAY LEAD TO BINDING ARBITRATION. For more details, go to Section 14.

If you have any questions, you can reach Customer Support here.

In these Terms of Service (referred to as these “Terms” or this “Agreement”), “we”, “us,” “our” or “LE FIVE” will refer collectively to Le Five USA Inc, a Delaware corporation, located at 11115 Folsom Blvd, Ste 200, Rancho Cordova, CA 95670. The terms “you”, “your”, or “Customer” will refer to you. If you are creating an account in order to use the Services on behalf of an organization, then you are agreeing to these Terms for that organization and promising to us that you have the authority to bind that organization to these Terms (and, in which case, the terms “you”, “your”, or “Customer” will refer to that organization). The exception to this is if that organization has a separate written agreement with us covering the use of the Services, in which case that agreement will govern such use. Le Five or Customer may also be referred to in these Terms individually as “party” and together as “parties.” To be eligible to create an account in order to use the Services, you must review and accept these Terms.

Our services consist of any of our products and services that are used by you, including products or services ordered under an order form, or otherwise provided to you on a trial basis or free of charge.

When we refer to the “Services” in these Terms, mean all products and services that are used by you, ordered by you under an Order Form (as defined below), or provided to you on a trial basis or otherwise free of charge. Services may include products and services that provide both (a) the platform services, including access to any application programming interface (“Le Five API”) and (b) where applicable, connectivity services, that link the Services to the telecommunication providers' networks via the Internet.

When we refer to an “Affiliate” in these Terms, we mean any entity that directly or indirectly controls or is controlled by, or is under common control with, the party specified. For purposes of this definition, “control” means direct or indirect ownership of more than fifty percent (50%) of the voting interests of the subject entity.



1. Changes to These Terms

These terms might change. But we'll let you know before we make any significant changes that impact you or your use of our services. We'll let you know 30 days in advance unless we can't because of changes in laws, regulations, or carrier requirements.

If you keep using our services after these terms have changed and gone into effect, that means you have accepted those changes and they're binding on you. If you don't agree with the changed terms, you must stop using our services immediately.

We may update these Terms from time to time. We will provide you with prior written notice of any material updates at least thirty (30) days in advance of the effective date; provided, however, we may not be able to provide at least thirty (30) days prior written notice of material updates to these Terms that result from changes in law, regulation, or requirements from telecommunications providers.

Notice will be given in accordance with Section 13.5 (Notices). This notice will highlight the intended updates. Except as otherwise specified by us, updates will be effective upon the effective date indicated at the top of these Terms. The updated version of these Terms will supersede all prior versions.

Following such notice, your continued use of the Services on or after the effective date of the updated version of these Terms constitutes your acceptance of such updated Terms. If you do not agree to the updated version of these Terms, you must stop using the Services immediately.

2. Account Creation and Information

If you want to use our services, you need to create an account. To create an account, you need to give us some information about yourself. The information you provide must be true and kept up to date.

If you violate these terms, you are not allowed to create new accounts until you fix the violation.



To use the Services, you will be asked to create an account. As part of the account creation process, you'll be asked to provide your email address, create a password, and verify your email. When creating an account, you must provide true, accurate, current, and complete information about yourself as requested during the account creation process. You must keep that information true, accurate, current, and complete after you create each account. As part of our ongoing and routine monitoring of account activity and to help us reduce the risk of fraudulent use of your account and the Services, you will initially be limited in the number of text messages you can send while we are activating your account or when you have not used a trial account for a period of 14-weeks. If you breach these Terms, including, without limitation, your payment obligations in Section 6 (Fees and Payment Terms), you are strictly prohibited from creating new accounts until you remedy such breach in full.

3. Provision of the Services

We want to make our services available for you to use 24/7, but things happen that occasionally make our services unavailable. We offer service credits if our services don't meet our service level agreement (SLA).

You may use our APIs and published documentation with your software applications or services that your end users can use so long as you and your end users comply with these terms and our Acceptable Use Policy.

3.1 Our Responsibilities. We will (a) make the Services available to you in accordance with these Terms, our documentation, including any usage guides and policies for the Services contained in such documentation (“Documentation”), and any applicable ordering document between the parties that specifies mutually agreed upon rates for certain Services and other commercial terms, including any applicable minimum spend commitments (“Order Form”); (b) comply with our Service Level Agreement for the Services (“SLA”) and our Security Overview for the Services, each of which may be updated from time to time; (c) provide the Services in accordance with laws applicable to our provision of the Services to our customers generally (i.e. without regard for your particular use of the Services), subject to your use of the Services in accordance with these Terms, the applicable Documentation, and any applicable Order Form(s);

(d) make commercially reasonable efforts to use industry standard measures designed to scan, detect, and delete code, files, scripts, agents, or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses; (e) if applicable, use trained, qualified personnel to provide the Services; and (f) use commercially reasonable efforts to provide you with applicable support for the Services as described in our Support Terms.

You have the choice to use our beta offerings (e.g., services that are in alpha, beta, limited release, etc.), but you don't have to. These are not generally available, and they may have bugs or defects.

