

TERMS OF SERVICE

ethereal computing, Inc.

Effective Date: June 20, 2026

Last Updated: June 20, 2026

1. Acceptance of These Terms

1.1 **Binding agreement.** These Terms of Service (these "**Terms**") form a binding legal agreement between you ("**you**" or "**User**") and **ethereal computing, Inc.**, a Delaware corporation ("**ethereal**," the "**Company**," "**we**," "**us**," or "**our**"), governing your access to and use of our website at etherealcomputing.com and associated subdomains (the "**Site**") and any software, applications, application programming interfaces, developer tools, documentation, evaluation or beta offerings, and other online services we make available that link to or reference these Terms (together with the Site, the "**Services**").

1.2 **How you accept.** You accept these Terms by (a) clicking a button or checking a box indicating acceptance; (b) creating an account; (c) accessing or using any Services; or (d) otherwise manifesting assent. **If you do not agree, do not access or use the Services.**

1.3 **Electronic agreement.** Your electronic acceptance constitutes a valid signature and these Terms are enforceable as a signed writing, consistent with the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.) ("**E-SIGN**") and applicable state Uniform Electronic Transactions Act ("**UETA**") provisions. You consent to receive communications electronically (Section 31).

1.4 **Authority to bind an entity.** If you accept on behalf of an entity, you represent that you have authority to bind it, and "you" refers to that entity.

1.5 **Additional terms.** Certain Services may be subject to additional posted guidelines, order forms, or supplemental terms ("**Additional Terms**"), incorporated by reference. In a conflict, the Additional Terms control for the applicable Service, except as provided in Section 4.3.

2. Definitions

2.1 **"Account"** means a registered account enabling access to certain Services.

2.2 **"Beta Services"** means any alpha, beta, preview, evaluation, pre-release, or trial Services or features identified as such or not generally available.

2.3 **"Content"** means any data, text, files, code, configurations, signals, models, outputs, or other information.

2.4 **"Customer Data"** means Content submitted to or processed by the Services by or on behalf of an Enterprise Customer under a Separate Agreement.

2.5 **"Enterprise Customer"** means a User that has entered into a Separate Agreement governing its use of the Services.

2.6 **"Feedback"** means suggestions, ideas, enhancement requests, recommendations, evaluations, or other feedback regarding the Services.

2.7 **"Neurophysiological and Operator-State Data"** means (a) data generated by measuring the activity of an individual's central or peripheral nervous system (for example, electroencephalography (EEG) or functional near-infrared spectroscopy (fNIRS)); and (b) physiological, behavioral, or biometric signals and any inferences, estimates, or scores derived from them that relate to or purport to estimate an individual's cognitive, emotional, attentional, physiological, or readiness state (for example, heart-rate variability, electrodermal activity, eye or gaze tracking, or state estimates derived from voice or other signals). This definition is intentionally broad and covers both directly measured neural data and inferred operator-state data.

2.8 **"Output"** means Content generated by the Services in response to inputs.

2.9 **"Providence"** means ethereal's human-state adaptive AI governance platform and related technology.

2.10 **"Separate Agreement"** means a separate written agreement executed between you (or your organization) and ethereal governing production or operational use of Providence or other Services, including any master subscription agreement, enterprise agreement, data processing addendum, government contract, or other transaction agreement (including an agreement entered pursuant to an Other Transaction authority).

2.11 **"User Content"** means Content that you or your authorized users submit to, or generate through, the Services other than under a Separate Agreement (for example, in connection with evaluation or Beta Services).

3. Eligibility and Accounts

3.1 **Age.** The Services are intended for professional and organizational use. You must be at least eighteen (18) years old. The Services are not directed to children, and we do not knowingly collect personal information from children under 13.

3.2 **Prohibited persons.** You represent that you are not, and are not acting for, any person (a) located in, organized under the laws of, or ordinarily resident in a comprehensively U.S.-sanctioned country or territory, or (b) on any U.S. government restricted-party list, including the OFAC Specially Designated Nationals and Blocked Persons List. See Section 22.

3.3 **Registration.** Where an Account is required, you agree to provide accurate, current, and complete information and keep it updated.

