

Wozniak & Co. Terms of Service

Welcome, and thank you for your interest in Wozniak & Co. ("**Wozniak & Co.**," "**we**," or "**us**") and our online service for construction management in the field available through our mobile applications (including tablet applications) (each a "**Mobile App**") and our web site www.wozniakllp.com (and related web sites) and other related embeddable widgets, downloadable software, as well as other services provided by us and on which a link to these Terms of service is displayed (collectively, together with the Mobile Apps, the "**Service**"). These Terms of Service are a legally binding contract between you ("**Customer**") and Wozniak & Co. regarding your use of the Service. However, and notwithstanding anything to the contrary in these Terms of Service, if you and Wozniak & Co. have entered into a separate agreement that purports to govern all use of the Service by you, then that separate agreement shall be the governing contract between you and Wozniak & Co. regarding your use of the Service and these Terms of Service shall not apply.

PLEASE READ THE FOLLOWING TERMS OF SERVICE CAREFULLY. BY CLICKING "I ACCEPT," REGISTERING FOR AN ACCOUNT FOR THE SERVICE, DOWNLOADING AND INSTALLING A MOBILE APP, OR BY OTHERWISE ACCESSING OR USING THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING THE WOZNIAK & CO. PRIVACY POLICY (COLLECTIVELY, THESE "**TERMS**"). If you are not eligible, or do not agree to these Terms, then please do not use the Service.

These Terms of Service provide that all disputes between you and Wozniak & Co. will be resolved by BINDING ARBITRATION. **WE EACH AGREE TO GIVE UP THE RIGHT TO GO TO COURT TO ASSERT OR DEFEND CERTAIN RIGHTS UNDER THIS CONTRACT.** Your rights will be determined by a NEUTRAL ARBITRATOR and NOT A JUDGE OR JURY and your claims cannot be brought as a class action. Please review Section 15 below for the details regarding your agreement to arbitrate any disputes with Wozniak & Co..

- 1. Eligibility.** You must be at least eighteen (18) years of age to use the Service. By agreeing to these Terms, you represent and warrant to us: (i) that you are at least eighteen (18) years of age; (ii) that you have not previously been suspended or removed from the Service; and (iii) that your registration and your use of the Service is in compliance with any and all applicable laws and regulations. If you are using the Service on behalf of an entity, organization, or company, you represent and warrant that you have the authority to bind such organization to these Terms and you agree to be bound by these Terms on behalf of such organization.
- 2. Use of the Service.** Subject to your continued compliance with these Terms, Wozniak & Co. grants you a limited, non-transferable, non-exclusive, non-sublicensable, revocable right to use the Service solely in connection with your internal business operations. Your right to use the Service is subject to and contingent upon your compliance with all limitations (such as limitations on the number of users, projects or sheets, and any other technical restrictions) that are associated with or determined by the subscription plan you have purchased on Wozniak & Co.'s website or via a mutually executed purchase order or other ordering document, as such subscription plans may be more particularly described on Wozniak & Co.'s website or otherwise agreed between You and Wozniak & Co. in writing from time to time. Your use of the Service is also subject to your agreement and compliance with the end-user license agreements provided or made available with such Mobile Apps, as well as any acceptable use policies, rules, or guidelines applicable to the Service or certain features of the Service that we may post on or link to on the Service. All such end-user license terms, policies, rules and guidelines are hereby incorporated by reference into, and made a part of, these Terms.
- 3. Accounts and Registration.** To access some features of the Service, you must register for an account. When you register for an account, you may be required to provide us with some information about yourself (such as your e-mail address or other contact information). You agree that the information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. When you register, you will be

asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password. You agree to accept responsibility for all activities that occur under your account. If you have reason to believe that your account is no longer secure, then you must immediately notify us at support@wozniakllp.com. Your account is for your use only, and no other persons may access the Service using your account. You may not transfer or share your account with anyone, and we reserve the right to immediately terminate your account if you do transfer or share your account. You may have the option to purchase subscriptions for other user accounts (“**Additional Accounts**”) that are associated with your organization or the “**Projects**” you manage through the Service. If you purchase subscriptions for Additional Accounts, then you shall ensure that each such Additional Account is accessed only by the person that you have identified to Wozniak & Co. as the user of that account, and by no other person.

