

Terms of Service

THIS TERMS OF SERVICE AGREEMENT (“Terms”) GOVERNS USER’S USE OF AND PARTICIPATION IN ANY FUNCTION OF THE SITE AND SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN. YOU ARE ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, (2) ACKNOWLEDGING ACCEPTANCE OF THIS AGREEMENT IN A SEPARATE DOCUMENT REFERENCING OR INCORPORATING THE TERMS OF THIS AGREEMENT AND/OR (3) CREATING AN ACCOUNT FOR THE SERVICES, USER AGREES TO THE TERMS OF THIS AGREEMENT. THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF THE COMPANY OR ORGANIZATION, THUS INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “USER” SHALL REFER TO BOTH (I) SUCH ENTITY AND ITS AFFILIATES AND (II) THE INDIVIDUAL SIGNING UP FOR THE ACCOUNT AND ALL INDIVIDUALS WITH ACCESS TO THE ORGANIZATIONS ACCOUNT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND PROCEED WITH ACCOUNT REGISTRATION. It is effective between any User (“User”, “you” or “you”) and ErateSync (“ErateSync” or “we”) as of the date of User’s accepting these Terms.

PLEASE READ: THESE TERMS CONTAIN A BINDING ARBITRATION PROVISION AND CLASS ACTION WAIVER (SECTION 15). READ CAREFULLY, INCLUDING USER’S RIGHT, IF APPLICABLE, TO OPT OUT OF ARBITRATION. EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN SECTION 15 BELOW, OR WHERE PROHIBITED BY LAW, BY ENTERING INTO THESE TERMS USER EXPRESSLY AGREES THAT DISPUTES BETWEEN USER AND ERATESYNC WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION, AND USER HEREBY WAIVES USER’S RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

1. ErateSync Services

An in-depth description of the Services together with the benefits and functionality are available on our Site located here www.eratesync.com (“Site”). ErateSync will provide the Services with reasonable care and skill in accordance with the description set out on the Site. ErateSync reserves the right to vary or withdraw any of the Services described on the Site without notice. ErateSync expects User to confirm that the Services User is purchasing will meet User’s needs. ErateSync doesn’t make any guarantee to User that User will obtain a particular result or maintain proper records, funding and compliance for the E-Rate program from User’s purchase of the Services. User acknowledges and agrees that the success of the Services and the provision of Services and deliverables are fully dependent upon User’s accurate participation and provision of information. ErateSync shall not be responsible for the way in which the User uses any output from the Service.

“**Services**” means the provision of this software as a service that allows E-rate entities to manage funding and associated records and maintain compliance with the E-rate Program’s record retention rules. ErateSync is designed for use by schools, public libraries, and government entities that are registered with the FCC’s E-rate program.

2. User Responsibilities

You must use the Services in compliance with the FCC's E-rate Program rules, and only as permitted by applicable law. The use of our Services in conjunction with other tools or resources in furtherance of any of the unacceptable uses described herein is also prohibited. User agrees to strictly abide by the following:

- a) You may not use the Services to commit an unlawful activity; use the Services for activities where use or failure of the Services could lead to physical damage, death, mental harm, or personal injury.
- (b) You may not provide any person under the age of 13 with access to the Services.
- (c) You may not purchase, use, or access the Services for the purpose of building a competitive product or service or for any other competitive purposes.
- (d) You may not misuse our Services by interfering with their normal operation, or attempting to access them using a method other than through the interfaces and instructions that we provide.
- (e) You may not circumvent or attempt to circumvent any limitations that ErateSync imposes on your account (such as by opening up a new account for the same organization or same E-rate entity number).
- (f) Unless authorized by ErateSync in writing, you may not probe, scan, or test the vulnerability or security of the Services or any ErateSync system or network.
- (g) Unless authorized by ErateSync in writing, you may not use any automated system or software to extract or scrape data from the websites or other interfaces through which we make our Services available.
- (h) You may not deny others access to, or reverse engineer, the Services, or assist anyone else to do so, to the extent such restriction is permitted by law.
- (i) You may not store or transmit any viruses, malware, or other types of malicious software, or links to such software, through the Services.
- (j) Unless authorized by ErateSync in writing, you may not resell or lease the Services.
- (k) If your use of the Services requires you to comply with industry-specific regulations and FCC regulations applicable to such use, you will be solely responsible for such compliance, unless ErateSync has agreed with you in writing otherwise. You may not use the Services in a way that would subject ErateSync to those industry-specific regulations without obtaining ErateSync's prior written agreement.