3.4 **Account security.** You are responsible for safeguarding your credentials and for all activity under your Account, and must notify us promptly of any unauthorized use. We are not liable for losses arising from unauthorized use of your Account.

3.5 **Suspension.** We may suspend or terminate your Account or access under Section 27.

4. Scope of Services; Relationship to Separate Agreements

4.1 **What these Terms cover.** These Terms govern informational use of the Site and access to evaluation, beta, developer, and other generally available or pre-release Services.

4.2 **What these Terms do not cover. These Terms do not authorize, and you may not engage in, any production, operational, safety-critical, or high-consequence use of Providence or any other Service.** Such use requires a Separate Agreement allocating risk through appropriate representations, service levels, security commitments, and indemnities. Absent a Separate Agreement, the Services are made available solely for informational, developmental, and evaluation purposes.

4.3 Order of precedence. If you have a Separate Agreement covering a Service, it governs that Service and controls over any conflicting provision of these Terms with respect to that Service. Otherwise, these Terms (with any Additional Terms) govern.

4.4 No reliance for high-risk decisions. Under these Terms, the Services are not intended or authorized for use where failure or inaccuracy could lead to death, personal injury, or severe physical, environmental, or property damage. See Sections 23 and 24.

5. Beta and Pre-Release Services

5.1 As is. Beta Services are provided for evaluation only, may be unstable or incomplete, and are provided **"AS IS" and "AS AVAILABLE"** without warranties (Section 23).

5.2 Changes. We may modify, suspend, or discontinue any Beta Service at any time without notice or liability, and Beta Services may never become generally available.

5.3 Confidentiality. Beta Services and related information are our Confidential Information (Section 20) unless we state otherwise.

5.4 Feedback. Use of Beta Services may be conditioned on your provision of Feedback (Section 10).

6. License to Use the Services; Reservation of Rights

6.1 License grant. Subject to your compliance with these Terms, we grant you a limited, revocable, non-exclusive, non-transferable, non-sublicensable license to access and use the Services solely for your internal evaluation and permitted purposes.

6.2 Reservation of rights. All rights not expressly granted are reserved by ethereal and its licensors. No rights or licenses arise by implication, estoppel, or otherwise.

7. Acceptable Use; Restrictions

7.1 Prohibited conduct. You shall not, and shall not permit any third party to:

- (a) copy, modify, translate, or create derivative works of the Services except as expressly permitted;
- (b) reverse engineer, decompile, disassemble, or attempt to discover the source code, object code, structure, models, model weights, or algorithms of the Services, except to the limited extent applicable law expressly permits despite this restriction;
- (c) use the Services or any Output to develop, train, fine-tune, or improve any competing product, model, or service, including by means of **model distillation** or the **generation of synthetic or derived datasets** from Outputs;
- (d) extract, replicate, or reconstruct the Services' features, models, or functionality;
- (e) conduct benchmarking, performance testing, or competitive analysis of the Services for publication or disclosure without our prior written consent;
- (f) access the Services by automated means (scraping, crawling, bots) except through interfaces and within rate limits we expressly authorize;

- (g) circumvent, disable, or interfere with security, authentication, usage limits, or other technical protections, or probe or test the vulnerability of any system without authorization;
- (h) use the Services in violation of any law, or to infringe, misappropriate, or violate any third party's intellectual property, privacy, or other rights;
- (i) upload or transmit malware, or Content that is unlawful, harmful, defamatory, or that you lack the right to submit;
- (j) misrepresent your identity or affiliation, or impersonate any person;
- (k) remove, obscure, or alter any proprietary notices; or
- (l) resell, rent, lease, sublicense, or commercially exploit the Services except under a Separate Agreement.

7.2 Prohibited AI and surveillance uses. You shall not use the Services to:

- (a) generate or facilitate deepfakes or deceptive synthetic media intended to deceive;
- (b) create or disseminate disinformation, fraud, or unlawful manipulation;
- (c) conduct unlawful surveillance, tracking, or monitoring of any individual;
- (d) perform social scoring of individuals, or biometric categorization or emotion recognition where prohibited by applicable law (including, where applicable, prohibited practices under Article 5 of the EU AI Act, such as emotion recognition in workplace or educational settings);
- (e) develop, operate, or support autonomous weapons or weapons targeting; or
- (f) engage in any prohibited military end use or any use prohibited under applicable law.

