**ACORN, INC. TERMS OF SERVICE**

1. **INTRODUCTION**

Welcome to Acorn.io (“Acorn”). Your use of Acorn’s software, website, cloud computing platform, APIs, and all other software or services offered by Acorn (the “Services”), is governed by these terms of service (the “Terms”). These Terms apply to all visitors, Users, and others who access or purchase the Services. For the purposes of these Terms, “we,” “our,” “us,” and “Acorn” refer to Acorn, Inc.

By purchasing and/or using the Services you agree to these Terms. You do so on behalf of yourself if you are purchasing or using the Services for your own personal use. If you are using or purchasing on behalf of an organization, you represent and warrant you have the authority to bind such organization to these Terms. “You”, “you” and “your” will also refer to that organization, wherever applicable.

“Authorized User” or “User” means: (i) you, the legal entity entering into this agreement, (ii) you, in the case of an individual accepting this Agreement on such individual’s own behalf; or (iii) an employee or authorized third-party of, who has been authorized by you to use the Services in accordance with the terms and conditions of this Agreement and has been allocated user credentials.

You must be over 18 years of age to use the Services, and children under the age of 18 cannot use, purchase or register for the Services.

We are constantly trying to improve the Services, so these Terms may need to change along with the Services. We reserve the right to change the Terms at any time, but if we do, we will place a notice on our website located at https://www.acorn.io/, send you an email, and/or notify you by some other means.

If you don’t agree with the new Terms, you are free to reject them; unfortunately, that means you will no longer be able to use the Services. If you use the Services in any way after a change to the Terms is effective, that means you agree to all of the changes.