3. User Account

User may only allow access to its account by other individuals who have been given authority on behalf of User. User is, at minimum, is required to provide the organization name, organization E-rate entity number, payment information and a contact person's name, email and phone. User is also responsible for uploading and maintaining complete and correct documentation as it relates to the E-rate program as it pertains to User's use of the Services. User shall at all times, on reasonable request by ErateSync, provide User information to the extent required by ErateSync to perform the Services; and shall respond to other reasonable requests and decisions required of the User for the effective performance of the Services.

Keep Your Password Secure.

If you have been issued an account by ErateSync in connection with your use of the Services, you are responsible for safeguarding your password and any other credentials used to access that account. You,

and not ErateSync, are responsible for any activity occurring in your account (other than activity that ErateSync is directly responsible for which is not performed in accordance with your instructions), whether or not you authorized that activity. If you become aware of any unauthorized access to your account, you should notify ErateSync immediately. Accounts may not be shared between organizations.

Keep Your Details Accurate.

ErateSync occasionally sends notices to the email address registered with your account. You must keep your email address and, where applicable, your contact details and payment details associated with your account current and accurate.

Remember to Backup.

You are responsible for maintaining, protecting, and making backups of your account content. To the extent permitted by applicable law, ErateSync will not be liable for any failure to store, or for loss or corruption of, your account content.

4. Errors and Inaccuracies

We always strive to provide complete, accurate, up-to-date information on our Site. Unfortunately, despite those efforts, human or technological errors may occur. The Site or Services may contain typographical mistakes, inaccuracies, or omissions, some of which may relate to pricing and some information may not be complete or current. We reserve the right to correct any errors, inaccuracies or omissions, including after an order has been submitted and whether or not the order has been confirmed and your payment method charged, and to change or update information at any time without prior notice.

5. Payment

In order to purchase the Services User must register for an account with us via the Site. Service subscription fees will either be billed direct via your payment information on file or invoiced (you will select your preference upon account setup). Electronic payments can be made either through BrainTree or PayPal. You will receive an initial 30-day trial upon account activation. Invoices will be sent from ErateSync with net 30-day payment terms. Credit card payments are processed through BrainTree or Paypal at the end of the 30-day trial, and annually moving forward. A receipt will be sent to User by email from ErateSync confirming payment. Please note that if User doesn't provide accurate details (including type of card and number), if User's credit card company does not authorize payment or if User's organization does not authorize payment of invoice, User's registration will be deemed void. ErateSync will not accept any liability for costs incurred as a result of orders deemed void in this manner. **ONCE A PAYMENT IS CHARGE THERE WILL BE NO REFUNDS OF ANY KIND FOR ANY REASON.**

All payments are due in U.S. Dollars at the time of purchase. All taxes, duties, levies, imposts, fines or similar governmental assessments including sales and use taxes, value-added taxes ("VAT"), goods and services taxes ("GST"), excise, business, service, and similar transactional taxes imposed by any jurisdiction and the interest and penalties thereon (collectively, "Taxes"), if any, are charged at the applicable rate depending on the Service and/or User. If User is a tax-exempt entity or claims exemption from any Taxes under these Terms, User shall provide a certificate upon execution of these Terms and, after receipt of valid evidence of exemption, ErateSync shall not charge User any Taxes from which it is exempt. If ErateSync is required to invoice or collect Taxes associated with User's purchase of, payment for, access to or use of the Services, ErateSync will issue an invoice to User including the amount of those Taxes, itemized where required by law.

Service Availability

Although availability may be indicated on our Site, we cannot guarantee we are available within a given timeframe to provide the Services. We reserve the right, without liability or prior notice, to revise, discontinue or cease to make available any or all Services.

Accuracy of Billing and Account Information

We reserve the right to refuse any order you place with us. We reserve the right to prohibit orders that, in our sole judgment, appear to fraudulent or duplicative. In the event that we make a change to or cancel an order, we may attempt to notify you by contacting the e-mail and/or billing address/phone number provided at the time the order was made.

