

Gravitate Terms of Use

TERMS OF USE

Effective as of July 26th, 2022

These Terms of Use (“Terms”) govern access to and use of Gravitare’s (“Gravitare,” “we” or “us”) proprietary SaaS Service. As an Authorized User of a Customer who has entered into a Master Subscription Agreement with Gravitare (the “Agreement”), you, whether an employee, contractor or other Authorized User of the Customer, you (an Authorized User) accept these Terms (whether on behalf of yourself or a legal entity you represent): To the extent there is any conflict between the these Terms of Use and the Agreement, the terms of the Agreement shall control. Access to and use of the Gravitare SaaS Service by employees of Customer is governed exclusively by the Agreement.

BY ACCESSING, USING, OR DOWNLOADING ANY MATERIALS IN CONNECTION WITH THE SAAS SERVICE AND GRAVITARE TECHNOLOGY, YOU AGREE TO FOLLOW AND BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, YOU ARE NOT AUTHORIZED AND MUST CEASE USING THE SAAS SERVICE AND GRAVITARE TECHNOLOGY IMMEDIATELY.

1. Definitions. Capitalized terms shall have the meanings set forth in this section, or in the section where they are first used.

1.1. **“Authorized User”** means (i) an employee or authorized contractor of Gravitare’s Customer or (ii) an individual or entity expressly authorized in an Order to access the SaaS Service pursuant to Customer’s rights under the Agreement and the applicable Order.

1.2. **“Customer”** means any individual or entity to which Gravitare provides use and access of the SaaS Service and Gravitare Technology pursuant to the Agreement and any related Order.

1.3. **“Gravitare Technology”** means Gravitare’s proprietary Gravitare Software, including the data model, analytics, automation, planning, modeling, optimization, interface and related software and technology that are used to provide the SaaS Service.

1.4. **“Gravitare”** means capSpire, Inc., dba Gravitare, an Arkansas corporation, with a principal office located at 620 N College Avenue, Fayetteville, Arkansas 72701.

1.5. **“Documentation”** means the user guides, manuals, and other technical materials provided by Gravitare to Customer describing the use and operation of the SaaS Service.

1.6. **“Order”** means an order for Service executed by Gravitare and a Customer in connection with the Master Subscription Agreement entered into between such parties.

1.7. **“SaaS Service”** means the on-line, web-based services provided by Gravitare, and Documentation provided by Gravitare for Customer’s use as specified on an Order form.

2. Updates.

We may revise these Terms or any additional terms and conditions that are relevant to a particular aspect of the SaaS Service and Gravitare Technology from time to time to reflect changes in the law or to the SaaS Service and Gravitare Technology. We will post the revised terms on the Gravitare website (www.gravitare.energy) with a “last updated” date. PLEASE REVIEW THE WEBSITE ON A REGULAR BASIS TO OBTAIN TIMELY NOTICE OF ANY REVISIONS. IF YOU CONTINUE TO USE THE SAAS

SERVICE AND/OR GRAVITATE TECHNOLOGY AFTER THE REVISIONS TAKE EFFECT, YOU AGREE TO BE BOUND BY THE REVISED TERMS. You agree that we shall not be liable to you or to any third party for any modification of the Terms.

3. Prohibited Uses.

3.1. You may use the SaaS Service and Gravitare Technology only for lawful purposes and in accordance with these Terms and the Agreement. You and the Customer shall be liable to Gravitare for any use in violation of these Terms. You acknowledge and agree that whether or not Gravitare monitors or polices the content of communications transmitted through the SaaS Service, Gravitare shall not be responsible for the content of any such communications or transmissions. You hereby agree not to use the SaaS Service and Gravitare Technology:

(a) In any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the United States or other countries).

(b) To transmit, or procure the sending of, any advertising or promotional material, including any "junk mail," "chain letter" or "spam" or any other similar solicitation.

(c) To impersonate or attempt to impersonate Gravitare, another Customer or Authorized User (including, without limitation, by using e-mail addresses associated with any of the foregoing).

