

Terms and Conditions

These Terms and Conditions are incorporated and made a part of an underlying agreement (“Agreement”) entered into between Customer and Upright Labs Software LLC (“Upright Labs” or the “Company”).

To access and use the services provided under the Agreement (the “Service”), Customer must register for an Upright Labs account (“Account”). You may be required to provide information about yourself in order to register for and/or use the Service. You may also be asked to choose a username and password. You are entirely responsible for maintaining the accuracy and security of your username and password and agree not to disclose such to any third party.

By accessing or using the Services, you accept these Terms and Conditions without modification. If you do not agree with the Terms and Conditions, do not use our Service. To the extent of any conflict between these Terms and Conditions and the Agreement, the language in the Agreement controls.

Capitalized terms used but not defined in these Terms and Conditions shall have the meanings given them in the Agreement.

1. RESTRICTIONS AND RESPONSIBILITIES

Customer has the right to use the Service starting on the first date Customer accesses or uses the Service until terminated in accordance with Section 5 of these Terms of Use. The Service can only be used by an individual employee, consultant, contractor, or agent of Customer who has been authorized by Customer to use the Service on behalf of Customer (“User”) and Customer is responsible for the activities of all such Users.

Customer represents, covenants, and warrants that Customer and its Users will not (i) use the Service in violation of any applicable laws and regulations (ii) modify, prepare derivative works of, or reverse engineer, the Service; (iii) knowingly or negligently use our Service in a way that abuses or disrupts our networks, user accounts, or the Service; (iv) transmit through the Service any harassing, indecent, obscene, or unlawful material; (v) market, or resell the Services to any third party; (vi) use the Service to send unauthorized advertising, or spam; (vii) harvest, collect, or gather user data without their consent; or (viii) transmit through the Service any material that may infringe the intellectual property, privacy, or other rights of third parties. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys’ fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer’s use of Service.

You are responsible for all content, including photos, videos, and written content, transmitted, generated, collected or uploaded in connection with your Account (“Materials”). We may, but have no obligation to, remove Materials and suspend or terminate Accounts if we determine in our sole discretion that Customer or User is violating these Terms and Conditions or the Privacy Policy. Company does not pre-screen Materials transmitted through the Service and it is in our sole discretion to remove or refuse any Materials from the Service. Verbal or written abuse of any kind (including threats of abuse or retribution) of any Company customer, employee, or officer may result in immediate Account termination.

Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Service, including, without limitation, modems, hardware, servers, operating systems, and the like (collectively, "Equipment").

2. CONFIDENTIALITY; PROPRIETARY RIGHTS

"Confidential Information" shall mean all information that is identified as confidential at the time of disclosure by the Disclosing Party or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. All Customer Data will be deemed Confidential Information of Customer without any marking or further designation. All Company technology and the terms and conditions of this Agreement will be deemed Confidential Information of Company without any marking or further designation. Confidential Information shall not include information that the Receiving Party can demonstrate: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information.

Each party (as **"Receiving Party"**) will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the other party (the **"Disclosing Party"**) for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. If Receiving Party is required by law or court order to disclose Confidential Information, then Receiving Party shall, to the extent legally permitted, provide Disclosing Party with advance written notification, and cooperate in any effort to obtain confidential treatment of the Confidential Information. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

Customer shall own all right, title and interest in and to any information or other data provided to Company by Customer (the "Customer Data"). Company shall own and retain all rights, title and interest in and to (a) the Service, all improvements, enhancements or modifications thereto, (b) any service, applications, data, derivative work, listings, inventions or other technology developed in connection with implementation of the Service or support, and (c) all intellectual property rights related to any of the foregoing.

Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Service and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Service and for other development, diagnostic and corrective purposes in connection with the Service

and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business, subject to all applicable laws related to such Customer Data. Company shall also have a fully paid-up, royalty-free, worldwide, irrevocable, and perpetual license to incorporate into the Service or otherwise use any suggestions, enhancement requests, recommendations or other feedback we receive from Company and its users.

3. SECURING YOUR INFORMATION

We have implemented certain physical, technical, and administrative measures to help prevent unauthorized access, use and disclosure of your information, but we cannot promise that these measures will work. You acknowledge and agree that we may use sub-processors to help provide the Service, who may access your Customer Data and any associated personal data, to provide, secure and improve the Service. Before sharing Customer Data with any sub-processor, we will ensure that the sub-processor maintains, at a minimum, reasonable data practices for maintaining the confidentiality and security of your Customer Data. We shall be responsible for the acts and omissions of such sub-processors to the same extent that we would be responsible if we were performing the Service directly.

You are responsible for maintaining the secrecy of any credentials that can be used to access any account or service with Company, and you should report suspected unauthorized activity to us. It is your responsibility to keep your password secure. You are responsible for activity conducted with your credentials. Company will not be liable for any loss or damage resulting from your failure to maintain the security of your Account and password.

