

# Terms of Service

Last Updated: Jan 24, 2022

These Terms of Service (the “Terms”) and our Privacy Policy available at <http://poeticcloud.co/privacy-policy.pdf> govern the relationship between you and Poetic Cloud, LLC (“Studio”, “our”, “we” or “us”) relating in any way to your use of our Services. “Services” means our website <http://poeticcloud.co/> (the “Site”), mobile applications (each a “Game”, collectively “Games”), and any related services and content.

## 1. Agreement to Terms

By using our Services, you agree to be bound by these Terms and by our Privacy Policy. If you don’t agree to these Terms and our Privacy Policy, do not use the Services.

**SECTION 19 OF THESE TERMS OF SERVICE CONTAINS A BINDING ARBITRATION AGREEMENT AND CLASS ACTION AND REPRESENTATIVE ACTION WAIVER THAT WAIVE YOUR RIGHT TO A COURT HEARING OR JURY TRIAL.**

## 2. Changes to Terms or Services

We may modify the Terms at any time, in our sole discretion. If we do so, we’ll let you know either by posting the modified Terms on the Site or through other communications via the Services. It’s important that you review the Terms whenever we modify them because if you continue to use the Services after we have posted modified Terms on the Site or via the Services, you are indicating to us that you agree to be bound by the modified Terms. If you don’t agree to be bound by the modified Terms, then you may not use the Site or the Services anymore. Because our Services are evolving over time we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.

## 3. Limited License; Who May Use the Services

3.1 Limited License Grant. Subject to your agreement and continuing compliance with these Terms, we grant you a non-exclusive, non-transferable, non-sublicensable, revocable limited license to access and use the Services for your own non-commercial entertainment purposes. You agree not to use the Services for any other purpose.

3.2 Eligibility – You may use the Services only if you are 16 years or older and are not barred from using the Services under applicable law.

If you are under the age of 18, or under the age of majority where you live, you represent that your legal guardian has reviewed and agreed to these Terms.

You may not use our Services if you are not allowed to receive products, including services or software, from the United States, for example if you are located in a country embargoed by the United States or if you are on the U.S. Treasury Department's list of Specially Designated Nationals.

3.3 Registration and Your Information – It's important that you provide us with accurate, complete and up-to-date information for your account and you agree to update such information, as needed, to keep it accurate, complete and up-to-date. If you don't, we might have to suspend or terminate your account. You agree that you won't disclose your account password to anyone and you'll notify us immediately of any unauthorized use of your account. You're responsible for all activities that occur under your account, whether or not you know about them.

#### **4. Intellectual Property Rights**

Except for the limited license granted above, we and our licensors retain all right, title and interest in and to the Services, including the technology and software used to provide the Services. The Services are protected by copyright, trademark and other laws. If you violate these Terms, you may be breaking the law, including by violating our intellectual property rights. We and our licensors may actively protect our intellectual property rights in the event you violate these Terms (including by seeking injunctive relief). In addition, you agree not to modify, create derivative works of, decompile, or otherwise attempt to extract source code from the Services.

If you provide us with any suggestions for enhancement or feedback regarding the Services, you agree that we will have a perpetual, transferable, sub-licensable, royalty-free, irrevocable, worldwide license to use such suggestions and feedback, including by incorporating your suggestions or feedback in the Services, without any obligation to compensate you. To the extent permitted by applicable law, you waive any moral rights you may have in such suggestions and feedback.

#### **5. Privacy Policy**

Please refer to our Privacy Policy available at <http://poeticcloud.co/privacy-policy.pdf> for information on how we collect, use and disclose information from you, your computer and your mobile device. You understand that through your use of our Services you acknowledge the collection, use and sharing of this information as described in our Privacy Policy. If you don't agree with the Privacy Policy, then you must stop using our Services.

