

THETA ANALYTICS TERMS OF USE

Effective Date: 9/23/2018

Welcome to the Theta Viewer Platform! Our Platform allows you to manage and analyze your online construction and blueprint data.

IF YOU AGREE WITH THESE TERMS, INDICATE YOUR AGREEMENT BY CLICKING THE "I AGREE" CHECKBOX BELOW. BY ACCESSING OR USING THE PLATFORM YOU ARE INDICATING THAT YOU HAVE READ AND UNDERSTAND THE TERMS, AND THAT YOU AGREE TO COMPLY WITH AND BE LEGALLY BOUND BY THE TERMS.

If you are accepting or agreeing to the Terms on behalf of a company or other legal entity, you represent and warrant that you have the authority to act on behalf of and bind that entity to the Terms.

IF YOU DO NOT AGREE TO THE TERMS, YOU MAY NOT ACCESS OR USE THE PLATFORM.

1. ABOUT THE TERMS

2. ABOUT THE PLATFORM

3. ACCOUNT REGISTRATION

4. FEES AND PAYMENT TERMS

5. USER CONDUCT GUIDELINES

6. ACCOUNT SUSPENSION AND CANCELLATION

7. INTELLECTUAL PROPERTY OWNERSHIP

8. THIRD PARTY TERMS

9. WARRANTIES, DISCLAIMERS, LIMITATION OF LIABILITY & INDEMNIFICATION

10. GOVERNING LAW & DISPUTE RESOLUTION

11. MISCELLANEOUS

1. ABOUT THE TERMS

1.1 Key Terms

As used in these Terms of Use:

- **"Platform"** means, individually and collectively, the Services and Website, and any software and technology used to provide any of the foregoing.
- **"Services"** means any and all construction project related data management services, and related services and promotions, provided by Theta Analytics, including support services.
"Your Content" means User Content made available or caused to be made available by you on or through the Platform.
- **"User Content"** refers to videos, text, photos, information and other content captured, recorded, streamed, stored, shared or otherwise made available or caused to be made available by users on or through the Platform.
- **"Users"** means any person or entity that accesses or uses the Platform. References to "access" and/or "use" of the Platform (and any variations thereof) include the acts of accessing or browsing the Website and accessing or using the Services.
- **"Website"** means any and all websites owned or operated by Theta Analytics (including the website currently located at www.thetaviewer.com), and any related services and promotions, through which access to the Services are available. References to the "Website" include any and all features, functionality, tools and content available on or through each such website.

- “Theta Analytics,” “we,” or “us” refer to Theta Analytics, Inc. and our officers, directors, employees, contractors and agents.

1.2 Platform Rules and Supplemental Terms

Your access to and use of the Platform is governed by the terms and conditions of these Terms of Use, our Privacy Policy, currently located at [www.thetaviewer.com/privacy]. (as described in more detail in Section 11.1 below), any and all other policies and rules referenced herein, posted on the platform, or otherwise communicated to users (the “Platform Rules”).

Certain of the features, functionality, tools, content and promotions available on or through the Platform may be subject to additional or supplemental terms and conditions (“Supplemental Terms”). If you choose to access or use those features, functionality, tools or content or participate in those promotions, the applicable Supplemental Terms are also incorporated and deemed part of these Terms of Use.

If there is a conflict between these Terms of Use and the Supplemental Terms, the Supplemental Terms will govern and control with respect to the applicable features, functionality, tools, content and promotions.

PLEASE READ THESE TERMS OF USE, OUR PRIVACY POLICY, PLATFORM RULES AND ALL APPLICABLE SUPPLEMENTAL TERMS (COLLECTIVELY, THE “TERMS”) CAREFULLY, AS THEY CONTAIN TERMS AND CONDITIONS THAT IMPACT YOUR RIGHTS, OBLIGATIONS AND REMEDIES IN CONNECTION WITH YOUR USE OF THE WEBSITE AND SERVICES. FOR EXAMPLE, THE TERMS INCLUDE:

- YOUR OBLIGATION TO COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS;
- LIMITATIONS OF OUR LIABILITY TO YOU; AND
- A REQUIREMENT THAT YOU PURSUE CLAIMS OR SEEK RELIEF AGAINST US (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS, RATHER THAN AS A PARTICIPANT IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING.

YOUR ACCESS TO AND USE OF THE WEBSITE AND SERVICES IS CONDITIONED ON YOUR ACCEPTANCE OF AND COMPLIANCE WITH THESE TERMS.

