

Terms of Use

 codeocean.com/terms-of-use

Effective Date: January, 2017

This Terms of Use (“**TOU**”) is a binding contract between you, the individual or entity who is entering into, and is responsible for complying with this TOU (“**you**”), and Code Ocean, Inc. (“**Code Ocean**,” “**we**,” “**us**” or “**our**”) governing your use of the website located at www.codeocean.com (“**Site**”). **BY ACCESSING OR USING THE SITE, YOU AGREE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THIS TOU. IF YOU DO NOT AGREE TO THIS TOU, THEN YOU MUST NOT ACCESS OR USE THE SITE.**

Material Terms: As provided in greater detail in this TOU (and without limiting the express language of this TOU), you acknowledge the following:

- you consent to the collection, use, and disclosure of your information in accordance with the Code Ocean [Privacy Policy](#) (“**Privacy Policy**”);
- the Site is provided “as is” without warranties of any kind and Code Ocean’s and its licensors’ liability to you is limited; and
- we will resolve disputes arising under this TOU through binding arbitration. **By accepting this TOU, as provided in greater detail in Section 9 of this TOU, you and Code Ocean are each waiving the right to a trial by jury or to participate in a class action.**

1. General Terms and Conditions.

a. Description. The Site provides you with a platform to (i) upload or import to the Site software source code (“**Code**”) and related input files and any content therein (collectively, “**Data**,” together with Code, “**Software Content**”); (ii) generate new Code based on sample Software Content created by Code Ocean and its licensors, and provided on the Site (collectively, “**Templates**”); (iii) execute Code in the cloud on machines hosted by or on behalf of Code Ocean and download the results of the same (“**Results**”), using application software of Code Ocean’s and its licensors’, the use of which is subject to applicable software product license(s) of such licensors; (iv) select Collaborators (defined below) or use the Site as a Collaborator; (v) Publish (defined below) your Software Content; (vi) share or embed Software Content on External Sites (defined in Section 7 below) through the available functionality; and (vii) download certain compute capsules made available via the Site by Code Ocean and its licensors, the use of which is subject to applicable software product license(s) of Code Ocean’s licensors, and containing (A) code, (B) data, and (C) the execution

environment which includes a snapshot of the specific operating system (the “**OS**”), modifications and additions to the OS, packages, libraries, and other artifacts the code depends on (collectively, the “**Compute Capsules**”).

Any user of the Site will be referred to herein as a “**User**.” Any User who has been designated a collaborator through the functionality on the Site (whether by you or any other User you designate as a collaborator) will be referred to herein as a “**Collaborator**.” As used herein, the term “**Publish**” means any instance when you make your Software Content available to all Users on the Site through the available functionality on the Site.

b. Changes to this TOU. You understand and agree that Code Ocean may change this TOU at any time without prior notice. Code Ocean will endeavor to provide you with prior notice of any material changes. You may read a current, effective copy of this TOU at any time by selecting the appropriate link on the Site. The revised TOU will become effective at the time of posting on the Site, and your use of the Site after such time will constitute your acceptance of the revised TOU. If any change to this TOU is not acceptable to you, then your sole remedy is to stop using the Site. Notwithstanding the preceding sentences of this Section 1.b, no revisions to this TOU will apply to any dispute between you and Code Ocean that arose prior to the effective date of those revisions.

c. Consideration.

i. Free Access and Subscriptions. Code Ocean provides you with limited capacity to use the Site for free. To obtain additional capacity to use the Site beyond that made available to you for free, you must purchase a subscription to the Site. If you purchase a subscription to the Site, then the following terms apply:

1. Automatic Renewal of Subscriptions. YOU MUST PURCHASE A MONTHLY OR ANNUAL SUBSCRIPTION. BY PURCHASING A SUBSCRIPTION TO THE SITE, YOU AGREE THAT, ONCE YOUR SUBSCRIPTION EXPIRES, YOUR SUBSCRIPTION WILL AUTOMATICALLY RENEW FOR SUCCESSIVE PERIODS EQUAL TO THE LENGTH OF YOUR INITIAL SUBSCRIPTION UNLESS YOU CANCEL YOUR SUBSCRIPTION AS FURTHER DESCRIBED BELOW.