#### **6. User Content**

We may permit you or other users to submit, upload, publish, transmit, or otherwise make available to us materials, data, information, communications, pictures and sounds using the Services ("User Content"). Your User Content remains your property. However, once you make

User Content available, you thereby grant to Studio an irrevocable, perpetual, transferable, sublicensable, fully paid-up, royalty-free, worldwide right and license to copy, reproduce, fix, adapt, modify, create derivative works from, manufacture, commercialize, publish, distribute, sell, license, sublicense, transfer, lease, transmit, publicly display, publicly perform, provide access to electronically, broadcast, communicate to the public by telecommunication, display, perform, enter into computer memory, and use and practice, in any way, your User Content as well as all modified and derivative works thereof in connection with the Services, including marketing and promotion of the Services, without notice to or consent from you, and without compensation to you or any other person or entity. You further hereby grant to Studio the unconditional, irrevocable right to use and exploit your name, likeness and any other information or material submitted or transmitted to Studio in connection with any User Content, without any obligation to you. Except as prohibited by law, you waive any rights of attribution and/or any moral rights you may have in your User Content, regardless of whether User Content is altered or changed in any manner.

As a user, you are personally and solely responsible for all information posted and/or sent, transmitted, or provided to others by you in connection with our Services, including but not limited to User Content posted in forums, blogs, and player chat features. Please do not use these mediums to share or post information you wish to remain confidential. You represent, warrant, and affirm that your User Content is accurate, that it does not violate any applicable laws or rights of others, that you have the appropriate permissions or rights from any third parties whose information or intellectual property is comprised in the User Content, and that such User Content is free of malware, viruses, adware, spyware or any malicious code. You agree not to submit and/or transmit any User Content that is unlawful, tortious, defamatory, libelous, obscene, threatening, harassing, abusive, violent, hateful, racist, or otherwise objectionable or inappropriate. We do not assume any liability or responsibility for any user behavior or for monitoring User Content or conduct in connection with the Services. We may, but are not obligated to, review, monitor, reject, deny, or remove User Content, at our sole discretion and at any time and for any reason, without notice to you.

## **7. Code of Conduct and Our Enforcement Rights**

### **7.1 Code of Conduct.**

When you access or use any Service, you agree that you will not:

- Violate any law, rule or regulation.
- Interfere with or disrupt another player's use of a Service. This includes disrupting the normal flow of game play, chat or dialogue within a Service by, for example, using vulgar or harassing language, being abusive, excessive shouting (all caps), spamming, flooding or hitting the return key repeatedly.
- Harass, threaten, bully, embarrass, spam or do anything else to another player that is unwanted, such as repeatedly sending unwanted messages or making personal attacks

or statements about race, sexual orientation, religion, heritage, etc. Hate speech is not tolerated.

- Contribute User Content or organize or participate in any activity or group that is inappropriate, abusive, harassing, profane, threatening, hateful, offensive, vulgar, obscene, sexually explicit, defamatory, infringing, invades another's privacy, or is otherwise reasonably objectionable.
- Publish, post, upload or distribute User Content or content that is illegal or that you don't have permission to freely distribute.
- Publish, post, upload or distribute any content, such as a topic, name, screen name, avatar, persona, or other material or information, that Studio (acting reasonably and objectively) determines is inappropriate, abusive, hateful, harassing, profane, defamatory, threatening, hateful, obscene, sexually explicit, infringing, privacy-invasive, vulgar, offensive, indecent or unlawful.
- Post a message for any purpose other than personal communication. Prohibited messages include advertising, spam, chain letters, pyramid schemes and other types of solicitation or commercial activities.
- Impersonate another person or falsely imply that you are a Studio employee or representative.
- Improperly use in-game support or complaint buttons or make false reports to Studio staff.
- Attempt to obtain, or phish for, a password, account information, or other private information from anyone else on the Services.
- Make use of any payment methods to access or purchase Services for fraudulent purposes, without permission of the authorized owner, or otherwise in connection with a criminal offence or other unlawful activity.
- Use any robot, spider or other automated device or process to access this website for any purpose or copy any material on this website.
- Use or distribute unauthorized software programs or tools, such as "auto" software programs, "macro" software programs, "cheat utility" software program or applications, exploits, cheats, or any other game hacking, altering or cheating software or tool.
- Modify any file or any other part of the Services that Studio does not specifically authorize you to modify.
- Use exploits, cheats, undocumented features, design errors or problems in a Service.
- Use or distribute counterfeit software or content, including virtual goods.
- Attempt to use a Service on or through any service that is not controlled or authorized by Studio.
- Sell, buy, trade or otherwise transfer or offer to transfer your Studio account, any personal access to the Services, including Studio Virtual Items and other entitlements, either within a Service or on a third party website, or in connection with any out-of-game transaction, unless expressly authorized by Studio.
- Use a Service in a country in which Studio is prohibited from offering such services under applicable export control laws.
- If a Service requires you to create a "user name" or a "persona" to represent you in game and online, you should not use your real name and may not use a user name or

persona that is used by someone else or that Studio determines is vulgar or offensive or violates someone else's rights.

