



## Terms of Service

Last Modified: October 20, 2015

Welcome to the website and/or web application of Environmental Data Systems LLC dba Wastebits (“We,” “Us” or “Our”), an online service for managing wastes and other post-manufacturing materials, activities and information. These Terms of Service, together with any documents they expressly incorporate by reference (collectively, this “Agreement”), govern Your access to and use of the Services and the Content.

Please read this Agreement carefully before You start to use the Services and the Content.

BY USING THE SERVICES OR THE CONTENT OR BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR AGREEMENT TO THIS AGREEMENT WHEN THIS OPTION IS MADE AVAILABLE TO YOU OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH COMPANY OR OTHER LEGAL ENTITY AND ITS AFFILIATES TO THIS AGREEMENT, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH COMPANY OR OTHER LEGAL ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST NOT ACCEPT OR AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND MAY NOT ACCESS OR USE THE SERVICES OR THE CONTENT.

We reserve the right to change this Agreement at any time and from time to time in Our sole discretion, effective immediately upon the posting of a modified Agreement to wastebits.com (the “Website”), which will apply to all access to and use of the Services and the Content thereafter. Your continued access to and use of the Services or the Content following such posting means that You accept and agree to the changes. It is likely that this Agreement will change over time. It is Your obligation to check the Website frequently so that You are aware of any changes as they are binding on You.

You may not access or use the Services or the Content if You are Our direct competitor or intend to directly compete with Us, except with Our prior written consent. In addition, You may not access or use the Services or

the Content for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement is effective between You and Us as of the date that You accept and agree to the terms and conditions of this Agreement.

## 1. DEFINITIONS

In addition to the capitalized terms defined elsewhere in this Agreement, the following capitalized terms have the following meanings:

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the subject entity, whether through the ownership of voting securities, by contract or otherwise.

"Approval" means any form of acceptance issued by a waste facility or other facility that receives or manages wastes or other post-manufacturing materials to a waste generating entity or authorized agent of a waste generating entity to receive or otherwise manage a specific waste or other post-manufactured material. Approval is inclusive of "Renewal" and "Recertification" as these terms apply to waste management and refer to when an Approval is about to expire (e.g., due to outdated analytical or exceeded volume or time constraints) and a renewal or recertification is issued by the receiving facility to continue the Approval so that the specific waste or other post-manufactured material may continue to be received or managed.

"Beta Services" means Our services that are not generally available to customers.

"Content" means information obtained by Us from Our content licensors or publicly available sources and provided to You pursuant to an Order Form, as more fully described in the Documentation.

"Documentation" means Our online user guides, documentation, and help and training materials, as updated at any time and from time to time in Our sole discretion, accessible via the Website or the Services, all of which are hereby incorporated into this Agreement by reference and are legally binding.

"Location" means a single, specific place of business or location to which one or any multiplicity of Users conduct business under or through, and for which You (or We at Your request) have created and verified a Location identification. Locations are uniquely identified by legal entity name and/or postal or physical address

and may include, for example, waste generation sites, manufacturing plants, service centers, waste disposal facilities, waste transfer station, recycling centers, and other parties which You use to transact business or with which You transact business.

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“Marketplace” means an online directory, catalog or marketplace of applications that interoperate with the Services, including, for example, those that may be listed on the Website.

“Non-Wastebits Applications” means a web-based or offline software application that is provided by You or a third party and interoperates with a Service, including, for example, an application that is developed by or for You or is listed on a Marketplace.

“Order Form” means an ordering document specifying the Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto, all of which are hereby incorporated into this Agreement by reference and are legally binding. By entering into an Order Form hereunder, Your Affiliates agree to be bound by the terms and conditions of this Agreement as if they were an original party hereto.

“Purchased Services” means Services that are used or purchased by You or Your Affiliates under an Order Form, as distinguished from those provided pursuant to a free trial.

“Services” means the products and services that are used or ordered by You or Your Affiliates under a free trial or an Order Form and made available online by Us, including associated offline components, as described in the Documentation. “Services” exclude Content and Non-Wastebits Applications.