2. Recurring Charges. YOU AUTHORIZE CODE OCEAN TO CHARGE THE PAYMENT METHOD THAT OUR PAYMENT PROCESSOR HAS ON FILE FOR YOU TO PAY FOR ANY RENEWAL SUBSCRIPTION. SUBSCRIPTION PRICES WILL BE DISPLAYED TO YOU AT THE TIME OF PURCHASE. YOU WILL BE BILLED FOR THE SAME SUBSCRIPTION PLAN (OR THE MOST SIMILAR SUBSCRIPTION PLAN, IF YOUR PRIOR PLAN IS NO LONGER AVAILABLE) AT THE THEN-CURRENT MONTHLY OR ANNUAL SUBSCRIPTION PRICE PLUS ANY APPLICABLE TAXES. ADDITIONAL TERMS AND CONDITIONS MAY APPLY UPON RENEWAL, AND SUBSCRIPTION FEES MAY CHANGE AT ANY TIME, TO THE FULLEST EXTENT PERMITTED UNDER LAW.

3. Cancellation. YOU MAY CANCEL YOUR SUBSCRIPTION TO THE SERVICE AT ANY TIME, AFTER WHICH WE WILL NOT RENEW YOUR SUBSCRIPTION. CANCELLATION WILL BECOME EFFECTIVE ONCE YOU MOVE TO A FREE PLAN THROUGH THE FUNCTIONALITY AVAILABLE ON THE SITE. WITHOUT LIMITING SECTION 10, CODE OCEAN WILL HAVE NO LIABILITY TO YOU WHATSOEVER FOR ANY REFUNDS IN CONNECTION WITH SUBSCRIPTIONS.

4. Payment Processors. Code Ocean currently uses a third party payment processor for electronic commerce. By using such payment processor, you agree to its terms and conditions of use. You acknowledge and agree that Code Ocean has no liability with regard to any fees or problems you may have with our payment processor.

ii. No Right to Compensation. In return for enjoying free or subscription-based access to the Site and its various features, you acknowledge and agree that Code Ocean may generate revenues, increase goodwill or otherwise increase the value of Code Ocean from your use of the Site, and you will have no right to share in any such revenues, goodwill or value whatsoever.

d. Privacy Policy. Your use of the Site is also subject to Code Ocean's [Privacy Policy](#), which is incorporated into this TOU by reference.

e. Jurisdictional Issues. The Site is controlled and operated by Code Ocean from its offices in the State of New York. Code Ocean makes no representation that materials on the Site are appropriate, lawful or available for use in any locations other than the United States of America. Those who choose to access or use the Site from locations outside the United States of America do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable.

f. Eligibility. THE SITE IS NOT FOR PERSONS UNDER THE AGE OF 13 OR FOR ANY USERS PREVIOUSLY SUSPENDED OR REMOVED FROM THE SITE BY CODE OCEAN. IF YOU ARE UNDER 13 YEARS OF AGE, THEN YOU MUST NOT USE OR ACCESS THE SITE AT ANY TIME OR IN ANY MANNER. Furthermore, by using the Site, you affirm that you are at least 18 years of age or have the consent of your parent or legal guardian who is at least 18 years of age. If you are using the Site on behalf of an entity, organization, or company, then you represent and warrant that you have the authority to bind that organization to this TOU and you agree to be bound by this TOU on behalf of that organization.

g. Support. We may provide you with an opportunity to submit support requests on the Site. We may, but have no obligation to, use commercially reasonable efforts to resolve the applicable problem. We do not guarantee that we will resolve any reported problem with the Site.

2. Accounts and Messages

a. Log-In Credentials. While you may always browse the public-facing portions of the Site without registering with us, in order to enjoy the full benefits of the Site you must register an account with us ("**Account**").

b. Account Security. You are responsible for the security of your Account, and are fully responsible for all activities that occur through the use of your log-in credentials. You agree to notify Code Ocean immediately at contact@codeocean.com if you suspect or know of any unauthorized use of your log-in credentials or any other breach of security with respect to your Account. Code Ocean will not be liable for any loss or damage arising from unauthorized use of your log-in credentials prior to you notifying Code Ocean of such unauthorized use or loss of your log-in credentials. Separate log-in credentials may be required to access External Sites.

c. Accuracy of Information. When creating an Account, you will provide true, accurate, current, and complete information as Code Ocean requests. You will update the information about yourself promptly, and as necessary, to keep it current and accurate. We reserve the right to disallow, cancel, remove, or reassign certain usernames and permalinks in appropriate circumstances, as determined by us in our sole discretion, and may, with or without prior notice, suspend or terminate your Account if activities occur on your Account which, in our sole discretion, would or might constitute a violation of this TOU, cause damage to or impair the Site, infringe or violate any third party rights, damage or bring into disrepute the reputation of Code Ocean, or violate any applicable laws or regulations. If messages sent to the e-mail address you provide are returned as undeliverable, then Code Ocean may terminate your Account immediately without notice to you and without any liability to you or any third party.

d. Messages. You may be able to send, and/or cause Code Ocean to send, electronic mail messages to others through the Site. You represent that you (i) are solely responsible for initiating the transmittal of all such messages; (ii) will only send such messages to others from whom you have obtained prior consent to send such messages; and (iii) will indemnify and hold Code Ocean harmless from any and all claims arising out of your sending such messages.