- Engage in any other activity that significantly disturbs the peaceful, fair and respectful gaming environment of a Service.
- Use information about users publicly available in any Service (e.g. on a leaderboard) for any purpose unrelated to the Service, including to attempt to identify such users in the real world.
- Interfere with or disrupt any Service or any server or network used to support or provide a Service, including any hacking or cracking into a Service.
- Use any software or program that damages, interferes with or disrupts a Service or another's computer or property, such as denial of service attacks, spamming, hacking, or uploading computer viruses, worms, Trojan horses, cancelbots, spyware, corrupted files and time bombs.
- Promote, encourage or take part in any prohibited activity described above.

7.2 Failure to comply with this Code of Conduct may result in the suspension of your account and access to the Services, and/or subject you to any of the penalties identified in Section 12.

## **8. Your Interactions with Other Users**

You are solely responsible for your interactions with other players with whom you interact through any Game. If you have a problem with another player, we are not required to get involved, but we can if we desire. You will fully cooperate with us to investigate any suspected unlawful, fraudulent or improper activity, including without limitation granting us access to any portion of your account.

If you have a dispute with another player, you release us (and our employees, officers, directors, agents, affiliates and joint ventures) from responsibility, claims, demands, and/or damages (actual or consequential) of every kind and nature, whether known or unknown, resulting from that dispute or connected to that dispute. This includes damages for loss of profits, goodwill, use, or data.

If you are located in California, you waive California Civil Code §1542, which says: **“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.”**

If you live outside of California, you waive any other statute, law, or rule of similar effect in your jurisdiction.

## **9. DMCA/Copyright Policy**

We respect the intellectual property rights of others and ask that you do as well. We respond to notices of alleged copyright infringement that comply with the US Digital Millennium Copyright

Act (“DMCA”) and similar or equivalent other local laws that may apply. For more information, please go to our Copyright Page on our Site to review our notification guidelines. We reserve the right to terminate any player’s access to the Services if we determine that the player is a “repeat infringer.” We do not have to notify the player before we do this.

## **10. Payment Terms**

### **10.1 In-Game purchases.**

We may license to you certain virtual goods to be used within the Games and which you may purchase with real money or which you may earn or redeem via gameplay (“Virtual Items”). When you obtain such Virtual Items from us or our authorized designee, you receive a limited, personal, non-transferable, non-sublicensable and revocable license to use such Virtual Items within the applicable Game and solely for non-commercial use.

When you purchase Virtual Items in our Games on third-party platforms such as Facebook, Apple or Google, we are not a party to the transaction and your purchase will be governed by the third-party platform’s payment terms and conditions. Please review the platform’s terms of service for additional information.

For Virtual Items, your order will represent an offer to us to obtain a limited license and right to use the relevant Virtual Item(s) that will be accepted by us when we accept payment. At that point, the limited license begins.

For orders to obtain a limited license and right to use Virtual Items, by clicking the purchase/order button on the purchase window or page you:

1. agree that we will supply the Virtual Items to you as soon as we have accepted your order; and
2. if you reside in the European Union (the “EU”), you acknowledge that you will therefore no longer have the right to cancel under the EU’s Consumer Rights Directive (as implemented by the law of the country where you are located) once we start to supply the Virtual Item.

You understand that while you may “earn,” “buy,” or “purchase” Virtual Items in our Services, you do not legally “own” the Virtual Items and the amounts of any Virtual Item do not refer to any credit balance of real currency or its equivalent. Any “virtual currency” balance shown in your account does not constitute a real-world balance or reflect any stored value, but instead constitutes a measurement of the extent of your limited license.