1.3 Amendment of Terms

Theta Analytics reserves the right, in its sole discretion, to amend the Terms, at any time and without prior notice, including to change, modify, add to, update or remove terms and conditions (collectively “amend” or “update”). If we choose to amend the Terms, we will update the Effective Date at the top of the Terms and post the updated version. We may also, at our option, choose to notify you by e-mail or another means. By continuing to use the Platform after we have posted an updated version of the Terms or otherwise notified you of an update, you are affirming that you agree to be bound by the amended Terms. This provision is subject to a few limitations in the “Dispute Resolution” section below. If the amended Terms are not acceptable to you, your only recourse is to stop using the Platform.

No other modification, amendment, supplement of or to the Terms will be binding on Theta Analytics unless it is in writing and signed by an authorized representative of Theta Analytics.

1.4 Consequences of Non-Compliance

Your failure to comply with the Terms may result in the suspension or termination of your account and/or access to the Platform, and may subject you to civil and criminal penalties.

2. ABOUT THE PLATFORM

2.1 License to Use

Subject to your compliance with the Terms, Theta Analytics grants you a limited non-exclusive, non-transferable, non-assignable and non-sublicensable license to access and use the Platform, for your own personal use only, and not for use for any external business purpose or commercial activity. This license is granted for the sole purpose of

enabling you to use and enjoy the benefit of the Platform as provided by Theta Analytics, in the manner permitted by the Terms.

2.2 Modifications and Updates to the Platform

Theta Analytics reserves the right, in its sole discretion, to modify or discontinue offering the Platform, in whole or in part, or any features, functionality, tools or content thereof, at any time, for any reason or no reason, with or without notice to you. We also retain the right to impose limits on your use and storage of Your Content at our sole discretion at any time without prior notice to you.

You agree that Theta Analytics has no obligation to provide any updates or to continue to provide or enable any particular features, functionality, tools or content, and will not be liable with respect to any such modifications, discontinuance or deletions.

2.3 International Users

The Platform is controlled and operated within the United States and is not intended for use outside of the United States. You are hereby prohibited from accessing or using the Platform from any territory where the Platform or any of the features, functionality, tools, content thereof, is illegal. If you choose to access the Platform from a location outside the United States, you do so at your own risk and you are solely responsible for compliance with applicable laws, rules and regulations, including export laws and any regulations and local laws regarding online conduct and content.

3. ACCOUNT REGISTRATION

3.1 Account Registration

While certain portions of the Platform are accessible without a user account, you must register for a user account before you are able to fully access and use the Platform. You may register to create an account directly via the Website.

You may not register for an account on behalf of any person (other than yourself).

No person or entity may have more than one active account at any given time.

For corporate clients, designated administrators will set up a primary account, and will designate the individuals who are eligible to sign up for subaccounts. Administrators for each client will have access to manage and view activities associated with the subaccounts registered to that client. (For simplicity, both accounts and subaccounts will be referred to hereafter as “accounts.”)

3.2 Account Set-Up

Your account and account profile page will be created based upon the information you provide to us.

You agree to provide complete, accurate and up-to-date information during the registration process and to update such information as necessary to ensure that it remains complete, accurate and up-to-date.

When you create your account, you will be asked to create a password, which you will be solely responsible for safeguarding. We encourage you to use “strong” passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with your Theta Analytics account or any other account that you may connect to your Theta Analytics account. You agree not to disclose your username or password to any third party, and you agree to immediately notify Theta Analytics of any unauthorized use of your account. You further acknowledge and agree that you will be solely responsible for any activities or actions on or through your account, whether or not you have authorized such activities or actions. Theta Analytics cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

4. FEES AND PAYMENT TERMS

4.1 Subscriptions

If you elect to access content, features or functionalities for which a charge applies, you agree to pay the applicable fee for the monthly subscription fee for your subscription level at the rates in effect when the charges are incurred, including any applicable taxes. Any change in the subscription fee will go into effect for the next billing period after we provide notice of the change.

Notwithstanding the foregoing, for enterprise customers, the initial number, pricing, and duration of subsidized subscriptions will be set forth in your Enterprise Registration Form (the "Registration Form"), as well as any set-up fee, reporting fee, or other fees to be paid, including any applicable taxes. Unless otherwise specified in the Registration Form, rates are subject to change upon the expiration of the initial term identified in the Registration Form. After the initial term, subscription, reporting and other fees will be billed at the rates in effect when the charges are incurred.

