

## USAGE AGREEMENT

This is a Software as a Service (SaaS) Agreement (hereinafter “Agreement”) between \_\_\_\_\_ (hereinafter “you” or “your”) and GAZER, LLC (hereinafter, “we,” “us,” or “our”). This Agreement applies to any GAZER™ websites (and any successor sites), Services (including pre-release services) and software, including all updates, support, and Content. This Agreement refers to all of these as the “Service(s).” You may only use the Service if you agree to these terms. If you do not agree, do not use the Service. This contract limits our liability and disclaims warranties for the Service to the maximum extent permitted by law. Please read these sections of the contract carefully.

### 1. DEFINITIONS

“Content” means data, suggestions, recommendations, and potential solutions presented to you pursuant to your use of the Service.

“Contracted Number of Users” means the number of individual Users authorized to access the Service through Subscription Access.

“Online Services” means the GAZER™ computing and data Service, and other services, that are accessed over the internet and subscribed to by you, including without limitation third party software services or data components that are provided with access to the Service.

“Order Form” means a sales quotation, purchase order, or other document identifying the Service that you order, for Subscription Access to the Service.

“Professional Judgment” means a standard of care applying relevant training, knowledge and experience in the use of the Service and any recommendation or suggestion provided by the Service, and is subject to observance of local laws and customs.

“Subscription Access” means access provided for your specific User accounts for those User accounts’ use of the Service, for a limited time period (“Term”) on a subscription basis.

“User” means a single individual having an individual user account for Subscription Access to the Service.

“Your Data” means data supplied by you or by one of your Users to the Service.

### 2. USE OF SERVICES AND CONTENT

**2.1 Use.** During the term of this Agreement, you may access and use our GAZER™ Service on a non-exclusive, non-assignable basis pursuant to our policies contained in this Agreement and posted on our website at <https://www.gazersafety.com/legal>, as such policies may be updated from time to time. You may allow your Users to use the Service for this purpose and you are responsible for your Users’ compliance with the Agreement.

**2.2 Subscriptions.** Unless otherwise provided in writing in an applicable Order Form, (a) Service and access to Content are purchased as subscriptions having Subscription Access to the Service and Content, for the Term set forth in this Agreement or any renewal thereof. Subscription Term is one (1) year unless otherwise agreed to in writing by both parties.

**2.3 Usage Limits.** Services and Content are subject to usage limits specified herein. Unless otherwise specified, (a) the Service or Content may not be accessed by more than the Contracted Number of Users each having an individual User account, (b) the rights and/or password and/or access of any User authorized by you to the Service cannot be shared or used by more than one individual, and (c) User accounts may be required to authenticate to a specific email or domain to continue use of the Service.

**2.4 Your Responsibilities.** You will (a) be responsible for your Users' compliance with this Agreement and its terms of use, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which you acquired Your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Service and Content, and notify us promptly of any such unauthorized access or use, and (d) use the Service and Content only in accordance with this SaaS Agreement and applicable laws and government regulations, including any legal limitations on the use of public data.

You will not (a) make any Service or Content available to, or use any Service or Content for the benefit of, anyone other than you or your Users, unless expressly stated otherwise in a separate written agreement, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service or Content, (c) use the Service in any way that harms us or our affiliates, resellers, distributors and/or vendors, (d) damage, disable, overburden, or impair the Service (or the networks connected to the Service) or interfere with anyone's use and enjoyment of the Service, (e) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (f) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, or use any of our Service to access or use any of our intellectual property except as permitted under this Agreement, (g) copy the Service or any part, feature, function or user interface thereof, (h) copy Content except as permitted herein, (i) access any Service or Content in order to build a competitive product or service, (j) reverse engineer any Service (to the extent such restriction is permitted by law), or (k) use any unauthorized means to modify or reroute, or attempt to modify or reroute, the Service.

**2.5 Future Functionality.** You agree that your purchases pursuant to this Agreement are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by us regarding future functionality or features.

**2.6 Professional Judgment.** The Service uses publicly available data. Such data is not guaranteed to be accurate or complete, and its use is subject to limitations of the data and its quality, and any legal limitations on the use of public data. Your use or adoption of any recommendation or recommended solution provided by the Service is subject to your employment of your Professional Judgment in implementing any recommendation or recommended solution.

**2.7 Breach.** Any use of the Service in breach of this Agreement by you or your Users that in our judgment threatens the security, integrity or availability of our Service, may result in our immediate suspension of the Service. We will use commercially reasonable efforts under the circumstances to provide you with notice and an opportunity to remedy such violation or threat prior to such suspension.

### **3. FEES AND PAYMENT FOR PURCHASED SERVICES**

**3.1. Fees.** Our Service is available on a subscription basis, for a Term as discussed in Section 5.1 Your subscription will automatically renew at the end of the Term, at your current subscription level and for the same Number of Contracted users, at the then current subscription rates. We will send a renewal notice with the current subscription rates at least sixty (60) days prior to the date of automatic renewal. No portion of any paid subscription will be refunded if you terminate your subscription. Except as otherwise specified herein, (i) fees and subscription prices are based on Service and Content subscriptions

purchased and not actual usage, and (ii) payment obligations are non-cancelable and fees paid are non-refundable.

**3.2. Invoicing and Payment.** You will provide us with a valid Order Form or alternative document reasonably acceptable to us. If you provide credit card information to us, you authorize us to charge such credit card for all Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 5.2 (Term of Purchased Subscriptions). Such charges shall be made in advance, either monthly or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, we will invoice you in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due immediately from the invoice date. You are responsible for providing complete and accurate billing and contact information to us and making changes in your account settings of any changes to such information.