“User” means an individual who is authorized by You to use a Service, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors, agents, vendors and third parties with which You transact business.

“You” or “Your” means you or the company or other legal entity for which you are accepting and agreeing to the terms and conditions of this Agreement and Affiliates of that company or other legal entity.

“Your Data” means electronic data and information submitted by You or for You to the Purchased Services or collected and processed by You or for You using the Purchased Services, excluding Content and Non-Wastebits Applications.

## 2. FREE TRIAL

If You register on the Website for a free trial, pilot account or demo (collectively, "free trial"), We may make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which You registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by You for such Service(s). Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are hereby incorporated into this Agreement by reference and are legally binding. We will have no liability for any harm or damage arising out of or in connection with any Services provided on a trial basis free of charge.

ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR FREE TRIAL MAY BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASE UPGRADED SERVICES, OR EXPORT SUCH DATA BEFORE THE END OF THE TRIAL PERIOD. YOU CANNOT TRANSFER DATA ENTERED OR CUSTOMIZATIONS MADE DURING THE FREE TRIAL TO A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL (E.G., FROM ENTERPRISE EDITION TO BASIC EDITION); THEREFORE, IF YOU PURCHASE A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, YOU MUST EXPORT YOUR DATA BEFORE THE END OF THE TRIAL PERIOD OR YOUR DATA WILL BE PERMANENTLY LOST.

NOTWITHSTANDING SECTION 9 (REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS) OR ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, DURING THE FREE TRIAL, THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY REPRESENTATION OR WARRANTY.

Please review the Documentation during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.

## 3. OUR RESPONSIBILITIES

3.1. Provision of Purchased Services and Content. We will (a) make the Services and Content available to You pursuant to this Agreement (including the applicable Order Forms), (b) provide Our standard support for the Purchased Services to You at no additional charge and/or upgraded support if purchased, and (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week,

except for: (i) planned downtime (of which We shall strive to give at least 8 hours electronic notice and which We shall schedule to the extent practicable during the weekend hours between 6:00 p.m. Friday and 6:00 a.m. Monday Eastern time), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, Non-Wastebits Application, or denial of service attack.

3.2. Protection of Your Data. We will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 8.3 (Compelled Disclosure) below, or (c) as You expressly permit in writing.

3.3 Our Personnel. We will be responsible for the performance of Our personnel and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

3.4 Beta Services. From time to time, We may invite You to try Beta Services at no additional charge. You may accept or decline any such trial in Your sole discretion. Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta Services are for evaluation purposes only and not for production use, are not considered "Services" under this Agreement, are not supported, and may be subject to additional terms and conditions. Any such additional terms and conditions are hereby incorporated into this Agreement by reference and are legally binding. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

#### 4. USE OF SERVICES AND CONTENT

4.1 Subscriptions. Unless otherwise provided in the applicable Order Form, (a) Services and Content are purchased as subscriptions, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.

4.2 Usage Limits. Services and Content may be subject to usage limits, including, for example, the quantities specified in Order Forms. Unless otherwise specified, (a) a quantity in an Order Form may refer to Locations or Approvals, and the Service or Content may not be accessed at or by more than the specified number of Locations or exceed the specified number of Approvals, if so specified, and (b) a Location identification may be reassigned to a new Location replacing one that no longer requires use of or access to the Service or Content. If You exceed a contractual usage limit, We may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding Our efforts, You are unable or unwilling to abide by a contractual usage limit, You will execute an Order Form for additional quantities of the applicable Services or Content promptly upon Our request and/or pay any invoice for excess usage in accordance with Section 6.2 (Invoicing and Payment).

4.3 Your Responsibilities. You will (a) be responsible for Users' compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content and notify Us promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with this Agreement (including Order Form(s) and the Documentation) and applicable laws and government regulations, and (e) comply with terms of service of Non-Wastebits Applications with which You use Services or Content.

A User's password may not be shared with any other individual, and a User identification may not be reassigned to any other User.