4. **Payment.**

4.1 Subscription Fees. You agree to pay to Wozniak & Co. all fees for subscriptions purchased by you or on your behalf, whether purchased on or through the Service or through a written agreement between you and Wozniak & Co., including in each case any applicable taxes (the “**Subscription Fees**”). Subscription Fees are nonrefundable (except as may otherwise be expressly provided herein). In the event of any change in the Subscription Fees applicable to the renewal of your subscription, Wozniak & Co. will send you a notice of such change in advance of renewal (via a message on or through the Service or email). You must cancel a subscription prior to renewal to avoid incurring Subscription Fees for the renewal term. For clarity, if you are using the Service on behalf of an organization, your use of the Service may be covered under that organization’s agreement with Wozniak & Co. and you may not be required to pay Subscription Fees.

4.2 Subscription Billing. Subscription Fees will be billed upon the initiation (or modification) of your subscription, and thereafter at the beginning of each month during the term of your subscription. For payment, Wozniak & Co. will charge the payment method you specify at the time of purchase or at any later time and you authorize Wozniak & Co. to charge all sums described herein to such payment method. If you pay any applicable fees with a credit card, Wozniak & Co. may seek pre-authorization of your credit card account prior to your purchase to verify that the credit card is valid and has the necessary funds or credit available to cover your purchase.

5. **User Content**

5.1 User Content Generally. Certain features of the Service may permit users to submit and publish on or through the Service a variety of content, including floorplans, blueprints, maps, messages, photos, images, video, data, text, documents, correspondence, and other types of works (collectively, “**User Content**”). As between you and Wozniak & Co., you retain ownership of all copyright and any other proprietary rights in the User Content that you post to the Service, and you do not transfer ownership of any intellectual property rights in your User Content to Wozniak & Co..

5.2 Limited License Grant to Wozniak & Co.. By submitting User Content, you grant Wozniak & Co. a worldwide, non-exclusive, royalty-free, transferable right and license (with the right to sublicense) to host, store, transfer, display and modify your User Content, in whole or in part, in any manner reasonably necessary to provide the Service. Wozniak & Co. may also provide certain features in the Service that may allow you to configure certain controls or limitations with respect to if and how other users may access particular User Content. You acknowledge and agree that Wozniak & Co. may also aggregate your User Content with data provided by other third parties and use and disclose such aggregated data for any business purposes,

provided that such aggregated data does not identify you or contain any personally identifiable information of any individuals associated with you.