4.2 Payment/ Credit Cards

YOU ARE RESPONSIBLE FOR PROVIDING THETA ANALYTICS WITH VALID CREDIT CARD OR PAYMENT ACCOUNT DETAILS AND FOR THE TIMELY PAYMENT OF ALL FEES. Please note that the payment information, including name and contact information, that you submit when you register may be used and shared with our payment processing services provider and otherwise used in accordance with our Privacy Policy.

Theta Analytics will automatically charge the credit card or payment account associated with your account at the beginning of the billing period, and billing will recur automatically at monthly intervals until you change or terminate your account. If you wish to designate a different credit card or payment account, or if there is a change in your credit card or payment account status, you must change your information in your account. This may temporarily disrupt your access to your account while Theta Analytics verifies your new payment information. Any change in the chosen payment method will go into effect for the next billing period. Please note that the payment information, including name and contact information that you submit when you register may be used and shared with our payment processing services provider and otherwise used in accordance with our Privacy Policy.

Alternatively, if you are an employer, you may choose to pay by bank transfer to a designated Theta Analytics account or by check. In that case, Theta Analytics will invoice you in accordance with the foregoing. Payment of invoices is due within thirty (30) days, and outstanding amounts will accrue interest at the lesser of 1½% per month and the maximum rate permitted by law.

If Theta Analytics is unable to successfully charge your credit card or payment account for fees due, or invoices are not paid in full when due, we reserve the right to restrict or suspend access to your account, or terminate your account (including, any employee accounts associated with your account). If you terminate your account for any reason or if we terminate your account due to your breach, such termination will be effective immediately, and you will be immediately billed for any unbilled fees incurred prior to the effective date of termination. You will not receive a refund for any amounts you already paid for that billing period. Further, you agree to reimburse us for any collection costs and interest for any overdue amounts.

We may contact you via email regarding your account, for example, in connection with a problem with your credit card or payment account.]

4.3 Free Trial Offers

If you receive a free trial offer for a specific time period, you will not be charged during the period of the free trial, but the subscription fee will be automatically charged to the credit card associated with your account for the subsequent period the day after your free trial period has ended, in advance, in accordance with the "Subscriptions" terms stated above. Thereafter, you will be charged at monthly intervals until you decide to cancel. Please make a note of when your free trial will expire as you may not receive additional notice prior to the automatic charge if you do not cancel before the free trial period expires. Free trials are limited to one per person. If you attempt to register for a second free trial offer, Theta Analytics will automatically charge your credit card in accordance with the "Subscriptions" terms stated above. If you do not wish to pay the applicable fees for a

subscription, you should cancel your account before the free trial period ends and not complete any subsequent registration for a subscription.

5. USER CONDUCT GUIDELINES

Any time you access or use the Platform, you are required to comply with our User conduct guidelines, as set forth below.

You agree that you will access and use the Platform and Services for your personal use /internal business purposes only.

5.1 Sharing Your Content

You should only share information and content through the Platform that you are comfortable being viewed by other Users and by other persons or entities.

5.2 User Guidelines and Restrictions

You are not authorized to access or use the Platform:

- to impersonate any person or entity, or falsify or otherwise misrepresent your identity, credentials, affiliations or intentions;
- to collect, store or use any information from or about another User;
- to “stalk” or harass any other User;
- to distribute unsolicited commercial or bulk electronic communications (or, “spam”), chain letters or “pyramid” schemes;
- for political campaigning, recruiting votes or soliciting donations or other support for legislative or other initiatives;
- to systematically retrieve information or content to create or compile, directly or indirectly, in single or multiple downloads, a collection, compilation, database, directory or the like, whether by manual methods, through the use of bots, crawlers, or spiders, or otherwise;
- if you are not able to form legally binding contracts (for example, if you are under 18);
- if you are a person barred from receiving services under the laws of the United States or other applicable jurisdiction; or
- for any other purposes that are not expressly permitted by the Terms.

Further, you may not:

- access, copy, distribute, share, publish, use or store any Platform content for purposes that are inconsistent with our Privacy Policy, or otherwise violate the privacy rights or any other rights of other Users or any other third party, including by disclosing, selling, renting, distributing or exposing any Platform Content to a third party, using it for marketing purposes, or otherwise using it for any purposes unrelated to the Platform;
- access, copy, distribute, share, publish, use or store, or prepare derivative works from any Platform content that belongs to Theta Analytics, or to a third party, including works covered by any copyrights, trademark, patent, or other intellectual property right, except with prior express permission of the person or entity party holding the rights to license such use;
- transfer your account to another party without our consent;
- circumvent our systems, policies, determinations as to your account status, including by attempting to access or use the Platform if your account has been suspended or cancelled or you have otherwise been temporarily or permanently prohibited or blocked from using the Platform;