**ALL SALES ARE FINAL: YOU ACKNOWLEDGE THAT WE ARE NOT REQUIRED TO PROVIDE A REFUND FOR ANY REASON, AND THAT YOU WILL NOT RECEIVE MONEY OR OTHER COMPENSATION FOR UNUSED VIRTUAL ITEMS WHEN AN ACCOUNT IS CLOSED, WHETHER SUCH CLOSURE WAS VOLUNTARY OR INVOLUNTARY, OR WHETHER YOU MADE A PAYMENT**

THROUGH OUR SITE OR ANOTHER PLATFORM SUCH AS APPLE, GOOGLE, FACEBOOK, OR ANY OTHER SITES OR PLATFORMS WHERE WE OFFER OUR SERVICES. PURCHASES TO ACQUIRE A LIMITED LICENSE AND RIGHT TO USE VIRTUAL ITEMS ARE NON-REFUNDABLE TO THE FULLEST EXTENT ALLOWED BY LAW.

#### Additional Payment Terms:

You agree to pay all fees and applicable taxes incurred by you or anyone using an account registered to you. We may revise the pricing for the Virtual Items it licenses to you through the Services at any time. We may modify or eliminate Virtual Items at any time, with or without notice. Virtual Items cannot be sold, traded, transferred, or exchanged for cash.

## 10.2 Subscriptions

Some of our Games may offer subscription-based Services. If you purchase a subscription, then by clicking the purchase button you are requesting that we begin supplying the subscription Services immediately and you are entering into a monthly subscription contract with us. You are also authorizing a charge to you on a recurring basis of a monthly subscription fee at the rate quoted at the time of purchase. By purchasing a subscription, we will automatically charge on a recurring basis the payment method associated with your account. For subscription Services purchased in a Studio Game played on a platform such as Apple or Google, the applicable platform will charge you for the subscription fee and the platform's payment terms will apply. Please review the appropriate platform's payment terms for additional information.

Trial subscriptions are offered free of charge for a certain period of time from activation specified in the relevant trial offer in the Game. If you do not cancel the subscription within such trial period, the trial subscription will automatically convert into a paid subscription for the fees and for the subscription period set out in the Game at the time of the activation of the trial period. You may cancel a subscription during its free trial period using the subscription setting of your account. Any paid subscription you activate begins immediately from the activation of such paid subscription and not after the expiration of any trial period. Any unused trial period will therefore be forfeited if a subscription is activated prior to the expiration of such trial period.

Your subscription will automatically renew each subscription period unless and until you terminate your subscription or we terminate it. You must cancel your subscription before it renews, otherwise payment of the subscription fees for the next period will be taken automatically via your chosen payment method. You are responsible for the timely payment of all fees and for providing Studio with valid credit card or payment account details for payment of all fees. In case the subscription fee cannot be taken from your account due to absence of monetary funds, invalidity of credit card or for any other reason, your subscription will be automatically cancelled.

Subscription rates are based on an amount in U.S. Dollars. If you are using a local currency, the actual amount may fluctuate based on currency exchange rates without notice to you. The charges will be applied to the payment instrument or method you provide when you start your

subscription (or to a different payment instrument or method, if you change your account information). Please note that prices and charges are subject to change. If we make a change to the monthly subscription rate in U.S. Dollars, we will notify you of such change in advance.

Once you have purchased a subscription, you cannot cancel your subscription for the current subscription period as that is activated as soon as you purchase a subscription. However, you may cancel your subscription for the next subscription period as follows: you can manage and cancel your subscription at any time in your “Account Settings” of your device. For iOS subscriptions, please see Apple’s support page <https://support.apple.com/en-gb/HT202039>. For Google Play subscriptions, please see Google Play’s support page <https://support.google.com/googleplay/answer/7018481?hl=en-GB&co=GENIE.Platform%3DAndroid>. For Amazon Appstore subscriptions, please see <https://www.amazon.com/gp/help/customer/display.html?nodeId=GRBHRJHSSV9RA2PM>.

Except where required by applicable law, paid subscription fees are non-refundable. Studio in its sole discretion and at any time may modify the subscription fee. Any subscription fee change will become effective at the end of the then-current subscription period. You will be provided reasonable prior notice of any change in subscription fee. If you do not take action to agree to the increase in subscription fee, your subscription shall expire at the end of the then-current subscription period.