4.4 Usage Restrictions. You will not (a) share Your User password with any other individual or User, (b) reassign or allow to be reassigned Your or any other User's identification to any other individual or User, (c) make any Service or Content available to, or use any Service or Content for the benefit of, anyone other than You or Users, (d) sell, resell, license, sublicense, distribute, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (e) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (f) use a Service to store or transmit Malicious Code, (g) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (h) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (i) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, (j) copy a Service or any part, feature, function or user interface thereof, (k) copy Content except as permitted herein or in an Order Form or the Documentation, (l) frame or mirror any part of any Service or Content, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (m) access any Service or Content in

order to build a competitive product or service, or (n) reverse engineer any Service (to the extent such restriction is permitted by law).

4.5 External-Facing Services. If You subscribe to a Service for creation and hosting of external-facing websites, You will comply with, and be responsible for Users' compliance with, Our External-Facing Services Policy posted on the Website, and be solely responsible for complying with applicable law in any use of cookies or other tracking technologies on such websites.

4.6. Removal of Content and Non-Wastebits Applications. If We are required by a licensor to remove Content, or receive information that Content provided to You may violate applicable law or third-party rights, We may so notify You and in such event You will promptly remove such Content from Your systems. If We receive information that a Non-Wastebits Application hosted on a Service by You may violate Our External-Facing Services Policy posted on the Website or applicable law or third-party rights, We may so notify You and in such event You will promptly disable such Non-Wastebits Application or modify the Non-Wastebits Application to resolve the potential violation. If You do not take required action in accordance with the above, We may disable the applicable Content, Service and/or Non-Wastebits Application until the potential violation is resolved.

## 5. NON-WASTEBITS PROVIDERS

5.1. Purchase of Non-Wastebits Products and Services. We or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-Wastebits Applications and implementation and other consulting services. Any acquisition by You of such Non-Wastebits products or services, and any exchange of data between You and any non-Wastebits provider, is solely between You and the applicable non-Wastebits provider. We do not warrant or support Non-Wastebits Applications or other non-Wastebits products or services, whether or not they are designated by Us as "certified" or otherwise, except as specified in an Order Form.

5.2. Non-Wastebits Applications and Your Data. If You install or enable a Non-Wastebits Application for use with a Service, You grant Us permission to allow the provider of that Non-Wastebits Application to access Your Data as required for the interoperation of that Non-Wastebits Application with the Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by a Non-Wastebits Application.

5.3. Integration with Non-Wastebits Applications. The Services may contain features designed to interoperate with Non-Wastebits Applications. To use such features, You may be required to obtain access to Non-Wastebits Applications from their providers, and may be required to grant Us access to Your account(s) on the Non-Wastebits Applications. If the provider of a Non-Wastebits Application ceases to make the Non-Wastebits

Application available for interoperation with the corresponding Service features on reasonable terms, We may cease providing those Service features without entitling You to any refund, credit, or other compensation.

## 6. FEES AND PAYMENT FOR PURCHASED SERVICES

6.1. Fees. You will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (a) fees are based on Services and Content purchased and not actual usage, (b) payment obligations are non-cancelable and fees paid are non-refundable, and (c) quantities purchased cannot be decreased during the relevant subscription term. Wastebits reserves the right to change the fees and to charge for use of Services that are currently available free of charge.

6.2. Invoicing and Payment. You will provide Us with valid and updated credit card information. If You provide credit card information to Us, You authorize Us to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 12.2 (Term of Purchased Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 10 days from the invoice date and are due in advance of access to or use of Services or Content. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

6.3. Overdue Charges. If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 6.2 (Invoicing and Payment).

6.4. Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 13.2 (Manner of Giving Notice), before suspending services to You.