You agree to provide current, complete and accurate purchase and account information for all purchases made on our Site. You agree to promptly update billing and other information, including your email address and payment processing information, so that we can complete your transactions and contact you as needed.

6. Cancellations

Notice of User's intent to terminate its account must be made directly on the Site or by emailing us at support@eratesync.com and is subject to the following terms:

- User's whose cancellation request is received at any time before the end of the initial 30-day trial period will not be charged
- NO REFUNDS OF ANY KIND OR FOR ANY REASON WILL BE PROVIDED AFTER THE INITIAL 30-DAY TRIAL PERIOD. It is very important you cancel your account or email us with the intent to cancel your account prior to the next billing cycle.
- Please allow up to ten (10) days for termination to take effect.

7. Term and Termination

To the fullest extent permitted by applicable law, ErateSync reserves the right, without notice and in our sole discretion, to terminate your license to use the Services and to block or prevent your future access to and use of the Services, including where we reasonably consider that: (a) your use of the Site or Services violates these Terms or applicable law; (b) you fraudulently use or misuse the Services; or (c) we are unable to continue providing the Site or Services to you due to technical or legitimate business reasons. To the fullest extent permitted by applicable law, your sole remedy with respect to any dissatisfaction with (i) the Site or Services, (ii) any term of these Terms, (iii) any policy or practice of ErateSync in operating the Site or Services, or (iv) any content or information transmitted through the Services, is to discontinue use of any and all parts of the Site and Services.

8. Effect of Termination

Upon termination of these Terms for any reason: all obligations of the parties shall terminate and all licenses granted by ErateSync will terminate, except that the following Sections will survive termination: Payments (Section 5), Cancellations (Section 6), Effect of Termination (Section 8), Intellectual Property (Section 9), Confidentiality (Section 10), Disclaimer and Warranty (Section 11), Limitation of Liability (Section 12), Indemnification (Section 13), Dispute Resolution (Section 15), Governing Law (Section 21), and all general provisions. Termination of these Terms by a party will not act as a waiver of any breach of these Terms and will not act as a release of liability under these Terms. Furthermore, User will have access to download any content upload by User to User's account for a 3-month period, beginning on the date of termination. After the 3 months, we will delete all information from the account.

9. Intellectual Property

(A) ErateSync Intellectual Property

All data, text, images, logos, photographs, advertisements, graphics, press releases, audio, video, documents, trademarks, copyrights and other information and content available on or through the Site or

Services (“**Content**”), is the property of ErateSync or its licensors. The Content is protected by copyright, trademark, trade dress and/or other intellectual property laws and you acknowledge and agree that we retain all right, title and interest in and to the Content.

(B) Feedback and Support Chat

ErateSync encourages User to ask support related questions, provide suggestions, proposals, ideas, recommendations or other feedback regarding improvements to ErateSync’s Services. To the extent User provides such feedback, whether it be via our Support Chat feature, email or other form of communication, User grants to ErateSync a royalty-free, fully paid, sub-licensable, transferable, non-exclusive, irrevocable, perpetual, worldwide right and license to make, use, sell, offer for sale, import and otherwise exploit feedback (including by incorporation of such feedback into the Content) without restriction.

(C) License to Use the Service

Subject to User’s compliance with these Terms and solely for so long as User is permitted by ErateSync to access and use the Service, ErateSync grants User a limited, non-transferable, non-exclusive, revocable right and license to access and use the Service for User’s own personal, non-commercial purposes, a right which may not be assigned or sublicensed to anyone. This license will remain in effect unless and until User violates these Terms or this license is terminated by User or ErateSync.

(D) Restrictions

Except as expressly permitted in writing by an authorized representative of ErateSync, User will not reproduce, redistribute, sell, transfer, create derivative works from, decompile, reverse engineer, or disassemble the Service, nor will User take any measures to interfere with or damage the Service. Unless otherwise specified, copying or modifying any Content or using Content for any purpose other than User’s personal, non-commercial use of the Service, including use of any such Content unrelated to the E-rate program, is strictly prohibited. All rights not expressly granted by ErateSync in these Terms are reserved.

