

# Fluree Enterprise Terms of Service

Last modified: March 13, 2017

These terms and conditions govern your access to and use of the Enterprise products and services (including, without limitation, the offered by Fluree, PBC. (“Fluree”). Certain terms only apply to your access to and use of certain Enterprise products and services:

BY ACCESSING AND USING THE SERVICES (AS DEFINED BELOW) IN ANY MANNER, YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY THESE TERMS OF SERVICE (THIS “AGREEMENT”) TO THE EXCLUSION OF ALL OTHER TERMS. IF YOU DO NOT UNCONDITIONALLY ACCEPT THIS AGREEMENT IN ITS ENTIRETY, YOU SHALL NOT (AND SHALL HAVE NO RIGHT TO) ACCESS OR USE THE SERVICES. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS. THIS AGREEMENT SHOULD BE READ IN CONJUNCTION WITH FLUREE’S PRIVACY POLICY AND COPYRIGHT POLICY.

Wherever used in this Agreement, “you”, “your”, “Customer”, and similar terms mean the person or legal entity accessing or using the Services. If you are accessing and using the Services on behalf of a company (such as your employer) or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to this Agreement.

We reserve the right, at any time, to update and change any or all of this Agreement, in our sole discretion, including the fees and charges associated with the use of the Services. If we do so, we will post the modified version of this Agreement on the website [www.flur.ee](http://www.flur.ee) (the “Site”), though we will notify you of any changes that, in our sole discretion, materially impact this Agreement. Continued use of the Services after any such changes have been made shall constitute your consent to such changes. You are responsible for regularly reviewing the most current version of this Agreement. When we change this Agreement, we will modify the “Last Modified” date above.

## **A. Terms Applicable to All Services**

### **1. Definitions.**

“Affiliate” means a person or entity that owns, is owned by, or is under common control with a Party, and “control” in this definition means that a person or entity owns more than 50% of the equity interest of any entity and/or has the ability to control the management of such entity.

“Authorization Form” means a document issued by us and executed or otherwise agreed upon by your authorized representative that specifies, among other things and as applicable, a description of the Services, the Fees, the number of Seats and/or units purchased, and any other details specifically related to the Services.

“Authorized Users” means individuals who you have authorized to use the Services with varying levels of control and access specified by you and who have been supplied user identifications and passwords. Authorized Users may include your and your Affiliates’ employees, consultants, contractors, agents, or other designees, but shall not include any employee or agent of any Fluree competitor.

“Customer Content” means all information and data (including, but not limited to, text, images, photos, videos, audio, and documents) or any other content in any media and format that you, directly or indirectly, provide or make available to us in connection with your use of the Services, but excluding Customer Information.

“Customer Information” means information and data submitted by or for you to us in connection with the creation and management of your account for the Services.

“Mentions” means the information, including links, posts, and excerpts, that has been made publicly available and obtained by Fluree on your behalf from the Internet, and data derived therefrom, including reports, summaries, graphs, and charts.

“Party” means either of you or us and “Parties” means, collectively, you and us.

“Seat” means a single subscription associated with a single log-in to a Service, assigned by you to one Authorized User.

“Services” means the products and services that are ordered by you under an Authorization Form and made available by us (including, without limitation, the Fluree Business Plan), but expressly excluding any Third-Party Services (as defined herein).

“Service Start Date” means, for each Authorization Form, the earlier of (i) the date set forth on the Authorization Form and (ii) the first date on which Customer is granted access to the Services purchased pursuant to the Authorization Form.

“Supported Platform(s)” means the social networking site(s) supported by the Services, including Twitter, Facebook, LinkedIn, Instagram, and other social networking sites as described further on the Site.

“Taxes” means all taxes, assessments, charges, fees, and levies that may be levied or based upon the sale or license of goods and/or services, as the case may be, including all sales, use, goods and services, value added, and excise taxes, custom duties, and assessments together with any installments with respect thereto, and any interest, fines, and penalties with respect thereto, imposed by any governmental authority (including federal, state, provincial, municipal, and foreign governmental authorities).

“we”, “our”, or “us” means, as applicable, Fluree and any of Fluree’s Affiliates.

## **2. Fluree Services.**

2.1 Services. During the Term (as defined herein), subject to the terms and conditions of this Agreement, and solely for your internal business purposes, we shall make the Services available to you in accordance with the applicable Authorization Form describing such Services. You acknowledge that the Services may be subject to usage limits, including any quantities specified in an Authorization Form. If you exceed a usage limit, we may work with you to seek to reduce your usage so that it conforms to that limit. If, notwithstanding our efforts, you are unable or unwilling to abide by a usage limit, you will execute an Authorization Form for additional quantities of the applicable Services and promptly pay any invoice for excess usage in accordance with Article 4.

