

RHITHM TERMS OF SERVICE
VERSION 2.0
LAST REVISED ON: FEBRUARY 15, 2020

Welcome to Rhithm. Before using Rhithm’s website (<https://rhithm.app/>), software, products, mobile application(s), and services (together, the “**Services**”, “**our Services**”, or “**Rhithm’s Services**”), it is important that you carefully read the following agreement. The website located at <https://rhithm.app/> (the “**Site**”) is a copyrighted work belonging to Rhithm, Inc. (“**Rhithm**”, “**us**”, “**our**”, and “**we**”). Certain features of the Services may be subject to additional guidelines, terms, or rules, which will be posted as appropriate in connection with such features. All such additional terms, guidelines, and rules are incorporated by reference into these Terms of Service.

THESE TERMS OF SERVICE (THE “**TERMS**”) ALONG WITH OUR PRIVACY POLICY SET FORTH THE LEGALLY BINDING TERMS AND CONDITIONS THAT GOVERN YOUR USE OF RHITHM’S SERVICES. BY USING THE SERVICES, YOU ARE ACCEPTING THESE TERMS (ON BEHALF OF YOURSELF OR ANY ENTITY THAT YOU REPRESENT), AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ENTER INTO THESE TERMS (ON BEHALF OF YOURSELF OR THE ENTITY THAT YOU REPRESENT). YOU MAY NOT USE THE SERVICES OR ACCEPT THE TERMS IF YOU ARE NOT AT LEAST 13 YEARS OLD UNLESS YOUR PARENT OR SCHOOL HAVE PROVIDED THE NECESSARY CONSENT. IF YOU DO NOT AGREE WITH ALL OF THE PROVISIONS OF THESE TERMS, DO NOT USE THE SERVICES.

THESE TERMS REQUIRE THE USE OF ARBITRATION (SECTION 10.3) ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

1. ACCOUNTS

1.1 Account Creation. In order to use certain features of Rhithm’s Services, you must login to an account registered through your school or school district (“**Account**”) and you may be required to provide certain information about yourself as prompted during login. You represent and warrant that: (a) all required registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information. You may delete your Account with the approval of your school or school district by contacting the relevant person in your school or school district. We may suspend or terminate your Account in accordance with Section 8.

1.2 Account Responsibilities. You are responsible for maintaining the confidentiality of your Account login information and are fully responsible for all activities that occur under your Account. You agree to immediately notify us of any unauthorized use, or suspected unauthorized use of your Account or any other breach of security. Rhithm cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

2. FERPA AND CALIFORNIA AB 1584.

2.1 Regarding FERPA and California AB 1584 (Buchanan) Privacy of Pupil Records: 3rd-Party Digital Storage & Education Software (Education Code section 49073.1), Rhithm will abide to the following:

(a) Student records obtained by Rhithm from an educational institution continue to be the property of and under the control of the educational institution. The educational institution retains full ownership rights to the personal information and education records it provides to Rhithm.

(b) Rhithm users may retain possession and control of their own generated content by Rhithm.

(c) Rhithm will not use any information in a student record for any purpose other than those required or specifically permitted by the Rhithm Terms of Use and Privacy Policy.

(d) *Parents, legal guardians, or eligible students may review personally identifiable information in the student's records and correct erroneous information by contacting their educational institution. Additionally, Rhithm users may access, correct, update, or delete personal information in their profile by signing into Rhithm, accessing their Rhithm account, and making the appropriate changes.*

(e) *Rhithm is committed to maintaining the security and confidentiality of student records. Towards this end, we take the following actions: (a) we limit employee access to student data to only those employees with a need to such access to fulfill their job responsibilities; (b) we conduct background checks on our employees that may have access to student data; (c) we conduct regular employee privacy and data security training and education; and (e) we protect personal information with technical, contractual, administrative, and physical security safeguards in order to protect against unauthorized access, release or use.*