(d) To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the SaaS Service and/or Gravitare Technology, or which, as determined by us in our sole discretion, may harm Gravitare or its Customers or expose them to liability.

3.2. Additionally, you agree not to:

(a) Use the SaaS Service and/or Gravitare Technology in any manner that could disable, overburden, damage, or impair the SaaS Service and/or Gravitare Technology or interfere with any other party's use of the SaaS Service and/or Gravitare Technology.

(b) Use, evaluate, or view any Gravitare Technology for the purpose of designing, modifying, or otherwise creating any environment, program, or infrastructure or any portion thereof, which performs functions similar to the functions performed by the SaaS Service and any Gravitare Technology.

(c) Use any robot, spider or other automatic device, process or means to access the SaaS Service and/or Gravitare Technology for any purpose, including monitoring or copying any of the material on the SaaS Service and/or Gravitare Technology.

(d) Use any manual process to monitor or copy any of the material on the SaaS Service and/or Gravitare Technology or for any other unauthorized purpose without our prior written consent.

(e) Use any device, software or routine that interferes with the proper working of the SaaS Service and/or Gravitare Technology or introduce any viruses, Trojan horses, worms, logic bombs or other material which is malicious or technologically harmful.

(f) Rent, sell, lease, sublicense, loan, transfer, distribute, or make copies of the SaaS Service and/or Gravitare Technology.

(g) Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Gravitare Technology, the server on which the Gravitare Technology is stored, or any server, computer or database connected to the Gravitare Technology.

(h) Attack the SaaS Service and/or Gravitare Technology via a denial-of-service attack or a distributed denial-of-service attack.

(i) Otherwise attempt to interfere with the proper working of the SaaS Service and/or Gravitare Technology.

4. Usage and Access Rights.

4.1. Eligibility to Use. You represent and warrant that you are: (a) of legal age (18 years of age or older or otherwise of legal age in your resident jurisdiction) and competent to agree to these Terms; and (b) you are not and will not when using the SaaS Service and Gravitare Technology be located in, under the control of, or a national or resident of a U.S. embargoed country or territory and are not a prohibited end user under applicable Export Control Laws. You acknowledge that you are not permitted to use the SaaS Service and Gravitare Technology if you cannot make these representations. If Gravitare has previously prohibited you from accessing or using the SaaS Service or Gravitare Technology, you are not permitted to access or use the SaaS Service or Gravitare Technology. If you are agreeing to these Terms on behalf of an organization or entity, you represent and warrant that you are authorized to agree to these Terms on that organization or entity's behalf and bind them to these Terms (in which case, the references to "you" and "your" in these Terms, except for in this sentence, also refer to that organization or entity).

4.2. Limited Rights of Use. Upon your acceptance of these Terms, you will be authorized to access and use the SaaS Service and/or Gravitare Technology for the internal business purposes of the Customer who provided you with access to the SaaS Service and only as expressly permitted in these Terms and the Agreement. You shall not use or permit use of the SaaS Service and/or Gravitare Technology for any illegal purpose or in any manner inconsistent with the provisions of these Terms. Except as otherwise restricted by these Terms, Gravitare grants you permission on a non-exclusive, non-transferable, limited basis to display, copy, and download content and materials in connection with the Gravitare Technology provided that you: (a) retain all copyright and other proprietary notices on the content and materials; (b) use them solely for personal or internal, non-commercial use or in accordance with these Terms; and (c) do not modify them in any way. Any violation by you of this Section 4 may result in the immediate termination of your right to use the Gravitare Technology, as well as potential liability for copyright infringement or other claims depending on the circumstances.

