

# cywestEdge Terms and Conditions

**Last Updated: Aug28, 2021**

This cywestEdge Customer Agreement (the “**cywestEdge Agreement**”) contains the terms and conditions that govern your access to and use of the Service Offerings (as defined below) and is an agreement between Cywest Communications, Inc. d/b/a cywestEdge (also referred to as “**cywestEdge**,” “**we**,” “**us**,” or “**our**”) and you or the entity you represent (“**you**” or “**your**”). This cywestEdge Agreement takes effect when you click an “I Accept” button or check box presented with this cywestEdge Agreement or, if earlier, when you use any of the Service Offerings (the “**Effective Date**”). You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this cywestEdge Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity. To the extent they are not defined contextually, please see Section 14 for a glossary of certain capitalized terms used in this cywestEdge Agreement.

## **1. Use of the Service Offerings.**

1.1 Generally. You may access and use the Service Offerings in accordance with this cywestEdge Agreement. Service Level Agreements and Service Terms apply to certain Service Offerings. You will comply with the terms of this cywestEdge Agreement, all laws, rules and regulations applicable to your use of the Service Offerings (including at least the applicable laws, rules and regulations of the United States (where the Service Offerings are offered through our infrastructure located in the United States) as well as the laws, rules and regulations of your Account Country as applicable), and any Service Level Agreements and/or Policies applicable to the Service Offerings which you utilize.

1.2 Your Account. To access the Services, you must have a cywestEdge Account associated with a valid email address and a valid form of payment. Unless explicitly permitted by the Service Terms, you will only create one cywestEdge Account per email address.

1.3 Third-Party Content. Third-Party Content may be used by you at your election. Third-Party Content is governed by this cywestEdge Agreement and, if applicable, separate terms and conditions accompanying such Third-Party Content, which terms and conditions may include separate fees and charges.

## **2. Changes to the Services or Service Level Agreements.**

2.1 Changes to the Services. We may change or discontinue any of the Services from time to time. We will provide you at least 12 months’ prior notice if we discontinue material functionality of a Service that you are using, or materially alter a customer-facing API that you are using in a backwards-incompatible fashion, except that this notice will not be required if the 12 month notice period (a) would pose a security or intellectual property issue to us or the Services, (b) is economically or technically burdensome, or (c) would cause us to violate legal requirements.

2.2 Changes to the Service Level Agreements. We may change, discontinue or add Service Level Agreements from time to time in accordance with Section 12.

### **3. Security and Data Privacy.**

3.1 cywestEdge Security. Without limiting Section 10 or your obligations under Sections 4.1-4.5, we will implement reasonable and appropriate measures designed to help you secure Your Content against accidental or unlawful loss, access or disclosure.

3.2 Data Privacy. By accepting this cywestEdge Agreement, you expressly consent to the storage of Your Content in, and transfer of Your Content into, the cywestEdge systems and/or databases. We will not access or use Your Content except as necessary to maintain or provide the Service Offerings, or as necessary to comply with the law or a binding order of a governmental body. We will not (a) disclose Your Content to any government or third party or (b) subject to Section 3.3, move Your Content from the cywestEdge systems and/or databases; except in each case as necessary to comply with the law or a binding order of a governmental body. Unless it would violate the law or a binding order of a governmental body, we will give you notice of any legal requirement or order referred to in this Section 3.2. We will only use your Account Information in accordance with the Privacy Notice, and you consent to such usage. The Privacy Notice does not apply to Your Content.

3.3 Service Attributes. To provide billing and administration services, we may process Service Attributes applicable to your use of the Service Offerings, both in the Account Country and/or the United States. To provide you with support services initiated by you and investigate fraud, abuse or violations of this cywestEdge Agreement, we may process Service Attributes where we maintain our support and investigation personnel.

### **4. Your Responsibilities.**

4.1 Your Account(s). Except to the extent caused by our breach of this cywestEdge Agreement, (a) you are responsible for all activities that occur under your cywestEdge Account, regardless of whether the activities are authorized by you or undertaken by you, your employees or a third party (including your contractors, agents or End Users), and (b) we and our affiliates are not responsible for unauthorized access to your cywestEdge Account.