(f) *In the event of an unauthorized disclosure of a student's records, Rhithm will (1) promptly notify Users unless specifically directed not to provide such notification by law enforcement officials. Notification shall identify: (i) the date and nature of the unauthorized use or disclosure; (ii) the Private Data used or disclosed; (iii) general description of what occurred including who made the unauthorized use or received the unauthorized disclosure; (iv) what Rhithm has done or shall do to mitigate any effect of the unauthorized use or disclosure; (v) what corrective action Rhithm has taken or shall take to prevent future similar unauthorized use or disclosure; and (vi) who at Rhithm the User can contact. Rhithm will keep the User fully informed until the incident is resolved.*

(g) *Rhithm will delete or de-identify personal information when it is no longer needed, upon expiration or termination of our agreement with an educational institution with any deletion or de-identification to be completed according to the terms of our agreement with the educational institution, or at the direction or request of the educational institution.*

(h) *Rhithm agrees to work with educational institution to ensure compliance with FERPA and the Parties will ensure compliance by providing parents, legal guardians or eligible students with the ability to inspect and review student records and to correct any inaccuracies therein as described in statement (4) above.*

(i) *Rhithm prohibits using personally identifiable information in student records to engage in targeted advertising.*

3. ACCESS TO THE SITE

3.1 License. Subject to these Terms, Rhithm grants you a non-transferable, non-exclusive, revocable, limited license to use and access the Services solely for your own personal, noncommercial use.

3.2 Certain Restrictions. The rights granted to you in these Terms are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Services, whether in whole or in part, or any content displayed on the Services; (b) you shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Site or Services; (c) you shall not access the Services in order to build a similar or competitive website, product, or service; and (d) except as expressly stated herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means. Unless otherwise indicated, any future release, update, or other addition to functionality of the Services shall be subject to these Terms. All copyright and other proprietary notices on the Services (or on any content displayed on any Service) must be retained on all copies thereof.

3.3 Modification. We reserve the right, at any time, to modify, suspend, or discontinue the Services (in whole or in part) with or without notice to you. You agree that Rhithm will not be liable to you or to any third party for any modification, suspension, or discontinuation of the Services or any part thereof.

3.4 No Support or Maintenance. You acknowledge and agree that we will have no obligation to provide you with any support or maintenance in connection with the Services. However, and without any obligation whatsoever, we will try to use commercially reasonable methods designed to ensure that the Services are free of material errors. If you have support or maintenance questions, you can contact us at support@rhithm.app.

3.5 Ownership. Excluding any User Content that you may provide (defined below), you acknowledge that all the intellectual property rights, including copyrights, patents, trademarks, and trade secrets, in the Services and their content are owned by Rhithm or our suppliers. Neither these Terms (nor your use of the Services) transfers to you or any third party any rights, title or interest in or to such intellectual property rights, except for the limited access rights expressly set forth in Section 3.1. Rhithm and its suppliers reserve all rights not granted in these Terms. There are no implied licenses granted under these Terms.

3.6 Compliance with Law. You are responsible for using the Services in compliance with all applicable federal and state laws and regulations. You shall not use the Services in violation of any applicable law.

3.7 Use by Children Under 13. The Children’s Online Privacy Protection Act (“COPPA”) requires that all online service providers, including Rhithm, obtain parental consent before knowingly collecting personally identifiable information from children under the age of 13. We do not knowingly collect or solicit any personally identifiable information from children under the age of 13, except with the appropriate consent as set out below. Children under the age of 13 are prohibited from using the Services or creating an Account unless they are doing so with parental consent or with the consent of a teacher, school, or district who is providing such consent in compliance with COPPA. If we learn that we have collected personal information from a person under the age of 13 that does not comply with COPPA, we will delete that information as soon as reasonably practicable. If you believe that a child under the age of 13 has provided personally identifiable information to us without the necessary consent, please contact us as soon as possible at team@rhithm.app.

3.8 Photo and Video Release. Adult users (including teachers, administrators, and similar professionals) are solely responsible for obtaining any necessary or appropriate parental consent or release to use photo and/or video of students

3.9 Accessibility. Rhithm is committed to taking reasonable steps to ensure that the Services are as accessible as possible to all individuals, regardless of disability. If you have any suggestions about improvements we can make to enhance the accessibility of the Services, please contact us at team@rhithm.app.