1. **SUBSCRIPTIONS TO THE SERVICE**
	1. Right to Access and Use. Subject to and conditioned on you, and your Users' compliance with the terms and conditions of this Agreement, Acorn hereby grants you a non-exclusive, non-transferable right to access and use the Services and Documentation for your internal business use during the Term, solely by Authorized Users in accordance with the terms and conditions herein. The total number of Authorized Users will not exceed the number set forth in your Order.
	2. Subscriptions. You may add additional Subscriptions during a Subscription Term at the current list prices then offered by Acorn. You may not reduce your Subscriptions during a Subscription Term. Each Subscription refers to an individual Authorized User. You may reassign a Subscription to a different User. Added Subscriptions will be co-terminated with existing subscriptions and fees for added Subscriptions pro-rated.
	3. Restrictions and Remedies
		1. Restrictions. For the purposes of this section Services will include any Sandbox. You will not: (i) resell, sublicense, rent, loan, lease, time share or otherwise make the Services available to any party not authorized to use the Services under the Agreement or an applicable Order; (ii) modify, adapt, alter, translate, copy, or create derivative works based on the Services; (iii) reverse-engineer, decompile, disassemble, or attempt to derive the source code for the Services (unless such right is granted by applicable law and then only to the minimum extent required by law); (iv) access the Services in order to: (a) build a competitive product or service; or (b) copy any ideas, features, functions or graphics of the Services; (v) merge or use the Services with any software or hardware for which they were not intended (as described in the Documentation); (vi) allow Users to share access credentials; (vii) use the Services for unlawful purposes or to store unlawful material; (viii) use the Services to send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, or agents; (ix) disrupt the integrity or performance of the Services; (x) remove, alter, or obscure in any way the proprietary rights notices (including copyright, patent, and trademark notices and symbols) of Acorn or its suppliers contained on or within any copies of the Services, (xi) bypass any security measure or access control measure of the Services, (k) use the Services other than as described in the Documentation, (xii) use the Services in a way that degrades, interrupts, or impairs the overall performance of the Services, or (xiii) perform or disclose any benchmarking or testing of the Services itself or of the security environment or associated infrastructure without Acorn’s prior written consent.
		2. Acorn Remedies. Acorn may, directly or indirectly, or any other lawful means, suspend, terminate, or otherwise deny your, any User's, or any other Person's access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (i) we receive a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires we do so; or (ii) we believe, in our sole discretion, that: (a) you or any User has failed to comply with any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement; (b) you or any User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (c) this Agreement expires or is terminated. This section 2.3.2 does not limit any of our other rights or remedies, whether at law, in equity, or under this Agreement.
	4. Sandbox. Acorn may invite you to use a trial or free instance of Services for limited evaluation or testing purposes (a “Sandbox”). You are under no obligation to use a Sandbox. Sandboxes will be clearly designated. Sandboxes are: (i) for evaluation purposes only and not for production use, (ii) are not considered a “Services” under the Agreement, and (iii) are provided “as-is” without warranty, and notwithstanding Section 10, Acorn will have no liability for any claim arising from your (or your Affiliates’) or your User’s use of a Sandbox. Acorn may discontinue a Sandbox at any time for any reason.
	5. Control and Changes.
		1. **Control**. We retain sole control over the operation, provision, maintenance, and management of the Provider Materials. You are responsible for the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Provider Materials by any Person by or through the Customer Systems or any other means controlled by you or any Authorized User.
		2. **Changes**. We may change the Services and Provider Materials in our sole discretion if we consider it useful or necessary to do so.
2. **YOUR OBLIGATIONS.**
	1. Your Systems and Cooperation. You shall: (i) set up, maintain, and operate in good repair all Customer Systems on or through which the Services are accessed or used, and (c) provide all cooperation and assistance as Acorn may request to enable allow us to exercise our rights and perform our obligations under and in connection with this Agreement.
	2. Effect of Your Failure or Delay. Acorn is not responsible or liable for any delay or failure of performance, caused in whole or in part, by your delay, or failure, in performing any of your obligations under this Agreement (each, a "Customer Failure").
	3. Corrective Action and Notice. If you become aware of any actual or threatened activity prohibited by Section 2.3.1, you shall, and shall cause your Users to, immediately: (i) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (ii) notify Acorn of any such actual or threatened activity.
	4. Your Responsibilities. You will: (i) use commercially reasonable efforts to prevent, and remain responsible for Users’ and Affiliate’s compliance with the Agreement and will promptly notify us of any unauthorized access to the Services arising from a compromise or misuse of your or your User’s access credentials, (ii) use the Services only in accordance with the Documentation, applicable laws, and government regulations, (iii) remain responsible for any action in violation of the Agreement by you, your Affiliates, and/or Users, (iv) remain responsible for determining what inputs, commands, and data you submit to the Service.
3. **FEES**
	1. Fees. You will pay the amounts indicated on your Order (the “Fees”).