User shall not (and shall not permit others to) do the following with respect to the Content: (i) license, sub-license, sell, re-sell, rent, lease, transfer, distribute or time share or otherwise make any of it available for access by third parties except as otherwise expressly provided in these Terms; (ii) access it for the purpose of developing or operating products or services intended to be offered to third parties in competition with ErateSync; (iii) disassemble, reverse engineer or decompile it; (iv) copy, create derivative works based on or otherwise modify it except as permitted in these Terms; (v) remove or modify a copyright or other proprietary rights notice in it; (vi) use it to reproduce, distribute, display, transmit or use material protected by copyright or other intellectual property right (including the rights of publicity or privacy) without first obtaining the permission of the owner.

10. Confidentiality

“**Confidential Information**” means all information disclosed by a party to the other party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. The recipient of Confidential Information shall: (i) at all times protect it from unauthorized disclosure with the same degree of care that it uses to protect its own confidential information, and in no event using less than reasonable care; and (ii) not use it except to the extent necessary to exercise rights or fulfill obligations under these Terms. Each party shall limit the disclosure of the other party’s Confidential Information to those of its employees and contractors with a need to access such Confidential Information for a party’s exercise of its rights and obligations under these Terms, provided that all such employees and contractors are subject to binding disclosure and use restrictions at least as protective as those set forth herein. Each party’s obligations set forth in this Section shall remain in effect during the term and three (3) years after termination of these Terms. The receiving party shall, at the disclosing party’s request or upon termination of these Terms, return all originals, copies, reproductions and summaries of Confidential

Information and other tangible materials and devices provided to the receiving party as Confidential Information, or at the disclosing party's option, certify destruction of the same. A party may disclose the disclosing party's Confidential Information to a court or governmental body pursuant to a valid court order, law, subpoena or regulation, provided that the receiving party: (a) promptly notifies the disclosing party of such requirement as far in advance as possible to the extent advanced notice is lawful; and (b) provides reasonable assistance to the disclosing party in any lawful efforts by the disclosing party to resist or limit the disclosure of such Confidential Information. The parties agree that the receiving party's disclosure of Confidential Information except as provided herein may result in irreparable injury for which a remedy in money damages may be inadequate. The parties further agree that in the event of such disclosure or threatened disclosure, the disclosing party may be entitled to seek an injunction to prevent the breach or threatened breach without the necessity of proving irreparable injury or the inadequacy of money damages, in addition to remedies otherwise available to the disclosing party at law or in equity.

11. Disclaimer and Warranty

The Site and Service are provided "AS IS". ErateSync provides the Services on an "AS IS" and "AS AVAILABLE" basis. Any participation in or use of the Services is at User's sole risk. TO THE FULL EXTENT PERMITTED BY LAW, ERATESYNC MAKES NO WARRANTY OF ANY KIND, IMPLIED OR EXPRESS, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT AND ANY OTHER WARRANTY THAT MIGHT ARISE UNDER ANY LAW, AS TO THE SERVICE'S ACCURACY, COMPLETENESS OR APPROPRIATENESS FOR ANY PURPOSE, THAT USER WILL SUCCESSFULLY MAINTAIN COMPLIANCE WITH THE E-RATE PROGRAM, OR THAT ANY PARTICULAR LEVEL OF KNOWLEDGE OR USEFULNESS WILL BE ATTAINED BY USER.

Without limiting the foregoing, ErateSync makes no warranties or representations that the provision of any content online, or the Services will always be available or be uninterrupted, timely or error free, that defects will be corrected or that such content is secure or free from bugs, viruses, errors and omissions, that the Services will meet User's personal or professional needs.

To the extent that another party may have access to or view content on User's account or through User's device, User is solely responsible for informing such party of all disclaimers and warnings in these Terms. TO THE EXTENT ANY DISCLAIMER OR LIMITATION OF LIABILITY DOES NOT APPLY, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL APPLICABLE EXPRESS, IMPLIED, AND STATUTORY WARRANTIES WILL BE LIMITED IN DURATION TO A PERIOD OF 30 DAYS AFTER THE DATE ON WHICH USER FIRST USED THE SERVICES, AND NO WARRANTIES SHALL APPLY AFTER SUCH PERIOD.

User acknowledges that ErateSync may discontinue the Services at any time in its sole discretion. ErateSync reserves the right to modify the Service, including, but not limited to updating, adding to, enhancing, modifying, removing or altering any content or features of the Service, at any time, in its sole discretion. User is responsible for providing its own access (e.g., computer, mobile device, Internet connection, etc.) to the Service.