4.2 Your Content. You will ensure that Your Content and your and End Users' use of Your Content or the Service Offerings will not violate any of the Policies or any applicable law. You are solely responsible for the development, content, operation, maintenance, and use of Your Content.

4.3 Your Security and Backup. You are responsible for properly configuring and using the Service Offerings and otherwise taking appropriate action to secure, protect and backup your accounts and Your Content in a manner that will provide appropriate security and protection, which might include use of encryption to protect Your Content from unauthorized access and routinely archiving Your Content.

4.4 Log-In Credentials and Account Keys. cywestEdge Account log-in credentials and private keys generated by the Services are for your internal use only and you will not sell, transfer or sublicense them to any other entity or person, except that you may disclose your private key to your agents and subcontractors performing work on your behalf.

4.5 End Users. You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this cywestEdge Agreement, Your Content or use of the Service Offerings. You are responsible for End Users' use of Your Content and the Service Offerings. You will ensure that all End Users comply with your obligations under this cywestEdge Agreement and that the terms of your agreement with each End User are consistent with this cywestEdge Agreement. If you become aware of any violation of your obligations under this cywestEdge Agreement caused by an End User, you will immediately suspend access to Your Content and the Service Offerings by such End User. We do not provide any support or services to End Users unless we have a separate agreement with you or an End User obligating us to provide such support or services.

## **5. Fees and Payment.**

5.1 Service Fees. We calculate and bill fees and charges monthly. We may bill you more frequently for fees accrued if we suspect that your account is fraudulent or at risk of non-payment. You will pay us the applicable fees and charges for use of the Service Offerings as described on the cywestEdge Site using one of the payment methods we support. All amounts payable by you under this cywestEdge Agreement will be paid to us without setoff or counterclaim, and without any deduction or withholding. Fees and charges for any new Service or new feature of a Service will be effective when we post updated fees and charges on the cywestEdge Site, unless we expressly state otherwise in a notice. We may increase or add new fees and charges for any existing Services you are using by giving you at least 30 days' prior notice. We may elect to charge you interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments.

5.2 Taxes. Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that party upon or with respect to the transactions and payments under this cywestEdge Agreement. All fees payable by you are exclusive of Indirect Taxes, except where applicable law requires otherwise. We may charge and you will pay applicable Indirect Taxes that we are legally obligated or authorized to collect from you. You will provide such information to us as reasonably required to determine whether we are obligated to collect Indirect Taxes from you. We will not collect, and you will not pay, any Indirect Tax for which you furnish us a properly completed exemption certificate or a direct payment permit certificate for which we may claim an available exemption from such Indirect Tax. All payments made by you to us under this cywestEdge Agreement will be made free and clear of any deduction or withholding, as may be required by law. If any such deduction or withholding (including but not limited to cross-border withholding taxes) is required on any payment, you will pay such additional amounts as are necessary so that the net amount received by us is equal to the amount then due and payable under this cywestEdge Agreement. We will provide you with such tax forms as are reasonably requested in order to reduce or eliminate the amount of any

withholding or deduction for taxes in respect of payments made under this cywestEdge Agreement.

## **6. Temporary Suspension.**

6.1 Generally. We may suspend your or any End User's right to access or use any portion or all of the Service Offerings immediately upon notice to you if we determine:

- (a) your or an End User's use of the Service Offerings (i) poses a security risk to the Service Offerings or any third party, (ii) could adversely impact our systems, the Service Offerings or the systems or Content of any other cywestEdge customer, (iii) could subject us, our affiliates, or any third party to liability, or (iv) could be fraudulent;
- (b) you are, or any End User is, in breach of this cywestEdge Agreement;
- (c) you are in breach of your payment obligations under Section 5; or
- (d) you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

6.2 Effect of Suspension. If we suspend your right to access or use any portion or all of the Service Offerings:

- (a) you remain responsible for (i) all fees and charges you incurred prior to the period of suspension as well as (ii) all fees and charges you incur during the period of suspension; and
- (b) you will not be entitled to any service credits under the Service Level Agreements for any period of suspension.