	2. Taxes. All Fees are exclusive of taxes and similar assessments. You are responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable hereunder, other than any taxes imposed on Acorn's income.
	3. Late Payment. If you fail to make any payment when due then, in addition to all other remedies that may be available: (i) we may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law, (ii) you will reimburse us for all costs incurred in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees, and (iii) if such failure continues for 10 days following written notice thereof, we may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to you or any other Person by reason of such suspension.
	4. No Deductions or Setoffs. All amounts payable under the Agreement shall be paid without any setoff.
	5. Fee Increases. We may increase Fees at any time.
4. **PAYMENT METHOD**
	1. Payment Method. Acorn uses Stripe to process your payment of Fees. The processing of payments is subject to Stripe’s terms and conditions found here: https://stripe.com/us/checkout/legal and their privacy policy found here: https://stripe.com/us/privacy. We are not responsible for any error by, or other acts or omissions of Stripe or any other payment processor we select in the future. You authorize us to charge you through the method of payment you selected when completing your Order.
	2. Current Information Required. You must provide current, complete and accurate billing information and promptly notify us or our payment processor if your payment method is canceled (e.g., for loss or theft), or if you become aware of a potential breach of security, such as the unauthorized disclosure or use of your user name or password.
	3. Auto-Renewal for Paid Services. Any Services you have signed up for will be automatically extended for successive renewal periods of the same duration as the subscription term originally selected, at the then-current non-promotional rate. To change or terminate your Services at any time, go to account settings. If you terminate the Service, you may use your subscription until the end of your then-current term, and your subscription will not be renewed after your then-current term expires. However, you will not be eligible for a prorated refund of any portion of the subscription fee paid for the then-current subscription period. IF YOU DO NOT WANT TO CONTINUE TO BE CHARGED ON A RECURRING MONTHLY BASIS, YOU MUST CANCEL THE APPLICABLE SERVICE THROUGH YOUR ACCOUNT SETTINGS OR TERMINATE YOUR ACORN ACCOUNT BEFORE THE END OF THE RECURRING TERM. SERVICES CANNOT BE TERMINATED BEFORE THE END OF THE PERIOD FOR WHICH YOU HAVE ALREADY PAID, AND EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, ACORN WILL NOT REFUND ANY FEES THAT YOU HAVE ALREADY PAID.
	4. Recurring Billing. Some of the Services may consist of an initial period, for which there is a one-time charge, followed by recurring period charges as agreed to by you. You will pay all recurring charges until your Subscription terminates. WE MAY SUBMIT PERIODIC CHARGES (E.G., MONTHLY) WITHOUT FURTHER AUTHORIZATION FROM YOU, UNTIL YOU PROVIDE PRIOR NOTICE (RECEIPT OF WHICH IS CONFIRMED BY US) THAT YOU HAVE TERMINATED THIS AUTHORIZATION OR WISH TO CHANGE YOUR PAYMENT METHOD. SUCH NOTICE WILL NOT AFFECT CHARGES SUBMITTED BEFORE WE REASONABLY COULD ACT. TO TERMINATE YOUR AUTHORIZATION OR CHANGE YOUR PAYMENT METHOD, GO TO ACCOUNT SETTINGS.
	5. Reaffirmation of Authorization. Your non-termination or continued use of the Services reaffirms that we are authorized to charge your payment method for that Service. We may submit those charges for payment and you will pay such charges. This does not waive our right to seek payment directly from you. Your charges may be payable in advance, in arrears, per usage, or as otherwise described in an Order.
5. **INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP**
	1. Reservations of Rights. Access to the Service is sold on a subscription basis. Except for the limited rights expressly granted to you hereunder, Acorn reserves all rights, title, and interest in and to the Service, the underlying software, the Provider Materials and any and all improvements (including any arising from your feedback), modifications and updates thereto, including without limitation all related intellectual property rights inherent therein. No rights are granted to you hereunder other than as expressly set forth in this Agreement. Nothing in this Agreement will impair Acorn’s right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with, any products, software or technologies that you may develop, produce, market, or distribute.
	2. Ownership and Processing of Customer Data. You and/or your licensors retain all right, title and interest in all Customer Data stored in the Service, including any revisions, updates or other changes made to that Customer Data. You grant Acorn a nonexclusive, worldwide, royalty-free right to reproduce, display, adapt, modify, transmit, distribute and otherwise use the Customer Data: (i) solely for the purpose of providing the Services under this Agreement; (ii) to prevent or address technical or security issues and resolve support requests; and (iii) as otherwise required by applicable law.
	3. Use of Aggregate Information. Acorn may collect, anonymize, and aggregate data derived from the operation of the Services (“Aggregated Data”), and Acorn may use such Aggregated Data for purposes of operating Acorn’s business, monitoring performance of the Services, and/or improving the Services. Aggregated Data is the property of Acorn.
	4. Ownership of Deliverables. With respect to any deliverables or work product (“Deliverables”) resulting from any of the professional services, Acorn owns all right title and interest in and to the intellectual property rights pertaining to such Deliverables and grants you a non-exclusive, worldwide right and license to use such Deliverable in connection with your permitted use of the Services.
	5. Feedback. You grant Acorn a non-exclusive, royalty-free, fully paid up, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, ideas, enhancement requests, feedback, recommendations or other information you (or Users) provide relating to the features, functionality or operation of the Services (“Feedback”).