- 5.3 Limited License Grant to Other Users. By publishing or sharing User Content with other users through the Service, you hereby grant the recipient of such User Content a non-exclusive license to access and use such User Content as contemplated by these Terms and the functionality of the Service (including functionality that allows further sharing of such User Content).
- 5.4 User Content Representations and Warranties. You are solely responsible for your User Content and the consequences of posting or publishing User Content. By submitting, posting, publishing, or sharing User Content, you affirm, represent, warrant, and covenant that:
- you are the creator and owner of, or have the necessary licenses, rights, consents, and permissions to submit, post, publish, and share such User Content with Wozniak & Co. and others, and to authorize Wozniak & Co. and users of the Service to use and distribute your User Content as necessary to exercise the licenses granted by you in this Section 5 and in the manner contemplated by these Terms; and
 - your User Content, and the use thereof as contemplated herein, does not and will not: (i) infringe, violate, or misappropriate any third party's rights, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; or (ii) slander, defame, or libel any third party.
- 5.5 Backups. You are solely responsible for maintaining backups of your User Content outside the Service, and Wozniak & Co. will have no liability whatsoever to you arising out of or in connection with any loss, compromise, or corruption of any data you may submit, receive, transmit, or store through the Service. Once you terminate your account, you will no longer have access to retrieve or obtain any of your User Content.
- 5.6 Customer Reference. You agree that Wozniak & Co. may reference you as a customer of Wozniak & Co., subject to your trademark and logo usage guidelines as provided in writing by Customer to Wozniak & Co..
- 5.7 Privacy Policy. Please read the Wozniak & Co. Privacy Policy carefully for information relating to our collection, use, storage and disclosure of your personal information. The Wozniak & Co. Privacy Policy is hereby incorporated by reference into, and made a part of, these Terms.
6. **Restrictions on Use.** You shall not, and shall not permit or encourage any third party to: (a) alter, modify, adapt, translate, reverse engineer, disassemble, decompile, or attempt to derive the source code of the Service or any part thereof, except to the extent that such activities are permitted under applicable law; (b) sell, lease, rent, sublicense, redistribute or otherwise transfer or convey the Service or any part thereof to any third party; (c) use the Service for any time-sharing, outsourcing, service bureau, hosting, application service provider or like purposes; (d) use the Service for the purpose of developing a product or service that directly or indirectly competes with the Service, or to perform any competitive analysis; (e) remove, alter, or obscure in any way the proprietary rights notices (including copyright, patent, and trademark notices and symbols) of Wozniak & Co. or its suppliers contained within the Service or any part thereof; (f) use the Service other than as described in the user manuals or documentation provided or made available to you by Wozniak & Co., or with any unsupported software or hardware (as described in user manuals or documentation); (g) disclose the results of any benchmark tests on the Service without Wozniak & Co.'s prior written consent; or (h) use the Service for any unlawful purpose. Any violation of any of the foregoing restrictions shall be a material breach of this Agreement.

7. **Third-Party Services and Linked Websites.** Wozniak & Co. may provide tools through the Service that enable you to export information, including User Content, to third party services, including through features that allow you to link your Wozniak & Co. account with an account on the third party service, such as Twitter or Facebook, or through our implementation of third party buttons (such as “like” or “share” buttons). We may additionally allow you to link your account with other third party services, such storage services provided by Dropbox or Box.net. By using these tools, you agree that we may transfer such information to the applicable third-party service. Such third party services are not under our control, and we are not responsible for their use of your exported information. The Service may also contain links to third-party websites. Such linked websites are not under our control, and we are not responsible for their content.
8. **Term; Termination.** These Terms and your subscription for the Service will continue until the end of the subscription period you have purchased unless terminated earlier in accordance with these Terms. Thereafter, these Terms and your subscription will automatically renew for successive terms equal in length to the initial term of your subscription, unless terminated earlier in accordance with these Terms. If you violate any provision of these Terms, including your payment obligations under Section 4, we may immediately terminate these Terms or suspend your account. You may terminate your account at any time by contacting customer service at support@wozniakllp.com. If you terminate your account, you will remain obligated to pay all outstanding fees, if any, relating to your use of the Service incurred prior to termination and for the remainder of the Term. Each of us may also terminate this Agreement (i) if the other party terminates or suspends its business, (ii) becomes insolvent or unable to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes. Additionally, Wozniak & Co. may immediately terminate this Agreement and your use of the Service upon notice to you if Wozniak & Co., in its sole discretion determines to discontinue providing the Service to its customers generally, but in that case Wozniak & Co. will provide you with a refund of any fees you may have pre-paid for the remainder of your subscription period. For clarity, access to any of our applications or developments may be suspended or discontinued if the account responsible for administering those Projects is suspended or terminated.
9. **Changes to the Terms.** We reserve the right, at our discretion, to change these Terms on a going-forward basis at any time. Please check these Terms periodically for changes. In the event that a change to these Terms materially modifies your rights or obligations, we will make reasonable efforts to notify you of such change. We may provide notice through a pop-up or banner within the Service, by sending an email to any address you may have used to register for an account, or through other mechanisms. Generally, modifications to the Terms are effective upon publication, provided that if the changed Terms materially modify your rights or obligations, the changes are effective upon the earlier of (a) your using the Service with actual knowledge of the change, or (b) thirty days following publication of the modified Terms, and further provided that disputes arising under these Terms will be resolved in accordance with the Terms in effect that the time the dispute arose. If you do not accept the changed Terms, you may not continue to access and use the Service.
10. **Ownership; Proprietary Rights.** The Service is owned and operated by Wozniak & Co.. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Service (the “**Materials**”) provided by Wozniak & Co. are protected by all relevant intellectual property and proprietary rights and applicable laws. All Materials contained in the Service, and all intellectual property rights therein and thereto, are the property of Wozniak & Co. or our third-party licensors. Except as expressly authorized by Wozniak & Co., you may not make use of the Materials. Wozniak & Co. reserves all rights to the Materials not granted expressly in these Terms.
11. **Indemnity.** You agree that you will be responsible for your use of the Service, and you agree to defend, indemnify, and hold harmless Wozniak & Co. and its officers, directors, employees, consultants, affiliates,