2.2 Customer Affiliates. Each Customer Affiliate that wishes to have a separate account or to be billed separately for its use of the Services shall enter into a separate Authorization Form substantially in the form of the initial Authorization Form, which incorporates the terms of this Agreement by reference.

2.3 Updates and Functionalities. You acknowledge that from time to time we may apply updates to any of the Services and that such updates may result in changes in the

appearance and/or functionality of such Services (including the addition, modification, or removal of functionality, features, or content). Excluding the addition of wholly new products, we will provide, implement, configure, install, support, and maintain at our own cost any and all updates, upgrades, enhancements, improvements, releases, corrections, bug fixes, patches, and modifications to the Services (collectively, the “Updates”). You acknowledge that the Services may interoperate with several Supported Platforms and that such Services are highly dependent on the availability of such Supported Platforms. If at any time any Supported Platforms cease to make their features or programs available to us on reasonable terms, we may cease to provide access to such features or programs without entitling you to a refund, credit, or other compensation.

2.4 Acceptable Use. You shall:

- (i) be responsible for your Authorized Users’ compliance with this Agreement and for any breach of this Agreement by your Authorized Users as if it were your breach;
- (ii) be solely responsible for the accuracy, quality, integrity, and legality of Customer Content and of the means by which you acquire or generate Customer Content;
- (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, including keeping passwords and user names confidential and not permitting any third party to access or use your (or any of your Authorized Users’) user name, password, or account for the Services;
- (iv) be solely responsible and liable for all activity conducted through your account in connection with the Services;
- (v) promptly notify us if you become aware of or reasonably suspect any security breach relating in any way to the Services, including any loss, theft, or unauthorized disclosure or use of your (or any of your Authorized Users’) user name, password, or account;
- (vi) use, or otherwise access in connection with your use thereof, the Services only in accordance with applicable laws and government regulations; and

(vii) comply in all respects with all applicable terms of the Third-Party Services that you access or subscribe to in connection with the Services, including, but not exclusively, the applicable terms for Supported Platforms, such as the Twitter Terms of Service published at [www.twitter.com/tos](http://www.twitter.com/tos), the Facebook Statement of Rights and Responsibilities published at [www.facebook.com/legal/terms](http://www.facebook.com/legal/terms), the LinkedIn User Agreement published at [www.linkedin.com/legal/user-agreement](http://www.linkedin.com/legal/user-agreement), and the YouTube Terms of Service published at [www.youtube.com/t/terms](http://www.youtube.com/t/terms), as applicable.

You must not:

- (a) make the Services available to anyone other than your Authorized Users;
- (b) except as expressly provided herein, allow more than one individual Authorized User to use a Seat (if applicable);
- (c) sell, trade, or otherwise transfer or your Seats, or assign your rights therein, to another party;
- (d) use the Services to store or transmit any content, including Customer Content, that may be infringing, defamatory, threatening, harmful, or otherwise tortious or unlawful, including any content that may violate intellectual property, privacy, rights of publicity, or other laws, or send spam or other unsolicited messages in violation of applicable law;
- (e) upload to, or transmit from, the Services any data, file, software, or link that contains or redirects to a virus, Trojan horse, worm, or other harmful component;
- (f) attempt to reverse engineer, de-compile, hack, disable, interfere with, disassemble, modify, copy, translate, or disrupt the features, functionality, integrity, or performance of the Services or the Supported Platforms (including any mechanism used to restrict or control the functionality of the Services or the Supported Platforms), any third-party use of the Services or the Supported Platforms, or any third-party data contained therein (except to the extent such restrictions are prohibited by applicable law);
- (g) attempt to gain unauthorized access to the Services, the Supported Platforms, or related systems or networks or to defeat, avoid, bypass, remove, deactivate, or otherwise circumvent any software protection or monitoring mechanisms of the Services or the Supported Platforms;

(h) access the Services in order to build a similar or competitive product or service or copy any ideas, features, functions, or graphics of the Services or the Supported Platforms; or

(i) authorize, permit, or encourage any third party to do any of the above. You agree that we may temporarily suspend your access to the Services for a violation of this Section 2.4 or for any abusive practices that degrade the performance of any Service for you and/or our other customers. Examples of abusive practices include tracking singular high-frequency terms such as “love”, “yes”, or “the” and using the Services for redistribution, syndication, or deceitful activities.

