

Terms of Service

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Last Revised: April 17, 2019

Binding Contract

These Terms of Service govern your access to and use of our Website and constitute a binding contract that you accept (i) by clicking "accept" when presented with that option at the time you register, renew, or revise an Account, purchase an item through our online Shop, or (ii) by otherwise accessing our Website and viewing its content. Our Privacy Policy, available at <https://www.sprowtlabs.com/legal/privacy-policy>, is incorporated by reference into these Terms of Service and agreed to by you with your acceptance of these Terms of Service. The embedded software, and updates, installed on a Sprowt Labs Device used in conjunction with our Website is licensed and governed by our End User License Agreement ("EULA"), available at <https://www.sprowtlabs.com/legal/end-user-license-agreement>, and the Company's Limited Warranty, available at <https://www.sprowtlabs.com/legal/warranty>. Your acceptance of this contract is expressly limited to the terms described herein, and may not be modified in any manner without our prior written consent. To the extent that the provisions of any additional terms conflict with these Terms of Service, the provisions of the additional terms will govern.

If you do not accept these Terms of Service as presented, you may not access our Website for any reason whatsoever. You also may not accept these Terms of Service, and therefore may not access our Website, if (i) you are not of legal age to form a binding contract with us or (ii) the laws of the jurisdiction in which you reside proscribe your use of our Website in the manner you intend. By purchasing items from our Shop, registering an Account, or generally accessing our Website you represent and warrant that (i) the information you provide is truthful and accurate; (ii) your actions do not violate any U.S. or other applicable law or regulation; and (iii) you are above the minimum age for alcohol consumption in the country and jurisdiction in which they reside, which in the United States is 21 years of age, but in no event less than 13 years of age.

Definitions

"Account" means the system on our Website by which you register and thereafter authenticate your privileges to access certain areas and features of our Website that we make available only to Registered Users.

"Company" means Sprowt, LLC, a corporation formed under the laws of the State of Minnesota; "us" and "we" are both synonymous with Company, and references to "our" is construed accordingly.

"Content" means any information (such as data files, written text, computer software, music, audio files, or other sounds, photographs, videos, or images of any kind), features, and services to which you have access as part of, or through your use of, the Website.

"Contributions" means comments, links, recipes, and other information and materials (whether text, graphics, audio, images, videos, or software) that any Registered User contributes to the Website.

"Device" means any equipment or device that we manufacture, such as the Acro™, that you configure to access the Website through your Account.

"Registered User" means a User who has an Account.

"Shop" refers to our store, accessible on the Website, where we offer various products for sale subject to applicable law.

"User" means any person who accesses the Website, regardless whether the User has an Account or not; "you" is synonymous with User, and "your" is construed accordingly. Also, "you" includes your principal if you are accessing the Website in your capacity as an employee or agent of another.

"Website" refers to our website accessed on the Internet using the URL, <https://www.sprowtlabs.com>.

Security and Privacy

Security. You are responsible for maintaining the confidentiality of passwords associated with any Account you use to access the Website, and for that reason, you are accountable for any activity that occurs under your Account. You must notify us immediately (see contact information below) if you become aware of an unauthorized use of your password or your Account. Further, we take reasonable precautions, consistent with standard industry practices, including administrative, technical, and physical measures, to safeguard your sensitive personal information against loss, theft, and misuse, as well as against unauthorized access, disclosure, alteration, and destruction. We do not guarantee that these reasonable precautions are sufficient to safeguard your sensitive personal information in every instance. Accordingly, by using our Website, you acknowledge that you are providing your personal information at your own risk.

Privacy. Our Privacy Policy, available at <https://www.sprowtlabs.com/legal/privacy-policy>, explains our policies regarding Sprowt Labs' collection, use, and disclosure of the User's personally identifiable and anonymous information, including the collection and provision of such information on behalf of Content Providers. You agree to the use of your data in accordance with our Privacy Policy, including our policy for using third parties to collect information from you on their systems and according to their policies for the purpose of processing payments on our behalf. The User should review our Privacy Policy before using a Sprowt Labs Account.

All Rights Reserved. You may access the Website in whatever manner you choose, including with a connected Device. But all Content of the Website is provided to you subject to copyright law, with all rights reserved. We do not transfer to you any intellectual property owned by us or a third party, and all right, title and interest in and to such property will remain the sole property of Sprowt Labs or the third-party provider. Nothing in these Terms of Service gives you a right to use any of our or our licensors' trade names, trademarks, service marks, logos, domain names, and other distinctive brand features. All rights not expressly granted to you in this Agreement are reserved by Sprowt Labs and its licensors.