## **11. Links to Third Party Websites or Resources**

The Services may contain links to third-party websites or resources. We provide these links only as a convenience and are not responsible for the content, products or services on or available from those websites or resources or links displayed on such websites. You acknowledge sole responsibility for and assume all risk arising from, your use of any third-party websites or resources.

## **12. Termination**

We may terminate your access to and use of the Services, at our sole discretion, at any time and without notice to you. Upon any termination, discontinuation or cancellation of Services or your account, all provisions of these Terms which by their nature should survive will survive, including, without limitation, ownership provisions, warranty disclaimers, limitations of liability, and dispute resolution provisions.

## **13. Indemnity**

If you violate the law or breach these Terms, and your violation or breach results in loss or damage or a claim or liability against us, you agree to indemnify, defend and hold us harmless from (which means you agree to compensate us for) that loss, damage, claim or liability, including our legal fees and expenses. We may take exclusive charge of the defense of any legal action for which you are required to indemnify us under this section, at your expense. You



agree to cooperate in our defense of these actions. We will use reasonable efforts to notify you of any claim for which you are obligated to indemnify us.

#### **14. Warranty Disclaimers**

THE SERVICES AND CONTENT ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, NON-INFRINGEMENT OR AVAILABILITY, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WE MAKE NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. WE MAKE NO WARRANTY REGARDING THE QUALITY, ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY CONTENT AVAILABLE IN THE SERVICES.

#### **15. Limitation of Liability**

YOU ACKNOWLEDGE THAT NEITHER WE NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, THE TOTAL LIABILITY OF STUDIO IS LIMITED TO THE TOTAL AMOUNT YOU HAVE PAID US IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH YOU FIRST ASSERT ANY SUCH CLAIM. IF YOU HAVE NOT PAID STUDIO ANY AMOUNT IN SUCH SIX (6) MONTH PERIOD, YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH STUDIO IS TO STOP USING THE SERVICES AND TO CANCEL YOUR ACCOUNT IF YOU HAVE ONE.

Certain jurisdictions do not allow some of the exclusion of certain warranties and liability set forth above. Therefore, the above limitations and disclaimers may not apply to you, and you may have additional rights. To the extent that we may not, as a matter of applicable law, disclaim any warranty or limit its liability as set forth herein, the scope of such warranty and the extent of our liability will be the minimum permitted under such applicable law.

#### **16. Time Limitation on Claims**

You agree that any claim you may have arising out of or relating to your relationship with us must be filed within one year after such claim arose; otherwise your claim is permanently barred.

## **17. Governing Law and Venue**

These Terms and any action related thereto will be governed by the laws of the State of California without regard to its choice of law or conflict of law principles.

Further, you and we agree to the jurisdiction of the courts in Santa Clara County, California to resolve any dispute, claim, or controversy that relates to or arises in connection with the Services (and any non-contractual disputes/claims relating to or arising in connection with them).

## **18. Dispute Resolution**

If you are having a problem with a Service, many issues can be resolved on one of our forums. You may find resolution by clicking on the “Support” or “Contact Us” link on that Service within settings or by emailing [support@poeticcloud.co](mailto:support@poeticcloud.co). Before initiating any arbitration or court proceeding, first contact our support team to address your issue. Most disputes can be resolved that way.

## **19. Agreement to Arbitrate; Class Action and Representative Action Waiver**

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS AND INCLUDES WAIVER OF A TRIAL BY JURY IN A COURT AND OF THE ABILITY TO BRING ANY CLASS ACTIONS OR REPRESENTATIVE ACTIONS.

### Overview

In the event of any controversy or claim arising out of or relating to these Terms, including any question regarding its existence, validity, termination or breach thereof, or your use of the Services, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a satisfactory solution. Most user concerns can be resolved by contacting our customer support team at [support@poeticcloud.co](mailto:support@poeticcloud.co). In the unlikely event that we are unable to resolve your concerns and a dispute remains, this Section explains how you and we agree to resolve it. As explained in more detail below, we each agree to resolve any dispute between us through binding arbitration or small claims court instead of in courts of general jurisdiction.