3. Intellectual Property Rights.

a. License. Subject to your complete and ongoing compliance with this TOU, Code Ocean hereby grants you a revocable, non-exclusive, non-transferable, non-sublicensable, royalty-free and worldwide right and license to access and use the Site, Templates, and Compute Capsules for research purposes and in strict compliance with the provisions of this TOU.

b. Restrictions. For clarity, you will solely own the rights to any Code that you generate through using the Templates, subject to Code Ocean's and its licensors' rights in and to the Templates and the licenses that you grant to any such Code under this TOU. FOR THE AVOIDANCE OF DOUBT AND WITHOUT LIMITING ANY OTHER PROVISIONS IN THIS TOU, YOU MAY NOT USE THE SITE OR DOWNLOAD ANY CONTENT FROM THE SITE (INCLUDING, WITHOUT LIMITATION, ANY SOFTWARE CONTENT OR RESULTS) IN ORDER TO CREATE A COMPETITIVE PRODUCT OR SERVICE TO THOSE OFFERED BY CODE OCEAN OR ITS LICENSORS, AND ANY SUCH USE OF THE SITE OR THE CONTENT THEREON IS EXPRESSLY PROHIBITED.

c. Content. The content that Code Ocean provides to you on the Site that is not User Content, including, without limitation, any text, graphics, Templates, Compute Capsules, software, interactive features, information or other materials, is protected by copyright or other intellectual property rights and owned by Code Ocean or its licensors (collectively, the "**Code Ocean Content**"). Separate license terms and privacy policies may apply to Code Ocean Content provided by Code Ocean's licensors. Moreover, Code Ocean or its licensors own all design rights, database and compilation rights and other intellectual property rights in and to the Site, in each case whether registered or unregistered, and any related goodwill.

d. Marks. The Code Ocean trademarks, service marks, and logos (collectively, the "**Code Ocean Trademarks**") used and displayed on the Site are Code Ocean's registered and/or unregistered trademarks or service marks. Any other product and service names located on the Site may be trademarks or service marks owned by third parties (each, a "**Third Party Mark**," collectively with the Code Ocean Trademarks, the "**Trademarks**"). Except as otherwise permitted by law, you may not use the Trademarks to disparage Code Ocean or any Third Party Mark owner, Code Ocean's or a Third Party Mark owner's products or services, or in any manner (using commercially reasonable judgment) that may damage any goodwill in the Trademarks or otherwise be considered improper by Code Ocean or any Third Party Mark owner. You may not use any Trademarks as part of a link to or from any website without Code Ocean's prior express written consent. All goodwill generated from the use of the Trademarks will inure solely to the benefit of the applicable owner.

e. Restrictions. Code Ocean and its licensors hereby reserve all rights not expressly granted to you in this Section 3. Accordingly, nothing in this TOU or on the Site will be construed as granting to you, by implication, estoppel, or otherwise, any additional license rights in and to the Site or any Code Ocean Content or Trademarks located or displayed on or within the Site.

4. User Content.

a. Definition. "**User Content**" means any content that you upload, import, submit or otherwise transmit to or through the Site (collectively, "**Post**"), including, without limitation, any Code, Data, text, photographs, and other works subject to protection under the laws of

the United States or any other jurisdiction, including, but not limited to, patent, trademark, trade secret, and copyright laws. For clarity, User Content excludes any Code Ocean Content and Feedback (defined in Section 8 below).

b. Your Rights to User Content. YOU RETAIN COPYRIGHT AND ANY OTHER PROPRIETARY RIGHTS THAT YOU MAY HOLD IN ANY USER CONTENT THAT YOU POST SUBJECT TO THE RIGHTS THAT YOU GRANT IN THIS TOU.

c. Licenses.

i. Code.

1. You hereby grant (A) a non-exclusive, perpetual (for the duration of any copyrights), irrevocable, transferable, sublicenseable, worldwide and royalty-free license to Code Ocean to store, host, reproduce, execute and publicly display on the Site any Code you Post and any related Derivative (defined in Section 4(c)(i)(2) below) (any such Code and related Derivative collectively, a “**Combination Code**”); and (B) a license to all Users to any Combination Code that you Publish under the terms of the applicable license. When you Publish Combination Code, you must select from the drop down menu on the Site a license that will govern Users’ use of the Combination Code. If you fail to do so, then the MIT license will apply. A copy of this license can be viewed here: <https://opensource.org/licenses/MIT>.