7.3 Data restrictions for evaluation. Unless a Separate Agreement provides otherwise, you shall not submit to the Services any (a) Neurophysiological and Operator-State Data (Section 12); (b) sensitive personal information, protected health information, biometric identifiers (including information regulated by the Illinois Biometric Information Privacy Act, 740 ILCS 14), financial account information, or other regulated data; (c) classified information or controlled unclassified information; or (d) technical data or software subject to export control (Section 22).

7.4 Enforcement. We may investigate suspected violations and suspend or terminate access under Section 27. We may, but need not, monitor use of the Services.

8. User Content, Data, and Output

8.1 Ownership of your Content. As between you and ethereal, you retain all rights you hold in your User Content and Customer Data. We claim no ownership of it.

8.2 Operational license. You grant ethereal a worldwide, non-exclusive, royalty-free license to host, store, reproduce, process, transmit, and display your User Content solely as necessary to provide, maintain, secure, and support the Services and to comply with law. Use of Content for model development is governed by Section 9. Use of Customer Data is governed by the applicable Separate Agreement.

8.3 Your responsibility and representations. You are solely responsible for your User Content and Customer Data. You represent that you have all rights, consents, and authorizations necessary to submit it and to grant the license in Section 8.2, and that it does not violate these Terms or any law or third-party right.

8.4 No obligation to store. We are not a backup service and have no obligation to store or retain Content. You are responsible for maintaining your own copies.

8.5 Removal. We may remove or disable access to Content that we reasonably believe violates these Terms or law, or that creates risk or liability.

8.6 Aggregated and de-identified data. We may generate and use aggregated, anonymized, or de-identified data derived from use of the Services for any lawful purpose, provided it does not identify you or any individual.

8.7 Output ownership; no IP warranty. As between you and ethereal, and subject to your compliance with these Terms, ethereal assigns to you all of its right, title, and interest in and to the Output generated for you. This assignment does not grant you any right in the Services, the underlying models, or any output generated for any other user. You acknowledge that, due to the nature of machine learning, Output may not be unique, that identical or similar Output may be generated for other users, and that Output may not be eligible for copyright or other intellectual property protection under applicable law, including because it may lack the human authorship required for copyright. ethereal makes no representation or warranty that any Output is protectable, original, or non-infringing, and you are solely responsible for evaluating Output and securing any rights necessary before relying on or using it. Your use of Output remains subject to these Terms, including Sections 7, 12, 13, 14, and 24.

9. Use of Data for Model Development

9.1 Customer Data: default no training. ethereal will not use Customer Data to train, fine-tune, or otherwise develop or improve its foundation models or production models, except as expressly authorized in writing in a Separate Agreement.

9.2 Evaluation and Beta data. We may use User Content submitted in connection with evaluation or Beta Services to operate, secure, troubleshoot, and improve the Services, including model improvement, only to the extent disclosed in and permitted by our Privacy Policy and applicable law, and subject to the restrictions in Sections 7.3 and 12. Where we offer controls to opt in or opt out of such use, your election governs.

9.3 No reliance for prohibited data. You must not rely on this Section to submit any data prohibited under Section 7.3 or 12.

10. Feedback

You may, but are not required to, provide Feedback. **You hereby assign to ethereal all right, title, and interest in and to all Feedback, including all intellectual property rights therein.** To the extent any such assignment is not effective, you grant ethereal a perpetual, irrevocable, worldwide, royalty-free, fully paid, transferable, and sublicensable license to use, reproduce, modify, and otherwise exploit the Feedback for any purpose without restriction or compensation. Feedback is provided voluntarily and is not your Confidential Information.

11. Intellectual Property Rights

11.1 Ownership. The Services, including all software, models, documentation, designs, text, graphics, and other materials, and all intellectual property rights therein, are owned by ethereal and its licensors and protected by U.S. and international law. This includes Providence and the architecture known as Predictive Conversational Patience (PCP).

11.2 Trademarks. "ethereal computing," "Providence," and related names, logos, and marks are ethereal's trademarks. You may not use them without our prior written permission. Other marks belong to their owners.