### Severability

This Section 19 applies to the maximum extent permitted by applicable law. In the event that any portion of Section 19 is deemed illegal or unenforceable, such provision will be severed and the remainder of Section 19 will be given full force and effect.

If there is a determination that applicable law precludes the arbitration of to any claim, cause of action or requested remedy, then that claim, cause of action or requested remedy, and only that claim, cause of action or requested remedy, will be severed from this agreement to arbitrate and will be brought in a court of competent jurisdiction. In the event that a claim, cause of action or requested remedy is severed pursuant to this paragraph, then you and we agree that the claims, causes of action or requested remedies that are not subject to arbitration will be stayed until all arbitrable claims, causes of action and requested remedies are resolved by the arbitrator.

#### Agreement to Arbitrate; Exceptions

If we cannot resolve our dispute through customer support, YOU AND WE AGREE TO RESOLVE ALL DISPUTES AND CLAIMS BETWEEN US IN INDIVIDUAL BINDING ARBITRATION, INCLUDING CLAIMS CONCERNING ANY ASPECT OF THE RELATIONSHIP BETWEEN US, YOUR DECISION TO DOWNLOAD THE GAME, YOUR USE OF THE GAME, ANY USER CONTENT, OR YOUR ACCOUNT. This Agreement to Arbitrate is intended to be interpreted broadly, and applies to all legal claims under any legal theory (whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory), and applies to any disputes or claims that you assert or that arise even after you stop using the Services or delete your account for the Game, stop using the Game, or delete the Game application from your mobile device. This Agreement to Arbitrate also applies to any claims that are currently the subject of a purported class action litigation in which you are not a member of a certified class. You and we agree that the arbitrator shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability or enforceability of the terms or formation of this contract, including whether any dispute between us is subject to this Agreement to Arbitrate (i.e., the arbitrator will decide the arbitrability of any dispute) and whether all or any part of these terms are void or voidable.

An arbitration is a proceeding before a neutral arbitrator, instead of before a judge or jury. Arbitration is less formal than a lawsuit in court, and provides more limited discovery. It follows different rules than court proceedings, and is subject to very limited review by courts. The arbitrator will issue a written decision and provide a statement of reasons if requested by either party. YOU UNDERSTAND THAT YOU AND WE ARE GIVING UP THE RIGHT TO SUE IN COURT AND THE RIGHT TO HAVE A TRIAL BEFORE A JUDGE OR JURY.

This Section 19, however, does not apply to the following types of claims or disputes, which you or we may bring in court in accordance with Section 17 above:

- (1) claims of infringement or other misuse of intellectual property rights, including such claims seeking injunctive relief; and
- (2) claims for preliminary injunctive relief for violations of Sections 3 and 7 herein.

This Section does not prevent you from bringing your dispute to the attention of any federal, state, or local government agencies that can, if the law allows, seek relief from us for you. Also, any of us can bring a claim in small claims court either in Santa Clara County, California or the county where you live, or some other place we both agree on, if such claims meets all the requirements to be brought in that court.

The Federal Arbitration Act applies to this Section 19. The arbitration will be governed by the Consumer Arbitration Rules (the “Rules”) of the American Arbitration Association (“AAA”) (including Rule 1(g) of those Rules that provides for arbitration through the submission of documents only/desk arbitration where no disclosed claims or counterclaims exceed \$25,000), as modified by these Terms. The Rules are available at <https://adr.org/>. The arbitrator will be bound by these Terms.

To start an arbitration proceeding, use the form on AAA’s website (<https://adr.org/>) or call the AAA at 1-800-778-7879.

Any arbitration under this section that is required to take place in person will take place pursuant to the Rules, which provide that face-to-face proceedings be conducted at a location which is reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances.

If your claim is for US\$25,000 or less, we agree to reimburse your filing fee promptly upon being notified of the filing, or pay it for you if you are unable to pay it and we receive a written request from you. Also, if your claim is for US\$25,000 or less, we agree to reimburse your share of the arbitration costs, including your share of arbitrator fees, at the conclusion of the proceeding, unless the arbitrator determines your claims are frivolous or your costs are unreasonable as determined by the arbitrator. If you seek more than US\$25,000, the arbitration costs, including arbitrator compensation, will be split between you and us according to the Rules. Irrespective of the amount you seek, neither party shall be entitled to have their attorneys’ fees or costs paid by the other party, provided, however, that either party may seek to recover their attorneys’ fees and costs in arbitration if the arbitrator determines that the other party’s claims (or counterclaims) are frivolous or the other party’s costs are unreasonable.