4. USER CONTENT

4.1 User Content. “User Content” means any and all information and content that a user submits to, or uses with, the Services (e.g., content in the user’s profile or postings). You are solely responsible for your User Content. You assume all risks associated with use of your User Content, including any reliance on its accuracy, completeness or usefulness by others, or any disclosure of your User Content that personally identifies you or any third party. You hereby represent and warrant that your User Content does not violate our Acceptable Use Policy (defined in Section 4.3). You may not represent or imply to others that your User Content is in any way provided, sponsored or endorsed by Rhithm. Because you alone are responsible for your User Content, you may expose yourself to liability if, for example, your User Content violates the Acceptable Use Policy. We are not obligated to backup any User Content, and your User Content may be deleted at any time without prior notice. You are solely responsible for creating and maintaining your own backup copies of your User Content if you desire. For users of the Rhithm App™ whose education institution have entered into a customer agreement with Rhithm, Inc: The Services may allow You to track and gather a range of data and information regarding Your employees, agents, independent contractors, and students (“User Data”). **You shall retain all title to and ownership of and all proprietary rights with respect to User Data**, and shall be solely responsible for its use thereof. You are also responsible for securing and backing up Your User Data. You hereby grants **Rhithm** a worldwide, royalty-free, and non-exclusive license to access and use User Data for the **sole purpose of enabling Rhithm to provide the Services**, and for the limited purposes set forth in Rhithm’s Privacy Policy.

4.2 License. You hereby grant (and you represent and warrant that you have the right to grant) to Rhithm an irrevocable, nonexclusive, royalty-free and fully paid, worldwide license to, to the extent permissible by applicable law, reproduce, distribute, publicly display and perform, prepare derivative works of, incorporate into other works, and otherwise use your User Content, and to grant sublicenses of the foregoing rights, solely for the purposes of including your User Content in the Services. You hereby irrevocably waive (and agree to cause to be waived) any claims and assertions of moral rights or attribution with respect to your User Content. For users of the Rhithm App™ whose education institution have entered into a customer agreement with Rhithm, Inc: Parties agree that all rights,

including all intellectual property rights, with respect to User Content shall **remain the exclusive property of the School/District**, and Provider has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in the Agreement. The Agreement does not give Provider any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Agreement. This includes the right to sell or trade Data

4.3 Acceptable Use Policy. The following terms constitute our “**Acceptable Use Policy**”:

(a) You agree not to use the Services to collect, upload, transmit, display, or distribute any User Content (i) that violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) that is unlawful, harassing, abusive, tortious, threatening, harmful, invasive of another’s privacy, vulgar, defamatory, false, intentionally misleading, trade libelous, pornographic, obscene, patently offensive, promotes racism, bigotry, hatred, or physical harm of any kind against any group or individual or is otherwise objectionable; (iii) that is harmful to minors in any way; or (iv) that is in violation of any law, regulation, or obligations or restrictions imposed by any third party.

(b) In addition, you agree not to: (i) upload, transmit, or distribute to or through the Services any computer viruses, worms, or any software intended to damage or alter a computer system or data; (ii) send through the Services unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (iii) use the Services to harvest, collect, gather or assemble information or data regarding other users, including e-mail addresses, without their consent; (iv) interfere with, disrupt, or create an undue burden on servers or networks connected to the Services, or violate the regulations, policies or procedures of such networks; (v) attempt to gain unauthorized access to our Services (or to other computer systems or networks connected to or used together with the Services), whether through password mining or any other means; (vi) harass or interfere with any other user’s use and enjoyment of the Services; or (vi) use software or automated agents or scripts to produce multiple accounts on the Services, or to generate automated searches, requests, or queries to (or to strip, scrape, or mine data from) our Services (provided, however, that we conditionally grant to the operators of public search engines revocable permission to use spiders to copy materials from the Services for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials, subject to the parameters set forth in our robots.txt file).

4.4 Enforcement. We reserve the right (but have no obligation) to review any User Content, and to investigate and/or take appropriate action against you in our sole discretion if you violate the Acceptable Use Policy or any other provision of these Terms or otherwise create liability for us or any other person. Such action may include removing or modifying your User Content, terminating your Account in accordance with Section 9, and/or reporting you to law enforcement authorities.

