

## END USER LICENSE AGREEMENT

Revised: Jun 10, 2024

### 1. ACCEPTANCE OF TERMS

Enspire Learning, Inc. (d/b/a Abilitie) ("Abilitie") provides technology-enabled services, including the software offering branded as "Abilitie" and the website at <https://www.abilitie.com/> as well as other related subdomains, software, content, services and/or platforms, including all versions and upgrades thereto (collectively, the "Services"). Your use of the Services is subject to and governed by the terms and conditions in this End User License Agreement (this "EULA"). Abilitie may, at its discretion, update this EULA at any time, and depending on where you reside, we may require your further consent to any updates to this EULA. You can access and review the most current version of this EULA at the URL for this page or by clicking on the link within the Services, or as otherwise made available by Abilitie.

PLEASE REVIEW THIS EULA CAREFULLY. BY REGISTERING FOR AN ACCOUNT OR OTHERWISE ACCESSING OR USING THE SERVICES, YOU AGREE TO BE BOUND BY THIS EULA, INCLUDING ANY UPDATES OR REVISIONS POSTED HERE OR OTHERWISE COMMUNICATED TO YOU. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS EULA, YOU MAY NOT ACCESS OR USE THE SERVICES.

**THIS EULA REQUIRES FINAL AND BINDING ARBITRATION TO RESOLVE ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THIS EULA, OR YOUR ACCESS TO OR USE OF THE SERVICES**, INCLUDING THE VALIDITY, APPLICABILITY OR INTERPRETATION OF THIS EULA, AND YOU AGREE THAT ANY SUCH CLAIM WILL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION, ARBITRATION OR OTHER SIMILAR PROCESS. PLEASE REVIEW SECTION 15 CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE RESOLUTION OF ANY CLAIM.

If you are entering into this EULA, you represent and warrant that you: (i) are of legal age to form a binding contract; (ii) have the right, authority, and capacity to agree to and abide by this EULA; and (iii) are not a person barred from using the Services under the laws of any applicable jurisdiction. THE SERVICES ARE NOT INTENDED FOR USERS UNDER THE AGE OF 18 OR THE LOWEST AGE PERMITTED BY APPLICABLE LAW, AND SUCH PERSONS ARE EXPRESSLY PROHIBITED FROM SUBMITTING ANY PERSONAL DATA TO OR USING ANY ASPECT OF THE SERVICES. BY SUBMITTING ANY PERSONAL DATA TO OR USING ANY ASPECT OF THE SERVICES OR CREATING AN ACCOUNT, YOU AGREE, REPRESENT, AND WARRANT THAT YOU ARE 18 YEARS OF AGE OR OLDER OR NO YOUNGER THAN THE LOWEST AGE PERMITTED BY APPLICABLE LAW.

### 2. RIGHTS

(a) **Grant.** Subject to and conditioned on your compliance with this EULA (including as set forth in Section 2(e)), Abilitie hereby grants you a limited, personal, non-exclusive, non-transferable, non-sublicensable, revocable license solely to use the Services for your personal, non-commercial use. Your access to and use of the Services must further comply in all material respects with all usage guidelines posted or made available by Abilitie.

(b) **Mobile Apps.** Abilitie may make available mobile software applications for access to and use of certain components of the Services (collectively, "Mobile Apps"). Your access to and use of Mobile Apps is subject to and governed by this EULA. If any Mobile App is downloaded by you from the iTunes App Store, Windows Phone Store, Amazon Appstore, Google Play or any similar service (an "App Store"), your use of such Mobile App is further subject to your compliance in all material respects with the terms and conditions of the applicable usage rules set forth by such App Store. This EULA is between you and Abilitie only and not with the proprietor of any App Store (a "Third-Party Proprietor"), and no Third-Party Proprietor is responsible for Mobile Apps and the contents thereof; however, any Third-Party Proprietor and its subsidiaries are third-party beneficiaries of this EULA with respect to Mobile Apps. To use the Mobile Apps, you must have a mobile device that is compatible with the applicable Mobile App, and Abilitie does not represent or warrant that the applicable Mobile App will be compatible with your mobile device. You may use mobile data in connection with the Mobile App and incur additional charges from your wireless provider for these services; you agree that you are solely responsible for such charges