6.5. Payment Disputes. We will not exercise Our rights under Section 6.3 (Overdue Charges) or 6.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

6.6. Taxes. Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 6.6, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

6.7. Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

## 7. PROPRIETARY RIGHTS AND LICENSES

7.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, We and Our licensors reserve all of Our/their right, title and interest in and to the Services and Content, including all of Our/their related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

7.2. License by Us to Use Content. We grant to You a worldwide, limited-term, revocable, non-exclusive, non-sublicensable license, under Our applicable intellectual property rights and licenses, to use Content acquired by You pursuant to Order Forms, subject to this Agreement (including the Order Forms and the Documentation).

7.3. License by You to Host Your Data and Applications. You grant Us and Our Affiliates a worldwide, limited-term, royalty-free license to host, copy, transmit and display Your Data, and any Non-Wastebits Applications and program code created by or for You using a Service, as necessary for Us to provide the Services in accordance with this Agreement. You also grant Us the right to use, for Our own internal use, marketing purposes and regulatory compliance, aggregated information regarding Your Data, provided that such aggregated information is not identifiable to You. Subject to the limited licenses granted herein, We acquire no other right, title or interest from You or Your licensors under this Agreement in or to Your Data or any Non-Wastebits Application or Non-Wastebits program code.

7.4. License by You to Use Feedback. You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of the Services.

7.5 Right to Use Your Company Name. We reserve the right to use your Company name as a reference for marketing or promotional purposes on Our website and in other communication with Our existing or potential customers. For example, we might list your company on one of Our webpages under lists of customers. We don't want to list customers who don't want to be listed, so you may send an email to [feedback@wastebits.com](mailto:feedback@wastebits.com) stating that you do not wish to be used as a reference.

7.6. Federal Government End Use Provisions. If a government agency has a need for rights not granted under these terms, it must negotiate with Us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

## 8. CONFIDENTIALITY

8.1. Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement (including all Order Forms and pricing contained therein) as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party without use or reference to the Confidential Information.

8.2. Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (a) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (b) except as otherwise authorized by the Disclosing Party in writing, to limit access to

Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement (including any Order Form) to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliates, legal counsel or accountants will remain responsible for such Affiliates', legal counsel's or accountants' compliance with this Section 8.2.

8.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by applicable law to do so, provided the Receiving Party gives the Disclosing Party prior written notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by applicable law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## 9. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

9.1. Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.

9.2. Our Warranties. We warrant that (a) the Purchased Services will perform materially in accordance with the applicable Documentation, (b) subject to Section 5.3 (Integration with Non-Wastebits Applications), We will not materially decrease the functionality of the Purchased Services during a subscription term, and (c) the Purchased Services will not introduce Malicious Code into Your systems. For any breach of an above warranty, Your exclusive remedies are those described in Sections 12.3 (Termination) and 12.4 (Refund or Payment upon Termination).

9.3. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, WE DO NOT WARRANT THAT THE SERVICES WILL MEET YOUR SPECIFIC REQUIREMENTS, THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY OR ERROR-FREE, THAT THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE

COMPLETE, ACCURATE OR RELIABLE, THAT THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS OR THAT ANY ERRORS IN THE SERVICES WILL BE CORRECTED. CONTENT AND BETA SERVICES ARE PROVIDED “AS IS,” EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY PROVIDERS.

## 10. MUTUAL INDEMNIFICATION

10.1. Indemnification by Us. We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of a Purchased Service in accordance with this Agreement infringes or misappropriates such third party’s intellectual property rights (a “Claim Against You”), and will indemnify You from any damages, reasonable attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, without breaching Our warranties under Section 9.2 (Our Warranties), (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon 30 days’ written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from Content, a Non-Wastebits Application or Your breach of this Agreement.

10.2. Indemnification by You. You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of any Service or Content in breach of this Agreement, infringes or misappropriates such third party’s intellectual property rights or violates applicable law (a “Claim Against Us”), and will indemnify Us from any damages, reasonable attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.

10.3. Exclusive Remedy. This Section 10 states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of claim described in this Section 10.