5. Ownership.

5.1. Rights in the SaaS Service, Gravitare Technology, and Documentation. The SaaS Service, Gravitare Technology, Documentation, and all machine learning artifacts like models and reports, and all modifications, improvements, upgrades, and derivative works made by either Party related to any of the foregoing, and all worldwide intellectual property rights in any of the foregoing, are the exclusive property of Gravitare and its third party technology contractors and vendors suppliers. You agree to assign and does hereby assign all right, title, and interest it may have in any of the foregoing to Gravitare. No express or implied license or right of any kind is granted to you regarding the SaaS Service, Gravitare Technology,

Documentation, or any part thereof, including any right to obtain possession of any source code, data or other technical material relating to the Gravitate Technology.

5.2. Rights in Customer Data. As between Gravitate and the Customer for whom you are an Authorized User, such Customer shall own all right, title, and interest in and to any data provided or made available to Gravitate hereunder in order to allow for the provision of the SaaS Service (collectively, "**Customer Data**"), including all intellectual property rights therein. For purposes of these Terms, Customer Data shall also mean and include any data of Customer's customers, vendors and suppliers, and similar proprietary material that Customer may input into the SaaS Service. Customer grants to Gravitate (which shall for this purpose include Gravitate's third party technology contractors and vendors who have a need to access or use the Customer Data) a non-exclusive, royalty-free, fully paid-up license to access and use such Customer Data during the Term of any applicable Order, for the purpose of providing the SaaS Service to, improving the SaaS Service for, and providing its other obligations under these Terms to, Customer. In addition, Gravitate shall be permitted to use any Customer Data and other data generated in connection with the SaaS Service (e.g., types of web applications utilized), provided, however, in the event Gravitate provides such data to third parties, it shall be anonymized and presented in the aggregate so that it cannot be linked specifically to Customer or any Authorized User ("**Aggregated Data**"); and further provided that Customer shall have the prior right to review and approve any Aggregated Data that is provided to third parties excluding Gravitate's third party technology contractors and vendors used to provide any Services). The foregoing shall not limit in any way Gravitate's confidentiality obligations pursuant to Article 8 of the Agreement. Customer is solely responsible for any and all of its use of Customer Data and the consequences of, and requirements for, distributing it. Gravitate agrees to access, use, maintain, collect, modify, merge, share or disclose all Customer Data only as is necessary for Gravitate to perform its obligations under the Agreement. Except as specifically set forth in the Agreement or as Customer otherwise directs in writing, Gravitate may not modify Customer Data, merge it with other data, or use it for any other purpose, commercial or otherwise.

5.3. You agree not to remove, obscure, or alter any copyright notice, trademarks, logos and trade names, or other proprietary rights notices affixed to, or contained within any portion of the SaaS Service and/or Gravitate Technology.

5.4. Feedback. You hereby grant Gravitate a royalty-free, fully paid-up, worldwide, transferable, sublicensable, irrevocable, perpetual license to use, or incorporate into the SaaS Service and other services and to exploit in any manner: (i) any aggregated non-personally identifiable information related to any usage of the SaaS Service to operate and improve Gravitate's products and services; and (ii) any suggestions, enhancement requests, recommendations or other feedback provided by you relating to the operation of the SaaS Service (collectively, "**Feedback**"). Gravitate shall have no obligation to incorporate any Feedback into the SaaS Service or other services.

5.5. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SAAS SERVICE AND GRAVITATE TECHNOLOGY, AND ANY OTHER MATERIALS PROVIDED BY GRAVITATE UNDER THESE TERMS AND THE APPLICABLE MASTER SUBSCRIPTION AGREEMENT ARE PROVIDED HEREUNDER "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. GRAVITATE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT THERETO, INCLUDING THE WARRANTIES OF MERCHANTABILITY, TITLE, AND ACCURACY OF DATA, NON-INFRINGEMENT, NON-INTERFERENCE, AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT IN PART, THE FUNCTIONALITY ASSOCIATED WITH THE SERVICE IS DEPENDENT UPON CUSTOMER OR THIRD PARTY DATA SOURCES AND TECHNOLOGY, AND THAT UPDATES TO SUCH PRODUCTS AND SERVICES MAY

AFFECT THE SERVICE IN A MANNER BEYOND GRAVITATE'S CONTROL. GRAVITATE DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICE AND GRAVITATE TECHNOLOGY SHALL BE UNINTERRUPTED OR ERROR-FREE.