- access, search, collect information from, or otherwise interact with the Platform by “scraping,” “crawling” or “spidering” the Platform, by the use of any software, device, script or robot, or by any other means (automated or otherwise) other than through the currently available, published interfaces that are provided by Theta Analytics, unless you have been specifically authorized to do so in a separate agreement with Theta Analytics;
- use, display, mirror or frame the Platform, or any feature, functionality, tool or content of the Platform, Theta Analytics’ name, any Theta Analytics trademark, logo or other proprietary information, without Theta Analytics’ express written consent;
- interfere with, disrupt, damage or compromise the Platform or our systems or the access of any User, host or network in any way, including through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial-of-service attacks, backdoors, packet or IP spoofing, forged routing or electronic mail address information or similar methods or technology or by overloading, flooding, spamming, mail-bombing the Platform or otherwise imposing an unreasonable or disproportionately large load on the Platform;
- access, tamper with or use non-public areas of any of the Platform, Theta Analytics’ computer systems, or the technical delivery systems of Theta Analytics’ providers;
- probe, scan, or test the vulnerability of any system or network of Theta Analytics or its providers, or breach or circumvent any security or authentication measures of such system or network;
- avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by Theta Analytics or any of Theta Analytics’ providers or any other third party to protect the Platform;
- forge any TCP/IP packet header or any part of the header information in any e-mail or posting, or in any way use the Platform to send altered, deceptive or false source-identifying information;
- attempt to decipher, decompile, disassemble or reverse engineer any of the code or software used to provide the Platform;
- export or re-export the Platform, except in compliance with the export control laws and regulations of any relevant jurisdictions;
- otherwise abuse the Platform or breach the Terms; or
- attempt to do any of the foregoing, or advocate, encourage or assist any third party in doing any of the foregoing.

5.3 Responsibility for User Content

Ultimately, all User Content, whether publicly posted or privately transmitted, is the sole responsibility of the User who originated such content. We do not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, or reliability of any User Content or endorse any opinions expressed in such User Content. You understand that by using the Platform, you may be exposed to User Content that is offensive, harmful, inaccurate, misleading, fraudulent or otherwise inappropriate. Under no circumstances will Theta Analytics be liable in any way for any User Content, including, but not limited to, any errors or omissions in any User Content, or any loss or damage of any kind incurred as a result of any User Content.

We may, but are not required to monitor or control the User Content captured, recorded, uploaded, streamed, shared or stored on or through the Platform, and we cannot take responsibility for such User Content. Any use or reliance on any User Content is at your own risk.

6. ACCOUNT SUSPENSION AND CANCELLATION

You may cancel your account at any time.

We may, in our discretion, without liability to you and without limiting our other remedies, with or without prior notice and at any time, decide to (i) limit, suspend, deactivate or cancel your account and take technical and legal steps to prevent you from using our Platform and Services at any time for any reason, and (ii) screen or delay the posting or delivery of Your Content.

Theta Analytics reserves the right to suspend or terminate your account or your access to the Platform if you create more than one account, or if any information provided during the registration process or thereafter is determined to be incomplete, inaccurate, out dated, deceptive or fraudulent.

We reserve the right to cancel unconfirmed accounts or accounts that have been inactive for a prolonged period of time. We also reserve the right to cancel accounts of Users who fail to comply with the Terms, including the terms and conditions regarding User conduct, as set forth in the "General User Conduct" section above and elsewhere in the Terms.

If your account is deactivated or cancelled, Theta Analytics will have the right, but not the obligation to delete Your Content.

If Theta Analytics has suspended your account due to your actual or suspected breach of the Terms, such suspension will continue until the suspected breach is cured or otherwise resolved to Theta Analytics' reasonable satisfaction.

6.1 Policy Enforcement

When an issue arises, we reserve the right to consider such User's performance history and the specific circumstances in applying our policies, and to determine how strictly to enforce such policies in an effort to achieve a fair outcome for all parties involved.

7. INTELLECTUAL PROPERTY OWNERSHIP

7.1 The Platform

The Platform and all features, functionality, tools and content thereof, is protected by copyright, trademark, patent and other laws of the United States and foreign countries. You acknowledge and agree that the Platform and Services, and all intellectual property rights therein are the exclusive property of Theta Analytics and its licensors. You will not remove, alter or obscure any copyright, trademark, service mark, patent marking, or other proprietary rights notices incorporated in or accompanying the Platform or Services.