## 11. LIMITATION OF LIABILITY

11.1 Limitation of Liability. NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION, SUIT OR PROCEEDING IS IN CONTRACT, TORT OR OTHERWISE AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

11.2. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOSS PROFITS OR REVENUES, LOSS OF GOODWILL, DAMAGE TO BUSINESS OR BUSINESS RELATIONS, LOSS OF USE OF EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTED SERVICES, DOWN-TIME COSTS OR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION, SUIT OR PROCEEDING IS IN CONTRACT, TORT OR OTHERWISE AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 12. TERM AND TERMINATION

12.1 Term of Agreement. This Agreement commences on the date You first accept and agree to it and continues until all subscriptions hereunder have expired or have been terminated.

12.2. Term of Purchased Subscriptions. The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any automatic renewal term will be the same as that during the immediately prior term unless We have given You written notice of a pricing increase at least 60 days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter.

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

12.4. Refund or Payment upon Termination. If this Agreement is terminated by You in accordance with Section 12.3 (Termination), We will refund You any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 12.3, You will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

12.5. Your Data Portability and Deletion. Upon written request by You made within 30 days after the effective date of termination or expiration of this Agreement, We will make Your Data available to You for export or download as provided in the Documentation. After that 30-day period, We will have no obligation to maintain or provide Your Data, and will thereafter delete or destroy all copies of Your Data in Our systems or otherwise in Our possession or control as provided in the Documentation, unless legally prohibited.

12.6. Surviving Provisions. The Sections titled "Fees and Payment for Purchase Services," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Portability and Deletion of Your Data," "Who You Are Contracting With, Notices, Governing Law and Jurisdiction," and "General Provisions" will survive any termination or expiration if this Agreement.

### 13. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

13.1. General. Who You are contracting with under this Agreement, who You should direct notices to under this Agreement, what law will apply in any lawsuit arising out of or in connection with this Agreement, and which courts have jurisdiction over any such lawsuit are provided as follows:

You are contracting with:

Wastebits

Which is a registered dba of Environmental Data Systems LLC, an Ohio limited liability company

Notices should be addressed to:

Wastebits

365 Water St, Akron, OH 44308 U.S.A

ATTN: LEGAL DEPT.

+1-844-256-8760

The governing law is:

Ohio

The courts having exclusive jurisdiction are:

Akron, Ohio, U.S.A.

13.2. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (a) personal delivery, (b) the second business day after mailing by certified mail, return receipt requested, or by overnight courier, (c) the second business day after sending by confirmed facsimile, or (d) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You.

13.3. Agreement to Governing Law and Jurisdiction. Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

13.4. No Agency. For the avoidance of doubt, We are entering into this Agreement as principal and not as agent for any other company. Subject to any permitted Assignment under Section 14.4, the obligations owed by Us under this Agreement shall be owed to You solely by Us and the obligations owed by You under this Agreement shall be owed solely to Us.

#### 14. GENERAL PROVISIONS

14.1. Export Compliance. The Services, Content, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service or Content in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

14.2. Anti-Corruption. You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Us at [info@Wastebits.com](mailto:info@Wastebits.com).

14.3 Entire Agreement and Order of Precedence. This Agreement is the entire agreement between You and Us regarding Your access to and use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) these Terms of Service, and (3) the Documentation.

14.4. Assignment. You may not assign any of your rights or obligations hereunder, whether by operation of law or otherwise, without Our prior written consent. If You are acquired by, sell substantially all of your assets to, or undergo a change of control in favor of, a direct competitor of Us, then We may terminate this Agreement upon written notice. In the event of such a termination, We will refund to You any prepaid fees covering the remainder of the term of all subscriptions. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

14.5. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

14.6. Third-Party Beneficiaries. Our Content licensors shall have the benefit of Our rights and protections hereunder with respect to the applicable Content. There are no other third-party beneficiaries under this Agreement.

14.7. Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

14.8. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

14.9. Force Majeure. The failure of either party hereto to comply with its obligations hereunder will be excused to the extent such party's performance hereunder has been rendered impossible or impracticable as the result of an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, Non-Wastebits Application, denial of service attack or for any other reason beyond the reasonable control of the party claiming protection by reason of such a force majeure event.