Outbound Links. The Website may include hyperlinks to other websites, services, or resources over which we have no control. You acknowledge and agree that we are not responsible for the availability of any such external websites, services, or resources, and that we do not endorse any products or other materials on or available from such websites, services, or resources, irrespective of whether advertised on our website or not. You acknowledge and agree that we are not liable for any loss or damage that you may incur as a result of the availability of those external websites, services, or resources, or as a result of any reliance you place on the completeness, accuracy or existence of any advertising, products or other materials on, or available from, any websites, services, or resources.

User-Generated Content. The Content of our Website may include Contributions made by you and other Registered Users. You acknowledge and agree that we are not responsible for, and that we do not endorse, any material or information included in any Contribution, and we specifically disavow representing or implying that such material is accurate, useful, or not harmful. You are responsible for taking precautions as necessary to protect yourself and your computer systems and Devices from viruses, worms, Trojan horses, and other harmful or destructive content. Despite our efforts to the contrary, the Website may contain content that is offensive, indecent, or otherwise objectionable, as well as content containing technical inaccuracies, typographical mistakes, and other errors. Your use of the Website and its Content is at your own risk.

Prohibited Conduct

You agree to access and use the Website only for the purposes permitted under these Terms of Service and any rules that we may post on the Website from time to time; and, even then, only to the extent allowed under any applicable law, regulation, or generally accepted practice or guideline that governs your conduct in any relevant jurisdiction. Without limiting the generality of the foregoing restriction, you expressly agree that you will not:

Misrepresent your identity or provide false personal or other information when registering an Account and accessing and using the Website; Post obscene, harassing, defamatory, filthy, violent, pornographic, abusive, threatening, libelous, illegal, or objectionable (including, without limitation, bigoted, racist, sexist, homophobic, or prejudiced) material; or post a communication that advocates or encourages criminal conduct or conduct that may give rise to civil liability; Advertise or otherwise solicit funds, goods, or services; Use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell or otherwise exploit for any purposes whatsoever any Content or third party submissions or other proprietary rights not owned by you, without prior express written consent, or that violates any third-party right; Post spam, post machine- or randomly-generated material, or submit unethical or undesirable commercial content designed to drive traffic to third party sites or boost the search engine rankings of third party sites, or to further unlawful acts (such as phishing) or mislead recipients as to the source of the material (such as spoofing); Copy, modify, reverse engineer, disassemble, redistribute, republish, alter, create derivative works from, assign, license, transfer, or adapt any of the software, information, text, graphics, source code or HTML code, or other Content available on the Website; Violate a third party's intellectual property, personality, publicity, or confidentiality rights; or upload, download, display, publish, perform, create derivative works from, transmit, or otherwise distribute information or content in violation of a third party's intellectual property rights; Post any material you create but to which your employer has intellectual property rights, without first receiving your employer's permission or otherwise securing a waiver and release; Remove or modify any copyright, trademark, legal notice, or other proprietary notation from the Content available on the Website; Transmit, install, upload, or otherwise transfer any material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; or transfer any other item or initiate any other process that in any way affects the use or enjoyment of the Website, or that otherwise adversely affects our computers, servers, or databases; Violate any domestic, foreign, or international law or regulation involving the export of software or technology, including, without limitation, the U.S. Export Administration Regulations; and Use any device (such as a "web crawler" or other automatic retrieval mechanism) or other means to harvest information about other Users or the Website. We reserve the right, but do not have any obligation, to monitor use of the Website; to remove any Content that we consider inappropriate or unlawful or otherwise likely to cause us liability; and to revoke or deny access to anyone, including you, who engages in prohibited conduct.

Responsibility. You may, if you are a Registered User and so choose, make Contributions, but you are solely responsible for any harm that your Contributions may cause. You hereby represent and warrant that, with respect to each Contribution you make, (i) you have the right to submit such Contribution, (ii) you are not aware of any material defect in the Contribution, and (iii) you have not engaged in any, and the Contribution does not constitute, "prohibited conduct" as described above.

License Grant. You hereby grant to the Company a world-wide, royalty-free, and non-exclusive license to reproduce, modify, adapt, and publish your Contributions for any purpose, including sharing as Content on the Website. You may not delete a Contribution once made.

