

TERMS OF SERVICES

Latest Update: January 2020

Thank you for using our products and services!

This agreement is between you (“**Customer**”; “**you**”) and SQALogic Technologies, Inc., located at 235 Peel Street, Montreal, QC, H3C 0P8, Canada (“**SQALogic**”; “**we**”; “**us**”).

The Terms of Services apply to your subscription to our [...] (the “**Services**”). The Services that we provide to you are described in further details in an order form executed by you or accepted through a purchase order (the “**Order Form**”). In case of contradiction between the Order Form and these Terms of Services, the Order Form shall have precedence over the Terms of Services (together, the “**Terms of Services**”).

If you have any questions on these Terms of Services, you can reach us at legal@sqalogic.com.

1. DEFINITIONS

- “**End User(s)**” means (i) each user who is provided with access to the Services through an authorized licence by a Commercial Licence Customer and (ii) each individual using the Services using a Professional License.
- “**Commercial Licence**” means a license for a group of End Users acquired by Customer, who is responsible for allocating and managing the licenses to End User. Commercial Licence may be used for commercial purposes, or for other purposes such as educational purposes.
- “**Confidential Information**” means any and all information of a party (the “**Disclosing Party**”) which has or will come into the possession of the other party (the “**Receiving Party**”) concerning the business, properties, affairs or finances of the Disclosing Party, including proprietary information and trade secrets. Confidential Information must be indicated as confidential information, or it must be clear at the time of the disclosure that the information ought to be handled as Confidential Information.
- “**Customer Data**” means the (i) the data generated by the Services and (2) the data inputted in the Services by End Users. Notwithstanding the foregoing, Usage Data shall not be considered Customer Data. Customer Data shall include Personal Data.
- “**Customer Materials**” means all information, algorithms, software code, content, data or any other materials disclosed or provided to us for us to provide the Services and fulfill our obligations under these Terms of Services. Customer Materials shall not include Customer Data.
- “**Intellectual Property**” means (a) any and all proprietary rights provided under patent law, copyright law (registered and unregistered copyrights and unpublished work of authorship), trademark law, design patents or industrial design law, semiconductor chip law, or any other statutory provision or common law principle applicable to the protection of intangible proprietary information or rights, including trade secret law, which may provide a right in either idea, formula, algorithm, concept, invention, or know-how generally, or the expression or use of such ideas, formulae, algorithms, concepts, inventions or know-how, and any and all applications, registrations, licences, sub-licences, continuations, reissues, extensions, franchises, agreements or any other evidence of a right in any of the foregoing.

- **“Personal Data”** means any information that would meet the definition of “personal information” (or similar nomenclature) under applicable laws and that is (a) submitted through the Services by Customer or End Users or (b) collected or generated by the Services about End Users. For the purpose of this Agreement, Personal Data shall not include Usage Data.
- **“Open Source Software”** means any software licensed under Open Source Licence terms.
- **“Open Source Licence Terms”** means the licensing and/or distribution models commonly known as “open source software” or “free software” or any other licensing and/or distribution models pursuant to which software and redistribution of such software. By way of example only and without limitation, Open Source Licence Terms include any versions of the following agreements, licences or distribution models: (1) the GNU General Public Licence (GPL); (2) Lesser/Library GPL (LGPL); (3) the Common Development and Distribution Licence (CDDL); (4) the Artistic Licence (including without limitation PERL); (5) the Netscape Public Licence; (6) the Sun Community Source Licence (SCSL) or the Sun Industry Standards License (SISL); (7) the Apache Licence; (8) the Common Public Licence; (9) the Affero GPL (AGPL) and (10) the Berkeley Software Distribution (BSD).
- **“Pre-Existing Intellectual Property”** shall include any and all Intellectual Property of a party which came into existence or use prior to the Term or which were acquired or generated outside the scope of these Terms of Services, as well as any modification, enhancement or improvement to any of the foregoing.
- **“Professional Licence”** means a license to use the Services for a sole individual and may be used commercial purposes, or other purposes such as educative.
- **“Usage Data”** means data captured and generated by the Services about performance and analytics, such as page views, performance statistics, errors occurrences, and electronic attributes of devices, such as browser name and version, operating system and country. Usage Data is generally used to improve our Services, monitor performance and understand popular features.
- **“Security Breach”** means any act or omission that materially compromises the security, confidentiality or integrity of Customer Data.
- **“Term”** means the term of these Terms of Services, which starts at the earliest of (i) the execution of an Order Form; (ii) the access or use of the Services or (iii) the signature of these Terms of Services. The Terms of Services shall remain active for as long as an Order Form is active.