12. Limitation of Liability

IN NO EVENT WILL ERATESYNC, INCLUDING OUR AFFILIATES, SUBSIDIARIES, PARENTS, SUCCESSORS AND ASSIGNS, AND EACH OF OUR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SHAREHOLDERS (COLLECTIVELY "ERATESYNC" FOR PURPOSES OF THIS SECTION), BE LIABLE TO YOU FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES (INCLUDING DAMAGES FOR DELETION, CORRUPTION, LOSS OF DATA, LOSS OF PROGRAMS, FAILURE TO STORE ANY INFORMATION OR OTHER CONTENT MAINTAINED OR TRANSMITTED BY THE SITE, SERVICE INTERRUPTIONS,

OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) ARISING OUT OF OR IN CONNECTION WITH THE SITE, A PURCHASE OF SERVICES, OR THESE TERMS, HOWEVER ARISING INCLUDING NEGLIGENCE, EVEN IF WE OR OUR AGENTS OR REPRESENTATIVES KNOW OR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CERTAIN JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

13. Indemnification

User will defend, indemnify, and hold ErateSync including our affiliates, subsidiaries, parents, successors and assigns, and each of our respective officers, directors, employees, agents, or shareholders harmless from any claims, actions, suits, losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of your use of the Site and Services, including: (1) your breach of these Terms or the documents it incorporates by reference; (2) your violation of any law or the rights of a third party as a result of your own interaction with such third party; (3) your use of any Services purchased through the Site; (5) any other activities in connection with the Site. This indemnity shall be applicable without regard to the negligence of any party, including any indemnified person.

14. Force Majeure

In case of force majeure, we are not obliged to fulfil our obligations. In that case we may either suspend our obligations for the duration of the state of force majeure or definitely repudiate these Terms.

Events of force majeure are all circumstances external to our will and control that render the respect of our obligations completely or partly impossible. Such events include, but are not limited to, any Act of God, epidemic, pandemic, terrorism, war, political insurgence, insurrection, riot, civil unrest, act of civil or military authority, uprising, earthquake, flood, disruption of energy supplies or telecommunication networks or communication systems and/or the temporary down-time of the Site, inaccessible Services, or any other natural or man-made eventuality outside of our control, which causes the termination of an agreement or contract entered into, nor which could have been reasonably foreseen. In the case of a force majeure event, you are responsible for filing claims with the proper third-party entities.

15. Dispute Resolution

In the event of any dispute, controversy or claim between the parties hereto arising out of or relating to these Terms, the parties shall first seek to resolve the dispute in good faith through informal discussion. User agrees that before initiating any dispute or arbitration proceeding, the parties will attempt to negotiate an informal resolution of any dispute. To begin this process, before initiating any arbitration proceeding, User must send a written notice of dispute ("Dispute Notice") by certified mail to 2400 N. Lincoln Avenue Altadena, CA 91001. In the Dispute Notice, User must describe the nature and basis of the dispute and the relief User is seeking. If the parties are unable to resolve the dispute within 30 days after ErateSync's receipt of the Dispute Notice, then User or ErateSync may initiate arbitration proceedings using the below procedure or small claims court.

Mandatory Binding Arbitration. The arbitration shall be administered by JAMS under its Comprehensive Rules in effect at the time the arbitration demand is made. The current rules, effective July 1, 2014, can be found here: <http://www.jamsadr.com/rules-comprehensive-arbitration/>. JAMS arbitration rules can be found here: <http://www.jamsadr.com/rules-clauses/>. In the event of any conflict between the rules and these Terms, these Terms shall apply. The parties agree to submit to the jurisdiction of a single neutral arbitrator selected in accordance with the JAMS Comprehensive Rules. The language of the arbitration shall be English. The arbitrator may grant injunctions or other relief in such dispute or controversy. The arbitrator's decision shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. The parties agree that the arbitrator shall have exclusive authority to decide all issues relating to the interpretation, applicability,

enforceability and scope of this arbitration agreement. During the arbitration, both User and ErateSync may take one deposition of the opposing party, limited to 4 hours. If the parties cannot agree on a time and location for a deposition, the arbitrator will resolve any scheduling disputes. Notwithstanding the foregoing, the arbitrator shall not have jurisdiction over any dispute relating to ownership, infringement or misappropriation of a party's intellectual property or confidentiality rights unless the parties specifically so agree in writing in such matter, and either party may (after attempting informal resolution as provided above) submit any such dispute to any court in accordance with "Governing Law" section below, and may apply to any such court for injunctive relief in connection therewith. The arbitration will be held in the United States county where User lives or works, Los Angeles, California, or any other location User and ErateSync mutually agreed upon in writing.