2. You hereby grant to your Collaborators (both those you designate directly and those selected by your designees) a non-exclusive, perpetual, revocable, nontransferable, nonsublicensable, royalty-free and worldwide license to (A) view, use and reproduce any Code you Post; and (B) if provided with edit permissions on the Site, modify and create derivative works of any Code you Post. If you use the Site as a Collaborator and modify another User’s Code to any extent, then you hereby irrevocably assign to any such User all of your rights, title and interest in and to the modifications to such Code that you Post, including, without limitation, any and all intellectual property rights (each, a “**Derivative**”).

ii. Data. You hereby grant (1) a non-exclusive, perpetual (for the duration of any copyrights), irrevocable, transferable, sublicenseable, worldwide and royalty-free license to Code Ocean to store, host, reproduce and publicly display on the Site any Data you Post; (2) a non-exclusive, perpetual, revocable, nontransferable, nonsublicensable, royalty-free and worldwide license to your Collaborators (both those you designate directly and those selected by your designees) to view, use and reproduce any Data you Post; and (3) a license to all Users to any Data that you Publish under the terms of the applicable license. When you Publish any Data on the Site, you must select from the drop down menu on the Site a

license that governs Users' use of the Data. If you fail to do so, then the Creative Commons "CC0" License will apply. A copy of this license can be viewed here:

<https://creativecommons.org/publicdomain/zero/1.0/>.

iii. Publishers. You acknowledge and agree that Code Ocean may allow third party publishers of academic journals (each, a "**Publisher**") to display a link to Code Ocean's website, and/or use Code Ocean's application programming interface to embed software on their online properties that will display Software Content from the Site (such link and software individually and collectively, the "**Widget**"). Accordingly, you acknowledge and agree that (1) the rights you grant to Code Ocean in this Section 4 include a right to sublicense to any Publisher the right to display your Software Content on the Publisher's online properties through the Widget; (2) Code Ocean may grant any such Publisher the foregoing right at any time in its sole discretion; and (3) you hereby waive all rights to object to or challenge any such sublicense.

iv. Other User Content. If you Post any User Content that is not Software Content ("**Other User Content**"), then you hereby grant to Code Ocean the right to host, transmit, store, reproduce, publicly display and perform, create derivative works of, distribute and otherwise use and exploit such User Content to provide and improve the Site and our business.

d. You Must Have Rights to the Content You Post. You represent and warrant that: (i) you own the User Content you Post or otherwise have the right to grant the licenses set forth in this TOU; (ii) the Posting and use of your User Content on the Site as permitted under this TOU does not violate the privacy rights, publicity rights, copyrights, trademark rights, patent rights, trade secret rights, contract rights, or any other rights of any party; (iii) the Posting of your User Content will not require us to obtain any further licenses from or pay any royalties, fees, compensation or other amounts or provide any attribution to any third parties; and (iv) the Posting of your User Content does not result in a breach of contract between you and a third party. You agree to pay all monies owing to any party, including Publishers, as a result of Posting your User Content.

e. Waiver of Rights to User Content. By Posting Other User Content, you waive any rights to prior inspection or approval of any marketing or promotional materials related to such Other User Content. You also waive any and all rights of privacy, publicity, or any other rights of a similar nature in connection with your Other User Content, or any portion thereof. To the extent any moral rights are not transferable or assignable, you hereby waive and agree never to assert any and all moral rights, or to support, maintain or permit any action based on any moral rights that you may have in or with respect to any Other User Content you Post.

f. Disclaimer. We are under no obligation to edit or control User Content that you Post, and will not be in any way responsible or liable for User Content. Code Ocean may, however, at any time and without prior notice, screen, remove, edit, or block any User Content that in our sole judgment violates this TOU or is otherwise objectionable, such as, without limitation, User Content that Code Ocean determines is or could be interpreted to be abusive, bigoted, defamatory, harassing, harmful, infringing, obscene, offensive, pornographic, racist, threatening, unlawful, vulgar or otherwise inappropriate (collectively, **“Objectionable Content”**). You agree to waive, and hereby do waive, any legal or equitable right or remedy you have or may have against Code Ocean with respect to User Content. We expressly disclaim any and all liability in connection with User Content.