11.3 No implied licenses. Except for the limited license in Section 6 and the Output assignment in Section 8.7, nothing grants you any right, title, or interest in the Services or our intellectual property.

12. Neurophysiological and Sensitive Data

12.1 Heightened-risk data. You acknowledge that Neurophysiological and Operator-State Data and other biometric or sensitive data are subject to heightened legal protection, including under the California Consumer Privacy Act, as amended (which treats neural data as sensitive personal information; Cal. Civ. Code § 1798.140), the Colorado Privacy Act, the Connecticut Data Privacy Act, the Illinois Biometric Information Privacy Act (740 ILCS 14), the Texas Capture or Use of Biometric Identifier Act (Tex. Bus. & Com. Code § 503.001), and other applicable state, federal, and foreign laws.

12.2 Not accepted in evaluation. The evaluation and Beta Services are not designed to receive, and you must not submit through them, any Neurophysiological and Operator-State Data or other sensitive or biometric data.

12.3 Production use requires a Separate Agreement. Any use of the Services that involves Neurophysiological and Operator-State Data requires a Separate Agreement and an accompanying data processing addendum, and requires that you (a) obtain and maintain all legally required notices, consents, and authorizations from affected individuals; (b) implement appropriate safeguards; and (c) comply with all applicable laws.

12.4 Inferences. You acknowledge that inferences, estimates, or scores about an individual's cognitive, emotional, attentional, or physiological state may themselves be regulated, regardless of whether they are derived from direct neural measurement or from other signals, and you are responsible for compliance with respect to such inferences.

13. No Medical Device; No Diagnostic Use

13.1 Not a medical device. The Services are not medical devices and are not intended to diagnose, treat, cure, mitigate, or prevent any disease or health condition.

13.2 No clinical use. The Services are not intended for clinical decision-making and are not a substitute for evaluation, advice, diagnosis, or treatment by a qualified professional. Any Output relating to fatigue, stress, attention, readiness, or cognitive or physiological state is an estimate, not a medical determination, and must not be used for any clinical or diagnostic purpose absent a Separate Agreement and any required regulatory clearance.

14. No Employment or Personnel Decisions

14.1 Not for personnel decisions. The Services and Outputs must not be used as the sole or a primary basis for any employment or personnel decision, including hiring, termination, promotion, demotion, discipline, compensation, scheduling, assignment, or performance evaluation.

14.2 Your compliance responsibility. You are solely responsible for ensuring that any use of the Services in an employment or workforce context complies with applicable law, including the Americans with Disabilities Act (including restrictions on medical examinations and inquiries under 42 U.S.C. § 12112(d)), Title VII and related anti-discrimination laws, and applicable state and local laws governing automated decision systems and the use

of AI in employment.

15. Human Oversight; No Professional Advice

15.1 Human oversight required. A qualified human must review, validate, and remain solely responsible for any decision or action informed by Outputs. The Services are intended to inform, not replace, human judgment, professional expertise, and supervisory oversight. You remain solely responsible for all decisions and actions you take based on the Services or Outputs.

15.2 No professional advice. The Services do not provide legal, medical, financial, psychological, employment, safety, or other professional advice, and Outputs do not constitute such advice.

16. Third-Party Materials, Services, and Infrastructure

16.1 Third-party materials. The Services may contain or link to third-party content, websites, or services we do not control. We do not endorse and are not responsible for them, and your use may be subject to separate third-party terms.

16.2 Third-party AI and infrastructure dependencies. Certain Services may depend on third-party artificial intelligence providers, cloud and hosting infrastructure, and hardware, sensor, or device vendors. We do not control and are not responsible for the availability, performance, changes, or outputs of such third parties, and we are not liable for any failure or interruption attributable to them.

16.3 Open source. The Services may include open-source components licensed under their own terms, which govern those components and, to the extent required, control over conflicting provisions of these Terms.

17. Fees

The Services governed by these Terms are currently provided free of charge for evaluation purposes. ethereal reserves the right to introduce fees for the Services upon at least thirty (30) days' notice. Any production or paid use of Providence or other Services is subject to the pricing and payment terms of the applicable Separate Agreement.

18. Privacy

18.1 Privacy Policy. Our handling of personal information is described in our Privacy Policy at www.etherealcomputing.com/privacy-policy, incorporated by reference.