Without limiting the foregoing, you acknowledge and agree that the trade names, logos, and other trademarks and service marks associated with Theta Analytics (the "**Theta Analytics Marks**") are the property of Theta Analytics, and that you are not permitted to use the Theta Analytics Marks without our prior written consent.

You may not use, copy, reproduce, distribute, license, sell, transfer, publish, post, publicly display, publicly perform, transmit, broadcast, adapt, modify, prepare derivative works based upon, or otherwise exploit any features, functionality, tools or content of the Platform in any form or by any means, or sublicense the rights granted in the Terms, except as expressly permitted herein, without the prior written permission of Theta Analytics or the intellectual property owner, as applicable.

This foregoing license is subject to modification or revocation at any time at Theta Analytics' sole discretion.

No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Theta Analytics or its licensors, except for the licenses and rights expressly granted in the Terms. All rights not expressly granted to you by the Terms are hereby reserved.

7.2 Your Content

By uploading, sharing or storing Your Content, you hereby grant Theta Analytics a worldwide, non-exclusive, transferable, sublicensable, royalty-free right and license to use, copy, reproduce, process, adapt, modify,

distribute, post, broadcast, publicly perform, publish and display Your Content in any and all media as necessary to (i) provide the Services to you, including, customer support services, and (ii) otherwise operate the Platform, including for product development and de-bugging purposes, and (iii) provide, promote, and improve the Platform and Services.

You also hereby grant Theta Analytics a perpetual, irrevocable, worldwide, non-exclusive, transferable, sublicensable, royalty-free right and license to use and copy Your Content, in any and all media, solely to create aggregated and/or anonymized information ("**Aggregated Data**"), for any purposes Theta Analytics deems necessary in its sole discretion. For the avoidance of doubt, Theta Analytics shall be the sole and exclusive owner of the Aggregated Data and all derivative works thereof. To the extent Theta Analytics is not automatically deemed to be the author, inventor or owner of any Aggregated Data, you agree to and hereby do assign, transfer, grant, and convey all rights, title, and interest it may have in and/or to any Aggregated Data to Theta Analytics, and agree to execute all documents necessary to effect Theta Analytics' full ownership in and to all Aggregated Data.

Such additional uses by Theta Analytics, or other companies, organizations or individuals who partner with us, may be made with no compensation paid to you with respect to Your Content.

We may modify or adapt Your Content in order to transmit, display or distribute it over computer networks and in various media and/or make changes to Your Content as are necessary to conform and adapt that content to any requirements or limitations of any networks, devices, services or media.

Except as stated otherwise herein, Theta Analytics does not claim any ownership rights in Your Content and nothing in the Terms will be deemed to restrict any rights that you may have to use and exploit any such content, subject only to the licenses and assignments granted to Theta Analytics under these Terms.

You acknowledge and agree that you are solely responsible for Your Content, and for any consequences thereof, including the use of Your Content by other users and our third party partners.

You represent and warrant that you have all the rights, power and authority necessary to grant the rights granted herein to Your Content, and that neither Your Content, nor Theta Analytics' use of Your Content (or any portion thereof) on or through the Platform or in connection with the Services will infringe, misappropriate or violate the rights of any person or entity, including patent, copyright, trademark, trade secret, moral rights, industrial rights, database rights or other proprietary or intellectual property rights, rights of publicity or privacy or data protection or contractual rights, or result in the violation of any applicable law or regulation.

7.3 Feedback

We welcome and encourage you to provide feedback, comments, ideas and suggestions for improvements, enhancements and modifications to the Platform ("**Feedback**"). You may submit Feedback by e-mailing us, at support@thetaviewer.com. You acknowledge and agree that all Feedback you give us (i) will be treated as non-confidential, and (ii) will be the sole and exclusive property of Theta Analytics. Without limiting the foregoing, you acknowledge that your Feedback may be disseminated or used by Theta Analytics or its affiliates for any purpose whatsoever, including developing, improving and marketing products. You hereby irrevocably transfer and assign to Theta Analytics all of your right, title, and interest in and to all Feedback, including all worldwide patent, copyright, trade secret, moral and other proprietary or intellectual property rights therein, and waive any moral rights you may have in such Feedback.

You agree to sign and deliver such documents, and otherwise provide such assistance, as may reasonably be required from time to time to perfect Theta Analytics' rights in such improvements, enhancements and modifications.