## **7. Term; Termination.**

7.1 Term. The term of this cywestEdge Agreement will commence on the Effective Date and will remain in effect until terminated under this Section 7. Any notice of termination of this cywestEdge Agreement by either party to the other must include a Termination Date that complies with the notice periods in Section 7.2.

7.2 Termination.

- (a) Termination for Convenience. You may terminate this cywestEdge Agreement for any reason by providing us notice and closing your cywestEdge Account for all Services for which we provide an account closing mechanism. We may terminate this cywestEdge Agreement for any reason by providing you at least 30 days' advance notice.
- (b) Termination for Cause.

(i) By Either Party. Either party may terminate this cywestEdge Agreement for cause if the other party is in material breach of this cywestEdge Agreement and the material breach remains uncured for a period of 30 days from receipt of notice by the other party. No later than the Termination Date, you will close your cywestEdge Account.

(ii) By Us. We may also terminate this cywestEdge Agreement immediately upon notice to you (A) for cause if we have the right to suspend under Section 6, (B) if our relationship with a third-party partner who provides software or other technology we use to provide the Service Offerings expires, terminates or requires us to change the way we provide the software or other technology as part of the Services, or (C) in order to comply with the law or requests of governmental entities.

### 7.3 Effect of Termination.

(a) Generally. Upon the Termination Date:

(i) except as provided in Section 7.3(b), all your rights under this cywestEdge Agreement immediately terminate;

(ii) you remain responsible for all fees and charges you have incurred through the Termination Date and are responsible for any fees and charges you incur during the post-termination period described in Section 7.3(b);

(iii) you will immediately return or, if instructed by us, destroy all cywestEdge Content in your possession; and

(iv) Sections 4.1, 5, 7.3, 8 (except the license granted to you in Section 8.3), 9, 10, 11, 13 and 14 will continue to apply in accordance with their terms.

(b) Post-Termination. Unless we terminate your use of the Service Offerings pursuant to Section 7.2(b), during the 30 days following the Termination Date:

(i) we will not take action to remove from the cywestEdge systems or databases any of Your Content as a result of the termination; and

(ii) we will allow you to retrieve Your Content from the Services only if you have paid all amounts due under this cywestEdge Agreement.

For any use of the Services after the Termination Date, the terms of this cywestEdge Agreement will apply and you will pay the applicable fees at the rates under Section 5.

## 8. Proprietary Rights.

8.1 Your Content. Except as provided in this Section 8, we obtain no rights under this cywestEdge Agreement from you (or your licensors) to Your Content. You consent to our use of Your Content to provide the Service Offerings to you and any End Users.

8.2 Adequate Rights. You represent and warrant to us that: (a) you or your licensors own all right, title, and interest in and to Your Content and Suggestions; (b) you have all rights in Your Content and Suggestions necessary to grant the rights contemplated by this cywestEdge Agreement; and (c) none of Your Content or End Users' use of Your Content or the Service Offerings will violate the Acceptable Use Policy.

8.3 Service Offerings License. We or our licensors own all right, title, and interest in and to the Service Offerings, and all related technology and intellectual property rights. Subject to the terms of this cywestEdge Agreement, we grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to do the following: (a) access and use the Services solely in accordance with this cywestEdge Agreement; and (b) copy and use the cywestEdge Content solely in connection with your permitted use of the Services. Except as provided in this Section 8.3, you obtain no rights under this cywestEdge Agreement from us, our affiliates or our licensors to the Service Offerings, including any related intellectual property rights. Some cywestEdge Content and Third-Party Content may be provided to you under a separate license, such as the Apache License, Version 2.0, or other open source license. In the event of a conflict between this cywestEdge Agreement and any separate license, the separate license will prevail with respect to the cywestEdge Content or Third-Party Content that is the subject of such separate license.