18.2 State privacy rights. Depending on your jurisdiction, you may have rights under the California Consumer Privacy Act, as amended by the California Privacy Rights Act (Cal. Civ. Code § 1798.100 et seq.), and other state privacy laws, including rights to access, correct, delete, and opt out of certain processing, and heightened protections for sensitive personal information (including neural data). We honor recognized universal opt-out signals, such as the Global Privacy Control, where required.

18.3 Consent. By using the Services, you consent to processing of your information as described in the Privacy Policy.

19. Security

19.1 Safeguards. We implement reasonable administrative, technical, and organizational measures designed to protect the Services and the information we process against unauthorized access, use, or disclosure.

19.2 No guarantee. No method of transmission or storage is completely secure, and we do not guarantee that the Services or any information will be free from compromise.

19.3 No specific certification. These Terms do not include any representation, warranty, or commitment regarding any specific security framework, audit, or certification (such as SOC 2, FedRAMP, or NIST). Any such commitments require a Separate Agreement.

20. Confidentiality

20.1 Confidential Information. "Confidential Information" means non-public information disclosed by ethereal that is designated as confidential or that a reasonable person would understand to be confidential, including Beta Services, non-public features, pricing, and roadmaps.

20.2 Obligations. You shall use Confidential Information only to exercise your rights and perform your obligations under these Terms, protect it with at least reasonable care, and not disclose it except to personnel with a need to know who are bound by at least as protective obligations.

20.3 Exceptions. The obligations do not apply to information that is or becomes public through no fault of yours, was known to you without obligation before disclosure, is rightfully received from a third party without restriction, or is independently developed. You may disclose if legally compelled, with prompt notice where lawful and reasonable cooperation.

21. Copyright Policy (DMCA)

21.1 Notices. We respond to copyright-infringement notices consistent with the Digital Millennium Copyright Act (17 U.S.C. § 512). Notices to our Designated Agent must include the elements required by 17 U.S.C. § 512(c)(3).

21.2 Designated Agent. Copyright Agent, ethereal computing, Inc., c/o Delaware Registered Agent Service LLC, 8 The Green, Ste D, Dover, DE 19901; info@etherealcomputing.com.

21.3 Counter-notice. If your Content was removed, you may submit a counter-notice under 17 U.S.C. § 512(g).

21.4 Repeat infringers. We will, in appropriate circumstances, terminate accounts of repeat infringers, consistent with 17 U.S.C. § 512(i).

22. Export Controls, Sanctions, U.S. Government Users, and Compliance Verification

22.1 Compliance. The Services and related technical data are subject to U.S. export control and sanctions laws, including the Export Administration Regulations (15 C.F.R. Parts 730-774), the International Traffic in Arms Regulations (22 C.F.R. Parts 120-130) where applicable, and OFAC-administered regulations.

22.2 Your representations. You will not, directly or indirectly, export, re-export, transfer, or use the Services (a) to any prohibited country, region, end user, or end use; (b) to support the design, development, or production of

missiles or chemical, biological, or nuclear weapons, or other prohibited end uses; or (c) in violation of any export or sanctions law.

22.3 U.S. Government end users. The Services are "commercial products," "commercial computer software," and "commercial computer software documentation" under 48 C.F.R. § 2.101. Consistent with 48 C.F.R. § 12.212 and 48 C.F.R. §§ 227.7202-1 through 227.7202-4, U.S. Government end users acquire only the rights set forth in these Terms and any applicable Separate Agreement.

22.4 Compliance verification. We may request information reasonably necessary to verify your compliance with Sections 7 and 22, and you agree to provide it promptly.

23. Disclaimer of Warranties

23.1 AS IS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND.

23.2 Disclaimer. ETHEREAL AND ITS LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE. This disclaimer is intended to be conspicuous and to exclude and modify implied warranties under Uniform Commercial Code § 2-316 and analogous law.

23.3 No warranty of results. WE DO NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SERVICES OR ANY OUTPUTS WILL BE ACCURATE, COMPLETE, OR RELIABLE.