(c) **Trademarks.** Except as expressly authorized herein, you may not use “Abilitie” or any of Abilitie’s names, brands, trademarks, service marks or logos that Abilitie makes available on the Services (“Marks”). Abilitie claims trademark protection over all such Marks. You will not remove or alter the Marks or any proprietary notices on or within the Services. The Marks may not be included by you in or as part of any registered corporate name, any other logo, or service or product name. You may not create any derivative works of the Marks or use the Marks in a manner that creates or reasonably implies an inaccurate sense of endorsement, sponsorship, or association with Abilitie. You will not otherwise use business names or logos in a manner that can mislead, confuse, or deceive any third party. All use of the Marks and all goodwill arising out of such use will inure to Abilitie’s benefit.

(d) **Responsibility for Content.** All information, data (including information received or provided by you through your use of the Services), text, documents, images, photos, audio files, and other materials accessible through the Services (“Content”) are the sole responsibility of the party from whom such information, data, text, documents, images, photos, audio files, or materials originated. You acknowledge and agree that: (i) the Services may provide access to and/or rely on Content from third parties, and such third parties, and not Abilitie, are entirely responsible for such Content; (ii) you, and not Abilitie, are entirely responsible for all Content that you submit, upload, email, transmit, or otherwise make available through the Services or to Abilitie and you shall ensure the accuracy, completeness, and integrity of the Content; and (iii) you are solely responsible for giving all required notices and obtaining all necessary consents, including all necessary rights and consents relating to privacy and intellectual property rights, before submitting Content through or to the Services or Abilitie. You further hereby represent and warrant that (1) you have all rights and licenses necessary to make available, submit, provide, and transfer all Content for Abilitie to exercise its rights granted and fulfill its obligations set forth herein, including as necessary for Abilitie to process, use, make available, distribute, or otherwise exploit any Content, and (2) your submission of any Content to Abilitie will not violate this EULA, any Abilitie usage guidelines or other policies, or any laws applicable to such Content, including without limitation intellectual property laws and any privacy laws or regulations governing any personal or sensitive information contained in any Content.

(e) **Accounts.** To access and use the Services, you will need to create an account with Abilitie (an “Account”). Abilitie may request further additional information from you, including personally identifiable information, in order to authenticate your Account. You may not share your Account or access information with anyone. You are fully responsible for all activities that occur under your Account, even if such activities were not authorized by you. You agree to notify Abilitie immediately of any unauthorized use of your or any other breach of security. If your Account remains inactive for three months or longer, Abilitie reserves the right to suspend or terminate your Account, with or without notice to you, and delete your information and Content without liability.

### **3. PRIVACY POLICY**

In addition to this EULA, the Abilitie Privacy Policy, available at [www.abilitie.com/privacy](http://www.abilitie.com/privacy), (“Privacy Policy”) applies to how Abilitie may process information provided as part of the Services. You acknowledge and agree that by accessing or using the Services, Abilitie may receive certain information about you, including personal and sensitive data, as set forth in the Privacy Policy, and Abilitie may collect, use, disclose, store, share, transfer and process such personal data in accordance with such Privacy Policy, which may be amended from time-to-time.

### **4. PROPRIETARY RIGHTS**

(a) **License to Content You Upload.** You hereby grant Abilitie and its service providers and end users a perpetual, worldwide, royalty-free, fully-paid-up, non-exclusive, sublicensable, freely transferable license to use, exploit, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make and have made all Content (in any form and any medium, whether now known or later developed) that you provide in connection with the Services. You acknowledge and agree that the technical processing and transmission of Content in association with the Services may require: (i) transmission over various networks and across borders; and (ii) modifications to conform, connect, and adapt to technical requirements of networks or devices.

(b) **Rights Reserved.** The Services provided to you hereunder or available to you through the Services are licensed, not sold, and Abilitie retains and reserves all rights not expressly granted in this EULA. You acknowledge and agree that, as between you and Abilitie, Abilitie and its licensors own all rights, title, and interest

(including all intellectual property rights) in the Services and all data and other materials within the Services. The Services are protected by U.S. and international copyright and other intellectual property laws and treaties.