8.4 License Restrictions. Neither you nor any End User will use the Service Offerings in any manner or for any purpose other than as expressly permitted by this cywestEdge Agreement. Neither you nor any End User will, or will attempt to (a) modify, distribute, alter, tamper with, repair, or otherwise create derivative works of any Content included in the Service Offerings (except to the extent Content included in the Service Offerings is provided to you under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the Service Offerings or apply any other process or procedure to derive the source code of any software included in the Service Offerings (except to the extent applicable law doesn't allow this restriction), (c) access or use the Service Offerings in a way intended to avoid incurring fees or exceeding usage limits or quotas, (d) resell or sublicense the Service Offerings, or (e) utilize the Service Offerings, the cywestEdge Content, any Third-Party Content, or the cywestEdge Site to take or engage in any actions which are prohibited by the laws, rules and regulations of the United States and/or your Account Country as applicable. You may only use the cywestEdge Marks in accordance with the Trademark Use Guidelines. You will not misrepresent or embellish the relationship between us and you (including by expressing or implying that we support, sponsor, endorse, or contribute to you or your business endeavors). You will not imply any relationship or affiliation between us and you except as expressly permitted by this cywestEdge Agreement.

8.5 Suggestions. If you provide any Suggestions to us or our affiliates, we and our affiliates will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to us all

right, title, and interest in and to the Suggestions and agree to provide us any assistance we require to document, perfect, and maintain our rights in the Suggestions.

## **9. Indemnification.**

9.1 General. You will defend, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any Losses arising out of or relating to any third-party claim concerning: (a) your or any End Users' use of the Service Offerings (including any activities under your cywestEdge Account and use by your employees and personnel); (b) breach of this cywestEdge Agreement or violation of applicable laws, rules and regulations of the United States and/or your Account Country by you, End Users or Your Content; or (c) a dispute between you and any End User. You will reimburse us for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to any third party subpoena or other compulsory legal order or process associated with third party claims described in (a) through (c) above at our then-current hourly rates.

### 9.2 Intellectual Property.

(a) Subject to the limitations in this Section 9, cywestEdge will defend you and your employees, officers, and directors against any third-party claim alleging that the Services infringe or misappropriate that third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement.

(b) Subject to the limitations in this Section 9, you will defend Cywest Communications, Inc., its affiliates, and their respective employees, officers, and directors against any third-party claim alleging that any of Your Content infringes or misappropriates that third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement.

(c) Neither party will have obligations or liability under this Section 9.2 arising from infringement by combinations of the Services or Your Content, as applicable, with any other product, service, software, data, content or method. In addition, cywestEdge will have no obligations or liability arising from your or any End User's use of the Services after cywestEdge has notified you to discontinue such use. The remedies provided in this Section 9.2 are the sole and exclusive remedies for any third-party claims of infringement or misappropriation of intellectual property rights by the Services or by Your Content.

(d) For any claim covered by Section 9.2(a), cywestEdge will, at its election, either: (i) procure the rights to use that portion of the Services alleged to be infringing; (ii) replace the alleged infringing portion of the Services with a non-infringing alternative; (iii) modify the allegedly infringing portion of the Services to make it non-infringing; or (iv) terminate the allegedly infringing portion of the Services or this cywestEdge Agreement.

9.3 Process. The obligations under this Section 9 will apply only if the party seeking defense or indemnity: (a) gives the other party prompt written notice of the claim; (b) permits the other

party to control the defense and settlement of the claim; and (c) reasonably cooperates with the other party (at the other party's expense) in the defense and settlement of the claim. In no event will a party agree to any settlement of any claim that involves any commitment, other than the payment of money, without the written consent of the other party.

#### **10. Disclaimers.**

THE SERVICE OFFERINGS ARE PROVIDED "AS IS." EXCEPT TO THE EXTENT PROHIBITED BY LAW, OR TO THE EXTENT ANY STATUTORY RIGHTS APPLY THAT CANNOT BE EXCLUDED, LIMITED OR WAIVED, WE AND OUR AFFILIATES AND LICENSORS (A) MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OFFERINGS OR THE THIRD-PARTY CONTENT, AND (B) DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES (I) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, (II) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, (III) THAT THE SERVICE OFFERINGS OR THIRD-PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND (IV) THAT ANY CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.