2. LICENSES

Subject to your respect of these Terms of Services, we grant you, for the Term, a non-exclusive, non-sublicensable, non-transferable, revocable right and license to access and use the Platform. All rights not expressly granted hereunder are reserved by us. If you have subscribed to a Commercial License, we grant you a non-sublicensable, non-transferable, revocable right and license to allow End Users access and use the Services during the Term. Customers with Commercial License shall remain entirely liable for the acts and omissions of your End Users in contravention of the [Acceptable Use Policy](#).

Neither you nor any of your End Users, if applicable, shall sell, transfer, sublicense, publish, disclose, or otherwise make available the Services, or copies thereof, to any third party without our prior written consent, except as otherwise provided in these Terms of Services.

The Services may include the provision of reports or similar outputs (each a “**Report**”). Unless otherwise set forth in an Order Form, we grant you a non-exclusive, non-sublicensable, transferable, limited and perpetual license to reproduce, print, download and use all such Reports. For greater clarity, this license survives the termination of these Terms of Services.

You grant us a non-exclusive, non-sublicensable, revocable (but only pursuant to these Terms of Services) right and license to access, use, modify, alter, aggregate and translate Customer Data and Customer Material to perform the Services and our obligations under these Terms of Services.

3. OPEN SOURCE SOFTWARE

The Services may contain Open Source Software. The terms and conditions governing your use of such Open Source Software shall be in accordance with the Open Source Licence Terms associated with such Open Source Software.

4. INTELLECTUAL PROPERTY

Each party shall be the sole and exclusive owner of its respective Pre-existing Intellectual Property. To be clear, the Services as well as any source or algorithms pertaining to any of the Services underlying technology and all intellectual property relating thereto are our sole and exclusive property.

You may make suggestions, enhancement requests, recommendations or other feedbacks (“**Feedbacks**”). We will be the sole owner of such Feedback as long as they relate to the Services and you hereby assign to us, without limitation of any kind, all rights, titles and interests therein.

5. ACCEPTABLE USE

You agree to use the Services only for lawful purposes and follow the following rules when using the Services. You represent and warrant that you will not use of the Services in any manner which contravenes, breaches or violates our [Acceptable Use Policy](#) (an “**Abuse**”).

You agree and acknowledge that an indirect or attempted violation of this Section shall be considered an Abuse. If we discover that you (or your End Users) are about to commit an Abuse (including by facilitating an Abuse), we may suspend part or all of the Services preemptively without any prior notice. We will send you a notice as soon as practicable, and we will conduct an inquiry.

If we reasonably determine that there is a material breach of this Section 5, we may terminate part or all the Services for cause and incurable breach pursuant to Section 16 of these Terms of Services.

Customer with Commercial License represents and warrants that it shall not allow or encourage the use of the Services by End Users in a manner which contravenes the Acceptable Use Policy,

to which Customer is a third-party beneficiary. For greater clarity, Customer shall be liable for any and all Abuses by their End Users.

6. UPGRADES

We may, from time to time, develop new modules, versions, functionalities or features to the Services (each an “**Upgrade**”). Upgrade are included in your license pursuant to these Terms of Services, except if we indicate otherwise (“**Excluded Upgrade**”). For greater clarification, we may charge additional fees in connection with an Excluded Upgrade. If we do so, we will apply the following principles:

- a) All clients shall be equally excluded from the Excluded Upgrade;
- b) Excluded Upgrade are only invoiced if you sign an Order form for the Excluded Upgrade;
- c) Excluded Upgrade shall never be mandatory;
- d) Excluded Upgrade shall never cover security issues with the Services. For greater clarity, all security patches and security Upgrade shall be included with the Services for no additional fees.
- e) Excluded Upgrade must be distinguishable from the actual Services performed;
- f) Excluded Upgrade shall not result in the actual Services as subscribed under the Order Form becoming obsolete or dependent on the Excluded Upgrade for regular use as initially intended by the parties. Notwithstanding the foregoing, Excluded Upgrade may add value to the existing Services without making the Services dependent on Excluded Upgrade.

7. SERVICE LEVEL AGREEMENT

“**Downtime**” means the overall number of minutes the Service is unavailable during a month. Downtime excludes Maintenance.