5. Notice and Procedure for Making Claims of Copyright or Other Intellectual Property Infringements.

g. Respect of Third Party Rights. Code Ocean respects the intellectual property of others and takes the protection of intellectual property very seriously, and we ask our Users to do the same. Infringing activity will not be tolerated on the Site.

h. Repeat Infringer Policy. Code Ocean’s intellectual property policy is to (i) remove or disable access to material that Code Ocean believes in good faith, upon notice from an intellectual property owner or his or her agent, is infringing the intellectual property of a third party by being made available on the Site; and (ii) remove any User Content Posted by “repeat infringers.” Code Ocean considers a “repeat infringer” to be any User that has uploaded User Content to the Site and for whom Code Ocean has received more than two takedown notices compliant with the provisions of 17 U.S.C. § 512 with respect to such User Content. Code Ocean has discretion, however, to terminate the Account of any User after receipt of a single notification of claimed infringement or upon Code Ocean’s own determination.

i. Procedure for Reporting Claimed Infringement. If you believe that any content made available on or through the Site has been used or exploited in a manner that infringes an intellectual property right you own or control, then please promptly send a **“Notification of Claimed Infringement”** containing the following information to the Designated Agent identified below. Your Notification of Claimed Infringement may be shared by Code Ocean with the User alleged to have infringed a right you own or control, and you hereby consent to Code Ocean making such disclosure. Your communication must include substantially the following:

v. A physical or electronic signature of a person authorized to act on behalf of the owner of the work(s) that has/have been allegedly infringed;

vi. Identification of works or materials being infringed, or, if multiple works are covered by a single notification, then a representative list of such works;

vii. Identification of the specific material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Code Ocean to locate the material;

viii. Information reasonably sufficient to permit Code Ocean to contact you, such as an address, telephone number, and, if available, an electronic mail address at which you may be contacted;

ix. A statement that you have a good faith belief that the use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and

x. A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

You should consult with your own lawyer and/or see 17 U.S.C. § 512 to confirm your obligations to provide a valid notice of claimed infringement.

j. Designated Agent Contact Information. Code Ocean's designated agent for receipt of Notifications of Claimed Infringement ("**Designated Agent**") can be contacted at:

Via E-mail: copyright@codeocean.com

Via U.S. Mail: Code Ocean, Inc., 311 West 43rd Street, 13th Floor, New York, NY10036

k. Counter Notification. If you receive a notification from Code Ocean that material you Posted has been the subject of a Notification of Claimed Infringement, then you will have the right to provide Code Ocean with what is called a "**Counter Notification.**" To be effective, a Counter Notification must be in writing, provided to Code Ocean's Designated Agent through one of the methods identified in Section 5.d above and include substantially the following information:

i. your physical or electronic signature;

ii. identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;

iii. a statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled; and

iv. your name, address, and telephone number, and a statement that you consent to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the your address is outside of the United States, for any judicial district in which Code Ocean may be found, and you will accept service of process from the person who provided notification in accordance with Section 5.d above or an agent of such person.

You should consult a lawyer or see 17 U.S.C. § 512 to confirm your obligations to provide a valid Counter Notification under the Copyright Act.

I. Reposting of Content Subject to a Counter Notification. If you submit a Counter Notification to Code Ocean in response to a Notification of Claimed Infringement, then Code Ocean will promptly provide the person who provided the Notification of Claimed Infringement with a copy of your Counter Notification and inform that person that Code Ocean will replace the removed User Content or cease disabling access to it in 10 business days, and Code Ocean will replace the removed User Content and cease disabling access to it not less than 10, nor more than 14, business days following receipt of the Counter Notification, unless Code Ocean's Designated Agent receives notice from the party that submitted the Notification of Claimed Infringement that such person has filed an action seeking a court order to restrain the User from engaging in infringing activity relating to the material on Code Ocean's system or network.

m. False Notifications of Claimed Infringement or Counter Notifications. The Copyright Act provides that:

[a]ny person who knowingly materially misrepresents under [Section 512 of the Copyright Act (17 U.S.C. § 512)] (1) that material or activity is infringing, or (2) that material or activity was removed or disabled by mistake or misidentification, will be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of [Code Ocean] relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

17 U.S.C. § 512(f).

Code Ocean reserves the right to seek damages from any party that submits a Notification of Claimed Infringement or Counter Notification in violation of the law.

For clarity, and notwithstanding anything in this Section 5 to the contrary, Code Ocean in its sole discretion may (but has no obligation to) disclose publicly any and all Notices of Claimed Infringement and Counter Notifications.