2.5 Mentions. You understand that, by using the Services, you may be exposed to third-party content, information, and Mentions that might be unlawful, offensive, harmful, inaccurate, or otherwise inappropriate. Unless you create the content of the Mentions, Mentions shall not be considered “Customer Content” under any circumstances. We have no obligation to preview, verify, flag, modify, filter, or remove any Mentions, even if requested to do so, although we may do so in our sole discretion. Your use of Mentions is at your sole risk, and we shall not be liable to you or any third party in relation to Mentions.

2.6 Agency. If you operate as an agency (an “Agency Customer”) representing various clients (“Clients”), you shall also contractually bind each of your Clients for which you are acting as agent in your use of the Services or that you otherwise permit to use the Services under your account to the terms of this Agreement and you will be liable for any breach of this Agreement by your Clients. In addition, as an Agency Customer, you represent and warrant that: (i) you have obtained all necessary authorizations, consents, and licenses from each Client to bind such Client to this Agreement (including each Authorization Form) and act as such Client’s agent and, more particularly, you have obtained all necessary approvals for the use and subscription to the Services by, and on behalf of, such Client; and (ii) all of your actions related to this Agreement will be within the scope of your agency with your Clients. You shall defend, indemnify, and hold harmless Fluree from all damages, liabilities, costs, and expenses (including reasonable attorneys’ fees) arising from your breach of this Section 2.6.

2.7 Third-Party Products and Services. You acknowledge that the Services may enable or assist you to access, interact with, and/or purchase services from Supported Platforms and other third parties via third-party websites or applications (collectively, the “Third-Party Services”). When you access the Third-Party Services, you do so at your own risk. Any use of Third-Party Services is subject solely to the terms and conditions governing such Third-Party Services (and you shall comply with all such terms and conditions), and any contract entered into, or any transaction completed via any Third-Party Services, is between you and the relevant third party, and not Fluree. We make no representation and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such Third-Party Services or any contract entered into and any transactions completed by you with any such third party. Further, you acknowledge and agree that, if you install or enable a Third-Party Service, you grant us permission to allow the provider of such Third-Party Service to access your Customer Content and Customer Information solely to the extent required for the interoperation of the Third-Party Service with the Services or as you may otherwise authorize or direct. Without limiting the generality of the foregoing, if you subscribe in an Authorization Form to any Third-Party Services references, you are expressly agreeing to be bound by the terms and conditions applicable to such services.

2.8 Non-Exclusivity. You acknowledge that the rights granted to you under this Agreement and any Authorization Form are non-exclusive and that nothing in this Agreement or any Authorization Form will be interpreted or construed to prohibit or in any way restrict our right to license, sell, or otherwise make available the Services to any third party or perform any services for any third party.

2.9 Beta Testing. From time to time, we may offer you the opportunity to install, use and test (the “Beta Testing”) certain of our services prior to their commercial release (the “Beta Services”). Beta Services are intended for evaluation purposes and not for production use and are subject to following terms: (i) we grant you a limited right to use the Beta Services for Beta Testing purposes during the applicable testing period; (ii) you agree to provide suggestions, comments, or other feedback with respect to the Beta Services as reasonably requested, including ideas for modifications and enhancements (the “Beta Feedback”). You hereby assign to us all right, title and interest in and to the Beta Feedback. All Beta Services and your Beta Feedback are Fluree’s Confidential Information, and Fluree may use your Beta Feedback in advertising and promotional materials with your prior consent (not to be unreasonably withheld); (iii) we reserve the right to modify the Beta Services or terminate your participation in the Beta Testing for any reason, without liability to you. We will use commercially reasonable efforts to provide you with reasonable advance notice of such termination; (iv) you acknowledge that the Beta Services are not at the level of performance or compatibility of a final,

generally available product offering, and may be substantially modified prior to commercial availability, or withdrawn. We are under no obligation to provide technical support with regards to the Beta Services, and we provide no assurance that any specific errors or performance issues in the Beta Services will be corrected; and (v) the Beta Services are provided on an “as is” and “as available” basis without any warranties or conditions of any kind, whether express, implied, statutory or otherwise. Use of the Beta Services is at your sole risk. In no event will we be liable to you for any damage whatsoever arising out of the use of or inability to use the Beta Services.

### **3. Intellectual Property and Security.**

3.1 Services. As between you and us, we retain all right, title, and interest in and to the Services. Nothing herein shall be construed to restrict, impair, encumber, alter, deprive, or adversely affect the Services or any of our rights or interests therein or any other of our intellectual property, brands, information, content, processes, methodologies, products, goods, services, materials, or rights, tangible or intangible. All rights, title, and interest in and to the Services not expressly granted in this Agreement are reserved by us.