“**Maintenance**” means scheduled downtime to ensure optimal performance of the servers and similar purposes.

“**Uptime**” means the percentage of minutes our Service are available during a month. Uptime is calculated as follows: $[(\text{Total minutes in a month} - \text{Downtime}) / \text{total minutes in a month}] \times 100$.

Our Uptime commitment for the Service is of 99.95%.

If we perform Maintenance, we will try our best to advise you at least 72 hours in advance and perform Maintenance outside of regular business hours. During each month, a maximum of 12 hours shall be allowed for Maintenance. Under certain circumstances, we may perform emergency Maintenance, such as to install security patches. We will not be able to provide you with an advanced notice in case of emergency Maintenance. Whenever possible, we will perform Maintenance outside of business hours.

8. SUPPORT SERVICES

We provide technical support by e-mail, phone and by [Online Tickets](#) directly to you and your authorized End Users. Policyholders may not contact us directly for technical support. Technical support is provided during business hours.

We maintain an incident management process substantially as described below. The objectives of this process are to restore normal Service operations without undue delay given the prioritization and to minimize impacts on business operations, thus ensuring that the usual levels of service quality and availability are maintained.

Upon becoming aware of an incident, we will classify the incident based on its severity as described below:

Severity	Type	Definition	Examples
Critical	System Down	Effectively no access to the Services or a critical part of the Services	Services unresponsive or displaying excessive response times (unusable) to the majority of End Users.
High	Major Impact	Services available but major functionalities unusable with no known workarounds.	Services are available to a small percentage of End Users or generally available but with impact to functional capability.
Medium	Minor Impact	Services generally available but with partial functionalities with an effective workaround that does not impact necessary processing.	Workaround required e.g. manual input of data when the field should be automatically populated.
Low	Minor Impact	General questions and inquiry on the Service or problems not covered by the above categories.	

For each category, our service levels to address support requests are as follows:

Severity	Response Times	Resolution Times	Update Frequency
Critical	1 hour	4 hours	Once every 1 hour
High	2 hours	12 hours	Once every 4 hours
Medium	8 hours	Inclusion of applicable fixes in future Upgrades	Once every business day

Low	24 hours	Answer within 5 business days and or inclusion of applicable fixes in future Upgrades	Once every 2 business days
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9. FEES AND TAXES

You agree to pay us for the Services in accordance with the payment terms set forth in the Order Form. Unless indicated otherwise in the Order Form, all payments are net30. Any amounts due after this delay is subject to an annual interest rate of 15% (1.15% monthly). You agree to pay all costs, including, but not limited to, reasonable attorney and accounting fees, court costs and other collection expenses resulting from non-payments or incomplete payments.

Unless otherwise stated in the Order Form, our fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, the “**Taxes**”). You are responsible for paying all Taxes associated with the Services, excluding taxes based on our net income or property. If we have an obligation to pay or collect Taxes for you, we will invoice you this amount and you agree to pay this amount, unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority.

10. CONFIDENTIAL INFORMATION

Each party acknowledges that it may be exposed to or acquire information in connection with the Services that classifies as Confidential Information of the Disclosing Party. For the purpose of these Terms of Services, Confidential Information shall not include:

- Information which is generally known or available publicly, including information which becomes generally known through no fault or breach of the Receiving Party;
- Information which was known by the Receiving Party prior to receive the information from the Disclosing Party;
- Information which is independently developed by the Receiving Party without the direct or indirect use of Confidential Information;
- Information which is lawfully obtained from a third party without violation of a confidentiality obligation of the Disclosing Party.

Either party can disclose Confidential Information if required to do so by a court or government agency having jurisdiction (provided that, unless prohibited by law from doing so, the party subject to disclosure shall, without undue delay, notify the other party so that the other party may steps to resist disclosure or obtain a protective order). Confidential Information may also be disclosed if required to perform the Services or as required for legitimate business needs, such as to auditors, as long as such third parties are contractually obliged to maintain the Confidential Information as confidential.

Each party agrees to exercise no less than reasonable care to prevent the unauthorized access, use or disclosure of the other party’s Confidential Information. The Confidential Information shall only be used for the purposes of delivering the Services.

11. PERSONAL DATA

Each Party shall comply with all applicable laws in the collection, use and disclosure of Personal Data. We collect, use and disclose Personal Data as set forth in our [Services Privacy Policy](#). You hereby consent to the collection, use and disclosure pursuant to this [Services Privacy Policy](#).