Each party agrees to comply with all applicable data privacy laws in connection with the provision and use of the Service. To the extent that Customer Data contains "personal information" that is subject to the California Consumer Privacy Act of 2018, its implementing regulations, and any amendments thereto (collectively, the "CCPA"), or any other similar state laws, Company agrees that it shall process such personal information as a service provider (as defined under the CCPA) and shall not (a) retain, use or disclose personal information for any purpose other than the purposes set out in this Agreement and/or as permitted by the CCPA; or (b) "sell" (as defined and understood within the requirements of the CCPA) personal information.

4. FEES

Customer will pay Company the then applicable fees described in the Agreement or a related Order Form through an invoice or an automatic charge, in which case, full payment for invoices issued in any given month must be received by Company thirty days (30) days after the receipt of the invoice by Customer. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with use by Customer of the Service other than U.S. taxes based on Company's net income. Customer is responsible for providing accurate and current billing, contact and payment information, and agrees that Company may take steps to update Customer's payment card information (where permitted) to ensure payment can be processed. Customer agrees that Company may suspend or terminate the Service if at any time Company determines that Customer's payment information is inaccurate or not current.

5. TERMINATION

Either party may terminate their use Service upon written notice no less than 30 (thirty) days before the end date of Customer Agreement with Company. In the event of termination, Customer will immediately cease use of the Service and will pay in full for the Service up to and including the last day on which the Service is provided. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, representations, warranties and indemnification, warranty disclaimers, and limitations of liability. Notwithstanding the foregoing, the term of the Agreement shall continue to apply to any open Order or Account.

6. WARRANTY AND DISCLAIMER

THE COMPANY REPRESENTS AND WARRANTS THAT (I) IT SHALL PROVIDE THE SERVICE USING A COMMERCIALY REASONABLE LEVEL OF CARE; (II) IT HAS THE RIGHT TO FURNISH TO CUSTOMER THE SERVICE AND OTHER MATERIALS COVERED HEREUNDER FREE OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER RESTRICTIONS; AND (III) THE SERVICE DOES NOT INFRINGE THE INTELLECTUAL PROPERTY AND/OR PROPRIETARY RIGHTS OF ANY THIRD PARTY. THE COMPANY DOES NOT REPRESENT OR WARRANT THAT (i) THE USE OF OUR SERVICE WILL BE TIMELY, UNINTERRUPTED OR ERROR FREE, OR OPERATE IN COMBINATION WITH ANY SPECIFIC HARDWARE, SOFTWARE, SYSTEM OR DATA, OR (ii) THE SERVICE WILL MEET YOUR SPECIFIC REQUIREMENTS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE.

The Service may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control. Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

7. LIMITATION OF LIABILITY

LIMITATION ON INDIRECT LIABILITY. UNLESS PROHIBITED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS, EXEMPLARY OR OTHER SUCH DAMAGES, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

LIMITATION ON AMOUNT OF LIABILITY. UNLESS PROHIBITED BY APPLICABLE LAW, EXCEPT FOR A PARTY'S (I) GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD, OR (II) INFRINGEMENT OF THE OTHER PARTY'S OR A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS, THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY ARISING OUT OF THIS AGREEMENT IS LIMITED TO THE SUM OF THE AMOUNTS PAID FOR THE SERVICE DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING

RISE TO THE LIABILITY; PROVIDED, HOWEVER, THAT THE FOREGOING DOES NOT LIMIT CUSTOMER'S OBLIGATION TO PAY ANY UNDISPUTED FEES.

8. COMPLETE AGREEMENT AND SEVERABILITY

The Agreement, together with these Terms and Conditions and Privacy Policy ("Agreement Documents"), constitute the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter thereof. If any provision of these Agreement Documents is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Agreement Document will otherwise remain in full force and effect and enforceable. Company may transfer and assign any of its rights and obligations under the Agreement Documents without consent. All waivers and modifications must be in a writing signed by both parties. No agency, partnership, joint venture, or employment is created as a result of the Agreement or these Terms and Conditions and neither party has any authority of any kind to bind the other party in any respect whatsoever. All notices under the Agreement and these Terms and Conditions will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. No party will be responsible for any delay or failure to perform under the Agreement or these Terms and Conditions due to force majeure events (e.g. natural disasters; terrorist activities, activities of third party service providers, labor disputes; and acts of government) and acts beyond a party's reasonable control, but only for so long as those conditions persist. The Agreement and these Terms and Conditions shall be governed by the laws of the State of Delaware without regard to its conflict of laws provisions.

9. MODIFICATIONS

These Terms and Conditions may be amended or modified by us at any time without notice so it is important to check for updates regularly.