3.2 Feedback. You may from time to time provide suggestions, comments, or other feedback to us with respect to the Services (“Feedback”). Feedback, even if designated as confidential by you and notwithstanding Article 5 of this Agreement, shall not create any confidentiality obligation for us. You shall, and hereby do, grant to us a non-exclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid-up license to use and exploit the Feedback for any purpose.

3.3 Customer Content and Customer Information. You hereby grant us a limited, worldwide, non-exclusive, non-transferable (except as set forth in Section 10.1) license, without a right of sublicense, to access, use, reproduce, electronically distribute, transmit, perform, format, display, store, archive, and index your Customer Content for the purpose of providing the Services to you and supporting your use of the Services. We may also use Customer Content for the purpose of developing the Services, provided that when doing so, we shall only use Customer Content in an anonymized and aggregated way. Subject only to the limited license expressly granted herein, you and your Authorized Users shall retain all right, title, and interest in and to, and all intellectual property rights in, your Customer Content and your Customer Information. Nothing in this Agreement will confer on us any right of ownership or interest in or to, or the intellectual property rights in, the Customer Content or the Customer Information.

3.4 Responsibility for Customer Content and Mentions. You are solely responsible for the Customer Content that Authorized Users upload, publish, display, link to, or otherwise make available via the Services, and you agree that the Services are only a passive conduit for the online distribution and publication of the Customer Content and the online display of Mentions. We will not review, share, distribute, or reference any Customer Content or Mentions, except as provided herein, as provided in our privacy policy published at <https://flur.ee/legal/privacy> (the “Privacy Policy”) and our copyright policy published at <https://flur.ee/legal/copyright> (the “Copyright Policy”), or as may be required by law. Notwithstanding the foregoing, we retain the authority to remove any Customer Content uploaded that we deem in violation of this Agreement, in our sole discretion.

3.5 Security Requirements. We have implemented technical and organizational security measures consistent with the prevailing industry standards. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures and we expressly deny any responsibility for damages, monetary or otherwise, resulting from unauthorized third-party access to your account or use, alteration, or disclosure of your Customer Content or Customer Information.

#### **4. Fluree Products and Fees.**

4.1 Fees. You will pay all fees as and when described in the Authorization Form(s) (the “Fees”).

4.2 Invoicing. We will invoice you for the Fees in the currency set forth on the applicable Authorization Form. Unless otherwise stated on the Authorization Form, all invoices shall be payable within 30 days of the invoice date. Any disputed amounts shall not affect payment of non-disputed amounts. You shall make payments to the entity and address set forth in the invoice.

4.3 Late Payment. If any amounts invoiced hereunder are not received by us by the due date, then at our discretion, such charges may accrue late interest at the rate of 10% per year or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. In addition, upon 30 days' written notice to you provided after the due date, we may suspend your access to the Services if we have not received the amounts invoiced hereunder at the expiration of such period.

4.4 Taxes. You are responsible for paying all Taxes associated with your subscription to the Services. If we have the legal obligation to pay or collect Taxes for which you are responsible under this Section 4.4, the appropriate amount shall be

invoiced to and paid by you, unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority.

4.5 Withholdings. Any and all payments by or on account of the compensation payable under this Agreement shall be made free and clear of and without deduction or withholding for any Taxes. If you are required to deduct or withhold any Taxes from such payments, then the sum payable shall be increased as necessary so that, after making all required deductions or withholdings, we receive an amount equal to the sum we would have received had no such deduction or withholding been made.

## **5. Confidential Information.**

5.1 Confidential Information. Each Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) and will not disclose or use any Confidential Information (as defined below) of the other Party for any purpose outside of the scope of this Agreement, and each Party shall limit access to Confidential Information to those of its, or its Affiliates', employees, contractors, and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the receiving Party containing protections no less stringent than those herein. In this Agreement, "Confidential Information" means all confidential business information and commercial strategies, as well as non-public information regarding a Party's pricing, personnel, customers, products, or services that is made available by one Party (the "discloser") to the other Party (the "recipient"), but excludes any information that the recipient proves (i) was lawfully in the recipient's possession before receiving it from the discloser; (ii) is provided in good faith to the recipient by a third party without breaching any rights of the discloser or any other party; (iii) is or becomes generally available to, or accessible by, the public through no fault of the recipient; or (iv) was or is independently developed by the recipient without reference to the discloser's Confidential Information. In the event that the recipient or any representative of the recipient becomes legally compelled (by law, rule, regulation, subpoena, or similar court process) to disclose any of the Confidential Information, the recipient will (if permitted to do so) provide the discloser with notice of such circumstances and will limit such disclosure to the required disclosure.

## **6. Term and Termination.**

6.1 Term of Agreement. This Agreement shall commence on the Service Start Date of the first Authorization Form (the "Effective Date") and shall continue in effect

until all Authorization Forms have expired or this Agreement has been terminated in accordance with Section 6.3 or Section 8.1(iii) below (the “Term”).