You are solely responsible for ensuring all proper consents have been obtained for the use, collection and disclosure of Personal Data that you update, input or process through our Services, and for ensuring that the consent from any individuals was informed.

Our Services are not intended for the collection, use and disclosure of sensitive Personal Data that have not been de-identified, tokenized or otherwise submitted through similar technical operations to reduce the risks of unauthorized access.

Each party shall make commercially reasonable efforts to support the other party's compliance efforts regarding Personal Data, such as answering diligently requests for information and providing the other party with the necessary and available information required to respond to individual rights requests. We may charge reasonable fees for such collaboration if justified by the circumstances and subject to applicable laws. If we decide that the circumstances justify charging such fees, we will inform you in writing before.

12. INFORMATION SECURITY

We will deploy reasonable security controls based on the nature, scope, context and purposes of the use, collection and disclosure of Customer Data (subject to Section 13). In case of a Security Breach, we will advise you without undue delay, and no later than forty-eight (48) hours after becoming aware of a Security Breach ("**Security Breach Notification**").

The Security Breach Notification shall minimally include:

- a) a description of the nature of the Security Breach, including, where possible, the categories and approximate number of individuals and Customer Data concerned;
- b) a description of the likely consequences of the Security Breach;
- c) a description of the measures we took or propose to take to address the Security Breach, including, where appropriate, measures to mitigate possible adverse effects.

If we are unable to provide you with all such information at the time of the initial Security Breach Notification, we will provide such information as it becomes available and complete our full disclosure without additional delays.

13. DISCLAIMERS

You are solely responsible for the accuracy, completeness, quality and the content of Customer Data and Customer Materials. We have no control over and accepts no responsibility for the accuracy, completeness, quality and content of Customer Data and Customer Materials.

We do not warrant that the Services will be uninterrupted or error free.

We do not make any warranty as to the results that may be obtained from the use of the Services.

Except as set forth in these Terms of Services, the Services are provided on an "as is" basis. To the maximum extent permitted by law, we make no other representations, conditions, warranties

or guarantees, express or implied, regarding the accuracy, reliability or completeness of the Services. We expressly disclaim any and all implied warranties of merchantability, fitness for a particular purpose, title and non-infringement. You hereby waive your rights in any of the foregoing warranties, representations or conditions, whether express or implied.

We do not operate the networks of, or have any control over the operations of, the wireless or other communications service providers through which you may access the Services. Accordingly (i) we disclaim all responsibility and liability for or relating to your use of any such providers to access the Services and (ii) we cannot guarantee the privacy or security of wireless data transmissions. You should consult your Internet service provider about their privacy and security practices.

No oral advices or written or electronically delivered information given by us, our affiliates, our officers, directors, employees, agents, providers, merchants, sponsors, licensors or the like shall create any warranty.

14. INDEMNITY

You agree to defend us and hold us harmless (including our affiliates, subsidiaries, licensors, suppliers, service providers, contractors, and agents, as well as their respective employees, directors, officers, contractors and agents) against any and all claims, penalties, fine, cost, expenses (including reasonable attorney's fees), actions, damages, losses or liabilities (collectively, the "**Losses**") directly or indirectly arising out of, related to, in connection with or resulting from:

- A breach of Section 6 (including, a breach of the [Acceptable Use Policy](#) by an End User of your Commercial Licence, if applicable);
- A claim that Customer Data or Customer Material violates Intellectual Property.

Each party (the "**Indemnifying Party**") shall indemnify, hold harmless and, if requested by the Indemnified Party (as hereinafter defined), defend, at the Indemnifying Party's sole cost and expense, the other party and its affiliates, their employees, directors, officers and agents (the "**Indemnified Party**") from and against any Losses directly or indirect arising out of, related to, in connection with or resulting from:

- An event of gross negligence, fraud or willful misconduct;
- A breach of applicable laws.

15. LIMITATION OF LIABILITY

To the maximum extent permitted by law, neither party will be liable to the other party or its affiliates, employees, subcontractors or agents for any loss of profits, or special, indirect, incidental, consequential or exemplary damages, in connection with the performance of the Services, or the performance of any other obligations under these Terms of Services, even if a party is aware of the possibility of occurrence of such damages.