23.4 Probabilistic outputs. YOU ACKNOWLEDGE THAT THE SERVICES MAY GENERATE PROBABILISTIC OR ESTIMATED OUTPUTS, INCLUDING ESTIMATES OF HUMAN STATE, THAT CAN BE INACCURATE OR INCOMPLETE. SUCH OUTPUTS ARE NOT A SUBSTITUTE FOR INDEPENDENT JUDGMENT OR HUMAN OVERSIGHT (SECTION 15), AND YOU ARE SOLELY RESPONSIBLE FOR EVALUATING AND VERIFYING THEM BEFORE RELYING ON THEM.

23.5 Beta. BETA SERVICES ARE PROVIDED WITHOUT ANY WARRANTY AND MAY BE WITHDRAWN AT ANY TIME.

23.6 Jurisdictional limits. Some jurisdictions do not allow the exclusion of certain warranties, so some exclusions may not apply to you; in that case, such warranties are limited to the minimum scope and duration permitted by law.

24. Assumption of Risk; No High-Risk Use

24.1 Not for high-risk use. THE SERVICES MADE AVAILABLE UNDER THESE TERMS ARE NOT DESIGNED, INTENDED, OR AUTHORIZED FOR USE IN ANY HAZARDOUS OR SAFETY-CRITICAL ENVIRONMENT, OR IN ANY APPLICATION WHERE FAILURE OR INACCURACY COULD RESULT IN DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, ENVIRONMENTAL, OR PROPERTY DAMAGE. Any such use requires a Separate Agreement with terms appropriate to the risk.

24.2 Assumption of risk. To the maximum extent permitted by law, you assume all risk arising from your access to and use of the Services in the absence of a Separate Agreement.

25. Limitation of Liability

25.1 Exclusion of certain damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL ETHEREAL OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, OR LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR FOR ANY LOSS OF PROFITS, REVENUE, DATA, GOODWILL, OR BUSINESS, ARISING OUT OF OR RELATED TO THESE TERMS OR THE SERVICES, UNDER ANY THEORY, AND WHETHER OR NOT ADVISED OF THE POSSIBILITY. This reflects the parties' allocation of risk under Uniform Commercial Code § 2-719.

25.2 Specific exclusions. WITHOUT LIMITING THE FOREGOING AND SUBJECT TO SECTION 25.5, ETHEREAL WILL HAVE NO LIABILITY FOR ANY CLAIMS, LOSSES, OR DAMAGES ARISING OUT OF OR RELATING TO (A) ALGORITHMIC BIAS, DISCRIMINATION, OR DISPARATE IMPACT RESULTING FROM YOUR USE OF THE SERVICES OR OUTPUTS; (B) YOUR FAILURE TO OBTAIN LEGALLY REQUIRED CONSENTS FOR THE COLLECTION OR PROCESSING OF NEUROPHYSIOLOGICAL, BIOMETRIC, OR SENSITIVE DATA; OR (C) FAILURES, OUTAGES, DEPRECATIONS, OR MATERIAL CHANGES OF THIRD-PARTY ARTIFICIAL INTELLIGENCE MODELS, CLOUD INFRASTRUCTURE, OR HARDWARE ON WHICH THE SERVICES RELY.

25.3 Aggregate cap. TO THE MAXIMUM EXTENT PERMITTED BY LAW, OUR TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OR THE SERVICES WILL NOT EXCEED THE GREATER OF (A) THE TOTAL AMOUNTS YOU PAID US FOR THE APPLICABLE SERVICES IN THE TWELVE (12) MONTHS BEFORE THE EVENT GIVING RISE TO THE CLAIM, OR (B) ONE HUNDRED U.S. DOLLARS (\$100).

25.4 Essential purpose. The limitations apply notwithstanding the failure of essential purpose of any limited remedy.

25.5 Exceptions and jurisdictional limits. Nothing in these Terms limits or excludes liability that cannot be limited or excluded by law, including, where applicable, liability for gross negligence, fraud, willful misconduct, or death or personal injury caused by negligence. (For example, California Civil Code § 1668 prohibits contracts that exempt a party from responsibility for fraud, willful injury, or violation of law.) Some jurisdictions do not allow certain limitations, so portions of this Section may not apply to you; in that case, our liability is limited to the minimum extent permitted by law.