6. Restrictions on Use of the Site.

a. Without limiting any other terms of this TOU, when using the Site, you agree not to (and not to attempt to):

i. decipher, decompile, disassemble, or reverse engineer any of the software or source code comprising or making up the Site, including without limitation any Code Ocean Content;

ii. use any device, software or routine to interfere or attempt to interfere with the proper working of the Site, or any activity conducted on the Site;

iii. delete or alter any material Code Ocean makes available on the Site except as permitted by the functionality on the Site;

iv. frame or link to any of the materials or information available on the Site;

v. use or exploit any Trademarks or Code Ocean Content in any manner that is not expressly authorized by this TOU;

vi. access, tamper with, or use non-public areas of the Site, Code Ocean's (and its hosting company's) computer systems and infrastructure, or the technical delivery systems of Code Ocean's providers;

vii. provide any false personal information to Code Ocean;

viii. create a false identity or impersonate another person or entity in any way;

ix. restrict, discourage, or inhibit any person from using the Site;

x. use the Site, without Code Ocean's prior express written consent, for any commercial or unauthorized purpose;

xi. gain unauthorized access to the Site or personally identifiable information, or to other computers or websites connected or linked to the Site;

xii. Post any Objectionable Content;

xiii. Post any virus, worm, spyware, or any other computer code, file, or program that may or is intended to disable, overburden, impair, damage, or hijack the operation of any hardware, software, or telecommunications equipment, or any other aspect of the Site or any other website or communications equipment and computers connected to the Site or any other website;

xiv. violate any federal, state, or local laws or regulations or the terms of this TOU; or

xv. assist or permit any person in engaging in any of the activities described above.

b. Export Control. The Site and Code Ocean Content are subject to U.S. export control laws and may be subject to applicable export and import laws and regulations in other jurisdictions. You are responsible for complying with all applicable United States or other governmental export and import regulations with respect to all use of the Site and Code Ocean Content.

7. External Sites. The Site may contain links to, and/or the ability to embed Software Content to, other websites or other online properties that are not owned or controlled by Code Ocean (collectively, "**External Sites**"). The content of External Sites is not developed or provided by Code Ocean. Code Ocean is not responsible for the content of any External Sites and does not make any representations regarding the content or accuracy of any materials on External Sites. You should contact the site administrator or Webmaster for External Sites if you have any concerns regarding content located on those External Sites. You should take precautions when downloading files from all websites to protect your devices from viruses and other destructive programs. If you decide to access any External Sites, then you do so at your own risk. Further, you will be solely responsible for compliance with any terms of service or similar terms imposed by any External Site in connection with your use of External Sites, including, without limitation, when you embed Software Content to External Sites through the Widget.

8. Feedback. While our own staff works to develop and evaluate our own product ideas and features, we pride ourselves on paying close attention to the interests, feedback, comments, and suggestions we receive from the User community. If you choose to contribute by sending Code Ocean or our employees any ideas for products, services, features, modifications, enhancements, content, refinements, technologies, content offerings (such as audio, visual, games, or other types of content), promotions, strategies, product/feature names, or any related documentation, artwork, computer code, diagrams, or other materials (collectively "**Feedback**"), then regardless of what your accompanying communication may say, the following terms will apply, so that future misunderstandings can be avoided. Accordingly, by sending Feedback to Code Ocean, you agree that:

a. Code Ocean has no obligation to review, consider, or implement your Feedback, or to return to you all or part of any Feedback for any reason;

b. Feedback is provided on a non-confidential basis, and Code Ocean is not under any obligation to keep any Feedback you send confidential or to refrain from using or disclosing it in any way; and

c. You irrevocably grant Code Ocean and its licensors perpetual and unlimited permission to reproduce, distribute, create derivative works of, modify, publicly perform (including on a through-to-the-audience basis), communicate to the public, make available, publicly display, and otherwise use and exploit the Feedback and derivatives thereof for any purpose and without restriction, free of charge, and without attribution of any kind, including by making, using, selling, offering for sale, importing, and promoting commercial products and services that incorporate or embody Feedback, whether in whole or in part, and whether as provided or as modified.

9. Dispute Resolution.

d. General. In the interest of resolving disputes between you and Code Ocean in the most expedient and cost effective manner, you and Code Ocean agree that any dispute arising out of or in any way related to this TOU or your use of the Site will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or in any way related to this TOU or your use of the Site, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of this TOU. **YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THIS TOU, YOU AND CODE OCEAN ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION AND THAT THIS AGREEMENT SHALL BE SUBJECT TO AND GOVERNED BY THE FEDERAL ARBITRATION ACT.**

e. Exceptions. Notwithstanding Section 9.a above, nothing in this TOU will be deemed to waive, preclude, or otherwise limit the right of either party to: (i) bring an individual action in small claims court; (ii) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (iii) seek injunctive relief in aid of arbitration from a court of competent jurisdiction; or (iv) to file suit in a court of law to address an intellectual property infringement claim.