3.2 Beta Offerings. From time to time, Le Five may make Services that are identified as alpha, beta, not generally available, limited release, developer preview, or any similar Services offered by us (collectively, “Beta Offerings”) available to you. You may choose to use Beta Offerings in your sole discretion. Le Five may discontinue Beta Offerings at any time, in our sole discretion, and decide not to make a Beta Offering generally available.

We can suspend our services to you for several reasons:

- You or your end users violate these terms, including our Acceptable Use Policy;
- You send fraudulent traffic using our services or your use of our services negatively impacts the operation of our services;
- Legal or regulatory conditions make it impractical for our services to operate;
- Your use or an end user's use threatens the security or operability of our services; or
- Your information in your account isn't true, accurate, or complete.

We'll try to let you know if we need to suspend your account in advance if we can, but cannot guarantee this. We will also try to limit the suspension if we can.

We also won't be liable for any consequences that result from the suspension of our services.

3.3 Suspension of Services. We may suspend the Services immediately upon notice to you for cause if: (a) you or an End User (as defined below) materially breaches (or we believe that you or an End User has materially breached) any provision of these Terms, including any obligations



under our Acceptable Use Policy; (b) there is an unusual and material spike or increase in your use of the Services and we believe that such traffic or use is fraudulent or materially and negatively impacting the operating capability of the Services; (c) we determine that our provision of the Services is prohibited by applicable law or regulation; (d) there is any use of the Services by you or an End User that in our judgment threatens the security, integrity, or availability of the Services; or (e) information in your account is untrue, inaccurate, or incomplete. However, we will use commercially reasonable efforts under the circumstances to (x) provide you with notice and an opportunity to remedy such violation or threat prior to any such suspension; (y) where practicable, limit the suspension based on the circumstances leading to the suspension (e.g., to certain phone numbers, sub-accounts, or other subset of traffic); and (z) remove the suspension as quickly as reasonably practicable after the circumstances leading to the suspension have been resolved. If your account is blocked because you are operating in a country or region prohibited under Section 8.3 (Export Controls), you will receive notice of your account being inoperable when you attempt to log into your account in such restricted country or region.

If we suspend the Services pursuant to this Section 3.3 or Section 6.3 (Payment Terms), we will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that you may incur in connection with any such suspension.

We're always looking to innovate and make our services better, so our APIs and SLA may change over time. We will let you know in advance if any API changes aren't backwards-compatible. We may also work with you to resolve any significant negative impacts that result from the API changes that aren't backwards-compatible.

3.4 Changes to the Services. The features and functions of the Services, including the Le Five APIs and our SLA, may change over time; provided, however, we will not materially decrease the overall functionality of the Services. It is your responsibility to ensure each Customer Application (as defined below) is compatible with the then-current Services. Although we try to avoid making changes to the Services that are not backwards-compatible, if any such changes become necessary, we will use reasonable efforts to let you know at least sixty (60) days prior to implementation. In the event we make a non-backwards compatible change to a Le Five API and such change materially and negatively impacts your use of the Services (“Adverse API



Change”), (a) you will notify us of the Adverse API Change and (b) we may agree to work with you, in our sole discretion, to resolve or otherwise address the Adverse API Change, except where we, in our sole discretion, have determined that an Adverse API Change is required for security reasons, by telecommunications providers, or to comply with applicable law or regulation.

4. Your Responsibilities

Some “dos and don'ts” to keep in mind when using the services:

- You're responsible for all use of our services under your account, including your data and the software applications you develop or services you offer;
- You won't transfer our services, resell them, etc., except as allowed to make the services available to end users as part of the software applications or services you offer;
- You won't use our services in violation of these terms, our Acceptable Use Policy, and any laws or regulations;
- You'll responsible for your end users acts, omissions, and activities;
- You'll prevent unauthorized access to or use of our services;
- You'll cooperate during information requests; and
- You'll comply with your promises in Section 8 (Representations, Warranties, and Disclaimer).

Le Five has no liability for any unauthorized use under your account.

You will: (a) be solely responsible for all use of the Services and Documentation under your account, including the quality and integrity of any data and other information made available to us by or for you through the use of the Services under these Terms (“Customer Data”) and each software application or service that you make available to End Users that interfaces with the Services (each, a “Customer Application”); (b) not transfer, resell, lease, license, or otherwise make available the Services to third parties (except to make the Services available to End Users in connection with the use of each Customer Application as permitted under these Terms) or offer them on a standalone basis; (c) use the Services only in accordance with these Terms, our Acceptable Use Policy, the applicable Documentation, any applicable Order Form(s), and

applicable law or regulation; (d) be solely responsible for all acts, omissions, and activities of anyone who accesses or otherwise uses any Customer Application (“End User”), including End Users' compliance with these Terms, the applicable Documentation, our Acceptable Use Policy, and any applicable Order Form(s); (e) do your best to prevent unauthorized access to or use of the Services and notify us promptly of any such unauthorized access or use; (f) provide reasonable cooperation regarding information requests from law enforcement, regulators, or telecommunications providers; and (g) comply with the representations and warranties you make in Section 8 (Representations, Warranties, and Disclaimer).