#### **11. Limitations of Liability.**

WE AND OUR AFFILIATES AND LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICE OFFERINGS, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENTS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, EXCEPT FOR PAYMENT OBLIGATIONS UNDER SECTION 9.2, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS BEFORE THE LIABILITY

AROSE. THE LIMITATIONS IN THIS SECTION 11 APPLY ONLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **12. Modifications to the cywestEdge Agreement.**

We may modify this cywestEdge Agreement (including any Policies) at any time by posting a revised version on the cywestEdge Site or by otherwise notifying you in accordance with Section 13.10; provided, however, that we will provide at least 90 days' advance notice in accordance with Section 13.10 for adverse changes to any Service Level Agreement(s). Subject to the 90 day advance notice requirement with respect to adverse changes to Service Level Agreements, the modified terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the Service Offerings after the effective date of any modifications to this cywestEdge Agreement, you agree to be bound by the modified terms. It is your responsibility to check the cywestEdge Site regularly for modifications to this cywestEdge Agreement. We last modified this cywestEdge Agreement on the date listed at the top of this cywestEdge Agreement.

## **13. Miscellaneous.**

13.1 Assignment. You will not assign or otherwise transfer this cywestEdge Agreement or any of your rights and obligations under this cywestEdge Agreement, without our prior written consent. Any assignment or transfer in violation of this Section 13.1 will be void. We may assign this cywestEdge Agreement without your consent (a) in connection with a merger, acquisition or sale of all or substantially all of our assets, or (b) to any affiliate or as part of a corporate reorganization; and effective upon such assignment, the assignee is deemed substituted for Cywest Communications, Inc. as a party to this cywestEdge Agreement and Cywest Communications, Inc. is fully released from all of its obligations and duties to perform under this cywestEdge Agreement. Subject to the foregoing, this cywestEdge Agreement will be binding upon, and inure to the benefit of the parties and their respective permitted successors and assigns.

### 13.2 Entire Agreement.

(a) Except as provided in Section 13.2(b), this cywestEdge Agreement incorporates the Policies by reference and is the entire agreement between you and us regarding the Service Offerings provided in connection with the cywestEdge Site. This cywestEdge Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the Service Offerings. We will not be bound by, and specifically object to, any term, condition or other provision that is different from or in addition to the provisions of this cywestEdge Agreement (whether or not it would materially alter this cywestEdge Agreement) including for example, any term, condition or other provision (a) submitted by you in any order, receipt, acceptance, confirmation, correspondence or other document, (b) related to any online registration, response to any request for bid, request for proposal, request for information, or other questionnaire, or (c) related to any invoicing process that you submit or require us to complete. If the terms of this document are inconsistent with the terms

contained in any Policy, the terms contained in this document will control, except that the Service Terms will control over this document.

(b) For the avoidance of doubt, and to clarify, Cywest Communications, Inc. provides various services beyond the Service Offerings affiliated with the cywestEdge Site. To the extent you have entered into any prior commitment(s) to purchase services from Cywest Communications, Inc. outside of or beyond the Service Offerings affiliated with the cywestEdge Site, whether related to this cywestEdge Agreement or not, those commitments exist independent of this cywestEdge Agreement and are controlled by the prior and/or existing written agreements between you and Cywest Communications, Inc. applicable to such services. This cywestEdge Agreement does not supplant, replace or supersede any prior commitment(s) to purchase services from Cywest Communications, Inc. outside of or beyond the Service Offerings affiliated with the cywestEdge Site.

**13.3 Force Majeure.** We and our affiliates will not be liable for any delay or failure to perform any obligation under this cywestEdge Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, pandemics, labor disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

**13.4 Governing Law.** Without reference to any conflict of law rules, and for purpose of any dispute of any sort that might arise between you and us, this cywestEdge Agreement will be governed by and construed in accordance with the laws of the United States and the State of Utah as though fully negotiated, executed, and performed in Utah. The United Nations Convention for the International Sale of Goods does not apply to this cywestEdge Agreement.

**13.5 Disputes.** Any dispute or claim relating in any way to this cywestEdge Agreement, your use of the Service Offerings, or to any products or services sold or distributed by cywestEdge, will be adjudicated in either the Federal District Court for the District of Utah located in Salt Lake County, Utah or the Third Judicial District Court located in Salt Lake County, Utah. You hereby consent to exclusive jurisdiction and venue in the foregoing courts. You hereby agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action.