f. Arbitrator. Any arbitration between you and Code Ocean will be governed by the Federal Arbitration Act and the Commercial Dispute Resolution Procedures and Supplementary Procedures for Consumer Related Disputes (collectively, "**AAA Rules**") of the American Arbitration Association ("**AAA**"), as modified by this TOU, and will be administered by the AAA. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by contacting Code Ocean. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.

g. Notice; Process. A party who intends to seek arbitration must first send a written notice of the dispute to the other party by U.S. Mail ("**Notice**"). Code Ocean's address for Notice is: Code Ocean, Inc., 311 West 43rd Street, 13th Floor, New York, NY 10036, Attn: Chief Executive Officer. The Notice must: (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought ("**Demand**"). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice is received, you or Code Ocean may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Code Ocean must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the dispute is finally resolved through arbitration in your favor with a monetary award that exceeds the last written settlement amount offered by Code Ocean prior to selection of an arbitrator, Code Ocean will pay you the highest of the following: (1) the amount awarded by the arbitrator, if any; (2) the last written settlement amount offered by Code Ocean in settlement of the dispute prior to the arbitrator's award; or (3) \$15,000.

h. Fees. If you commence arbitration in accordance with this TOU, Code Ocean will reimburse you for your payment of the filing fee, unless your claim is for more than \$15,000 or as set forth below, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in New York County, New York, but if the claim is for \$15,000 or less, you may choose whether the arbitration will be conducted: (i) solely on the basis of documents submitted to the arbitrator; (ii) through a non-appearance based telephone hearing; or (iii) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Code Ocean for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. Each party agrees that such written decision, and information exchanged during arbitration, will be kept confidential except to the extent necessary to enforce or permit limited judicial review of the award. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

i. No Class Actions. YOU AND CODE OCEAN AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE

PROCEEDING. Further, unless both you and Code Ocean agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

j. Modifications to this Arbitration Provision. Except as otherwise provided in this TOU, if Code Ocean makes any future change to this arbitration provision, other than a change to Code Ocean's address for Notice, you may reject the change by sending us written notice within 30 days of the change to Code Ocean's address for Notice, in which case this arbitration provision, as in effect immediately prior to the changes you rejected, will continue to govern any disputes between you and Code Ocean.

k. Enforceability. If Section 9.f above is found to be unenforceable or if the entirety of this Section 9 is found to be unenforceable, then the entirety of this Section 9 will be null and void.

10. Limitation of Liability and Disclaimer of Warranties. THE TERMS OF THIS SECTION 10 APPLY TO THE FULLEST EXTENT PERMITTED BY LAW:

I. NEITHER CODE OCEAN NOR ITS AFFILIATES OR THEIR RESPECTIVE LICENSORS (COLLECTIVELY, "**CODE OCEAN PARTIES**") MAKE ANY WARRANTIES OR REPRESENTATIONS ABOUT THE SITE OR ANY CONTENT THEREON, INCLUDING WITHOUT LIMITATION THE CODE OCEAN CONTENT. ACCORDINGLY, THE SITE AND ALL CONTENT THEREON (INCLUDING, WITHOUT LIMITATION, ANY CODE OCEAN CONTENT, AND ANY OTHER CODE, DATA OR RESULTS) ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND THE CODE OCEAN PARTIES HEREBY DISCLAIM ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND FITNESS FOR A PARTICULAR PURPOSE. CONSEQUENTLY, YOU AGREE THAT YOU SOLELY ASSUME ALL RISKS ARISING FROM YOUR USE OF THE SITE, INCLUDING WITHOUT LIMITATION THE CODE OCEAN CONTENT.

m. WITHOUT LIMITING SECTION 10.a, THE CODE OCEAN PARTIES DO NOT WARRANT THAT THE SITE AND ANY CONTENT THEREON (INCLUDING, WITHOUT LIMITATION, ANY CODE OCEAN CONTENT, AND ANY OTHER CODE, DATA OR RESULTS) ARE FREE OF ERRORS, COMPUTER VIRUSES, OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES. ACCORDINGLY, IF YOUR USE OF THE SITE OR ANY CONTENT THEREON, INCLUDING WITHOUT LIMITATION THE CODE OCEAN CONTENT, RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, THEN NO CODE OCEAN PARTY WILL BE RESPONSIBLE FOR THOSE COSTS.