We will not be liable for any loss or damage arising from unauthorized use of your account.

5. Your Affiliates

Your affiliates (namely a parent company or a subsidiary that your company controls) may not use our services under these terms. Each of your affiliates must create its own account and accept and agree to these terms individually.

Your Affiliates are not permitted to use the Services under these Terms that you accepted. Each of your Affiliates that wants to use the Services must accept these Terms individually and create its own account.

6. Fees and Payment Terms

You agree to pay the fees generated under your account.

7. Ownership, Use of Customer Data, and Confidentiality

What's ours is ours, including our services, the documentation, our confidential information, and data that is generated or derived from the use or operation of our services. What's yours is yours, including your software applications or services, your confidential information, and your data.

7.1 Ownership. As between the parties, we exclusively own and reserve all right, title, and interest in and to the Services, the Documentation, our Confidential Information (as defined below), and any data, in anonymized or aggregated form that does not identify you, any End

Users, or any natural person, generated or derived from the use or operation of the Services, including volumes, frequencies, bounce rates, and performance results for the Services. As between the parties, you exclusively own and reserve all right, title, and interest in and to each Customer Application, your Confidential Information, and Customer Data, subject to our rights to use and disclose Customer Data in accordance with these Terms.

We can use and disclose any data that you provide to us while using our services in order to provide you with our services and according to our promises of confidentiality in Section 7.4 (Confidentiality) and the terms of our Data Protection Addendum and Privacy Notice.

We are also not responsible if anything happens to your data outside of our network.

If you do not agree with our Data Protection Addendum and Privacy Notice, you must stop using our services immediately.

7.2 Our Use of Customer Data. You instruct us to use and disclose Customer Data as necessary to (a) provide the Services consistent with this Section 7.2, Section 7.4 (Confidentiality), our Data Protection Addendum, and Privacy Notice, including detecting, preventing, and investigating security incidents, fraud, spam, or unlawful use of the Services, and (b) respond to any technical problems or your queries and ensure the proper working of the Services. You acknowledge that the Internet and telecommunications providers' networks are inherently insecure. Accordingly, you agree we are not liable for any changes to, interception of, or loss of Customer Data while in transit via the Internet or a telecommunications provider's network.

If you do not agree with the terms of our Data Protection Addendum or Privacy Notice, you must stop using the Services immediately.

We are also not responsible if anything happens to your data outside of our network.

Please let us know what you think about Le Five and our services. By the way, though, if you send us feedback, we own it and can use it however we choose.



7.3 Feedback. We welcome any recommendations, suggestions, improvement or correction requests, comments, or other feedback from you or any End User about the Services (collectively, “Feedback”). Please know, however, that by submitting Feedback to us, you agree that: (a) Feedback will not be treated as your Confidential Information; (b) we may use or disclose, or choose not to use or disclose, Feedback for any purpose and in any way; (c) we own any Feedback; and (d) you and any End User are not entitled to any compensation or reimbursement of any kind from us under any circumstances for Feedback.

Neither party will tell anyone else about or use the confidential information that it got from the other party, except as agreed to in these terms.

7.4 Confidentiality.

7.4.1 Definition. “Confidential Information” means any information or data, regardless of whether it is in tangible form, disclosed by either party (“Disclosing Party”) to the other party (“Receiving Party”) that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential given the nature of the information and the circumstances surrounding disclosure, including, without limitation, any Order Form(s), Customer Data, the Documentation, security reports and attestations, audit reports, customer lists, pricing, phone numbers, concepts, processes, plans, designs and other strategies, “know how”, financial, and other business and/or technical information and materials of Disclosing Party and its Affiliates. Confidential Information does not include any information which: (a) is publicly available through no breach of these Terms or fault of Receiving Party; (b) was properly known by Receiving Party, and to its knowledge, without any restriction, prior to disclosure by Disclosing Party; (c) was properly disclosed to Receiving Party, and to its knowledge, without any restriction, by another person without breach of Disclosing Party's rights; or (d) is independently developed by the receiving party without use of or reference to the Confidential Information of Disclosing Party

7.4.2 Use and Disclosure. Except as otherwise authorized by Disclosing Party in writing, Receiving Party will not (a) use any Confidential Information of Disclosing Party for any purpose outside the scope of these Terms and (b) disclose or make Confidential Information of

Disclosing Party available to any party, except to its, its Affiliates', and their respective employees, legal counsel, accountants, contractors, and in our case, subcontractors (collectively, "Representatives") who have a "need to know" in order to carry out the purpose of these Terms. Receiving Party is responsible for its Representatives' compliance with this Section 7.4. Representatives will be legally bound to protect Confidential Information of Disclosing Party under terms of confidentiality that are at least as protective as the terms of this Section 7.4. Receiving Party will protect the confidentiality of Confidential Information of Disclosing Party using the same degree of care that it uses to protect the confidentiality of its own confidential information but in no event less than reasonable care. Notwithstanding the foregoing, you may disclose to End Users our SOC2 or similar report, which will constitute our Confidential Information, only to an End User's employee or contract worker who has a "need to know" for such Confidential Information and is legally bound to terms of confidentiality that are at least as protective as the terms of this Section 7.4.