For non-US Users:

In the event of any controversy or claim arising out of or relating to these Terms, including any question regarding its existence, validity, termination or breach thereof, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a satisfactory solution. If they do not reach settlement within a period of 60 days, then, upon notice by any party to the other(s), any unresolved controversy or claim shall be settled by arbitration administered by the International Centre for Dispute Resolution (“ICDR”) ([www.icdr.org](http://www.icdr.org)) in accordance with the provisions of its International Arbitration Rules. The place of arbitration shall be in London, England. The number of arbitrators shall be one. The language to be used in the arbitral proceedings shall be English. Except as may be required by law, neither a party nor its representatives may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of Studio. The European Union also operates an online dispute resolution platform which can be found at [www.ec.europa.eu/consumers/odr](http://www.ec.europa.eu/consumers/odr).

Class Action and Representative Action Waiver

For disputes arising between us and you, or any other user, you and we agree that we can only bring a claim against each other on an individual basis. NEITHER YOU NOR WE CAN BRING A CLAIM AS A PLAINTIFF OR CLASS MEMBER IN A CLASS ACTION, CLASS-WIDE ARBITRATION, CONSOLIDATED ACTION, OR REPRESENTATIVE ACTION. THE ARBITRATOR CANNOT COMBINE MORE THAN ONE PERSON'S CLAIM INTO A SINGLE CASE, AND CANNOT PRESIDE OVER ANY CONSOLIDATED, CLASS, OR REPRESENTATIVE ARBITRATION PROCEEDING, UNLESS WE BOTH AGREE OTHERWISE IN WRITING. NONETHELESS, IF ANY PORTION OF THIS CLASS ACTION OR REPRESENTATIVE ACTION WAIVER IS DEEMED UNENFORCEABLE OR INVALID, THE ARBITRATOR SHALL HAVE AUTHORITY TO ISSUE ANY AND ALL REMEDIES AUTHORIZED BY LAW.

YOU UNDERSTAND THAT YOU WOULD HAVE HAD A RIGHT TO LITIGATE THROUGH A COURT, TO HAVE A JUDGE OR JURY DECIDE YOUR CASE AND TO BE PARTY TO A CLASS OR REPRESENTATIVE ACTION. HOWEVER, YOU UNDERSTAND AND CHOOSE TO HAVE ANY CLAIMS DECIDED INDIVIDUALLY AND ONLY THROUGH ARBITRATION.

#### Service of Process

To initiate arbitration or any legal proceeding against us, you must serve initiating documents on our registered agent at: Corporation Service Company, 251 Little Falls Drive, Wilmington Delaware, 19808.

#### Changes to this Section 19

Notwithstanding any provision in these Terms to the contrary, we agree that if we make any future change to this Section 19, you may reject any such change by sending us written notice within 30 days of the change to: [legal@poeticcloud.co](mailto:legal@poeticcloud.co).

Survival. This Section 19 shall survive termination of these Terms.

### **20. California Notice**

Under California Civil Code Section 1789.3, consumers from California are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 N. Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at 1(916) 445-1254 or 1(800) 952-5210. We may be contacted in writing at Attn: "Legal".

### **21. General Terms**

These Terms constitute the entire and exclusive understanding and agreement between us and you regarding the Services, and these Terms supersede and replace any and all prior oral or written understandings or agreements between us and you regarding the Services. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or

unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

You may not assign or transfer these Terms, by operation of law or otherwise, without our prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. We may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

Any notices or other communications provided by us under these Terms, including those regarding modifications to these Terms, will be given: (i) via email; or (ii) by posting to the Services. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

Our failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by our duly authorized representative. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

## **22. Contact Information**

If you have any questions about these Terms or the Services, please contact us at [legal@poeticcloud.co](mailto:legal@poeticcloud.co).