subsidiaries and agents (collectively, the “**Wozniak & Co. Entities**”) from and against any and all claims, liabilities, damages, losses, and expenses, including reasonable attorneys' fees and costs, arising out of or in any way connected with (i) your access to, use or misuse of the Service; (ii) your violation of these Terms or any representation, warranty, or agreements referenced herein, or any applicable law or regulation; (iii) your violation of any third-party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right; (iv) your User Content, or (v) any disputes or issues between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (and without limiting your indemnification obligations with respect to such matter), and in such case, you agree to cooperate with our defense of such claim.

12. Disclaimers; No Warranties

THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS, WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE WOZNIAK & CO. ENTITIES SPECIFICALLY (BUT WITHOUT LIMITATION) DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING BUT NOT LIMITED TO (i) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (ii) ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. THE WOZNIAK & CO. ENTITIES DO NOT WARRANT THAT THE SERVICE OR ANY PART THEREOF, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE WILL BE ACCURATE, UP TO DATE, UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND DO NOT WARRANT THAT ANY OF THE FOREGOING WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE OR ANY MATERIALS OR CONTENT AVAILABLE ON OR THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE WOZNIAK & CO. ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. YOU ASSUME ALL RISK FOR ALL DAMAGES THAT MAY RESULT FROM YOUR USE OF OR ACCESS TO THE SERVICE, YOUR DEALINGS WITH OTHER SERVICE USERS OR OTHER THIRD PARTIES, AND ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE. YOU UNDERSTAND AND AGREE THAT YOU USE THE SERVICE AND USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN MATERIALS OR CONTENT THROUGH THE SERVICE AND ANY ASSOCIATED SITES OR SERVICES AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM USED IN CONNECTION WITH THE SERVICE) OR LOSS OF DATA THAT RESULTS FROM THE USE OF THE SERVICE OR THE DOWNLOAD OR USE OF SUCH MATERIALS OR CONTENT.

SOME JURISDICTIONS MAY PROHIBIT A DISCLAIMER OF WARRANTIES AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

13. Limitation of Liability

IN NO EVENT WILL WOZNIAK & CO. BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR ANY OTHER LEGAL

THEORY, WHETHER OR NOT THE WOZNIAK & CO. ENTITIES HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE.

YOU AGREE THAT THE AGGREGATE TOTAL OF ALL LIABILITY OF THE WOZNIAK & CO. ENTITIES TO YOU FOR ANY AND ALL CLAIMS ARISING OUT OF RELATING TO THE USE OF OR ANY INABILITY TO USE THE SERVICE (INCLUDING ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE) OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE AMOUNTS YOU HAVE PAID TO WOZNIAK & CO. FOR ACCESS TO AND USE OF THE SERVICE IN THE 12 MONTHS PRIOR TO SUCH CLAIM. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. ACCORDINGLY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS UNDER THESE TERMS BETWEEN THE PARTIES. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 13 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

14. **Governing Law.** THESE TERMS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES. To the extent that any lawsuit or court proceeding is permitted hereunder, you and Wozniak & Co. agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Santa Clara County, California for the purpose of litigating all disputes arising out of or related to this Agreement.