26. Indemnification

26.1 Your indemnity. You will defend, indemnify, and hold harmless ethereal and its affiliates, officers, directors, employees, and agents from and against any claims, demands, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees and costs incurred in responding to subpoenas or other legal process) arising out of or related to: (a) your access to or use of the Services; (b) your User Content or Customer Data; (c) your submission of any data prohibited by Section 7.3 or 12, including any claim under the Illinois Biometric Information Privacy Act (740 ILCS 14), the Texas Capture or Use of Biometric Identifier Act (Tex. Bus. & Com. Code § 503.001), the California Consumer Privacy Act, or any other privacy or biometric law arising from your failure to obtain legally required consents; (d) your use of the Services in any medical, employment, or high-risk context in violation of Sections 13, 14, or 24; (e) your breach of these Terms or any applicable law; or (f) your violation of any third-party right.

26.2 Procedure. We will provide notice of the claim, reasonable cooperation (at your expense), and may participate with our own counsel. You will not settle any claim imposing obligations or admissions on us without our prior written consent.

26.3 Legal process costs. If ethereal or its personnel are compelled to respond to a subpoena, discovery request, or other legal process in a third-party proceeding arising out of or related to your use of the Services, you will reimburse ethereal for its reasonable costs of responding, including reasonable attorneys' fees and reasonable charges for personnel time. This Section does not apply to the extent the proceeding arises from ethereal's own breach or where reimbursement is prohibited by law.

27. Term, Suspension, and Termination

27.1 Term. These Terms apply while you access or use the Services and survive as provided in Section 27.4.

27.2 Termination and suspension. We may suspend or terminate your access, with or without notice, if we reasonably believe you have violated these Terms, your use poses a security or legal risk, or as required by law. You may stop using the Services at any time.

27.3 Effect. Upon termination, your license under Section 6 ends and you must cease using the Services and, if requested, return or destroy our Confidential Information.

27.4 Survival. Sections 2, 4.4, 6.2, 7, 8.3-8.7, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27.3-27.4, 28, 29, and 31-34 survive termination.

28. Dispute Resolution; Binding Arbitration; Class Action Waiver

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO BRING A LAWSUIT IN COURT AND TO HAVE A JURY TRIAL, AND REQUIRES INDIVIDUAL ARBITRATION OF MOST DISPUTES.

28.1 Informal resolution first. Before initiating arbitration, the parties will attempt in good faith to resolve any dispute through a written notice describing the dispute and relief sought, and will negotiate for at least sixty (60) days. This does not toll any limitations period.

28.2 Agreement to arbitrate. Except for the carve-outs in Section 28.5, you and ethereal agree that any dispute arising out of or relating to these Terms or the Services will be resolved by **binding individual arbitration**, administered by **JAMS** under its then-current rules. This arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.).

28.3 Arbitrability and procedure. The arbitrator has exclusive authority to resolve disputes about the interpretation, applicability, enforceability, or formation of this arbitration agreement, except that a court decides whether the Class Action Waiver in Section 28.4 is enforceable. Arbitration will be conducted in Santa Clara County, California, or, at your election, by video, telephone, or written submissions where permitted.

28.4 Class action and jury trial waiver. THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL. ALL CLAIMS MUST BE BROUGHT INDIVIDUALLY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE, OR REPRESENTATIVE PROCEEDING. The arbitrator may not consolidate more than one person's claims or preside over any class or representative proceeding.

28.5 Carve-outs; irreparable harm. Either party may bring an individual claim in small-claims court if it qualifies. You acknowledge that any breach of Section 7 (Acceptable Use; Restrictions) or Section 11 (Intellectual Property Rights), or any unauthorized use or disclosure of Confidential Information, would cause ethereal irreparable harm for which monetary damages would be inadequate. Accordingly, ethereal may seek immediate injunctive or other equitable relief in any court of competent jurisdiction to prevent or stop such conduct, without the necessity of posting a bond, in addition to any other remedies available at law, and seeking such relief will not waive the agreement to arbitrate other matters.

28.6 Coordinated or mass arbitration. If twenty-five (25) or more similar demands are filed by or with the assistance of the same or coordinated counsel, the demands will be administered in sequential batches of fifty (50) to promote efficiency, with the limitations period tolled for unfiled demands, as further specified by the administrator's mass-arbitration or supplementary rules where available.