	6. Open-Source Software. Your use of any software programs accompanied by a separate license agreement is governed by that separate license agreement. If you do not agree to abide by the applicable license terms for the third party software, you may not install and/or use it.
6. **WARRANTIES AND DISCLAIMER**
	1. Customer Warranties. You represent and warrant that: (i) you have the right to provide Acorn with access to all Customer Data, and (ii) you will at all times comply with the restrictions in Section 2.3.1.
	2. Disclaimer of Warranty. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE SERVICES, PROFESSIONAL SERVICES AND DOCUMENTATION ARE PROVIDED “AS IS” WITHOUT OTHER WARRANTY OF ANY KIND, AND ACORN MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SERVICE AND PROFESSIONAL SERVICES. ACORN SPECIFICALLY AND EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, THOSE ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. FURTHER, ACORN DOES NOT WARRANT THE SERVICES WILL BE ERROR-FREE OR THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED. THE SERVICES AND MATERIALS ARE NOT DESIGNED, INTENDED OR WARRANTED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS.
7. **INDEMNIFICATION**
	1. Indemnity. To the fullest extent allowed by applicable law, you agree to indemnify and hold the Acorn harmless from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys’ fees) arising from or in any way related to any claims relating to: (i) your use of the Services (including any actions taken by a third party using your account), (ii) your violation of the Agreement, (iii) allegation of facts that, if true, would constitute your breach of any of your representations, warranties, covenants, or obligations under this Agreement, (iv) negligence or more culpable acts or omissions (including recklessness or willful misconduct) by you, any User, or any third party on your behalf or any User, in connection with this Agreement. In the event of such a claim, suit, or action (“Claim”), we will attempt to provide notice of the Claim to the contact information we have for your account (provided that failure to deliver such notice shall not eliminate or reduce your indemnification obligations hereunder).
8. **LIMITATION OF LIABILITY AND DISCLAIMER OF DAMAGES.**
	1. DISCLAIMER OF INDIRECT DAMAGES. IN NO EVENT WILL ACORN OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (ii) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES; (iii) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (iv) COST OF REPLACEMENT GOODS OR SERVICES; (v) LOSS OF GOODWILL OR REPUTATION; OR (vi) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE
	2. CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF ACORN, ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED ONE THOUSAND DOLLARS ($1,000). THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
9. **TERM AND TERMINATION**
	1. Initial Term. The initial term of this Agreement begins on the day your purchase via an Order or use of Services and will continue until terminated as provided hereunder (the "Initial Term").
	2. Renewal Term. The Agreement automatically renews unless terminated pursuant to the Agreement.
	3. Termination. In addition to any other express termination right set forth elsewhere in this Agreement Acorn may terminate this Agreement, effective on written notice (email being sufficient) to you if: (i) you fail to pay any amount when due hereunder, and such failure continues more than ten (10) calendar days after notice; (ii) you breach any of your obligations under the agreement, or (iii) for any reason, or no reason, at Acorn’s convenience. In the event Acorn terminates your Subscription for convenience it will provide you a prorated refund of any pre-paid but unused Fees as of the date of termination.
	4. Effect of Termination. Upon any expiration or termination of this Agreement: (i) all Subscriptions, rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate and you will immediately terminate your use of the Services; (ii) we may disable all you and your Users access to the Provider Materials, and (iii) if you requests in writing at least ten (10) days prior to the effective date of expiration or termination we will deliver to you the then most recent version of Customer Data maintained in the Services provided that you have at that time paid all Fees then outstanding and any amounts payable after or as a result of such expiration or termination, including any expenses and fees, on a time and materials basis, for incurred by us in transferring such Customer Data.
	5. Survival. Any term which by its nature should survive the termination of the agreement shall so survive.
10. **MISCELLANEOUS**
	1. Assignment. You may not assign, delegate or transfer these this Agreement or your rights or obligations hereunder, or your Services account, in any way (by operation of law or otherwise) without our prior written consent. We may assign the Agreement, or transfer, or delegate these our rights and obligations without consent.
	2. Compliance with Applicable Laws. You will comply with all applicable laws, including without limitation, applicable export-control restrictions, data privacy laws, and anti-corruption laws.
	3. Future Features and Functions. You agree Acorn may, from time to time, at its sole discretion, modify and update the Services. You understand and agree that any features or functions related to Acorn products referenced on any Acorn website, or in any presentations, verbal or electronic communications, press releases or public statements, which are not currently available as a GA release, may not be delivered on time or at all. The development, release, and timing of any features or functionality described for our products and services remains at Acorn's sole discretion. Accordingly, you agree that you are purchasing products and services based solely upon features and functions that are currently available as of the time of purchase, and not in expectation of any future feature or function.