Either party may disclose the confidential information it got from the other party if required by a law, regulation, subpoena, or a court order, if the parties fulfill certain conditions, such as providing notice (if legally allowed) and reimbursement of legal fees.

7.4.3 Compelled Disclosure. Receiving Party may disclose Confidential Information of Disclosing Party if so required pursuant to a regulation, law, subpoena, or court order (collectively, "Compelled Disclosures"), provided Receiving Party gives Disclosing Party notice of a Compelled Disclosure (to the extent legally permitted). Disclosing Party will cover Receiving Party's reasonable legal fees for preparation of witnesses, deposition, and testimony to the extent such Compelled Disclosure is in connection with a lawsuit or legal proceeding to which Disclosing Party is a party or to the extent fees are incurred in connection with reasonable assistance provided to Disclosing Party in connection with Disclosing Party's efforts to contest such Compelled Disclosure.

Money alone may not be enough to make either party whole if the other party breaks its promise of confidentiality. So, the parties can seek other remedies (like gag orders), if needed.

7.4.4 Injunctive Relief. The parties expressly acknowledge and agree that no adequate remedy may exist at law for an actual or threatened breach of this Section 7.4 and that, in the event of an actual or threatened breach of the provisions of this Section 7.4, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it.

8. Representations, Warranties, and Disclaimer

You promise that you are only giving us any data for which you've given required notices and gotten required permissions, including in a manner as required by law or regulation. In addition, we will only use and disclose this data according to Section 7.2 (Our Use of Customer Data) above.

8.1 Customer Data. You represent and warrant that you have provided, and will continue to provide, adequate notices and have obtained, and will continue to obtain, the necessary permissions and consents to provide Customer Data to us for use and disclosure pursuant to Section 7.2 (Our Use of Customer Data).

We promise that our services will work the way we say they will in our documentation.

8.2 Services. We represent and warrant that the Services perform materially in accordance with the applicable Documentation. Our sole obligation, and your sole and exclusive remedy, in the event of any failure by us to comply with this Section 8.2 will be for us to, at our option, re-perform the affected Services or refund to you the fees you actually paid for the affected Services.

Both of us must follow export control and economic sanctions laws, including those of the U.S. Each party swears that it, or its organization, is not on any government sanctions lists of people and organizations that U.S. companies are not allowed to do business with.

8.3 Export Controls. Each party will comply with export control and economic sanctions laws in all applicable jurisdictions that apply directly or indirectly to the Services, including, without limitation, the United States of America. You will obtain all licenses or other authorizations

required to export, re-export, or transfer the Services. Each party represents that it (and, in your case, also End Users) is not on any government prohibited/denied/unverified-party, sanctions, debarment, or exclusion list (collectively, “Sanctions Lists”). You will not export, re-export, or transfer the Services to an entity on any Sanctions List without prior U.S. government or other required government authorization. You will (a) immediately discontinue your use of the Services if you are placed on any Sanctions List and (b) remove an End User's access to the Services if such End User becomes placed on any Sanctions List.

Except for any of our explicit warranties in this Section 8, we are offering our services “as is.” You also understand that we are not liable for anything that happens as a result of your use of our beta offerings, and we won't indemnify for them either.

8.4 DISCLAIMER. WITHOUT LIMITING A PARTY'S EXPRESS WARRANTIES AND OBLIGATIONS UNDER THESE TERMS, AND EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8, THE SERVICES ARE PROVIDED “AS IS,” AND WE MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. WE ADDITIONALLY DISCLAIM ALL WARRANTIES RELATED TO THIRD PARTY TELECOMMUNICATIONS PROVIDERS. BETA OFFERINGS ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITH NO WARRANTIES WHATSOEVER, AND WE WILL HAVE NO LIABILITY AND NO OBLIGATION TO INDEMNIFY FOR ANY BETA OFFERING WHATSOEVER.

9. Mutual Indemnification

If our services violate someone else's intellectual property rights, then we will fight that fight and pay the fines, damages, and costs awarded by a court or that we approve as part of a settlement.

9.1 Indemnification by Us.

9.1.1 Scope of Indemnification. We will defend you from and against any claim, demand, suit, or proceeding made or brought against you by a third party alleging that our provision of the Services infringes or misappropriates such third party's intellectual property rights (“Infringement Claim”). We will indemnify you from any damages, fines or penalties imposed by a government or regulatory body, attorneys' fees, and costs awarded against you or for settlement amounts approved by us for an Infringement Claim.

If we think our services may violate someone else's intellectual property rights, then we may try to obtain the right for you to continue to use our services or modify our services so they are no longer infringing. If we are unable to do either, then we may terminate these terms, close your account, and refund you any unused pre-paid fees.