To the maximum extent permitted by law, our total liability to you for any damages arising out or in connection with these Terms of Services, whether arising by statute, contract tort or otherwise, will not exceed the amounts paid or payable by Customer to us under an Order Form during the twelve (12) months period preceding the event which gave rise to such claim.

16. PROOF OF CONCEPT; FREE TRIAL

If Customer is provided with a free trial to the Services, or otherwise with access and use for the purpose of a proof of concept (a) we do not make any representations regarding the Service Level Agreement, and Section 7 shall find no application during the free trial; (b) we do not guarantee support services in accordance with Section 8; (c) we make no representations or warranties whatsoever and (d) we shall have no liability whatsoever for the Services. The [Acceptable Use Policy](#) shall apply in full force, as set forth under Section 5.

17. TERMINATION; EFFECTS OF TERMINATION

Either party may terminate any Order forms for cause (i) upon a 30 day prior written notice of a material breach of these Terms of Service to the other party, if such breach remains uncured at the expiration of such period (the “**Termination Date**”) or (ii) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. If you terminate these Terms of Services lawfully pursuant sub-clause (i), we will reimburse you for any portion of the fees which you have paid in advance for Services which were not used at the Termination Date. You shall pay any fees accrued to or payable to us until the Termination Date.

Notwithstanding the foregoing, we may end the Services or suspend your access to the Services with or without notice to you if a material breach of these Terms of Services is not curable, in which case, we shall have no obligation to reimburse you for the Services paid for in advance.

We may terminate an Order Form without cause subject to a 60 days’ notice, in which case, we will reimburse you for any portion of the fees which you have paid in advance for Services which were not used at the Termination Date. You shall pay any fees accrued to or payable to us until the Termination Date.

18. EXPORT CONTROL

Each Order Form is made subject to any restrictions concerning the export of the Services (including the Platform and the technical information) from Canada and other countries that may be imposed on the parties from time to time. You may not directly or indirectly sell, export, re-export, transfer, divert, or otherwise dispose of our Services in any destination which is restricted or prohibited by Canada or other applicable countries, or use the Services for any purposes which is restricted by international treaties to which Canada is a part and by any applicable export control laws.

19. GOVERNING LAWS AND JURISDICTION

These Terms of Service and all transactions hereunder shall be governed by and construed in accordance with the laws of Ontario, Canada, without giving effect to any choice or conflict of law provision or rule (whether in Ontario or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of Ontario, Canada.

Any legal suit, action or proceeding, arising out of these Terms of Service or any transactions hereunder shall be instituted exclusively in Toronto, Ontario, Canada, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

20. MISCELLANEOUS

These Terms of Services are subject to changes at our sole discretion, such as to adapt to new laws and functionalities. When we change these Terms of Services, we will update the “**Latest Update**” above. Changes to these Terms of Services will only affect your and our respective rights and obligations from and after the effective date of such changes. We will advise you by e-mail of any changes to these Terms of Services. Order Forms can only be amended by a change order executed by both parties (a “**Change Order**”).

If any provision of these Terms of Services is in violation of any governmental statute or regulations, or is illegal for any reason, said provision shall be self-deleting without affecting the validity of the remaining provisions.

The waiver of a breach of any provision of these Terms of Services will not operate or be interpreted as a waiver of any other or subsequent breach.

You may not use our name or any logo, trademark, service mark, business name, trade name, domain name or social media account name or handle owned or licensed by us or generally speaking, our brand features, whether registered or not, and including any good will associated therewith, in any manner without our prior written consent.

Neither party shall be liable for delays in or failure of performance hereunder due to causes beyond its reasonable control, including, but not limited to, acts of God or public enemy, acts of government in either its sovereign or contractual capacity, flood, earthquake or other natural disaster, strike or other labor disputes, acts of war, acts of civil disobedience, denial-of-services and distributed-denial-of-services, ransomware and other cyber-attacks that are not caused or facilitated by gross negligence.

These Terms of Services describe the entire understanding and agreement of the parties and supersedes all oral and written agreements or understandings between them related to its subject matter.

We may assign these Terms of Services, in whole or in part, at any time with prior notice to you. You may not assign these Terms of Services, or part of it, to any other person without our prior written approval. Any attempt by you to do so is void. You may not transfer to anyone else, either temporarily or permanently, any rights to use the Services or any part of the Services. The foregoing shall not apply in the context of a bona fide business restructuration, sale of all or parts of your assets, acquisition, merger and acquisition or similar transactions, in which case, you must send us a notification of assignment without undue delay.