4.5 Feedback. If you provide us with any feedback or suggestions regarding the Services (“**Feedback**”), you hereby assign to Rhithm all rights in such Feedback and agree that we shall have the right to use such Feedback and related information as appropriate in compliance with applicable law. You agree that you will not submit Feedback to us containing any information or ideas that you consider to be confidential or proprietary.

4.6 Your Data. Rhithm is subject to certain laws and regulations, some of which are described below. Please visit our Privacy Policy for more information on how we collect, use, and safeguard “Data.”

(a) Rhithm seeks to comply with all applicable federal and state student privacy laws and regulations, including the Family Educational Rights and Privacy Act (“**FERPA**”). We will provide access to personal information of students and children only to our employees and subcontractors who reasonably need to access the data for us to provide the Services to you.

4.7 Limited Contact; No Advertising. Through your use of the Services, we may contact you via email to send you information about the Services including, without limitation, about changes to these Terms or our Privacy Policy, new features, and other information helpful or appropriate to the use of the Services. Rhithm will never contact via text message or by phone. Rhithm contacts will never request personal information such as social

security numbers, credit card numbers, or other personal information. Rhithm will never contact you to advertise to you or for other commercial purposes.

5. INDEMNIFICATION. You agree to indemnify and hold Rhithm (and its officers, employees, and agents) harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of (a) your use of the Services, (b) your violation of these Terms, (c) your violation of applicable laws or regulations or (d) your User Content. We reserve the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. You agree not to settle any matter without the prior written consent of Rhithm. We will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

6. THIRD-PARTY LINKS; OTHER USERS

6.1 Third-Party Links. The Services may contain links to third-party websites and services (collectively, "**Third-Party Links**"). Such links are only visible to adult (teacher and administrator) users and not to children and not intended for advertising or marketing purposes. Such Third-Party Links are not under the control of Rhithm, and we are not responsible for any Third-Party Links. We provide access to these Third-Party Links only as a convenience to you, and do not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Links. You use all Third-Party Links at your own risk, and should apply a suitable level of caution and discretion in doing so. When you click on any of the Third-Party Links, the applicable third party's terms and policies apply, including the third party's privacy and data gathering practices. You should make whatever investigation you feel necessary or appropriate before proceeding with any transaction in connection with such Third-Party Links.

6.2 Other Users. Each Service user is solely responsible for any and all of its own User Content. Because we do not control User Content, you acknowledge and agree that we are not responsible for any User Content, whether provided by you or by others. We make no guarantees regarding the accuracy, currency, suitability, or quality of any User Content. Your interactions with other Service users are solely between you and such users. You agree that we will not be responsible for any loss or damage incurred as the result of any such interactions. If there is a dispute between you and any Service user, we are under no obligation to become involved.

6.3 Release. You hereby release and forever discharge Rhithm (and our officers, employees, agents, successors, and assigns) from, and hereby waive and relinquish, each and every past, present and future dispute, claim, controversy, demand, right, obligation, liability, action and cause of action of every kind and nature (including personal injuries, death, and property damage), that has arisen or arises directly or indirectly out of, or that relates directly or indirectly to, the Services (including any interactions with, or act or omission of, other Service users or any Third-Party Links & Ads). IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, WHICH STATES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

7. DISCLAIMERS

THE SITE AND THE SERVICES ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS, AND RHITHM (AND OUR SUPPLIERS) EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. WE (AND OUR SUPPLIERS) MAKE NO WARRANTY THAT THE SITE WILL MEET YOUR REQUIREMENTS, WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS, OR WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE, COMPLETE, LEGAL, OR SAFE. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SERVICES, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF FIRST USE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

8. LIMITATION ON LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL RHITHM (OR OUR SUPPLIERS) BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THESE TERMS OR YOUR USE OF, OR INABILITY TO USE, THE SERVICES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF, THE SERVICES IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR COMPUTER SYSTEM, OR LOSS OF DATA RESULTING THEREFROM.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO THE GREATER OF THE AMOUNT PAID BY YOU DURING THE TWELVE MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM AROSE OR FIFTY US DOLLARS (U.S. \$50). THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT. YOU AGREE THAT OUR SUPPLIERS WILL HAVE NO LIABILITY OF ANY KIND ARISING FROM OR RELATING TO THIS AGREEMENT.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