9.1.2 Infringement Options. If your use of the Services has become, or in our opinion is likely to become, the subject of any Infringement Claim, we may at our option and expense: (a) procure for you the right to continue using the Services as set forth in these Terms; (b) modify the Services to make them non-infringing; or (c) if the foregoing options are not reasonably practicable, terminate these Terms, or, if applicable, terminate the Services that are the subject of any Infringement Claim, and refund you any unused pre-paid fees.

There are limits on what we indemnify you for. We will not pay for any fines, damages, or costs for:

- A claim that was filed because you violated these terms.
- Any intellectual property infringement claim that arises from your use of our services in combination with other applications, products, or services; or
- Any of our services that are free of charge.

9.1.3 Limitations. We will have no liability or obligation under this Section 9.1 with respect to any Infringement Claim (a) arising out of your use of the Services in breach of these Terms; (b) arising out of the combination, operation, or use of the Services with other applications, portions of applications, products, or services where the Services would not by themselves be infringing; or (c) arising from Services for which there is no charge.

If someone comes after us for:

- You or your end users violation of Section 4 (Your Responsibilities) or
- Something related to your software applications or services, then you have to fight that fight and cover the fines, damages, or costs awarded by a court or approved by you as part of a settlement.

9.2 Indemnification by You. You will defend us, our officers, directors, employees, and Affiliates (collectively, “Le Five Indemnified Parties”) from and against any claim, demand, suit, or proceeding made or brought against a Le Five Indemnified Party by a third party alleging or arising out of (a) your or any End Users' breach of Section 4 (Your Responsibilities) or (b) a Customer Application, including, without limitation, any claims that a Customer Application, or your or an End User's use of a Customer Application, infringes or misappropriates such third party's intellectual property rights (collectively, “Customer Indemnifiable Claims”). You will indemnify us from any damages, fines or penalties imposed by a government or regulatory body, attorneys' fees, and costs awarded against a Le Five Indemnified Party or for settlement amounts approved by you for a Customer Indemnifiable Claim.

If either party wants to be indemnified by the other for a particular claim, then the party requesting indemnification needs to do certain things – namely give notice of the claim, cooperate, and let the party providing the indemnification handle the defense or settlement of the claim. If these things are not done, then the other party may not have to provide the requested indemnification. See the legal language to the left for what is specifically required.

9.3 Conditions of Indemnification. As a condition of the foregoing indemnification obligations: (a) the indemnified party (“Indemnified Party”) will promptly notify the indemnifying party (“Indemnifying Party”) of any Infringement Claim or Customer Indemnifiable Claim (individually and collectively referred to as a “Claim”); provided, however, any failure to give such prompt notice will not relieve Indemnifying Party of its obligations under this Section 9 except to the extent that Indemnifying Party was actually and materially prejudiced by such failure; (b) Indemnifying Party will have the sole and exclusive authority to defend or settle any Claim; and (c) Indemnified Party will reasonably cooperate with Indemnifying Party in

connection with Indemnifying Party's activities under this Section 9 at Indemnifying Party's expense. Indemnified Party reserves the right, at its own expense, to participate in the defense of any Claim. Notwithstanding anything to the contrary in this Section 9, Indemnifying Party will not settle any Claims for which it has an obligation to indemnify pursuant to this Section 9 admitting liability or fault on behalf of Indemnified Party, nor create any obligation on behalf of Indemnified Party, without Indemnified Party's prior written consent, which will not be unreasonably withheld, conditioned, or delayed..

9.4 Exclusive Remedy. This Section 9 states Indemnifying Party's sole liability to, and Indemnified Party's exclusive remedy against, the other party for any third party claims.

10. Limitation of Liability

Generally speaking, neither party owes the other party for any bad things that might indirectly result from our services or from a failure of a party to carry out its promises under these terms.

10.1 LIMITATION ON INDIRECT, CONSEQUENTIAL, AND RELATED DAMAGES.

IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, LOST DATA, BUSINESS INTERRUPTION, OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

Generally speaking, any direct damages either party might owe to the other party cannot be more than the amount you've paid (or should have paid) us in the previous 12-months for the specific services giving rise to the claim.

10.2 LIMITATION OF LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY ARISING OUT OF OR RELATED TO THESE TERMS EXCEED THE

AMOUNTS PAID OR PAYABLE BY YOU UNDER THESE TERMS FOR THE SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

The only exceptions that apply to the limitations in Section 10.1 and Section 10.2 are indirect and direct damages for your violation of Section 4 (Your Responsibilities) or Section 6 (Fees and Payment Terms) or for the claims covered under Section 9 (Mutual Indemnification).

10.3 UNLIMITED LIABILITY. 10.2 (LIMITATION OF LIABILITY), THE LIMITATIONS IN SECTION 10.1 AND SECTION 10.2 DO NOT APPLY TO (a) YOUR BREACH OF SECTION 4 (YOUR RESPONSIBILITIES); (b) YOUR BREACH OF SECTION 6 (FEES AND PAYMENT TERMS); OR (c) AMOUNTS PAYABLE PURSUANT TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 (MUTUAL INDEMNIFICATION).