## **5. USER CONDUCT AND RESTRICTIONS**

### **(a) Prohibited Conduct.** In your use of the Services, you will not:

- (i) use, reproduce, modify, adapt, create derivative works from, sublicense, publicly perform, publicly display, distribute, sell, lease, rent, make, have made, assign, pledge, transfer or otherwise grant rights to the Services or any Content, except as expressly permitted under this EULA;
- (ii) reverse engineer, disassemble, decompile, translate, or otherwise attempt to derive trade secrets, algorithms, or the source code, architectural framework, or data records, within or associated with the Services or any Content;
- (iii) interfere with or disrupt the integrity or performance of the Services, including by disrupting the ability of any other person to use or enjoy the Services;
- (iv) provide use of the Services on a service bureau, rental, or managed services basis, provide, or permit other individuals or entities to create Internet “links” to the Services or “frame” or “mirror” the Services on any other server, or wireless or Internet-based device;
- (v) access the Services for the purpose of developing, marketing, selling, or distributing any product or service that competes with or includes features substantially similar to the Services;
- (vi) violate any applicable local, state, provincial, federal, or international law or regulation, or use the Services or any Content for any illegal, unauthorized, or otherwise improper purposes, including to store or transmit malicious code, or to store or transmit material in violation of third-party privacy rights;
- (vii) remove or obscure any proprietary notice that appears within the Services or any Content;
- (viii) impersonate any person or entity, including Abilitie personnel, or falsely state or otherwise misrepresent your affiliation with Abilitie, or any other entity or person;
- (ix) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Services;
- (x) take any action that imposes an unreasonable or disproportionately heavy load on the Services or its infrastructure; or
- (xi) use spiders, crawlers, robots, scrapers, automated tools, or any other similar means to access the Services; or download, reproduce, or archive any substantial portion of the Services or any Content.

### **(b) Prohibited Content.** You will not upload, submit, post, email, store, transmit, or otherwise make available any Content that:

- (i) is illegal, harmful, threatening, abusive, harassing, tortious, defamatory, or otherwise objectionable;
- (ii) may not be made available under any law or under contractual or fiduciary relationships (such as confidential or proprietary information learned as part of an employment relationship or under a non-disclosure agreement);
- (iii) infringes, misappropriates, or otherwise violates any patent, trademark, trade secret, copyright, or other proprietary right of any person;
- (iv) violates any person’s privacy, likeness, publicity, personality, or similar rights;
- (v) consists of unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, commercial electronic messages, or any other form of solicitation;

(vi) contains software viruses or any other code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware;

(vii) contains infringing, libelous, or otherwise unlawful or tortious material; or

(viii) consists of information that you know or have reason to know is false or inaccurate.

(c) **Enforcement.** Abilitie shall have sole discretion and control over (i) moderating and removing any Content and (ii) determining whether any Content violates this EULA or any guidelines set forth by Abilitie or otherwise. Abilitie's failure to enforce any of these restrictions or guidelines shall not act as a waiver for any future enforcement, will not be considered a breach of this EULA by Abilitie, and does not create a private right of action for any other party.

## 6. FEES

(a) **Fees.** You shall pay all agreed upon fees through the Services, including without limitation any agreed upon subscription fees, as set forth in the subscription confirmation page or as otherwise mutually agreed to by you and Abilitie ("Fees") in accordance with terms set forth herein and any additional terms set forth in the Services. You hereby authorize Abilitie to charge your credit card on file for all Fees that have become due and payable. All payments will be made in United States dollars and are non-refundable unless otherwise agreed to in writing between you and Abilitie. Abilitie reserves the right to increase Fees subject to automatic renewal upon 30-day written notice to you.

(b) **Cancellation.** You can cancel your subscription at any time by logging into your account or contacting us by email at support@abilitie.com. Your cancellation will take effect at the end of the current Subscription Period (as defined below).