**3.3. Overdue Charges.** If any invoiced amount is not received by us by the due date, then without limiting our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) we may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 3.2 (Invoicing and Payment).

**3.4. Suspension of Service and Acceleration.** If any amount owing by you under this or any other agreement for our Service is past due, we may, without limiting our other rights and remedies, accelerate your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend our Service to you until such amounts are paid in full.

**3.5. Payment Disputes.** We will not exercise our rights under Section 3.3 (Overdue Charges) or 3.4 (Suspension of Service and Acceleration) above if you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

**3.6. Taxes.** Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “**Taxes**”). You are responsible for paying all Taxes associated with your purchases hereunder. If we have the legal obligation to pay or collect Taxes for which you are responsible under this Section, we will invoice you and you will pay that amount unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority.

**3.7. Refund Policy.** There is **NO REFUND**. We do not offer any refunds on our products and/or subscriptions.

## **4. PROPRIETARY RIGHTS**

**4.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, we and our licensors and Content providers reserve all of our/their right, title and interest in and to the Services and Content, including all of our/their related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.

**4.2. License to Host Your Data and Applications.** You grant us, our affiliates and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Your Data, as reasonably necessary for us to provide the Service in accordance with this SaaS Agreement. Subject to the limited licenses granted herein, we acquire no right, title or interest from you in or to any of Your Data.

**4.3 Ownership.** We retain all right, title, and interest in and to the Service, including without limitation all software used to provide the Service and all logos and trademarks reproduced through the Service, and this Agreement does not grant you any intellectual property rights in the Service or any of its components. You retain all ownership and intellectual property rights in and to Your Data.

## **5. TERM AND TERMINATION**

**5.1 Term of Agreement.** This Agreement commences on the date you first accept it, and continues for a period of one (1) year or until all subscriptions hereunder have expired or have been terminated. Acceptance of this Agreement is effected as indicated by signature of a representative of yours, and you warrant that the representative is duly authorized to enter into this Agreement.

**5.2. Term of Purchased Subscriptions. Term of Subscriptions.** The term of each subscription shall be one (1) year. Except as otherwise specified in an Order Form, subscriptions will automatically renew at the end of a Term for an additional Term of one (1) year. Each renewal constitutes a new Term and acceptance of this Agreement.

**5.3. Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**5.4. Refund or Payment upon Termination.** If this Agreement is terminated by you in accordance with Section 5.3 (Termination), We will NOT REFUND you any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by us in accordance with Section 5.3, you will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve you of your obligation to pay any fees payable to us for the period prior to the effective date of termination.

## **6. DISCLAIMERS**

YOU UNDERSTAND AND AGREE THAT YOUR USE OF OUR SERVICES OR CONTENT PROVIDED (THE "SERVICE") IS AT YOUR OWN RISK. SERVICES AND CONTENT ARE PROVIDED TO YOU "AS IS", AND WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, ORAL OR WRITTEN, EITHER IMPLIED OR EXPRESS, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WE MAKES NO WARRANTY, EITHER IMPLIED OR EXPRESS, THAT ANY PART OF THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, VIRUS-FREE, TIMELY, SECURE, ACCURATE, RELIABLE, OR OF ANY QUALITY, NOR IS IT WARRANTED EITHER IMPLICITLY OR EXPRESSLY THAT ANY CONTENT IS SAFE IN ANY MANNER. YOU UNDERSTAND AND AGREE THAT OUR PROFESSIONAL ADVICE OF ANY KIND AND THAT ANY ADVICE OR ANY OTHER INFORMATION OBTAINED VIA OUR SERVICES MAY BE USED SOLELY AT YOUR OWN RISK, AND THAT WE WILL NOT BE HELD LIABLE IN ANY WAY.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

CONTENT AND BETA SERVICES ARE PROVIDED “AS IS,” EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

## **7. LIMITATION OF LIABILITY**

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT YOUR AND YOUR AFFILIATES’ PAYMENT OBLIGATIONS UNDER THE “FEES AND PAYMENT” SECTION ABOVE.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT WE WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES; THIS INCLUDES, BUT IS NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM (I) THE USE OF SERVICES OR THE INABILITY TO USE SERVICES, (II) THE COST OF OBTAINING SUBSTITUTE GOODS AND/OR SERVICES RESULTING FROM ANY TRANSACTION ENTERED INTO ON THROUGH SERVICES, (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR DATA TRANSMISSIONS, (IV) STATEMENTS BY ANY THIRD PARTY OR CONDUCT OF ANY THIRD PARTY USING SERVICES, OR (V) ANY OTHER MATTER RELATING TO SERVICES.

## **8. OTHER**

**8.1. Severability.** Should any court of competent jurisdiction declare any term of this Agreement void or unenforceable, such declaration shall have no effect on the remaining terms hereof.

**8.2. Force Majeure.** Neither party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party.

**8.3. Choice of Law.** The Agreement is governed by the substantive and procedural laws of the State of Minnesota and the parties agree to submit to the exclusive jurisdiction of, and venue in, the courts in Minnesota in any dispute arising out of or relating to the agreement.

**8.4. Entire Agreement.** This Agreement contains the entire understanding of the parties relating to the subject matter contained herein and supersedes all prior agreements and understandings, written or oral, relating to the subject matter hereof. This Agreement may not be modified or amended except by written agreement signed by both parties.