THE PROVISIONS OF THIS SECTION 10 ALLOCATE THE RISKS PURSUANT TO THESE TERMS BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THE LIMITATIONS SET FORTH IN THIS SECTION 10 IN DETERMINING WHETHER TO ENTER INTO OR OTHERWISE ACCEPT THESE TERMS.

11. Use of Marks

If you use our services, then we can use your company's name, logo, and description of how you use our services on our website, in earnings releases and calls, and in marketing, promotional, or other materials available to the public according to your usage guidelines that you provide to us.

You grant us the right to use your name, logo, and a description of your use case to refer to you on our website, earnings releases and calls, or marketing or promotional materials, subject to your standard trademark usage guidelines that you expressly provide to us.

12. Term, Termination, and Survival



These terms become effective on the day you accept them and create an account to use our services.

12.1 Term. These Terms, as may be updated from time to time, will commence on the date they are accepted by you and continue until terminated in accordance with Section 12.2 (Termination) (“Term”).

Either party may terminate these terms for any reason 30 days after informing the other party in writing. However, if there are any order forms in effect, then these terms won't terminate until all order forms have expired or been terminated.

Termination will result in the closure of all of your accounts.

12.2 Termination.

12.2.1 For Convenience. Either party may terminate these Terms and close all of your accounts for any reason upon thirty (30) days written notice to the other party. Notwithstanding the preceding sentence, if there is an Order Form(s) in effect, then these Terms will not terminate until such Order Form(s) has expired or been terminated in accordance with its terms.

If you significantly violate these terms and don't fix the violation within 15 days of us telling you about the violation, then we may terminate these terms. Similarly, if we significantly violate these terms and don't fix the violation within 15 days of you telling us about the violation, then you may terminate these terms.

Termination will result in the closure of all of your accounts.

12.2.2 Material Breach. We, at our sole discretion, may terminate these Terms and close all of your accounts in the event you commit any material breach of these Terms and fail to remedy such material breach within fifteen (15) days after we provide written notice of such breach to you. You may also terminate these Terms in the event we commit a material breach of these Terms and fail to remedy such material breach within fifteen (15) days after providing written notice of such material breach to us.

Either party may also terminate these terms by providing the other party with written notice if the other party goes bankrupt or fails to continue its business.

Termination will result in the closure of all of your accounts.

12.2.3 Insolvency. Subject to applicable law, either party may terminate these Terms immediately and close all of your accounts by providing written notice in the event of the other party's liquidation, commencement of dissolution proceedings, or any other proceeding relating to a receivership, failure to continue business, assignment for the benefit of creditors, or becoming the subject of bankruptcy.

Some terms live on even after these terms end. That includes your payment obligations and the specific sections mentioned on the left.

12.3 Survival. Upon termination of these Terms, the terms of this Section 12.3, and the terms of the following Sections will survive (i.e. still apply): Section 3.1(b) (regarding our Security Overview), Section 6 (Fees and Payment Terms), Section 7 (Ownership, Use of Customer Data, and Confidentiality), Section 8.4 (Disclaimer), Section 9 (Mutual Indemnification), Section 10 (Limitation of Liability), Section 13 (General), and Section 14 (Dispute Resolution).

13. General

Just because we don't enforce some part of these terms against you now doesn't mean we can't enforce them against you later. If the various documents that are referred to in these terms seem to be in conflict, we explain which documents will prevail over the other ones.

13.1 No Waiver and Order of Precedence. No failure or delay by either party in exercising any right or enforcing any provision under these Terms will constitute a waiver of that right, provision, or any other provision. Any waiver must be in writing and signed by each party to be legally binding. Titles and headings of sections of these Terms are for convenience only and will not affect the construction of any provision of these Terms. In the event of any conflict or inconsistency among the following documents, the order of precedence will be: (1) the

applicable Order Form, (2) these Terms, (3) our Acceptable Use Policy, and (4) the applicable Documentation.

You cannot just transfer these terms or your obligations under these terms to someone else or another party without our permission first. We can transfer these terms or our obligations under these terms to someone else or another party without your permission

13.2 Assignment. You will not assign, delegate, or otherwise transfer these Terms, in whole or in part, without our prior written consent. Any attempt by you to assign, delegate, or transfer these Terms will be null and void. We may assign, delegate, or otherwise transfer these Terms, in whole or in part, without your consent. Subject to this Section 13.2, these Terms will be binding on each party and each party's successors and assigns.

These terms don't create any special relationship between the parties, like an employer-employee relationship, joint venture, or a partnership. Nothing will change that. Each party will be responsible for its own employees and agents.

13.3 Relationship. Each party is an independent contractor in the performance of each and every part of these Terms. Nothing in these Terms is intended to create or will be construed as creating an employer-employee relationship or a partnership, agency, joint venture, or franchise. Each party will be solely responsible for all of its respective employees and agents and its respective labor costs and expenses arising in connection with its respective employees and agents. Each party will also be solely responsible for any and all claims, liabilities, damages, or debts of any type that may arise on account of each of its respective activities, or those of its respective employees and agents, in the performance of these Terms. Neither party has the authority to commit the other party in any way and will not attempt to do so or imply that it has the right to do so.