(c) **Payment Processor.** The Services may include or provide access to various payment processors ("Payment Processor"). Abilitie currently uses Stripe, Inc. as its Payment Processor; however, Abilitie reserves the right to change payment processors at any time. You hereby (i) acknowledge and agree that Abilitie uses or may use any such Payment Processor in connection with its collection of Fees, (ii) acknowledge and agree that Abilitie will not be responsible for any payments or charges as a result of your failure to provide up-to-date and accurate information to any such Payment Processor, and (iii) acknowledge and authorize Abilitie and its third-party payment processors to charge all Fees to your chosen payment method.

(d) **Automatic Renewal.** Your subscription to use the Services shall automatically renew for the same subscription period set forth in the order confirmation, or as mutually agreed to by you and Abilitie, page unless you provide notice of non-renewal by 11:59 p.m. your local time before the date of non-renewal. Abilitie reserves the right to increase Fees subject to automatic renewal upon 30-day written notice to you.

(e) **Late Payments.** Any payment not received from you when due may incur interest at the rate of one and a half percent (1.5%) per month or the maximum rate permitted by law, whichever is less, and Abilitie reserves the right to revoke or suspend the Services until such time as you bring your account completely current.

(f) **Taxes.** All Fees exclude any and all taxes and similar fees now in force, enacted or imposed in the future on the transaction, delivery of the Services, including any sales, use or value added taxes, goods and services tax, consumption tax, customs duties or similar charges, but excluding withholding taxes and taxes solely based on Abilitie's net income, and you shall be responsible for payment of all such taxes, duties and charges, and any related penalties and interest arising from the payment of such amounts.

## 7. CONFIDENTIALITY

(a) **Confidential Information.** "Confidential Information" shall mean all information identified in good faith by either party as being confidential or proprietary, or information that, under the circumstances, a reasonable person would assume to be confidential or proprietary. Confidential Information shall include research, product plans, products, services, customers, customer lists, markets, software, developments, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, or

other business information provided by either party. Confidential Information may include third party information as to which the disclosing party has an obligation of confidentiality.

(b) **Exceptions.** Confidential Information shall not include information that: (i) can be demonstrated to have been publicly known at the time of the disclosing party's disclosure of such Confidential Information to the receiving party; (ii) becomes part of the public domain or publicly known, by publication or otherwise, not due to any unauthorized act or omission by the receiving party; (iii) can be demonstrated to have been independently developed or acquired by the receiving party without reference to or reliance upon such Confidential Information; (iv) is provided to the receiving party by a third party who is under no obligation to the disclosing party to keep the information confidential; or (v) is required to be disclosed by law, provided, however, that the receiving party shall take reasonable actions to minimize such disclosure and promptly notify the disclosing party, to the extent permitted by law, so that the disclosing party may take lawful actions to avoid or minimize such disclosure

(c) **Obligations.** Each party agrees that it will use the Confidential Information provided by the other party only as necessary to exercise its rights and discharge its obligations under this Agreement and for no other purpose without the prior written consent of the disclosing party. Neither party shall disclose to a third-party Confidential Information of the other party. To maintain in confidence the Confidential Information of the disclosing party, the receiving party shall use the same degree of care as it uses to protect the confidentiality of its own Confidential Information of like nature, but no less than a reasonable degree of care.

## **8. FEEDBACK**

If you elect to provide or make available to Abilitie any suggestions, comments, ideas, improvements or other feedback relating to the Services as provided through the Services or otherwise ("Feedback"), Abilitie shall own and be free to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make, have made, assign, pledge, transfer or otherwise grant rights in your Feedback in any form and any medium (whether now known or later developed), without credit or compensation to you.

## **9. DEALINGS WITH ADVERTISERS AND OTHER THIRD PARTIES**

The Services may include or provide access to third party products, services, content, or offerings, including advertising for such ("Third Party Services"), which may include without limitation, the Payment Processor. You acknowledge that different terms of use and privacy policies may apply to your use of such Third Party Services and that such terms and policies are solely between you and the other third party. You agree that Abilitie does not endorse and is not responsible or liable for any issues related to Third Party Services. **YOU ACKNOWLEDGE THAT ABILITIE USES CERTAIN APPLICATION PROGRAMMING INTERFACES ("APIS") AND THAT SUCH APIS PROVIDE GENERATIVE AI FUNCTIONALITIES AND INFORM THE OUTPUTS OF THE SERVICES. ABILITIE MAKES NO REPRESENTATIONS AS TO THE ACCURACY OF ANY OUTPUTS OF THE SERVICES AND, GIVEN THE PROBABILISTIC NATURE OF MACHINE LEARNING, SUCH OUTPUTS OF THE SERVICES MAY BE INCORRECT. YOU SHOULD USE HUMAN REVIEW PRIOR TO USING ANY SUCH OUTPUTS.**