6.2 Term of Authorization Forms. The term of each Authorization Form shall start on the Service Start Date specified on the Authorization Form and shall continue for the term specified therein. Except as expressly stated otherwise in an Authorization Form, all Authorization Forms shall automatically renew for subsequent one-year renewal periods, unless a either Party provides written notice of non-renewal at least 60 days prior to the end of the then-current term. Upon renewal, we reserve the right to increase the Fees for Services by providing you written notice thereof (which notice may be provided by email) at least 60 days prior to the end of the then-current term.

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

6.4 Effects of Termination. Upon termination of this Agreement for any reason, all Authorization Forms will automatically terminate and: (i) you will immediately cease all use of the Services; (ii) you will have no further access to your accounts provided by us; and (iii) you will pay us all unpaid amounts owed to us. If you terminate this Agreement in accordance with Section 6.3, Fluree will refund to you any unearned Fees that you paid in advance for the Services. If we terminate this Agreement in accordance with Section 6.3, then, without limiting any other remedies that may be available to us, you will pay any unpaid Fees covering the remainder of the term of each Authorization Form after the date of termination. In no event will termination relieve you of your obligation to pay any amounts payable to us for the period prior to the date of termination.

6.5 Survival. Any provision of this Agreement that, either by its terms or to give effect to its meaning, must survive and such other provisions that expressly or by their nature are intended to survive termination shall survive the expiration or termination of this Agreement. Without limiting the foregoing, Sections 3.1, 3.2, 3.3, and 4.4, and Articles 5, 8, and 9 shall survive the expiration or termination of this Agreement.

## **7. Warranties and Warranty Disclaimer.**

7.1 Mutual Warranties. Each of Fluree and Customer represents and warrants that it has the power and authority to enter into this Agreement and to perform its obligations and duties under this Agreement

7.2 Fluree Warranties. Fluree warrants that (a) subject to Section 2.3, the functionality of the Services will not be materially decreased during the term of the applicable Authorization Form; and (b) the Services do not knowingly contain any malicious code or viruses. For any breach of an above warranty, your exclusive remedies are those described in Sections 6.3 and 6.4.

7.3 Disclaimer. SOME COUNTRIES AND JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED TERMS IN CONTRACTS WITH CONSUMERS AND AS A RESULT THE CONTENTS OF THIS SECTION 7.3 MAY NOT APPLY TO YOU. EXCEPT AS EXPRESSLY PROVIDED HEREIN, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, WE EXPRESSLY EXCLUDE AND DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE SPECIFICALLY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUALITY, AND NONINFRINGEMENT, THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT OUR SERVICES WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ERROR-FREE. IN ADDITION, WE DO NOT WARRANT ANY CONNECTION TO OR TRANSMISSION FROM THE INTERNET. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM US OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

WE DISCLAIM ANY AND ALL RESPONSIBILITY OR LIABILITY IN RELATION TO THE CONTENT MADE AVAILABLE THROUGH THE SERVICES, INCLUDING CUSTOMER CONTENT, MENTIONS, AND ANY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES. WE DO NOT CONTROL OR VET CUSTOMER CONTENT OR MENTIONS AND WE ARE NOT RESPONSIBLE FOR WHAT OTHER USERS POST, TRANSMIT, OR SHARE ON OR THROUGH THE SERVICES. WE ARE NOT RESPONSIBLE OR LIABLE IN ANY MANNER FOR ANY SUPPORTED PLATFORMS OR THIRD-PARTY SERVICES ASSOCIATED WITH OR UTILIZED IN CONNECTION WITH THE SERVICES, INCLUDING THE FAILURE OF ANY SUCH SUPPORTED PLATFORMS OR THIRD-PARTY SERVICES. WE EXPRESSLY DENY ANY RESPONSIBILITY RESULTING FROM HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS

OR USE OF THE SERVICES OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

## **8. Mutual Indemnification**

8.1 Indemnification by Fluree. Subject to your compliance with Section 8.3, Fluree shall defend you from and against any and all third-party claims that the use of the Services as permitted hereunder infringes a valid U.S. or Canada patent or copyright or misappropriates a third party's trade secret (a "Claim") and shall indemnify you for any damages finally awarded against, and for reasonable attorneys' fees incurred by, you in connection with any such Claim.