**13.6 Trade Compliance.** In connection with this cywestEdge Agreement, each party will comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to a U.S. company, such as the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the Service Offerings, including your transfer and processing of Your Content, the provision of Your Content to End Users, and the cywestEdge country (including but not limited to the Account Country) in which any of the foregoing occur. You represent and warrant that you and your financial institutions, or any party that owns or controls you or your financial institutions, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties,

including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce), the European Union or its Member States, or other applicable government authority.

13.7 Independent Contractors; Non-Exclusive Rights. We and you are independent contractors, and this cywestEdge Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship. Neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. Both parties reserve the right (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services, concepts, systems, or techniques developed or contemplated by the other party, and (b) to assist third party developers or systems integrators who may offer products or services which compete with the other party's products or services.

13.8 Language. All communications and notices made or given pursuant to this cywestEdge Agreement must be in the English language. If we provide a translation of the English language version of this cywestEdge Agreement, the English language version of this cywestEdge Agreement will control if there is any conflict.

13.9 Confidentiality and Publicity. You may use the cywestEdge Confidential Information only in connection with your use of the Service Offerings as permitted under this cywestEdge Agreement. You will not disclose any cywestEdge Confidential Information during the Term or at any time during the 5-year period following the end of the Term. You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of the cywestEdge Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature. You will not issue any press release or make any other public communication with respect to this cywestEdge Agreement or your use of the Service Offerings.

13.10 Notice.

(a) To You. We may provide any notice to you under this cywestEdge Agreement by: (i) posting a notice on the cywestEdge Site; or (ii) sending a message to the email address then associated with your cywestEdge Account. Notices we provide by posting on the cywestEdge Site will be effective upon posting and notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your cywestEdge Account when we send the email, whether or not you actually receive the email.

(b) To Us. To give us notice under this cywestEdge Agreement, you must contact Cywest Communications, Inc. by either (a) email at [info@cywest.com](mailto:info@cywest.com) or (b) via the "form of notice" available at [https:// Edge.cywest.com/notice/](https://Edge.cywest.com/notice/). We may update the email address or form of notice available at <https://www.cywest.com> by posting a notice on the cywestEdge Site. Notices provided to us will effective only when you receive a reply (either manual or

automated) acknowledging receipt of either your email or submission of your form of notice.

13.11 No Third-Party Beneficiaries. Except as set forth in Section 9, this cywestEdge Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this cywestEdge Agreement.

13.12 U.S. Government Rights. The Service Offerings are provided to the U.S. Government as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data” with the same rights and restrictions generally applicable to the Service Offerings. If you are using the Service Offerings on behalf of the U.S. Government and these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Service Offerings. The terms “commercial item” “commercial computer software,” “commercial computer software documentation,” and “technical data” are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

13.13 No Waivers. The failure by us to enforce any provision of this cywestEdge Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by us must be in writing to be effective.

13.14 Severability. If any portion of this cywestEdge Agreement is held to be invalid or unenforceable, the remaining portions of this cywestEdge Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect the intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this cywestEdge Agreement but the rest of the cywestEdge Agreement will remain in full force and effect.

#### **14. Glossary of Certain Capitalized Terms used in this cywestEdge Agreement.**

“Acceptable Use Policy” means the policy located at <https://www.cywest.com> (and any successor or related locations designated by us), as it may be updated by us from time to time.

“Account Country” is the country associated with your cywestEdge Account. If you have provided a valid tax registration number for your cywestEdge Account, then your Account Country is the country associated with your tax registration. If you have not provided a valid tax registration, then your Account Country is the country where your billing address is located, except if you have a credit card associated with your cywestEdge Account that is issued in a different country and your contact address is also in that country, then your Account Country is that different country.

“Account Information” means information about you that you provide to us in connection with the creation or administration of your cywestEdge Account. For example, Account Information includes names, usernames, phone numbers, email addresses and billing information associated with your cywestEdge Account.

“API” means an application program interface.

“cywestEdge Account” means the arrangement established between you and us (in accordance with log-in credentials and other features selected or created by you) to facilitate your use of the cywestEdge Site and/or the Service Offerings.