8. THIRD PARTY TERMS

The Platform may provide links to third-party websites, resources or services. You acknowledge and agree that Theta Analytics is not responsible or liable for (i) the availability, terms or practices of such websites, resources or services, or (ii) the content, products or services available on or through such websites, resources or services, including that any information provided is complete, accurate or up-to-date. Links to such websites, resources or services do not imply any endorsement by Theta Analytics of such websites, resources or services or the content,

products or services available on or through such websites, resources or services. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites, resources or services or the content, products or services available on or through such websites or services.

We will not be responsible or liable for any damage or harm resulting from your interactions with such websites or services, or the content, products or services available on or through such websites or services.

9. WARRANTIES, DISCLAIMERS, LIMITATION OF LIABILITY & INDEMNIFICATION

9.1 Warranties by Users

You represent and warrant to Theta Analytics that:

- (i) you have the power and authority to accept and agree to the Terms,
- (ii) you own or control all of the rights necessary to grant the rights and licenses granted herein,
- (iii) you will not violate any federal, state or local laws, rules or regulations or infringe the rights of any third party, including, any intellectual property, privacy or publicity-related rights, in connection with Your Content or otherwise in connection with your access to or use of the Platform,
- (iv) the exercise by Theta Analytics of the rights granted by you hereunder will not cause Theta Analytics to violate any applicable laws, rules or regulations, to infringe the rights of any third party, and
- (v) all account information provided by you will be complete, accurate and up-to-date when provided, and updated as necessary to ensure that it remains complete, accurate and up-to-date.

9.2 Disclaimers

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, THETA ANALYTICS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE OR RIGHTFUL CLAIM, WARRANTIES AS TO THE RELIABILITY OR AVAILABILITY OF THE PLATFORM OR SERVICES, OR THAT USE OF THE PLATFORM WILL BE UNINTERRUPTED OR ERROR FREE, WARRANTIES AS TO THE COMPLETENESS, ACCURACY OR TIMELINESS OF ANY PLATFORM CONTENT.

9.3 Limitation of Liability

YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW:

- THE ENTIRE RISK ARISING OUT OF OR RELATING TO YOUR USE OF THE PLATFORM IS AND REMAINS WITH YOU.
- WITHOUT LIMITING THE FOREGOING, THETA ANALYTICS DISCLAIMS ANY AND ALL LIABILITY RELATED TO YOUR USE OF OR INABILITY TO USE THE PLATFORM YOU ACKNOWLEDGE AND AGREE THAT THE ACCESSING AND USING THE PLATFORM, AND SUBMITTING AND TRANSMITTING YOUR CONTENT, ARE DONE AT YOUR OWN DISCRETION AND RISK, AND YOU AND HEREBY RELEASE THETA ANALYTICS AND WAIVE ANY AND ALL CLAIMS AND CAUSES OF ACTION WITH RESPECT TO ANY DAMAGES CAUSED BY ANY OF THE FOREGOING.
- YOU ACKNOWLEDGE AND AGREE THAT THE ACCESSING AND USING THE PLATFORM, SUBMITTING AND TRANSMITTING YOUR CONTENT, COMMUNICATING OR INTERACTING WITH OTHER USERS AND ACCESSING, VIEWING OR DOWNLOADING THE USER CONTENT OF OTHER USERS ARE DONE AT YOUR OWN DISCRETION AND RISK, AND YOU AND HEREBY RELEASE THETA ANALYTICS AND WAIVE ANY AND ALL CLAIMS AND CAUSES OF ACTION WITH RESPECT TO ANY DAMAGES CAUSED BY ANY OF THE FOREGOING.
- IN NO EVENT WILL THETA ANALYTICS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR DAMAGES FOR LOST REVENUES OR PROFITS,

LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED IN WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THETA ANALYTICS HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

- CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSIVE OR LIMITATION OF CERTAIN DAMAGES AS SET FORTH IN THIS SECTION, SO THESE LIMITATIONS AND EXCLUSIONS APPLY TO YOU ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW. IN THE EVENT THAT THE FOREGOING LIMITATION OF LIABILITY IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE UNENFORCEABLE, THETA ANALYTICS' AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO ONE HUNDRED U.S. DOLLARS (US\$100).

9.4 Basis of the Bargain

YOU ACKNOWLEDGE AND AGREE THAT THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH ABOVE ARE ESSENTIAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THETA ANALYTICS AND YOU, AND WILL SURVIVE AND APPLY EVEN IF YOUR REMEDIES ARE FOUND OR ALLEGED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

9.5 Exclusions

NOTHING IN THE TERMS FURTHER IS INTENDED TO EXCLUDE OR LIMIT ANY CONDITION, WARRANTY, RIGHT OR LIABILITY WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE FROM DEATH OR PERSONAL INJURY. ACCORDINGLY, ONLY THE ABOVE LIMITATIONS IN THIS SECTION IX THAT ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU, AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT REQUIRED BY LAW.