## **10. INDEMNIFICATION**

You shall indemnify and hold Abilitie and its affiliates, and each of their officers, directors, members, managers, employees, agents, partners and licensors (collectively, "Abilitie Parties") harmless from and against all losses, damages, costs, liabilities, and expenses, including reasonable attorneys' fees, to extent resulting from or arising out of any third-party claim, demand, or action due to (i) Content or other content, including Content, you provide to Abilitie; (ii) your violation of this EULA, any law or regulation, or any rights (including intellectual property or privacy rights) of another party; or (iii) your use of the Services, except as expressly permitted in this EULA.

## **11. DISCLAIMER OF WARRANTIES**

(a) **General Disclaimer.** YOUR ACCESS TO AND USE OF THE SERVICES AND ANY CONTENT FROM ABILITIE OR ANY THIRD PARTY IS AT YOUR SOLE RISK. THE SERVICES AND ANY CONTENT FROM ABILITIE OR ANY THIRD PARTY ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ABILITIE PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED OR ARISING FROM STATUTE, COURSE OF DEALING, USAGE OF TRADE OR

OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

(b) **No Implied Representations and Warranties.** ABILITIE PARTIES MAKE NO WARRANTY OR REPRESENTATION THAT: (i) THE SERVICES OR ANY CONTENT FROM ABILITIE OR ANY THIRD PARTY WILL MEET YOUR REQUIREMENTS; (ii) ACCESS TO THE SERVICES OR ANY CONTENT FROM ABILITIE OR ANY THIRD PARTY WILL BE UNINTERRUPTED, TIMELY, SECURE, VIRUS-FREE, OR ERROR-FREE; OR (iii) THE CONTENT THAT MAY BE OBTAINED FROM ACCESS TO OR USE OF THE SERVICES OR ANY CONTENT FROM ABILITIE OR ANY THIRD PARTY WILL BE ACCURATE, RELIABLE, CURRENT, OR COMPLETE.

(c) **Non-Reliance.** ALL CONTENT FROM ABILITIE OR ANY THIRD PARTY MADE AVAILABLE THROUGH THE SERVICES IS MADE AVAILABLE FOR INFORMATIONAL PURPOSES ONLY. YOU ARE SOLELY RESPONSIBLE FOR CONFIRMING THE ACCURACY OF ALL CONTENT FROM ABILITIE OR ANY THIRD PARTY BEFORE TAKING OR OMITTING ANY ACTION. YOU SHOULD NOT RELY ON THE SERVICES AND YOU SHOULD NOT USE THE SERVICES FOR ADVICE OF ANY KIND.

(d) **Disclaimer Limitation.** THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME JURISDICTIONS AND YOU MAY HAVE WARRANTY RIGHTS UNDER LAW WHICH MAY NOT BE WAIVED OR DISCLAIMED. ANY SUCH WARRANTY EXTENDS ONLY FOR THIRTY (30) DAYS FROM THE EFFECTIVE DATE OF THIS EULA (UNLESS SUCH LAW PROVIDES OTHERWISE).

## **12. LIMITATION OF LIABILITY**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, ABILITIE PARTIES SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOSS OF DATA OR GOODWILL, OR COST OF COVER, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS, OR FINANCIAL LOSS, EVEN IF ABILITIE PARTIES HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE. EXCEPT AS SET FORTH IN SECTION 12(b), IN NO EVENT SHALL THE ABILITIE PARTIES' TOTAL LIABILITY TO YOU EXCEED ONE-THOUSAND DOLLARS (\$1,000). THE FOREGOING LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION ON LIABILITY HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION COMPLIANT WITH APPLICABLE LAW. THE PARTIES AGREE THAT THE LIMITATIONS ON LIABILITIES SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **13. BETA SERVICES**