n. IN NO EVENT WILL ANY CODE OCEAN PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION RESULTING FROM, OR IN

CONNECTION WITH, THE USE OR INABILITY TO USE THE SITE AND ANY CONTENT THEREON (INCLUDING, WITHOUT LIMITATION, THE CODE OCEAN CONTENT, AND ANY OTHER CODE, DATA OR RESULTS), WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF THE CODE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CODE OCEAN'S LIABILITY, AND THE LIABILITY OF ANY OF THE OTHER CODE OCEAN PARTIES (EXCEPT FOR ANY LICENSOR OF CODE OCEAN AND/OR ANY OF ITS AFFILIATES), TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE ARISING FROM THIS TOU IS LIMITED TO U.S. \$100. NO LICENSOR OF CODE OCEAN AND/OR ANY OF ITS AFFILIATES WILL BE LIABLE TO YOU OR ANY THIRD PARTY IN CONNECTION WITH YOUR USE OF THE SITE AND ANY CONTENT AVAILABLE THEREON, INCLUDING WITHOUT LIMITATION THE CODE OCEAN CONTENT.

11. Third Party Disputes. ANY DISPUTE YOU HAVE WITH ANY THIRD PARTY (E.G., ANOTHER USER) IN CONNECTION WITH YOUR USE OF THE SITE OR ANY CONTENT THEREON (INCLUDING, WITHOUT LIMITATION, THE CODE OCEAN CONTENT, AND ANY OTHER CODE, DATA OR RESULTS), IS DIRECTLY BETWEEN YOU AND SUCH THIRD PARTY. ACCORDINGLY, TO THE FULLEST EXTENT PERMITTED BY LAW, YOU HEREBY IRREVOCABLY RELEASE THE CODE OCEAN PARTIES FROM ANY AND ALL CLAIMS, DEMANDS, AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

12. Indemnification. To the fullest extent permitted by law, you agree to defend, indemnify, and hold harmless the Code Ocean Parties from and against any claims, actions, or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from (i) your breach of this TOU; or (ii) your access to, use, or misuse of the Code Ocean Content, Trademarks or the Site. Code Ocean will provide notice to you of any such claim, suit, or proceeding. Code Ocean reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this Section 12 if Code Ocean believes that you are unwilling or incapable of defending Code Ocean's interests. In such case, you agree to cooperate with any reasonable requests assisting Code Ocean's defense of such matter at your expense.

13. Term and Termination of the TOU.

a. Term. As between you and Code Ocean, the term of this TOU commences as of your first use of the Site and continues until the termination of this TOU by either you or Code Ocean.

b. Termination. You may terminate this TOU by sending written notification to Code Ocean at contact@codeocean.com and terminating your use of the Site. Code Ocean reserves the right, in its sole discretion, to restrict, suspend, or terminate your access to all or any part of the Site or to terminate this TOU at any time without prior notice or liability if you breach any provision of this TOU or violate the rights of any third party on or through

the Site. Code Ocean reserves the right to change, suspend, or discontinue all or any part of the Site at any time without prior notice or liability. Sections 1(b), 1(c)(i)(4), 1(c)(ii), 1(e), 1(f), 2(b), 2(d), 3(b)-(e), 4-15 and all defined terms used therein will survive the termination of this TOU indefinitely.

14. Consent to Electronic Communications. By using the Site, you consent to receiving certain electronic communications from us as further described in the [Privacy Policy](#). Please read the [Privacy Policy](#) to learn more about your choices regarding our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing.

15. Miscellaneous. This TOU is governed by the internal substantive laws of the State of New York without respect to its conflict of laws provisions. You agree that no joint venture, partnership, employment, or agency relationship exists between you and Code Ocean as a result of this TOU or use of the Site. If any provision of this TOU is found to be invalid by any court having competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions of this TOU, which will remain in full force and effect. Failure of Code Ocean to act on or enforce any provision of this TOU will not be construed as a waiver of that provision or any other provision in this TOU. No waiver will be effective against Code Ocean unless made in writing, and no such waiver will be construed as a waiver in any other or subsequent instance. Except as expressly agreed by Code Ocean and you in writing, this TOU constitutes the entire agreement between you and Code Ocean with respect to the subject matter hereof, and supersedes all previous or contemporaneous agreements, whether written or oral, between the parties with respect to the subject matter herein. The Section headings are provided merely for convenience and will not be given any legal import. This TOU will inure to the benefit of our successors and assigns. You may not assign this TOU or any of the rights or licenses granted hereunder without the prior express written consent of Code Ocean. Code Ocean may assign this TOU, including all its rights hereunder, without restriction. For the purposes of this TOU, an assignment includes, without limitation, any merger, acquisition of stock or assets, change of control or similar transaction.

16. Contact Us. If you would like to contact us in connection with your use of the Site, then please contact us at 311 West 43rd Street, 13th Floor, New York, NY10036 or by email at contact@codeocean.com.