	4. Notices. Notices may be sent by first-class, registered mail (return receipt requested) or private courier to Acorn at: 19925 Stevens Creek Blvd, Suite 100, Cupertino, CA 95014, with a copy to: Legal@acorn.io. Notice to you will be given via email to the email provided in association with your purchase of your Subscription or associated with your account. Either party may from time to time change its address for notices under this section upon written notice to the other party.
	5. Non-waiver. Any failure of either party to enforce performance by the other party of any of the provisions of this Agreement, or to exercise any rights or remedies under this Agreement, will not be construed as a waiver of such party's right to assert or rely upon such provision, right or remedy in that or any other instance. Neither party waives any rights or limits its remedies for actions taken outside the scope of this Agreement.
	6. Dispute Resolution. This Agreement will be governed by the laws of the State of California, U.S.A., without giving effect to any conflicts of laws provisions. Neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act will apply to this Agreement. Any claim, suit, action or proceeding arising out of or relating to this Agreement or its subject matter will be brought exclusively in the state or federal courts of San Francisco County, California, and each party irrevocably submits to the exclusive jurisdiction and venue of such courts. No claim or action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the earlier of the following: a) the expiration or termination of all Subscriptions, b) the termination of this Agreement, or c) the time a party first became aware, or reasonably should have been aware, of the basis for the claim. To the fullest extent permitted, each party waives the right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.
	7. Severability. If any provision of this Agreement is held invalid or unenforceable under applicable law by a court of competent jurisdiction, it shall be replaced with the valid provision that most closely reflects the intent of the parties, and the remaining provisions of the Agreement will remain in full force and effect.
	8. Relationship of the Parties. Nothing in this Agreement is to be construed as creating an agency, partnership, or joint venture relationship between the parties hereto. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect. Each party may identify the other as a customer or supplier, as applicable.
	9. Force Majeure. Force majeure events shall excuse the affected party (the "Non-Performing Party") from its obligations under this Agreement so long as the event and its effects continue. Force majeure events include acts which are beyond the reasonable control of a party, including without limitation, Acts of God, natural disasters, pandemic, epidemic, war, riot, network attacks, acts of terrorism, fire, explosion, accident, sabotage, strikes, inability to obtain power, fuel, material or labor, or acts of any government (each, a “Force Majeure Event”). As soon as feasible, the Non-Performing Party shall notify the other party of: (a) its best reasonable assessment of the nature and duration of the Force Majeure Event, and (b) the steps it is taking to mitigate its effects. If the Force Majeure Event prevents performance for more than sixty (60) days, and the parties have not agreed upon a revised basis for performance, then either party may immediately terminate the Agreement upon written notice. Acorn’s suspension of the Services in order to comply with laws is a Force Majeure Event.
	10. U.S. Government Restricted Rights. If the Services is used by the U.S. Government, parties agree the Services is “commercial computer software” and “commercial computer documentation” developed exclusively at private expense, and (a) if acquired by or on behalf of a civilian agency, shall be subject solely to the terms of this Agreement as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; and (b) if acquired by or on behalf of units of the Department of Defense (“DOD”) shall be subject to the terms of this commercial computer software license as specified in 48 C.F.R. 227.7202-2, DOD FAR Supplement and its successors.
	11. Publicity. During the term of this Agreement, you agree to support Acorn’s marketing efforts in the following areas: (i) your name and logo may be used on Acorn’s website and in Acorn’s marketing materials (subject to Acorn’s compliance with any written trademark use guidelines provided by you to Acorn in advance), (ii) press release announcing your selection of Acorn and/or the Service, and (iii) announcement of your use of Acorn (in a method of your choosing; blog, press release, email, other channels). If you plans to submit or publish any research relative to your outcome of using Acorn products and/or the Services, you agrees to inform Acorn prior to such submission or publication.
	12. Entire Agreement; Execution. This Agreement, together with the applicable Order(s) constitute the entire agreement between parties, and supersedes all prior or contemporaneous proposals, quotes, negotiations, discussions, or agreements, whether written or oral, between the parties regarding its subject matter. Revisions to this Agreement may be made by Acorn by notifying you as described in Section 1, no other method of changing this agreement will apply unless it is signed by Acorn. However, if you agreed to these terms by reference in another binding instrument (e.g., on an Order which refers to these terms by URL), Acorn may change these terms by posting an updated version at the applicable URL and notifying you of the change pursuant to Section 1. By continuing to access or use the Services after such notice you agrees to be bound by the updated terms. Your click-through terms, preprinted terms in your purchase orders or other of your ordering documents, or terms referenced or linked within them, will have no effect on this Agreement and are hereby rejected, regardless of whether they are signed by Acorn and/or purport to take precedence over this Agreement. The order of precedence among all documents executed among the parties shall be: (1) the applicable Order, (2) this Agreement, (3) the Documentation.