6. Limitations of Liability.

TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL GRAVITATE BE LIABLE HEREUNDER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF GRAVITATE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Term and Termination.

7.1. Suspension of Access to SaaS Service. In accordance with these Terms, Gravitare may suspend any use of the SaaS Service and/or Gravitare Technology, remove any content or disable or terminate any Authorized User that Gravitare reasonably and in good faith believes violates these Terms. Gravitare will use commercially reasonable efforts to notify you prior to any such suspension or disablement, unless Gravitare reasonably believes that: (a) it is prohibited from doing so under applicable law or under legal process, such as court or government administrative agency processes, orders, mandates, and the like; or (b) it is necessary to delay notice in order to prevent imminent harm to the SaaS Service, Gravitare Technology, or a third party. Under circumstances where notice is delayed, Gravitare will provide the notice if and when the related restrictions in the previous sentence no longer apply.

7.2. Termination. In the event you or the applicable Customer (or any other Authorized User of the Customer) is in material breach of the terms of any Order, these Terms or the Agreement and such breach is not cured within thirty (30) days following notice thereof, then Gravitare may immediately terminate the applicable Order or the Agreement in its entirety and all access to and use of the SaaS Service and Gravitare Technology, including access and use by you, shall immediately be terminated at Gravitare's option without notice to you.

8. General.

8.1. Third Party Content. We may provide, or third parties may provide, links to other third party websites, services, or resources that are beyond our control. We make no representations as to the quality, suitability, functionality, or legality of any third party content to which links may be provided, and you hereby waive any claim you might have against us with respect to such services. GRAVITATE IS NOT RESPONSIBLE FOR THE CONTENT ON THE INTERNET OR WEB PAGES THAT ARE LOCATED OUTSIDE THE SAAS SERVICE OR POSTS OF USER CONTENT.

8.2. Relationship. At all times, you and Gravitare are independent contractors, and are not the agents or representatives of the other. These Terms are not intended to create a joint venture, partnership, or franchise relationship between the parties. Non-parties do not benefit from and cannot enforce these Terms. There are no third party beneficiaries to these Terms. You must not represent to anyone that you are an agent of Gravitare or are otherwise authorized to bind or commit Gravitare in any way without Gravitare's prior written authorization.

8.3. Assignability. These Terms will inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. You may not assign any of your rights hereunder without the prior written consent of Gravitare in its sole discretion, at its sole option.

8.4. Force Majeure. Gravitare shall not be deemed to have breached any provision of these Terms as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, acts of civil or military authorities, civil disturbances, wars, terrorism, pandemic, floods, fires, earthquakes, strikes and other labor problems, transportation contingencies, interruptions in third party telecommunications or internet equipment or service, other catastrophes, or any other occurrences which are beyond Gravitare's control.

8.5. Governing Law and Jurisdiction. These Terms shall be governed by and construed in accordance with the laws of the State of Arkansas applicable to agreements entered into, and to be performed entirely, within Arkansas between Arkansas residents, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Any legal action or proceeding arising under these Terms shall be brought exclusively in the federal or state courts located in Washington County, Arkansas, and Gravitare and you hereby consent to personal jurisdiction and venue therein. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement or these Terms.

8.6. Waiver. The failure of Gravitare to enforce at any time the provisions of these Terms, or Gravitare's failure to require at any time performance by you of any of the provisions of these Terms, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of Gravitare to enforce each and every such provision thereafter. The express waiver by Gravitare of any provision, condition or requirement of these Terms shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

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

8.8. How to Contact Us. If you have any questions about the SaaS Service or these Terms, complaints, or other inquiries, please contact Gravitare at 620 N College Avenue, Fayetteville, Arkansas 72701.