(a) **Beta Services Disclaimer.** AS FURTHER SET FORTH IN SECTION 10, ALL ABILITIE SERVICES LABELED ALPHA, BETA, PRE-RELEASE, TRIAL, PREVIEW OR SIMILARLY ("Beta Services") ARE PROVIDED "AS IS", "AS AVAILABLE", WITH ALL FAULTS, AND CUSTOMER'S USE OF SUCH BETA SERVICES IS AT ITS SOLE RISK AND ABILITIE DISCLAIMS ANY WARRANTY OR LIABILITY OBLIGATIONS OF ANY KIND. Abilitie has no obligations in connection with or in the course of providing the Beta Services. Any expectations and estimates regarding Beta Services are based on factors currently known and actual events or results could differ materially. Abilitie does not assume any obligation to update any Beta Services. In addition, any information about Abilitie's roadmap outlines Abilitie's general product direction and is subject to change at any time without notice. It is for informational purposes only and shall not be incorporated into this EULA or any contract or other commitment. Abilitie undertakes no obligation either to develop the features or functionality provided in the Beta Services, or to include any such feature or functionality in a future release of the Services. You expressly acknowledge that the Beta Services have not been fully tested and may contain defects or deficiencies which may not be corrected by Abilitie. The Beta Services may undergo significant changes prior to release of the corresponding generally available final version.

(b) **Beta Services Liability Waiver.** NOTWITHSTANDING SECTION 10(d), WHERE LEGAL LIABILITY CANNOT BE EXCLUDED BUT MAY BE LIMITED, ABILITIE'S LIABILITY AND THAT OF ITS SUPPLIERS AND AUTHORIZED

PARTNERS SHALL BE LIMITED TO THE SUM OF ONE HUNDRED DOLLARS (\$100) FOR ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THE BETA SERVICES.

#### **14. SUSPENSION AND TERMINATION**

(a) **Termination for Convenience.** Either party may terminate this EULA at any time. To terminate this agreement, you may navigate to your Account and follow the instructions provided therein or reach out to Abilitie at [\[SUPPORT EMAIL\]](#).

(b) **Termination or Suspension for Cause.** If you violate this EULA, Abilitie may, with or without notice to you, immediately suspend, or terminate your access and use of the Services.

(c) **Right to Modify Services.** Abilitie reserves the right at any time to modify, suspend, or discontinue the Services (or any portion thereof) with or without notice, and Abilitie shall not be liable to you or any third party for any such modification or discontinuance;

(d) **Effect of Termination; Survival.** Upon termination of this EULA for any reason: (i) Abilitie, in its sole discretion, may remove and discard your Content and other information; (ii) you will immediately cease your use of the Services; and (iii) any provision that, by its terms, is intended to survive the expiration or termination of this EULA shall survive such expiration or termination. Further, you agree that Abilitie shall not be liable to you or any third party for any termination of your Account or access to the Services.

#### **15. GOVERNING LAW**

This EULA shall be governed by and construed and enforced in accordance with the United States Federal Arbitration Act, other applicable federal laws, and the laws of the State of Delaware, without regard to conflict of laws principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this EULA, regardless of the states in which the parties do business or are incorporated.

#### **16. BINDING ARBITRATION AND CLASS ACTION WAIVER**

(a) **Binding Arbitration.** ALL CLAIMS ARISING IN CONNECTION WITH THIS EULA SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION RATHER THAN IN COURT, EXCEPT THAT YOU MAY ASSERT CLAIMS IN SMALL CLAIMS COURT (DEFINED FOR THE PURPOSES OF THIS EULA AS A COURT OF LIMITED JURISDICTION THAT MAY ONLY HEAR CLAIMS NOT EXCEEDING \$10,000) IF YOUR CLAIMS ARE WITHIN THE COURT'S JURISDICTION. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED.