**Appendix 1
(Definitions)**

**“Affiliate”** means, with respect to a party to this Agreement, any entity that directly or indirectly controls, is controlled by, or is under common control with such party through the possession of more than fifty percent (50%) of the voting stock of the controlled entity.

**“Authorized User” or “User”** means: (a) in the case of an individual accepting this Agreement on such individual’s own behalf, such individual; or (b) your employee or authorized third-party who has been authorized by you to use the Services in accordance with the terms and conditions of this Agreement and has been allocated user credentials.

**“Customer Data”** means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly, from you or a User by or through the Services. For the avoidance of doubt, Customer Data does not include Resultant Data or any other information reflecting the access or use of the Services by or on your behalf or any User.

"**Customer Systems**" means your information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by you or through the use of third-party services.

**“Documentation”** means Acorn’s published user manual that describes the functionality of the Services, as updated by Acorn from time to time.

**“Order”** means the purchasing document (however so named), whether on-line, clickthrough, or signed by a duly authorized representative of each party, that details the Subscription, pricing, payment terms, and additional information such as (but not limited to): (i) applicable licensing metrics, (ii) other applicable commercial terms and condition, and includes its attachments, schedules, exhibits, addenda, and any terms and conditions and other products and services purchased by you from Acorn pursuant to this Agreement.

**“Party”** means either Customer or Acorn and together the “Parties”.

**“Professional Services”** means training services, implementation services, or other services you agree to purchase as described in a fully executed statement of work or Order.

"**Provider Materials**" means the Services, Documentation, and Provider Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Acorn or any subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials include Resultant Data and any information, data, or other content derived from Acorn's monitoring of your access to or use of the Services, but do not include Customer Data.

"**Provider Systems**" means the information technology infrastructure used by or on behalf of Acorn in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Acorn or through the use of third-party services.

"**Resultant Data**" means data and information related to your use of the Services that is used by Acorn in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

"**Subscription**" means access to the Services during the Subscription Term. Each Subscription is specific to a unique User and under no circumstance may a User Subscription be transferred to, shared among or used by different Authorized Users.

**“Subscription Term(s)”** means the subscription period(s) during which Customer is authorized to use the Services, as specified in an applicable Services Order.