28.7 Right to opt out. You may opt out of this Section 28 by written notice to info@etherealcomputing.com within thirty (30) days after first accepting these Terms. If you opt out, Section 29 governs disputes in court.

28.8 Severability. If the Class Action Waiver is found unenforceable as to a claim or request for relief, that claim or request will be severed and adjudicated in court under Section 29 while the remaining claims proceed in arbitration. If any other provision of this Section is found unenforceable, it will be severed and the remainder will continue.

28.9 Confidentiality. The arbitration and outcome will be kept confidential except as necessary to enforce the award or as required by law.

29. Governing Law and Venue

29.1 Governing law. These Terms are governed by the laws of the State of Delaware, without regard to conflict-of-laws principles; the Federal Arbitration Act governs the arbitration agreement in Section 28. Nothing in this Section deprives you of the protection of mandatory consumer-protection provisions of the law of your place of residence that cannot be waived by agreement.

29.2 Venue for non-arbitrable matters. For any dispute not subject to arbitration, the parties consent to the exclusive jurisdiction and venue of the state and federal courts located in Santa Clara County, California.

29.3 **CISG excluded.** The United Nations Convention on Contracts for the International Sale of Goods does not apply.

30. Changes to the Services and to These Terms

30.1 **Services; changes in law.** We may modify, suspend, or discontinue any part of the Services at any time. If a change in applicable law or regulation materially affects our ability to provide the Services, we may modify, suspend, or discontinue the affected Services as reasonably necessary to comply. For Services governed solely by these Terms, we will not be liable for any such change.

30.2 **Terms.** We may update these Terms. We will post the updated Terms with a new "Last Updated" date and, for material changes, provide reasonable notice. Changes are effective when posted unless otherwise stated. **Your continued use after the effective date constitutes acceptance.** If you do not agree, stop using the Services.

31. Notices and Electronic Communications

31.1 **To you.** We may provide notices by email, by posting on the Site, or through the Services. You consent to receive communications electronically, and agree that electronic communications satisfy any requirement that a communication be in writing.

31.2 **To us.** Legal notices to ethereal must be sent to ethereal computing, Inc., c/o Delaware Registered Agent Service LLC, 8 The Green, Ste D, Dover, DE 19901, and to info@etherealcomputing.com.

32. Assignment

You may not assign or transfer these Terms or any rights or obligations without our prior written consent, and any attempted assignment in violation is void. We may assign without restriction, including in a merger, acquisition, reorganization, or sale of assets. These Terms bind and benefit the parties and their permitted successors and assigns.

33. Force Majeure and Upstream Failures

ethereal will not be liable for any failure or delay in performance caused by events beyond its reasonable control, including acts of God, natural disasters, war, terrorism, civil unrest, labor disputes, governmental action, internet or telecommunications failures, denial-of-service attacks, or third-party service outages, including outages, deprecations, or material changes to third-party artificial intelligence models, cloud infrastructure, or hardware platforms on which the Services rely.

34. General Provisions

34.1 **Entire agreement.** These Terms, with any Additional Terms, the Privacy Policy, and any applicable Separate Agreement, constitute the entire agreement regarding the Services and supersede prior understandings.

34.2 **Severability.** If any provision is held unenforceable, it will be modified to the minimum extent necessary or severed, and the remaining provisions remain in force.

34.3 **No waiver.** Failure to enforce any provision is not a waiver. A waiver is effective only in a writing signed by an authorized representative.

34.4 **No third-party beneficiaries.** These Terms create no third-party beneficiary rights, except that ethereal's affiliates and licensors are intended beneficiaries of Sections 23, 25, and 26.

34.5 **Relationship.** The parties are independent contractors. No partnership, joint venture, agency, or employment relationship is created.

34.6 **Interpretation.** Headings are for convenience only. "Including" means "including without limitation."

34.7 **California consumer notice.** Under California Civil Code § 1789.3, California residents may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800) 952-5210.

34.8 **Contact.** Questions about these Terms may be sent to info@etherealcomputing.com.

35. Contact Information

ethereal computing, Inc.

c/o Delaware Registered Agent Service LLC, 8 The Green, Ste D, Dover, DE 19901

info@etherealcomputing.com