9. TERM AND TERMINATION.

9.1 Termination; Effect of Termination. Subject to this Section, these Terms will remain in full force and effect while you use the Services. We may suspend or terminate your rights to use the Services (including your Account) at any time for any reason at our sole discretion, including for any use of the Services in violation of these Terms. Upon termination of your rights under these Terms, your Account and right to access and use the Services will terminate immediately. You understand that any termination of your Account may involve deletion of your User Content associated with your Account from our live databases. Rhithm will not have any liability whatsoever to you for any termination of your rights under these Terms, including for termination of your Account or deletion of your User Content. Even after your rights under these Terms are terminated, the following provisions of these Terms will remain in effect: Sections 3.2 through 3.5, Section 3.7 and Sections 4 through 10.

9.2 Deletion of Sensitive Information. Upon termination of your Account, you may request that we delete personal information from our live databases by making your request through your school and we agree to take commercially reasonable steps to honor such request in a reasonable amount of time not to exceed ninety (90) days. You understand and agree that we may continue to have Sensitive Information in archive files or similar databases. You further agree that we have no obligation to delete aggregated or de-identified information. We may retain and use aggregated and de-identified information for any purpose that is consistent with applicable federal and state laws and regulations.

10. COPYRIGHT POLICY.

Rhithm respects the intellectual property of others and asks that users of our Services do the same. In connection with our Services, we have adopted and implemented a policy respecting copyright law that provides for the removal of any infringing materials and for the termination, in appropriate circumstances, of users of our Services who are repeat infringers of intellectual property rights, including copyrights. If you believe that one of our users is, through the use of our Services, unlawfully infringing the copyright(s) in a work, and wish to have the allegedly infringing material

removed, the following information in the form of a written notification (pursuant to 17 U.S.C. § 512(c)) must be provided to our designated Copyright Agent:

1. your physical or electronic signature;
2. identification of the copyrighted work(s) that you claim to have been infringed;
3. identification of the material on our services that you claim is infringing and that you request us to remove;
4. sufficient information to permit us to locate such material;
5. your address, telephone number, and e-mail address;
6. a statement that you have a good faith belief that use of the objectionable material is not authorized by the copyright owner, its agent, or under the law; and
7. a statement that the information in the notification is accurate, and under penalty of perjury, that you are either the owner of the copyright that has allegedly been infringed or that you are authorized to act on behalf of the copyright owner.

Please note that, pursuant to 17 U.S.C. § 512(f), any misrepresentation of material fact (falsities) in a written notification automatically subjects the complaining party to liability for any damages, costs and attorney's fees incurred by us in connection with the written notification and allegation of copyright infringement.

The designated Copyright Agent for Rhithm is:

Designated Agent: Josh Knutson

Address of Agent: P.O. Box 1811 Denton, TX 76202

Telephone: 940.268.1029

Email: josh.p.knutson@gmail.com

11. GENERAL

11.1 Fees. The Services are currently free to end users. Rhithm reserves the right to change the fees at any time. If Rhithm decides to change fees for end users you will receive at least thirty (30) days notice of the change.

11.2 Changes. These Terms are subject to occasional revision, and if we make any substantial changes, we may notify you by sending you an e-mail to the last e-mail address you provided to us (if any), and/or by prominently posting notice of the changes on our Site. You are responsible for providing us with your most current e-mail address. In the event that the last e-mail address that you have provided us is not valid, or for any reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice. Any changes to these Terms will be effective upon the earlier of thirty (30) calendar days following our dispatch of an e-mail notice to you (if applicable) or thirty (30) calendar days following our posting of notice of the changes on our Site. These changes will be effective immediately for new users of our Services. Continued use of our Services following notice of such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes.