9.6 Indemnification

To the maximum extent not prohibited by applicable law, you agree to release, defend, indemnify, and hold Theta Analytics its parent, subsidiaries, affiliates, licensors and service providers, and its and their officers, directors, shareholders, agents, employees and representatives, harmless (collectively "indemnify" or any variation thereof) from and against any claims, liabilities, damages, losses, costs and expenses, including, any bodily injury, illness, death or damage to any real or personal property, or any other injuries, losses, or damages (whether compensatory, direct, incidental, consequential or otherwise) of any kind, and including reasonable legal fees and litigation expenses and costs, arising out of or relating to or in any way connected with (i) your access to or use of the Platform, including any and all features, functionality, tools, content and promotions available on and through the Website, (ii) Your Content, (iii) your breach of the Terms, including any violation of national, federal, state or local or other applicable laws, rules or regulations or any infringement or misappropriation of the rights of any third party, and (iv) your gross negligence or willful misconduct.

9.7 Obligation to Defend

You agree that, at Theta Analytics' option, you will conduct the defense of any such claim or action; provided that, notwithstanding our election that you to conduct the defense, (i) Theta Analytics may nevertheless participate in such defense or settlement negotiations and pay its own costs associated therewith, and (ii) you will not enter into any settlement or other compromise without the prior written approval of Theta Analytics (which approval shall not be unreasonably withheld), unless such settlement or other compromise includes a full and unconditional release of the relevant parties from all liabilities and other obligations in respect of such claim or action.

9.8 No Implied Indemnity

No person or entity shall be entitled to any form of equitable or implied indemnification at any time, except as provided by the Terms.

10. GOVERNING LAW & DISPUTE RESOLUTION

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS AND WILL HAVE A SUBSTANTIAL IMPACT ON HOW CLAIMS YOU AND THETA ANALYTICS HAVE AGAINST EACH OTHER ARE RESOLVED.

10.1 Governing Law

The Terms shall be governed by and interpreted in accordance with the laws of the State of New York without regard to conflict of law principles.

10.2 Arbitration

Notwithstanding any contrary provision of these Terms, all disputes, claims, controversies and matters relating to or in connection with these Terms (or the breach thereof) or any transactions hereunder shall be settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules (“AAA Rules”), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place in the State of New York before a single neutral arbitrator appointed in accordance with the AAA Rules and shall be conducted in the English language. All arbitrations shall be conducted and resolved on an individual basis and not a class-wide, multiple plaintiff or similar basis. No arbitration shall be consolidated with any other arbitration proceeding involving any other person or entity.

10.3 Jurisdiction and Venue

Subject to the above arbitration provisions, you and Theta Analytics agree that any and all disputes, claims and actions, at law or in equity, arising out of or relating to or in connection with the Terms or the breach, termination, enforcement, interpretation or validity thereof, or to the use of the Platform (collectively, “Disputes”) in the federal or state courts located in the State of New York and each us agrees that such courts shall have exclusive jurisdiction and venue for any such actions, except that Theta Analytics retains the right to submit a Dispute to any court of competent jurisdiction. Theta Analytics also may seek injunctive or other equitable relief for breach of these Terms in any court of competent jurisdiction wherever located. You consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum. The prevailing party in any suit, action or proceeding, including any arbitration proceeding, will be entitled to recover its reasonable legal fees and costs and expenses from the other party.

10.4 Prohibition of Class and Representative Actions and Non-Individualized Relief

YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST THETA ANALYTICS ONLY ON AN INDIVIDUAL BASIS AND HEREBY WAIVE THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING, TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW. FURTHER, UNLESS BOTH YOU AND Theta Analytics OTHERWISE AGREE IN WRITING, THE COURT MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON’S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING.

10.5 Future Amendments to this Section

Both of us agree that if we make any amendment to this **Dispute Resolution** section (other than an amendment to any notice address or site link provided herein) in the future, that amendment will not apply to any claim that was filed in a legal proceeding against us prior to the effective date of the amendment. However, the amendment will apply to all other disputes or claims governed by this section that have arisen or may arise between you and Theta Analytics. We will notify you of amendments to this section by posting the amended Terms on <https://www.thetaviewer.com/terms>. If you do not agree to the amended terms, you may close your account within 30 days and you will not be bound by the amended dispute resolution terms. If you do not have an account (or once you have closed your account, if applicable), you must cease using the Platform immediately. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Theta Analytics in accordance

with the provisions of this “Dispute Resolution” section as of the date you first accepted the Terms (or accepted any subsequent changes to the Terms).