CLASS ACTION WAIVER. TO THE EXTENT PERMISSIBLE BY LAW, ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE ACTION, OR NON-PAGA REPRESENTATIVE PROCEEDING (COLLECTIVELY "CLASS ACTION WAIVER"). THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS OR ENGAGE IN ANY CLASS ARBITRATION. USER AGREES THAT, BY ENTERING INTO THESE TERMS, USER AND ERATESYNC ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. Further, if the parties' dispute is resolved through arbitration, neither JAMS nor the arbitrator may not consolidate another person's claims with User's claims or otherwise preside over any form of a representative or class proceeding for any purpose. If this specific provision is found to be unenforceable, then the entirety of this Section 16 shall be null and void.

In any lawsuit in which (1) the complaint is filed as a class action, collective action or non-PAGA representative action; and (2) the civil court of competent jurisdiction in which the complaint was filed finds the Class Action Waiver is unenforceable (and such finding is confirmed by appellate review if review is sought), the Class Action Waiver shall be severable from these Terms and in such instances, the class action, collective action and/or non-PAGA representative action must be litigated in a civil court of competent jurisdiction and not as a class, collective or non-PAGA representative arbitration.

PAGA WAIVER: TO THE EXTENT PERMISSIBLE BY LAW, THERE WILL BE NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE BROUGHT, HEARD, OR ARBITRATED ON A GROUP BASIS OR IN ANY ACTION IN WHICH A PARTY SEEKS TO REPRESENT OTHER INDIVIDUAL(S) IN A PRIVATE ATTORNEY GENERAL ACTION ("PAGA WAIVER"). PAGA CLAIMS MAY ONLY BE ARBITRATED ON AN INDIVIDUAL BASIS.

In any lawsuit in which (1) the complaint is filed as a private attorney general action seeking to represent any individual(s) other than the named plaintiff; and (2) the civil court of competent jurisdiction in which the complaint was filed finds the PAGA Waiver is unenforceable (and such finding is confirmed by appellate review if review is sought), the PAGA Waiver shall be severable from these Terms and in such instances, the private attorney general action must be litigated in a civil court of competent jurisdiction and not as a private attorney general arbitration.

Notwithstanding any other clause contained in these Terms, any claim that all or part of the Class Action Waiver or PAGA Waiver is invalid, unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. The Class Action Waiver and PAGA Waiver shall be severable when a dispute is filed as an individual action and severance is necessary to ensure that the individual action proceeds in arbitration.

Opt-out of Mandatory Arbitration. User may seek to resolve a dispute in small claims court if it qualifies. User may decline this mandatory arbitration provision within 30 days of accepting these Terms by emailing ErateSync at support@eratesync.com and indicating User's intent to opt-out of the arbitration provision. Please include User's contact details. Note that opting out of this

arbitration provision does not affect any other part of these terms and these Terms, including the provisions regarding controlling law or in which courts any disputes must be brought.

Arbitration Costs. Payment of all filing, administration and arbitrator fees will be governed by the JAMS Rules. If User asserts a claim against ErateSync, User will be responsible for paying a \$250 consumer filing fee. ErateSync will pay for reasonable arbitration fees where: (a) the claim for damages does not exceed \$10,000, and (b) the claims are not frivolous under Federal Rule of Civil Procedure 11(b). ErateSync will not seek attorneys' fees or costs in arbitration unless the arbitrator determines the claims are frivolous under Federal Rule of Civil Procedure 11(b).

Severability. With the exception of any of the provisions in this Section, if an arbitrator or court of competent jurisdiction decides that any part of these terms is invalid or unenforceable, the other parts of these terms will still apply.