(b) **Arbitration Procedure.** The arbitration shall be conducted by the American Arbitration Association (AAA) under its then-applicable Commercial Arbitration Rules or, as appropriate, its Consumer Arbitration Rules. The AAA's rules are available at <http://www.adr.org/>. Payment of all filing, administration and arbitrator fees shall be governed by the AAA's rules. The arbitration shall be conducted in the English language by a single independent and neutral arbitrator. For any hearing conducted in person as part of the arbitration, you agree that such hearing shall be conducted in New Castle County, Delaware, or if the Consumer Arbitration Rules apply, another location reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances, as determined by the arbitrator. The decision of the arbitrator shall be final and binding. Judgment on the arbitral award may be entered in any court of competent jurisdiction.

(c) **Class Action Waiver.** WE EACH AGREE THAT ALL CLAIMS SHALL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION OR OTHER SIMILAR PROCESS (INCLUDING ARBITRATION). IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION, WE EACH WAIVE ANY RIGHT TO A JURY TRIAL AND AGREE THAT SUCH CLAIM SHALL BE BROUGHT ONLY IN A COURT OF COMPETENT JURISDICTION IN NEW CASTLE COUNTY, DELAWARE. YOU HEREBY SUBMIT TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS AND WAIVE ANY OBJECTION ON THE GROUNDS OF VENUE, FORUM NON-CONVENIENS OR ANY SIMILAR GROUNDS WITH RESPECT TO ANY SUCH CLAIM.

(d) **Injunctive Relief.** Notwithstanding anything to the contrary, either party may seek injunctive relief and any other equitable remedies from any court of competent jurisdiction, whether in aid of, pending, or independently of the resolution of any dispute pursuant to the arbitration procedures set forth in this Section 15.

(e) **Effect of Changes.** If Abilitie implements any material change to this Section 15, such change shall not apply to any claim for which you provided written notice to Abilitie before the implementation of the change.

**17. LEGAL COMPLIANCE**

You represent and warrant that you will comply with all applicable foreign, federal, state, and local laws, rules and regulations, including without limitation, U.S. export laws and import and use laws of the country where any goods or services are delivered or used and you are not: (i) located in a country that is subject to a U.S. Government embargo, or designated by the U.S. Government as a “terrorist supporting” country; and (ii) listed on any U.S. Government list of prohibited or restricted parties, including the Specially Designated Nationals List.

**18. U.S. GOVERNMENT ENTITIES**

This section applies to access to or use of the Services by a branch or agency of the United States Government. The Services includes “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. § 12.212 and qualifies as “commercial items” as defined in 48 C.F.R. § 2.101. Such items are provided to the United States Government: (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. § 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. §§ 227.7202-1 and 227.7202-3. The United States Government shall acquire only those rights set forth in this EULA with respect to the such items, and any access to or use of the Services by the United States Government constitutes: (a) agreement by the United States Government that such items are “commercial computer software” and “commercial computer software documentation” as defined in this section; and (b) acceptance of the rights and obligations herein.

**19. CALIFORNIA USERS & RESIDENTS**

In accordance with California Civil Code § 1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting such unit in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800) 952-5210.

**20. GENERAL PROVISIONS**

This EULA constitutes the entire agreement between you and Abilitie concerning your access to and use of the Services. It supersedes all prior and contemporaneous oral or written negotiations and agreements between you and Abilitie with respect to such subject matter. In the event of any conflict between or among this EULA and any other agreement, privacy policy, or usage guidelines to which this EULA refers, the terms and conditions of this EULA shall take precedence and govern. This EULA may not be amended by you except in a writing executed by you and an authorized representative of Abilitie. You hereby consent and authorize Abilitie to contact and communicate with you through electronic means, including through email. Except as otherwise expressly provided in this EULA, there shall be no third-party beneficiaries to this EULA. For the purposes of this EULA, the words “such as,” “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation.” You may not assign or delegate any right or obligation under this EULA without the prior written consent of Abilitie. The failure of Abilitie to exercise or enforce any right or provision of this EULA shall not constitute a waiver of such right or provision. If any provision of this EULA is held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of this EULA. Any prevention of or delay in performance by Abilitie hereunder due to labor disputes, acts of god, failure of the Internet, governmental restrictions, enemy or hostile governmental action, fire or other casualty or other causes beyond its reasonable control shall excuse the performance of its obligations for a period equal to the duration of any such prevention or delay.

**[Click to download a copy of this EULA](#)**