Indemnification. You agree to defend, indemnify and hold harmless the Company, its affiliates, and their respective directors, officers, and employees against any and all costs, damages, and losses, including reasonable attorneys' fees, resulting from any third-party claim or lawsuit arising out of or based on: (a) Contributions that you submit, post, or display on or through the Website that allegedly infringes the rights of, or has caused harm to, a third party; or (b) any breach of any representation, warranty, or covenant by you under these Terms of Service. We reserve the right, at your expense, and upon providing reasonable notice to you, to assume the exclusive defense and control of any claim or lawsuit subject to this indemnification provision and you agree to cooperate with our defense of such claims. Your indemnification obligations are conditioned on (i) an indemnified party providing prompt notice to you of any such claim, and (ii) providing you with any reasonable information or assistance that you request, and at your expense.

DMCA Compliance

We will remove any offending Contribution that is reported to us pursuant to the Digital Millennium Copyright Act (17 U.S.C.A. § 512), also known as the DMCA. We will not restore such Contribution unless (a) you file a counter-notice that is the form required under the DMCA, and (b) the complaining party then fails to initiate a court action, as the DMCA requires. For making requests or providing notices under the DMCA, please contact us at contact@sprowtlabs.com. We discourage false claims of infringement the same as we discourage false claims of non-infringement, either of which may be subject to liability under the DMCA. We therefore encourage you to seek the legal advice of counsel before seeking, or opposing, the removal of Contributions.

Reports of Offending Contributions. To make a report to us under the DMCA, please provide the following information in writing, as detailed in the DMCA at 17 U.S.C.A. § 512(c)(3): (i) the physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (ii) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site; (iii) identification of the 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 us to locate the material; (iv) your contact information, such as an address, telephone number, and e-mail address; (v) a statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; (vi) 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.

Counter-Notice. If you believe that a Contribution that was removed, or for which access was disabled, is not infringing, or that you have the authorization or a right to post and use the information, you may send a counter-notice containing the following information in writing as detailed in the DMCA at 17 U.S.C.A. § 512(g)(3): (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; (iv) your name, address, and telephone number, and a statement that you consent to the jurisdiction of the Federal District Court located in Hennepin County, Minnesota and that you will accept service of process from the person who provided notification of the alleged infringement.

Upon receipt of a counter-notice, we may provide the complaining party with a copy of the counter-notice and inform them that the removed information may be replaced or cease disabling access to it in 10 business days. We may, at our discretion, replace or cease disabling access to the removed information between 10 to 14 business days or more after receiving the counter-notice, unless the complaining party has filed an action seeking a court order to restrain the contributing party from posting the offending Contribution.

Feedback and Suggestions

We welcome your feedback and suggestions, including your ideas for improvement, for our Website, any Device, and our other products and services. You agree that your submissions are voluntary, gratuitous, unsolicited, and without restriction and will not place us under any fiduciary or other obligation to you or anyone else. We may use, copy, modify, publish, or redistribute your submission and its contents, and use the ideas you voluntarily share, for any purpose and in any way without any compensation to you. We will be under no obligation to use your ideas and we do not waive any right we have to use similar or related ideas previously known to us, developed by our employees, or obtained from other sources.

Exclusion of Warranties

YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF OUR WEBSITE IS AT YOUR SOLE RISK, AND THAT WE PROVIDE THE WEBSITE TO YOU "AS IS" AND "AS AVAILABLE," UNLESS OTHERWISE WARRANTED IN THESE TERMS OF SERVICE. IN PARTICULAR, WE NEITHER REPRESENT NOR WARRANT THAT YOUR USE OF OUR WEBSITE WILL MEET YOUR REQUIREMENTS; THAT YOUR USE OF THE WEBSITE WILL BE UNINTERRUPTED, SECURE, OR FREE FROM ERROR; AND THAT ANY DEFECTS IN OPERATION OR FUNCTIONALITY WILL BE CORRECTED. WE FURTHER EXPRESSLY DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

Limitation of Liability

IN NO EVENT WILL WE BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY RELATING TO YOUR USE OF THE WEBSITE FOR: (A) ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES; (B) THE COST OF PROCUREMENT FOR SUBSTITUTE PRODUCTS OR SERVICES; (C) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; OR (D) FOR ANY AMOUNTS THAT EXCEED THE FEES PAID BY YOU TO US UNDER THIS AGREEMENT. WE SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY FAILURE OR DELAY DUE TO MATTERS BEYOND OUR REASONABLE CONTROL.