15. **Dispute Resolution and Arbitration**

- 15.1 **Generally.** In the interest of resolving disputes between you and Wozniak & Co. in the most expedient and cost effective manner, you and Wozniak & Co. agree that any and all disputes arising in connection with these Terms shall be resolved by binding arbitration. Arbitration is more informal 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. Our agreement to arbitrate disputes includes, but is not limited to all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, and regardless of whether the claims arise during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND WOZNIAK & CO. ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.
- 15.2 **Exceptions.** Notwithstanding subsection 15.1, we both agree that nothing herein will be deemed to waive, preclude, or otherwise limit either of our right to (i) bring an individual action in small claims court, (ii) pursue enforcement actions through applicable federal, state, or local agencies where such actions are available, (iii) seek injunctive relief in a court of law, or (iv) to file suit in a court of law to address intellectual property infringement claims.
- 15.3 **Arbitrator.** Any arbitration between you and Wozniak & Co. will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "**AAA Rules**") of the American Arbitration Association ("**AAA**"), as modified by these Terms, 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 Wozniak & Co..

- 15.4 **Notice; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other, by certified mail or Federal Express (signature required), or in the event that we do not have a physical address on file for you, by electronic mail ("**Notice**"). Wozniak & Co.'s address for Notice is as set forth at the end of these Terms. The Notice must (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought ("**Demand**"). We agree to use good faith efforts to resolve the claim directly, but if we do not reach an agreement to do so within 30 days after the Notice is received, you or Wozniak & Co. may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Wozniak & Co. shall not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. In the event our dispute is finally resolved through arbitration in your favor, Wozniak & Co. shall pay you (i) the amount awarded by the arbitrator, if any, (ii) the last written settlement amount offered by Wozniak & Co. in settlement of the dispute prior to the arbitrator's award; or (iii) \$1,000.00, whichever is lesser.
- 15.5 **Fees.** In the event that you commence arbitration in accordance with these Terms, Wozniak & Co. will reimburse you for your payment of the filing fee, unless your claim is for greater than \$10,000, in which case the payment of any fees shall be decided by the AAA Rules. Any arbitration hearings will take place at a location to be agreed upon in Santa Clara County, California, provided that if the claim is for \$10,000 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 telephonic 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 such case, you agree to reimburse Wozniak & Co. 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 shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. 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.
- 15.6 **No Class Actions.** YOU AND WOZNIAK & CO. 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 Wozniak & Co. 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.
- 15.7 **Modifications.** In the event that Wozniak & Co. makes any future change to this arbitration provision (other than a change to Wozniak & Co.'s address for Notice), you may reject any such change by sending us written notice within 30 days of the change to Wozniak & Co.'s address for Notice, in which case your account with Wozniak & Co. shall be immediately terminated and this arbitration provision, as in effect immediately prior to the amendments you reject shall survive.
- 15.8 **Enforceability.** If Subsection 15.6 is found to be unenforceable or if the entirety of this Section 15 is found to be unenforceable, then the entirety of this Section 15 shall be null and void and,

in such case, the parties agree that the exclusive jurisdiction and venue described in Section 14 shall govern any action arising out of or related to these Terms.