Except as explained in Section 14 (Dispute Resolution), if any part of these terms is not enforceable, the rest of these terms will still be enforceable.

13.4 Severability. Except as described in Section 14 (Dispute Resolution), if any provision of these Terms is held by a court or other tribunal of competent jurisdiction to be unenforceable,



that provision will be limited or eliminated to the minimum extent necessary to make it enforceable and, in any event, the rest of these Terms will continue in full force and effect.

If you need to notify us, you must use our headquarters' address for personal delivery or mail and send a copy to le Five. If you're notifying us by email, the notice should be sent to Le Five Attn: General Counsel.

If we need to notify you, we'll notify you via email to the email address designated in your account or via your account portal.

13.5 Notices. Any notice required or permitted to be given under these Terms to us will be given in writing to the following address by personal delivery, certified mail, return receipt requested, overnight delivery by a nationally recognized carrier or by email:

Le Five USA Inc

11115 Folsom Blvd, Ste 200, Rancho Cordova, CA 95670

Notices given to us by personal delivery, certified mail, return receipt requested, or overnight delivery by a nationally recognized carrier will be copied to info@lefive.us

Attention: General Counsel.

Any notice required or permitted to be given under these Terms to you will be sent via email to the email address you designate in your account or provided via your account portal.

If either party can't keep its promises because something crazy happens beyond its control (think earthquake, massive power outage, war, etc.), then that doesn't count as a violation of these terms.

13.6 Force Majeure. No failure, delay, or default in performance of any obligation of a party will constitute an event of default or breach of these Terms to the extent that such failure to perform, delay, or default arises out of a cause, existing or future, that is beyond the control and without negligence of such party, including action or inaction of governmental, civil, or military



authority, fire, strike, lockout, or other labor dispute, flood, terrorist act, war, riot, theft, earthquake, or other natural disaster. The party affected by such cause will take all reasonable actions to minimize the consequences of such cause.

If you're associated with a government entity, these terms still apply to your use of our services.

13.7 Government Terms. We provide the Services, including any related software and technology, for ultimate federal government end use solely in accordance with these Terms. If you (or any End Users) are an agency, department, or other entity of any government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Services, or any related documentation of any kind, including technical data, software, and manuals, is restricted by these Terms. All other use is prohibited and no rights other than those provided in these Terms are conferred. The Services were developed fully at private expense.

Other than arbitration (see Section 14), if the parties can't agree on something and end up having a legal dispute, then California laws will apply.

13.8 Governing Law and Venue. The enforceability and interpretation of Section 14 (Dispute Resolution) will be determined by the Federal Arbitration Act (including its procedural provisions). Apart from Section 14 (Dispute Resolution), these Terms will be governed by and interpreted in accordance with the laws of the State of California without regard to conflicts of laws and principles that would cause the laws of another jurisdiction to apply. These Terms will not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Except as provided in Section 14 (Dispute Resolution), any legal suit, action, or proceeding arising out of or related to these Terms or the Services will be instituted in either the state or federal courts of San Francisco, California, and each party consents to the personal jurisdiction of these courts.

This is the only set of terms that governs the parties' relationship. Any purchase order or other terms that you provide will not be binding or valid.

13.9 Entire Agreement. Except as provided in these Terms and any exhibits or attachments, applicable Order Form(s), or other terms incorporated by reference into these Terms, these



Terms supersede all prior and contemporaneous proposals, statements, sales materials, presentations, or agreements, oral and written. No oral or written information or advice given by us, our agents, or our employees will create a warranty or in any way increase the scope of the warranties or obligations under these Terms. Any term or condition stated in your vendor registration form or registration portal or in any purchase order document or similar document provided by you will be construed solely as evidence of your internal business processes, and the terms and conditions contained thereon will be null and void and have no effect with regard to these Terms between the parties and be non-binding against us even if signed by us after the date you accept these Terms.

14. Dispute Resolution

Please reach out to our Customer Support team before bringing a legal case.

If our Customer Support team can't help you with a dispute, the parties will escalate the dispute internally to see if it can be resolved. If it can't, the parties agree to go to binding arbitration, again, in San Francisco, California. Arbitration means a professional arbitrator will decide how to resolve a dispute instead of a judge or a jury deciding the case.

Before bringing a formal legal case, please first try contacting our Customer Support. Most disputes can be resolved that way.

14.1 Agreement to Arbitrate. If a dispute, claim, or controversy related to these Terms or the Services (collectively, “Disputes”) cannot be resolved through our Customer Support team, each party's senior representatives will engage in good faith negotiations with the other party's senior representatives to amicably resolve a Dispute (except for Disputes set forth in Section 14.3 (Exceptions to Agreement to Arbitrate), which may be litigated in court). If parties are unable to resolve a Dispute within thirty (30) days after the first request to engage in good faith negotiations or within such other time period as the parties may agree to in writing, the parties may commence binding arbitration in accordance with Section 14.2 (Details on Arbitration Procedure). If either party has a Dispute about whether this Section 14.1 can be enforced or applies to a Dispute between the parties, each party agrees that the arbitrator will decide that, too.