We will have no liability for any Claim to the extent it arises from:

- (i) a modification of the Services by or at your direction or the direction of an Authorized User;
- (ii) use of the Services in violation of this Agreement or applicable law;
- (iii) use of the Services after we notify you to discontinue use because of an infringement or misappropriation claim;
- (iv) the combination, operation, or use of the Services with any other software, program, or device not provided or specified by us to the extent such infringement would not have arisen but for such combination, operation, or use; or
- (v) your use of the Services in a manner that is inconsistent with its intended use.

For avoidance of doubt, our indemnification obligations in this Section 8.1 will not apply to third-party content, Supported Platforms, and/or Third-Party Services accessed through the Services and/or Customer Content and/or Mentions.

If a Service has become, or in our opinion is likely to become, the subject of any such Claim, we may at our option and expense (a) procure for you the right to continue using the Service as set forth hereunder; (b) replace or modify the Service or certain functionalities to make it non-infringing; or (c) if options (a) or (b) are not reasonably practicable, terminate either this Agreement or the Authorization Form for such Service. This Section 8.1 sets forth our sole liability (and your sole remedy) regarding infringement or misappropriation of third party rights.

8.2 Indemnification by Customer. You shall defend, indemnify, and hold harmless us and our directors, officers, employees, and agents from and against all claims, losses, damages, penalties, liability, and costs, including reasonable attorneys' fees, of any kind or nature that are in connection with or arising out of a claim (a) alleging that Customer Content or your use of the Services infringes or violates the intellectual property rights, privacy rights, or other rights of a third party or violates any applicable law; (b) relating to, or arising from, Customer Content, Customer Information or your breach of Section 2.4 or 2.7; or (c) relating to, or arising from, your use of any Third-Party Services (including your breach of any terms or conditions applicable to any Third-Party Services).

8.3 Indemnification Procedure. The indemnified Party shall (a) promptly give written notice of the claim to the indemnifying Party; (b) give the indemnifying Party sole control of the defense and settlement of the claim (provided that the indemnifying Party may not settle or defend any claim without the indemnified Party's prior written consent unless it unconditionally releases the indemnified Party of all liability); and (c) provide the indemnifying Party with reasonable cooperation and assistance at the indemnifying Party's expense.

**9. Limitation of Liability.**

EXCEPT AS EXPRESSLY PROVIDED HEREIN, IN NO EVENT SHALL OUR AGGREGATE LIABILITY TO YOU FOR ALL CLAIMS OF ANY KIND, INCLUDING ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BY STATUTE, CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE FEES PAID BY YOU, OR PAID ON YOUR BEHALF, FOR THE SERVICES SUBJECT TO THE CLAIM DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE. YOUR EXCLUSIVE REMEDIES FOR ANY INTERRUPTION OR CESSATION OF ACCESS OR TRANSMISSION TO OR FROM THE SERVICES ARE SET FORTH IN THE APPLICABLE SERVICE LEVEL AGREEMENT.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE, OUR DIRECTORS, EMPLOYEES, AGENTS, OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL USE, OR DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE SERVICES OR ANY OTHER ASPECT OF THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL WE BE RESPONSIBLE

FOR ANY DAMAGE, LOSS, OR INJURY RESULTING FROM HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

THE PARTIES ACKNOWLEDGE AND AGREE THAT THE ESSENTIAL PURPOSE OF THIS SECTION 9 IS TO ALLOCATE THE RISKS UNDER THESE TERMS BETWEEN THE PARTIES AND LIMIT THEIR POTENTIAL LIABILITY GIVEN THE FEES CHARGED UNDER THIS AGREEMENT, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF WE WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. THE PARTIES HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO ENTER INTO THESE TERMS. NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE OR RESTRICT OR SHALL BE CONSTRUED AS EXCLUDING OR RESTRICTING OUR LIABILITY FOR (I) DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE OR THE NEGLIGENCE OF OUR EMPLOYEES; (II) OR OUR EMPLOYEES' WILLFUL MISCONDUCT; OR (III) ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED BY APPLICABLE LAW.

## **10. General.**

10.1 Assignment. Neither Party may assign or otherwise transfer any of its rights or obligations hereunder, whether by merger, sale of assets, change of control, operation of law, or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld), and any attempted assignment without such consent will be void. Notwithstanding the foregoing, we may assign this Agreement in its entirety (including all Authorization Forms), without your consent, to one of our Affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our shares or assets.

10.2 Relationship of the Parties. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither Party has any authority of any kind to bind the other in any respect.

10.3 Publicity. You agree that we may use your name and may disclose that you are a customer of the Services in our advertising, press, promotion, and similar public disclosures, including at trade shows and similar events. In addition to the foregoing, you hereby grant us a non-exclusive license during the Term to list your name and display your logo as a Fluree customer on our website.