Effect of Changes on Arbitration. Notwithstanding the provisions of Section 21 (Changes To Terms And Conditions), if ErateSync changes any of the terms of this Section 16 after the date User first accepted these Terms (or accepted any subsequent changes to these Terms), User may reject any such change by sending ErateSync written notice within 30 days of the date such change became effective, as indicated in the "Last Updated" date above or the date of ErateSync's email to User notifying User of such change. By rejecting any change, User are agreeing that User will arbitrate any dispute between ErateSync and User in accordance with the terms of this Section 16 as of the date User first accepted the Terms (or accepted any subsequent changes to these Terms).

16. Relationship of The Parties

Nothing in these Terms shall be construed to create a partnership, joint venture or agency relationship. Neither party shall have any right or authority to assume or create any obligation of any kind expressed or implied in the name of or on behalf of the other party.

17. Third-Party Tools

ErateSync may in the future provide User with access to third-party tools which ErateSync neither monitors nor has any control over or gives input. User acknowledges and agrees that ErateSync provides access to such tools "as is" and "as available" without any warranties, representations or conditions of any kind and without any endorsement. ErateSync shall have no liability whatsoever arising from or relating to User's use of optional third-party tools.

18. Entire Terms

These Terms incorporate the following legal documents by reference, as well as any other policies or procedures referenced herein that are posted to the Site from time to time: **[INSERT LINK TO PRIVACY POLICY].**

These Terms contains the entire and final agreement between the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of these Terms and supersedes all prior or contemporaneous oral or written agreements, representations, understandings, undertakings and negotiations with respect to the subject matter hereof. These Terms supersedes any prior written or oral agreements between the parties. The terms of these Terms apply to the exclusion of any other terms that User seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. User acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of ErateSync that is not set out in these Terms. In the event of a conflict between any policies posted on the Service and these Terms, these Terms will control.

19. Severability

If any provision of these Terms will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of these Terms is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced

as so limited.

20. Changes to Terms and Conditions

User can review the most current version of the Terms at any time on the Site. ErateSync reserves the right, at its sole discretion, to update, change or replace any part of these terms by posting updates and changes to its Site (as indicated by a revised "Last Updated" date at the top of this page). It is User's responsibility to check the Site periodically for changes. Modifications will be effective on the date that they are posted to the Site. Users continued use of or access to the Site or the Service following the posting of any changes to these terms constitutes acceptance of those changes. ErateSync may change or discontinue all or any part of the Service, at any time and without notice, at its sole discretion.

21. Governing Law

These Terms shall be governed by the laws of the state of California, without regard to its conflict of laws principles. The parties hereby irrevocably consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Los Angeles County, California, for the purposes of adjudicating any dispute arising out of these Terms. Notwithstanding the foregoing, either party may at any time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding such party's intellectual property rights.

22. Notice

User consents to receive all communications including notices, agreements, disclosures, or other information from ErateSync electronically. ErateSync may communicate by email or by posting to the Site. For all notices to ErateSync, please write an email to the following address: support@eratesync.com.

23. Waiver

The failure of ErateSync to enforce any provision of these Terms shall not be construed as a waiver or limitation of ErateSync's right to subsequently enforce and compel strict compliance with every provision of these Terms. A waiver of any right is only effective if it is in writing by an authorized representative of ErateSync and only against the party who signed such writing and for the circumstances given. ErateSync's rights and remedies hereunder are cumulative and not exclusive.

24. Geographical Use

Although this Site may be accessible worldwide, the materials, services on this Site are not available for use in locations outside the United States of America. We do not allow Users or accounts based outside of the United States. Furthermore, we make no claims that the Site is accessible or appropriate outside of the United States. Access to the Site may not be legal by certain persons or in certain countries. If you access the Site from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

25. Assignment

Any Services provided by ErateSync under these Terms are personal to User and cannot be transferred or assigned to any other person. ErateSync shall be entitled to assign these Terms to any other company without prior notice to User. ErateSync may assign, transfer, sub-contract any of our rights or obligations to any third party at ErateSync's sole and absolute discretion.

26. Construction and Interpretation

The rule requiring construction or interpretation against the drafter is waived. The document shall be deemed as if it were drafted by both parties in a mutual effort. Section headings are for convenience only and are not to be used in interpreting these Terms.