“cywestEdge Confidential Information” means all nonpublic information disclosed by us, our affiliates, business partners or our or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. cywestEdge Confidential Information includes: (a) nonpublic information relating to our or our affiliates or business partners’ technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that we are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between you and us or our affiliates. cywestEdge Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this cywestEdge Agreement; (ii) can be shown by documentation to have been known to you at the time of your receipt from us; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by you without reference to the cywestEdge Confidential Information.

“cywestEdge Content” means Content we or any of our affiliates make available in connection with the Services or on the cywestEdge Site to allow access to and use of the Services, including APIs; Documentation; sample code; software libraries; command line tools; proofs of concept; templates; and other related technology (including any of the foregoing that are provided by our personnel). cywestEdge Content does not include the Services or Third-Party Content.

“cywestEdge Marks” means any trademarks, service marks, service or trade names, logos, and other designations of Cywest Communications, Inc. and its affiliates that we may make available to you in connection with this cywestEdge Agreement.

“cywestEdge Site” means <http://edge.cywest.com> (and any successor or related site designated by us), as may be updated by us from time to time.

“Content” means software (including machine images), data, text, audio, video or images.

“Documentation” means the user guides and admin guides (in each case exclusive of content referenced via hyperlink) for the Services located at <https://edge.cywest.com> (and any successor or related locations designated by us), as such user guides and admin guides may be updated by cywestEdge from time to time.

“End User(s)” means any individual or entity that directly or indirectly through another user: (a) accesses or uses Your Content; or (b) otherwise accesses or uses the Service Offerings under your cywestEdge Account. The term “End User” does not include individuals or entities when they are accessing or using the Services or any Content under their own cywestEdge Account, rather than under your cywestEdge Account.

“Indirect Taxes” means applicable taxes and duties, including, without limitation, VAT, Service Tax, GST, excise taxes, sales and transactions taxes, and gross receipts tax.

“Losses” means any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys’ fees).

“Policies” means the Acceptable Use Policy, Privacy Notice, the Site Terms, the Service Terms, the Trademark Use Guidelines, all restrictions described in the cywestEdge Content and on the cywestEdge Site, and any other policy or terms referenced in or incorporated into this cywestEdge Agreement, but does not include whitepapers or other marketing materials referenced on the cywestEdge Site.

“Privacy Notice” means the privacy notice located at <https://edge.cywest.com> (and any successor or related locations designated by us), as it may be updated by us from time to time.

“Service(s)” means each of the services made available by us or our affiliates, including those web services described in the Service Terms. Services do not include Third-Party Content.

“Service Attributes” means Service usage data related to your cywestEdge Account, such as resource identifiers, metadata tags, security and access roles, rules, usage policies, permissions, usage statistics and analytics.

“Service Level Agreement(s)” means all service level agreements that we offer with respect to the Services and post on the cywestEdge Site, as they may be updated by us from time to time. The service level agreements we offer with respect to the Services are located at <https://www.cywest.com/> (and any successor or related locations designated by Cywest Communications, Inc.), as may be updated by cywestEdge from time to time.

“Service Offerings” means the Services (including associated APIs), the cywestEdge Content, the cywestEdge Marks, and any other product or service provided by us under this cywestEdge Agreement. Service Offerings do not include Third-Party Content.

“Service Terms” means the rights and restrictions for particular Services located at <https://edge.cywest.com> (and any successor or related locations designated by us), as may be updated by us from time to time.

“Site Terms” means the terms of use located at <https://edge.cywest.com/> (and any successor or related locations designated by us), as may be updated by us from time to time.

“Suggestions” means all suggested improvements to the Service Offerings that you provide to us.

“Term” means the term of this cywestEdge Agreement described in Section 7.1.

“Termination Date” means the effective date of termination provided in accordance with Section 7, in a notice from one party to the other.

“Third-Party Content” means Content made available to you by any third party on the cywestEdge Site or in conjunction with the Services.

“Trademark Use Guidelines” means the guidelines and trademark license located at <https://edge.cywest.com/> (and any successor or related locations designated by us), as they may be updated by us from time to time.

“Your Content” means Content that you or any End User transfers to us for processing, storage or hosting by the Services in connection with your cywestEdge Account and any computational results that you or any End User derive from the foregoing through their use of the Services. For example, Your Content includes Content that you or any End User stores in our databases. Your Content does not include Account Information.