10.4 Force Majeure. Except for payment obligations, neither Party shall be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond such Party's reasonable control, including the elements; fire; flood; severe weather; earthquake; vandalism; accidents; sabotage; power failure; denial of service attacks or similar attacks; Internet failure; acts of God and the public enemy; acts of war; acts of terrorism; riots; civil or public disturbances; strikes lock-outs or labor disruptions; and any laws, orders, rules, regulations, acts or restraints of any government or governmental body or authority, civil or military, including the orders and judgments of courts.

10.5 Amendment. We reserve the right to modify, supplement, or replace this Agreement, effective upon posting on the Site or otherwise notifying you. Your continued use of the Services after the effectiveness of that update will be deemed to represent your agreement with, and consent to be bound by, the new Agreement. Except for changes made by us as described here, no other amendment or modification of this Agreement shall be effective unless set forth in a written agreement bearing a written signature by Fluree and Customer.

10.6 Severability. Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid, or unenforceable in any jurisdiction, the illegality, invalidity, or unenforceability of that provision will not affect the legality, validity, or enforceability of the remaining provisions of this Agreement or of that provision in any other jurisdiction.

10.7 Notices. For purposes of service messages and notices about the Services, we may place a banner notice across the Services or the Site to alert you of certain changes such as modifications to this Agreement. Alternatively, notice may consist of an email from us to an email address associated with your account, even if we have other contact information. For communication about your Fluree account and services associated with us, we may contact you or your Authorized Users through your Fluree account or through other means including email, mobile number, telephone, or delivery services such as the postal service. You acknowledge and agree that we shall have no liability associated with or arising from your failure to maintain accurate contact or other information, including your failure to receive critical information about the Services.

10.8 Waivers. No waiver of any provision of this Agreement is binding unless it is in writing and signed by all Parties to this Agreement, except that any provision that does not give rights or benefits to particular Parties may be waived in writing, signed only by those Parties who have rights under, or hold the benefit of, the provision being waived if those Parties promptly send a copy of the executed waiver to all other Parties. No

failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

10.9 Governing Law. This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and will be enforced, construed, and interpreted exclusively in accordance with the laws applicable in North Carolina, USA. The Parties irrevocably attorn to the exclusive jurisdiction of the courts of North Carolina. In any action or proceeding to enforce rights under this Agreement, (a) the prevailing party shall be entitled to recover costs and attorneys' fees; and (b) if applicable, the parties irrevocably waive any right to a trial by jury.

10.10 Entire Agreement. The terms of this Agreement, together with any applicable Authorization Forms, our Privacy Policy, and our Copyright Policy, constitute the entire agreement between the Parties with respect to the subject matter thereof and supersede any prior or inconsistent agreements, negotiations, representations, and promises, written or oral, with respect to the subject matter and is binding upon the Parties and their permitted successors and assigns. In the event of any conflict between this Agreement and the terms of an Authorization Form, the provisions of the Authorization Form shall prevail. The terms of this Agreement will apply to all orders submitted to us and shall supersede any additional terms that may be incorporated in a purchase order form or any other Customer-generated form. Any such Customer terms shall be null and void.

## **B. Fluree Advocate– Additional Terms**

If you purchase FlureeAdvocate, in an Authorization Form, the following Additional Terms apply to your access to, and use of, such Services in addition to the Terms Applicable to All Services contained herein.

### **1. Additional Definition.**

“FlureeAdvocate” means our proprietary software, content, text, images, media, and other materials delivered through our web platform [www.flur.ee](http://www.flur.ee) (including successor domain names and sites) and mobile applications that provide for a single log-in, centralized dashboard that enables Authorized Users to manage and publish social media content to multiple Supported Platforms, including any modifications or Updates but which, for greater certainty, does not include any Third-Party Services.

### **2. FlureeAdvocate.**

2.1 FlureeAdvocate. During the term of any applicable Authorization Form, subject to the terms and conditions of this Agreement, and solely for your internal business purposes, we shall make the FlureeAdvocate available to you and your Authorized Users for the number of Seats purchased in accordance with the applicable Authorization Form.

2.2 Hosting Services; Service Levels. We shall use commercially reasonable efforts to host and serve FlureeAdvocate in accordance with the service level criteria and performance metrics set forth in the service level agreement published at [www.flur.ee/enterprise-service-level-agreement](http://www.flur.ee/enterprise-service-level-agreement).

## **C. Fluree Professional Services – Additional Terms**

If you purchase Fluree Professional Services in an Authorization Form, the following Additional Terms apply to your access to and use of such Services in addition to the Terms Applicable to All Services.