16. **Consent to Electronic Communications.** By using the Service, you consent to receiving certain electronic communications from us and other users as further described in our Privacy Policy. Please read our 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.
17. **Confidentiality.** Recipient may use Discloser's Confidential Information solely to perform Recipient's obligations or exercise its rights hereunder. Recipient may not knowingly disclose, or permit to be disclosed, Discloser's Confidential Information to any third party without Discloser's prior written consent, except that Recipient may disclose Discloser's Confidential Information solely to Recipient's employees, officers, directors, consultants, contractors, agents or advisors ("**Representatives**") who have a need to know for purposes of the Recipient's exercise of its rights or performance of its obligations under this Agreement and who are bound in writing to keep such information confidential pursuant to confidentiality agreements consistent with this Agreement. Recipient acknowledges and agrees that it is responsible and liable for any breach by its Representatives of this section of this Agreement. Recipient agrees to exercise due care in protecting Discloser's Confidential Information from unauthorized use and disclosure, and will not use less than a reasonable degree of care. The foregoing will not apply to any information that: (i) was or becomes generally known by the public through no fault of Recipient; (ii) was properly known to Recipient, without restriction, prior to disclosure by Discloser; (iii) was properly, and with authority, disclosed by a third party to Recipient, without restriction ; (iv) Recipient independently develops without use of Discloser's Confidential Information; or (v) is expressly permitted to be disclosed pursuant to the terms of this Agreement. If the Recipient or any of its Representatives is required pursuant to a judicial or legislative order or proceeding to disclose any Confidential Information of Discloser, then, to the extent permitted by applicable law, the Recipient shall promptly, and prior to such disclosure, notify the Discloser of such requirement so that the Discloser can see a protective order or other remedy, notice of the intended disclosure and an opportunity to respond or object thereto. No such compelled disclosure by the Recipient will otherwise affect the Recipient's obligations hereunder with respect to the Confidential Information so disclosed. Upon Discloser's written request at any time and subject to any contrary obligations under this Agreement or applicable law, Recipient shall at Discloser's direction promptly return or destroy and erase from all systems it directly or indirectly uses or controls (a) all originals and copies of all documents, materials and other embodiments and expressions in any form or medium that contain, reflect, incorporate or are based on Discloser's Confidential Information, in whole or in part, except to the extent required by applicable law or in backup systems until deleted in the ordinary course, provided that all such information and materials will remain subject to the confidentiality and security requirements set forth in this Agreement, or (b) solely such specific Confidential Information as Discloser may request, and provide, upon request, a written statement to Discloser certifying that it has complied with the requirements of this section.
18. **Independent Contractors.** The parties are independent contractors. No joint venture, partnership, employment, or agency relationship exists between the parties as a result of this Agreement or use of the Service. Neither party shall have any authority to contract for or bind the other party in any manner whatsoever.
19. **Purchase Orders.** This Agreement shall prevail over any inconsistent terms or conditions contained in, or referred to in, Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing. No addition to, variation of, exclusion or attempted exclusion of any term of the Agreement shall be binding on Wozniak & Co. unless in writing and signed by a duly authorized representative of the Wozniak & Co..

20. **Entire Agreement.** This Agreement forms the entire agreement between Customer and Wozniak & Co. regarding the subject matter hereof. It supersedes all prior or contemporaneous negotiations or agreements between the parties regarding its subject matter. Any preprinted terms on any Customer purchase order will have no effect on the terms of this Agreement and are hereby rejected. Headings are for reference purposes. "Including" means "including but not limited to."
21. **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
22. **General.** These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference herein, constitute the entire and exclusive understanding and agreement between you and Wozniak & Co. regarding your use of and access to the Service, and except as expressly permitted above may be amended only by a written agreement signed by authorized representatives of all parties to these Terms. You may not assign or transfer these Terms or your rights hereunder, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice. The failure to require performance of any provision will not affect our right to require performance at any time thereafter, nor shall a waiver of any breach or default of these Terms or any provision of these Terms constitute a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and shall not have any impact on the interpretation of particular provisions. In the event that any part of these Terms is held to be invalid or unenforceable, the unenforceable part shall be given effect to the greatest extent possible and the remaining parts will remain in full force and effect. Upon termination of these Terms, any provision that by its nature or express terms should survive will survive such termination or expiration, including, but not limited to, Sections 1, 4, 5, 7, and 10 through 23.
23. **Contact Information.** The services hereunder are offered by Wozniak & Co., located at 199 First Street, Suite 335, Los Altos, CA 94022. You may contact us by sending correspondence to the foregoing address or by emailing us at support@wozniakllp.com. If you are a California resident, you may have these Terms mailed to you electronically by sending a letter to the foregoing address with your electronic mail address and a request for these Terms.