Qualification

NOTHING IN THESE TERMS, AND IN PARTICULAR THE PRECEDING EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY, SHALL EXCLUDE OR LIMIT OUR LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED UNDER APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, ONLY THE LIMITATIONS THAT ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

Changes to our Website or Termination of Access

We reserve the right to change, suspend, or discontinue our Website, or any part of it, with or without notice at any time. We may terminate your access to all or any part of the Website at any time, with or without cause, with or without notice, effective immediately. You agree that we will not be liable to you or to any third party for any action taken under this section. You may terminate your Account (if you have one) at any time simply by discontinuing use of the Website. All provisions of this Agreement that by their nature should survive termination will survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitations of liability.

Governing Law; Arbitration

These Terms of Service shall be governed by and construed in accordance with the laws of the State of Minnesota and the laws of the United States, without regard to conflicts of law principles.

BY ENTERING INTO THESE TERMS OF SERVICE, YOU AGREE THAT WE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY, AND SHALL, EXCEPT AS PROVIDED IN THIS PROVISION, SUBMIT ANY AND ALL CLAIMS OR DISPUTES TO MEDIATION AND BINDING ARBITRATION. IF YOU DO NOT WISH TO BE BOUND TO ARBITRATION, YOU MUST NOTIFY US IN WRITING WITHIN 30 DAYS OF THE DATE THAT YOU FIRST ACCEPT THESE TERMS OF SERVICE, OR AS REQUIRED BY APPLICABLE LAW.

You agree that you shall submit any claim, cause of action, or dispute you have with us arising out of or relating to these Terms of Service or your access to the Website exclusively to Judicial Dispute Resolution, Inc. ("JDR") in Minneapolis, Minnesota for non-binding mediation. If complete agreement cannot be reached within ten (10) days of submission to mediation, the remaining unresolved issues shall be submitted upon the demand of either party to JDR in Minneapolis, Minnesota for final and binding arbitration by a single arbitrator pursuant to JDR's rules and procedures. In that event, the parties will use their best efforts to agree to the selection of the arbitrator. If the parties cannot so agree, then (i) they will request JDR to supply them with a list of five (5) arbitrators; (ii) each party will have the right to strike two (2) names from the list; and (iii) the remaining arbitrator will decide the dispute.

Notwithstanding the terms of this provision, either of us may: (i) bring an action in small claims court; (ii) seek an preliminary injunction or temporary restraining order, pending arbitration, in any court that has jurisdiction; (iii) bring issues to the attention of federal, state, or local agencies, which may seek relief against us on your behalf; or (iv) seek injunctive or other equitable relief to protect trade secrets and intellectual property rights or to prevent loss or damage to services in any court with competent jurisdiction.

General Legal Provisions

These Terms of Service comprise the entire contract between you and us concerning our Website, and supersedes any prior contracts we may have. This contract does not confer any third-party beneficiary rights, nor does this contract prohibit us from complying with the law. If any portion of this contract is found to be unenforceable, the remaining portion will remain in full force and effect. If we fail to enforce any of these Terms of Service, our failure will not be deemed a waiver. Instead, any waiver of these Terms of Service must be made in a writing that we sign. You may not transfer any of your rights or obligations under this contract without our consent. At the same time, however, we may freely assign all our rights and obligations under our contract with you in connection with a merger, acquisition, or sale of assets, or otherwise by operation of law.

Changes to the Terms of Service

We may modify these Terms of Service at any time and for any reason in our sole and absolute discretion. Any such change shall take effect on the later to occur of the date when you receive notice of such a change or the date we specify in such notice. Your access of our Website after the effective date of any such change shall be deemed as your acceptance of these Terms of Service as so modified.

Contact Information; Notices

You agree that any notices we send to you in relation to your use of the Service generally and to these Terms of Services specifically may be sent via email to the address we have on file for your Account. You further agree that, with respect to changes we may make to these Terms of Service, we may notify you either by sending an email or otherwise by posting a prominent notice on the home page of the Website for a period of time not less than ten (10) days before the date the change takes effect. You are responsible for keeping the contact information in your Account current, and for accessing the Website periodically to view any changes to these Terms of Service that we may make. Please add @sprowtlabs.com to your e-mail account to help ensure that you receive communications from us.

You, in turn, will direct questions you have to us about the Service or about this contract in the following manner:

For General Inquiries: contact@sprowtlabs.com

For Support Requests: contact@sprowtlabs.com

For Security Breaches: contact@sprowtlabs.com

For DMCA Notices: contact@sprowtlabs.com

Otherwise by postal to: 12651 Zenith Ave S #107, Burnsville, MN, 55337