11.3 Dispute Resolution; Mandatory Arbitration. *Please read this Arbitration Agreement carefully. It is part of your contract with Rhithm and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.*

(a) Applicability of Arbitration Agreement. All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with the Terms or the use of any product or service provided by Rhithm that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement. Unless otherwise agreed to, all arbitration proceedings shall be held in English. This Arbitration Agreement applies to you and us, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or goods provided under the Terms.

(b) Notice Requirement and Informal Dispute Resolution. Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute (“**Notice**”) describing the nature and basis of the claim or dispute, and the requested relief. A Notice to Rhithm should be sent to: P.O. Box 1811

Denton, TX 76202. After the Notice is received, you and Rhithm may attempt to resolve the claim or dispute informally. If you and Rhithm do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

(c) *Arbitration Rules.* Arbitration shall be initiated through the American Arbitration Association (“AAA”), an established alternative dispute resolution provider (“ADR Provider”) that offers arbitration as set forth in this section. If AAA is not available to arbitrate, the parties shall agree to select an alternative ADR Provider. The rules of the ADR Provider shall govern all aspects of the arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with the Terms. The AAA Consumer Arbitration Rules (“Arbitration Rules”) governing the arbitration are available online at www.adr.org or by calling the AAA at 1-800-778-7879. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in a location within 100 miles of your residence, unless you reside outside of the United States, and unless the parties agree otherwise. If you reside outside of the U.S., the arbitrator shall give the parties reasonable notice of the date, time and place of any oral hearings. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. If the arbitrator grants you an award that is greater than the last settlement offer that we made to you prior to the initiation of arbitration, Rhithm will pay you the greater of the award or \$2,500.00. Each party shall bear its own costs (including attorney’s fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the ADR Provider.

(d) *Additional Rules for Non-Appearance Based Arbitration.* If non-appearance based arbitration is elected, the arbitration shall be conducted by telephone, online and/or based solely on written submissions; the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise agreed by the parties.

(e) *Time Limits.* If you or Rhithm pursue arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the AAA Rules for the pertinent claim.

(f) *Authority of Arbitrator.* If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of you and Rhithm, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the AAA Rules, and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and Rhithm.

(g) *Waiver of Jury Trial.* THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and Rhithm in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND RHITHM WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

(h) *Waiver of Class or Consolidated Actions.* ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE CUSTOMER OR

USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER.

(i) *Confidentiality.* All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent a party from submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

(j) *Severability.* If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.

(k) *Right to Waive.* Any or all of the rights and limitations set forth in this Arbitration Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of this Arbitration Agreement.

(l) *Survival of Agreement.* This Arbitration Agreement will survive the termination of your relationship with Rhithm.

(m) *Small Claims Court.* Notwithstanding the foregoing, either you or Rhithm may bring an individual action in small claims court.

(n) *Emergency Equitable Relief.* Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

(o) *Claims Not Subject to Arbitration.* Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark or trade secrets shall not be subject to this Arbitration Agreement.

(p) *Courts.* In any circumstances where the foregoing Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within Dallas, Texas for such purpose

11.4 Export. The Services may be subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Rhithm, or any products utilizing such data, in violation of the United States export laws or regulations.

11.5 Disclosures. If you are a California resident, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Product of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

11.6 Electronic Communications. The communications between you and Rhithm use electronic means, whether you use the Site or send us emails, or whether we post notices on the Services or communicates with you via email. For contractual purposes, you (a) consent to receive communications from us in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications would satisfy if it were be in a hardcopy writing. The foregoing does not affect your non-waivable rights.

11.7 Entire Terms. These Terms constitute the entire agreement between you and us regarding the use of the Services. Our failure to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual

effect. The word “including” means “including without limitation”. Neither party is an employee, agent or partner of the other.

11.8 Severability. If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

11.9 Assignment. These Terms, and your rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by you without Rhithm’s prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. We may freely assign these Terms. The terms and conditions set forth in these Terms shall be binding upon assignees.

11.10 Copyright/Trademark Information. Copyright © 2020 Rhithm. All rights reserved. All trademarks, logos and service marks (“Marks”) displayed on the Site are our property or the property of other third parties. You are not permitted to use these Marks without our prior written consent or the consent of such third party which may own the Marks.

11.11 Contact Information:

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