11. MISCELLANEOUS

11.1 Privacy

Our collection and use of information about Users is governed by our Privacy Policy. By accessing and using the Platform, you consent to the collection and use of this information, including the transfer of this information outside the United States and/or other countries, for storage, processing and use by Theta Analytics. As part of providing you the Platform, we may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Services, which you may not be able to opt-out from receiving.

11.2 Entire Agreement

These Terms, including these Terms of Use, our Privacy Policy, the applicable Supplemental Terms and any and all Platform Rules, constitute the entire and exclusive understanding and agreement between you and Theta Analytics regarding your access to and use of the Platform and supersede and replace any and all prior or contemporaneous oral or written understandings or agreements between you and Theta Analytics and regarding the subject matter hereof.

11.3 Assignment

You may not assign, transfer, delegate or sublicense any of your rights or obligations under the Terms, including by operation of law or merger or consolidation, without our express prior written consent, which may be granted or withheld in our sole discretion. Any attempted assignment, transfer, delegation or sublicense without the foregoing consent will be null and void. Theta Analytics may assign, transfer, delegate and/or sublicense our rights and obligations under the Terms, in whole or in part, in its sole discretion, without restriction.

Subject to the foregoing, the Terms will bind and inure to the benefit of the parties, their successors and assigns.

11.4 No Agency

Except as otherwise expressly set forth herein, no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by the Terms.

11.5 Survival of Terms

Any provisions of the Terms that contemplate performance or observance subsequent to the expiration or termination of these Terms of Use shall survive such expiration or termination.

11.6 Notices

Any notices or other communications permitted or required hereunder, including those regarding modifications to the Terms, will be in writing and given by Theta Analytics (i) via e-mail (in each case to the address that you provide), or (ii) by posting to the Website. For notices made by e-mail, the date on which such notice is transmitted will be deemed the date of receipt.

11.7 Waiver

Our failure to exercise any right or enforce any obligation under these Terms of Use or to take action with respect to a breach by you or others will not constitute a waiver of such right, obligation or breach. The waiver of any right, obligation or breach will be effective only if in writing and signed by a duly authorized representative of Theta Analytics. In addition, no waiver granted in any instance shall constitute a waiver in any other instance.

11.8 Remedies

Except as expressly set forth in the Terms, the exercise by either party of any of its remedies under the Terms will be without prejudice to its other remedies available under contract, at law, in equity or otherwise.

11.9 Severability

Except as otherwise provided in the Terms, if an arbitrator or a court of competent jurisdiction finds any provision of the Terms to be invalid, void or unenforceable, in whole or in part, for any reason, the offending provision will be enforced to the maximum extent permissible and will not affect the validity or enforceability of the remaining provisions, which will remain in full force and effect.

11.10 Headings

The headings in the Terms are for reference purposes only and do not limit or otherwise affect the meaning or interpretation of any of the provisions hereof.

11.11 Third Party Beneficiaries

Except as otherwise expressly set forth herein, the Terms do not and are not intended to confer any rights or remedies upon any person other than the parties hereto.

11.12 Construction

In the Terms, unless the context requires otherwise: (i) "herein," "hereof," "hereunder," "hereto," and similar terms refer to the Terms collectively and as a whole, and not merely to the specific section, paragraph or clause in which the term appears, (ii) "or" connotes any combination of all or any of the items listed, and (iii) "including" (and any of its derivative forms) means "including but not limited to."

11.13 Contact Us

If you have any questions or concerns, please contact Theta Analytics at support@thetaviewer.com.

You can also write to us at:

Theta Analytics, Inc.
415 Madison Avenue
New York NY 10017

11.14 California Residents

Pursuant to California Civil Code §1789.3, California residents are also entitled to the following specific consumer rights notice:

Complaints regarding the Platform or Services or requests to receive further information regarding use of the Platform or Services may be sent to the above address or to support@thetaviewer.com.

The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Boulevard, Suite N112, Sacramento, CA 95834 or by telephone at (916) 445-1245 or (800) 952-5210. Hearing impaired persons may call TDD (800)-326-2297 or TDD (916)-928-1227, see www.dca.ca.gov for additional information.

Copyright ©2018 Theta Analytics, Inc. All rights reserved.