Pursuant to this Section 14.1, you understand that you are giving up the right to have a judge and/or jury resolve any Dispute arising out of or related to these Terms or the Services.

If the parties go to arbitration, then it will be arbitrated through the American Arbitration Association (AAA) with only one arbitrator (one is so much easier). And remember, the arbitrator's decision will be final and binding.

14.2 Details of Arbitration Procedure. Except for Disputes set forth in Section 14.3 (Exceptions to Agreement to Arbitrate), Disputes that have not been resolved between the parties will be submitted to binding arbitration, which will be conducted by the American Arbitration Association (AAA). You can look at AAA's rules and procedures on their website <http://www.adr.org> or you can call them at 1-800-778-7879. The arbitration will be governed by the then-current version of AAA's Commercial Arbitration Rules (“Rules”) and will be held with a single arbitrator appointed in accordance with the Rules. To the extent anything described in this Section 14 conflicts with the Rules, the language of this Section 14 applies. Each party will be entitled to get a copy of non-privileged relevant documents in the possession or control of the other party and to take a reasonable number of depositions. All such discovery will be in accordance with procedures approved by the arbitrator. This Section 14 does not alter in any way the statute of limitations that would apply to any Disputes asserted by either party. The arbitrator's award will be based on the evidence admitted and the substantive law of the State of California and the United States of America, as applicable, and will contain an award for each issue in Dispute. The award will provide in writing the factual findings and legal reasoning for such award. The arbitrator will not be entitled to modify these Terms. Except as provided in the Federal Arbitration Act, the arbitration award will be final and binding on the parties. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Any arbitration proceedings will take place in San Francisco, California.

Despite what we said above in this Section 14, there are some disputes that won't go to arbitration, but to court, like IP disputes and disputes about your violation of our Acceptable Use Policy. The parties also don't have to arbitrate small claims court cases.



14.3 Exceptions to Agreement to Arbitrate. Each party agrees it will go to court to resolve Disputes relating to:

(a) either party's intellectual property (e.g., trademarks, trade dress, domain names, trade secrets, copyrights, or patents)

or

(b) Your or an End User's breach of our Acceptable Use Policy.

Also, either party can bring a Dispute in small claims court either in San Francisco, California, or the county where you live, or some other location the parties agree on, if it qualifies to be brought in that court. In addition, if either party brings a Dispute in court that should be arbitrated or either party refuses to arbitrate a Dispute that should be arbitrated, the other party can ask a court to force the parties to go to arbitration to resolve such Dispute (i.e., compel arbitration). Either party may also ask a court to stop a court proceeding while an arbitration proceeding is ongoing.

Neither party will bring a class action suit against the other party. If, for some reason, a court decides that this Section 14.4 isn't enforceable, then this Section 14.4 will go away.

14.4 Class Action Waiver. Each party agrees that any Disputes between the parties must be brought against each other on an individual basis only. That means neither party can bring a Dispute as a plaintiff or class member in a class action, consolidated action, or representative action. An arbitrator cannot combine more than one person's or entity's Disputes into a single case and cannot preside over any consolidated class or representative proceeding. Each party agrees the arbitrator's decision or award in one person's or entity's case can only impact the person or entity that brought a Dispute and cannot impact or otherwise be used to decide Disputes with other people or entities, including other Le Five customers. If a court decides that this Section 14.4 is not enforceable or valid, then this Section 14.4 will be null and void. But, the rest of these Terms will still apply.

15. Additional Terms



These terms apply to you if you provide data from the EEA, UK, or Switzerland.

15.1 If we process personal data from the European Economic Area (EEA), Switzerland, or the United Kingdom on your behalf, you agree to the terms of our Data Protection Addendum incorporated by reference into these Terms

These terms apply to you if you reside in the EEA, UK, or Switzerland.

15.2 If you reside in the European Economic Area (EEA), Switzerland, or the United Kingdom, nothing in these Terms will exclude or limit the liability of either party for (i) gross negligence or intentional misconduct of such party; (ii) death or personal injury caused by such party's negligence; (iii) fraud or fraudulent misrepresentation; or (iv) any other liability to the extent that the same may not be excluded or limited as a matter of applicable law.

These terms apply to you if you reside in Germany.

15.3 If you reside in Germany, we warrant that the Services will operate in accordance with the applicable Documentation and will materially comply with any specifications contained the applicable Documentation. The parties agree that to the extent you are entitled to any statutory warranty rights, the applicable statutory warranty period is hereby reduced to twelve (12) months and any and all further warranties are excluded.

These terms apply to you if you are a microenterprise, small enterprise, or not for profit organisation in the EEA or UK.

15.4 If you are a microenterprise, small enterprise, or not for profit organisation and Le Five provides you with the Services within the European Economic Area or United Kingdom, you have read and agree to the European Electronic Communications Code Rights Waiver.

These terms apply to you if you reside in Japan.

15.5 If you reside in Japan, these Terms are hereby amended by the Amendment to the Global Le Five Terms of Service, which will apply to you.