### **1. Additional Definitions.**

“Background IP” means the various intellectual property, including, but not limited to, content, information, data, tools, processes, methods, designs, and know-how, whether or not copyrightable or patentable, that we may use in connection with the Professional Services and the Deliverable, whether pre-existing or created or invented during the performance of the Professional Services. Background IP specifically excludes any Deliverable and Customer Content.

“Professional Services” means the training or other services set forth in the applicable Authorization Form.

“Deliverables” means the training or other offering to be developed by us and specifically identified by us as a deliverable in the applicable Authorization Form.

### **2. Professional Services and Deliverables.**

2.1 Professional Services and Deliverables. During the term of any applicable Authorization Form, subject to the terms and conditions of this Agreement, and solely for your internal business purposes, we shall provide the Professional Services and the Deliverables, if any, to you as set out in such Authorization Form.

2.2 Cooperation. In order for us to perform the Professional Services and deliver the Deliverables, if any, you shall, in a timely manner: (i) make yourself reasonably available at such times and locations as we may require; (ii) allocate sufficient resources, perform any tasks, and deliver any materials, including Customer Content, reasonably necessary to enable us to perform our obligations under the applicable Authorization Form; (iii) respond to our inquiries related to the Professional Services; and (iv) provide complete, accurate, and timely information, data, and feedback all as reasonably required by us. If you do not comply with your obligations in this Section 2.2 in a timely manner, delays may result or we may charge you additional fees. For greater certainty, Sections 2.4, 3.3, and 3.4 of the Terms Applicable to All Services contained

herein apply to Customer Content provided to us in connection with the Professional Services.

2.3 Time of Performance. Subject to Section 10.4 of the Terms Applicable to All Services, we shall use commercially reasonable efforts to provide the Professional Services and deliver the Deliverables, if any, according to the schedule set forth in the applicable Authorization Form. Notwithstanding the foregoing, we may, in our sole discretion, alter the schedule for the Professional Services or extend the delivery date for any Deliverables by giving reasonable notice to you; provided further that we shall use commercially reasonable efforts to minimize further delays.

2.4 Scope Changes. You may, from time to time, request changes in the scope of the Professional Services (a "Change Request"). Upon receipt of a written Change Request, we shall evaluate such requested changes and, within 10 days of such Change Request, submit to you a written response (the "Change Order") to the Change Request. The Change Order shall indicate, among other things, the extent to which the Change Request will impact the Fees, the Deliverables, if any, and/or other terms set forth in the applicable Authorization Form. If you accept such Change Order (such acceptance to be indicated in writing), the Change Order will be incorporated by reference into the applicable Authorization Form and will be deemed to amend and modify the applicable Authorization Form to the extent specified in the Change Order. Should you not accept the Change Order, the applicable Authorization Form shall continue in full force and effect, unamended.

2.5 Term. If an end date is not specified in an applicable Authorization Form, such Authorization Form shall remain in effect until the date on which both Parties have fully performed their obligations thereunder.

2.6 Acceptable Use of Deliverables. You shall use the Deliverables only as permitted herein and in accordance with applicable laws and government regulations.

2.7 Our Employees/Contractors. You will not directly or indirectly at any time during the term of the applicable Authorization Form and for twelve (12) months thereafter, (i) induce or encourage any of our employees or contractors to leave their employment or engagement with us; or (ii) employ, attempt to employ, assist any person to employ, or retain as an employee, consultant, or contractor any of our employees or contractors or former employees or contractors, without our prior written consent.

### **3. Intellectual Property.**

3.1 License for Deliverables. During the term of the applicable Authorization Form, subject to the terms and conditions of this Agreement, and solely for your internal business purposes, we grant to you a limited, worldwide, non-exclusive, non-transferable license, without a right to sublicense, to use and display the Deliverables as set out in such Authorization Form.

3.2 Professional Services and Background IP. As between you and us, we retain all right, title, and interest in and to the Professional Services, the Deliverables, and the Background IP, and any derivative intellectual property developed as a result of this Agreement by either party. Nothing herein shall be construed to restrict, impair, encumber, alter, deprive, or adversely affect any of our rights or interests therein. We reserve all rights, title, and interest in and to the Professional Services, the Deliverables, and the Background IP not expressly granted herein.

#### **4. Additional Warranty.**

4.1 Additional Fluree Warranty. Fluree warrants that the Professional Services will be performed in a professional manner in accordance with generally accepted industry standards. For any breach of the above warranty, your exclusive remedy and our entire liability will be the re-performance of the applicable Professional Services. If we are unable to re-perform the Professional Services as warranted, your exclusive remedy will be to seek recovery of any Fees paid to us for the deficient Professional Services. You must make any claim under the foregoing warranty to us in writing within thirty (30) days of performance of such Professional Services in order to receive the foregoing remedies.