

## SKYCATCH, INC.

### Terms of Service

LAST UPDATED: 2.26.16

Skycatch, Inc. operates websites, including Skycatch.com, and mobile and web-based applications and other online services (collectively, the “Sites”). These Terms of Service are an agreement regarding the access and use of the Sites. If you do not agree to the terms and conditions in these Terms of Service, you will not be permitted to access and use the Sites.

The Sites are owned, operated and managed by Skycatch, Inc. In these Terms of Service, “Skycatch” refers to Skycatch, Inc. and our affiliates, which includes all subsidiaries, parent companies, joint ventures and other corporate entities under common ownership. Skycatch will also be referred to in these Terms of Service by use of the terms “our”, “we” and “us”.

Your use of the Sites may also be governed by a Cloud Services Agreement or a Professional Services Agreement (each a “Services Agreement”). To the extent that any of the provisions of this Terms of Service conflict with the provisions of a Services Agreement, the Services Agreement will control.

You and Skycatch agree as follows:

#### **1 ACCESS TO SITES.**

**1.1 Account Registration.** Some parts of the Sites may require that you open and maintain an account. If any part of the Sites requires you to open an account, you must complete the registration process by providing current, complete, and accurate information as prompted by the applicable registration form. You may also be asked to choose a password and username. You are solely responsible for maintaining the confidentiality of your password, username, and other account information. You are also solely responsible for all activities that occur under your account and will be held liable for losses or damages incurred by Skycatch or another party due to someone else using your account or password. You agree to notify Skycatch right away if you discover any unauthorized use of your account or any other breach of security. Skycatch will not be liable for any loss or damages that you may incur as a result of someone else using your password or account.

**1.2 Use of the Sites.** Skycatch grants you a limited, nonexclusive, nontransferable, revocable license to access and use the Sites solely in accordance with these Terms of Service.

**1.3 Restrictions.** As a condition to your access and use of the Sites and the limited license expressly granted to you in Section 1.2 above, you agree that you will not do or attempt to do any of the following:

- Use the Sites in a way that could damage, disable, overburden, or otherwise impair the Sites or interfere with any other party’s use;

- Make the Sites available to, or use the Sites for the benefit of, anyone other than yourself, or impersonate any other person;
- Sell, resell, license, sublicense, distribute, rent, or lease any services or products provided through the Sites unless expressly permitted by a Services Agreement between you and Skycatch;
- Attempt to gain access to the Sites by any means other than using your own username and password, including by circumventing or modifying, or encouraging or assisting any other person to circumvent or modify, any security, technology, device, or software that is part of the Sites;
- Attempt to gain unauthorized access to the Sites, interfere with the proper functioning, integrity or performance of the Sites, or connect to or use the Sites in any way not expressly permitted by these Terms of Service or a Services Agreement between you and Skycatch;
- Except where permitted by law or relevant open-source licenses, reverse engineer, decompile, disassemble, decipher, or otherwise attempt to derive the source code for any underlying software or other intellectual property associated with the Sites, or to obtain any information from the Sites that we have not intentionally made available to you;
- Copy, modify, or distribute any content, data or information from the Sites, including text, documents, charts, maps, logos, buttons, icons, “look and feel” and screenshots, audio and video recordings, graphics, photographs, still and moving images, sound, illustrations, information, software, and any other content (collectively, the “Content”) except as specifically allowed by these Terms of Service or a Services Agreement between you and Skycatch;
- Use the Sites to post, store, or transmit any information that (a) is abusive, threatening, obscene, defamatory, libelous, infringing, or otherwise unlawful or tortious; (b) violates any third-party rights (including copyrights, trademarks, patents, trade secrets, rights of privacy, rights of publicity, or other rights of any person or entity); (c) is racially, sexually, religiously, or otherwise objectionable or offensive; or (d) contains links to any of the foregoing types of information;
- Use the Sites to harass, abuse, or harm, or advocate or incite harassment towards, another person or group;
- Upload or transmit unauthorized communications, data or software through the Sites, including junk mail, chain letters, spam, and any materials that promote, contain or link to any Trojan horse, malware, spyware, or malicious code;
- Solicit commercial or personal information from any other user of the Sites;
- Collect or post any other subscriber or user’s private information, including any commercial and personally identifiable information (whether in text, image or video form), identification documents, or financial information through the Sites; or

- Use the Sites if you are located in a country embargoed by the United States, or if you are on the United States Treasury Department's list of Specially Designated Nationals.

- 1.4 Reservation of Rights.** We do not grant you any license, express or implied, to any Skycatch intellectual property except as specifically authorized by these Terms of Service or in a Services Agreement between you and Skycatch. Subject only to the limited license provided in Section 1.2, Skycatch reserves all right, title and interest in and to the Sites and all Content, including all related intellectual property and other proprietary rights.
- 1.5 Changes.** Skycatch reserves the right, in our sole discretion, to (a) revise any Content; (b) modify these Terms of Service; (c) impose additional rules and limitations regarding use of, or access to, the Sites; (d) restrict your access to part, or all, of the Sites without notice; or (e) change, suspend or discontinue any aspect of the Sites, including changes to services provided by our third-party service providers. We also reserve the right to revoke your access to the Sites, and terminate any account that you have, at any time and for any reason, including as a result of a violation by you of these Terms of Service or any applicable law; provided, however, that such revocation and termination is not Skycatch’s sole remedy for any such violation.
- 1.6 Our Privacy Policy.** Access to and use of the Sites is governed by these Terms of Service and Skycatch’s Privacy Policy [\[insert link\]](#), which is incorporated by reference into these Terms of Service. We encourage you to read our Privacy Policy carefully. We may modify our Privacy Policy from time to time and will post the current Privacy Policy within the Sites.
- 1.7 Maintenance of the Sites.** Skycatch reserves the right to perform maintenance operations on the Sites, which may result in your temporary inability to access or use the Sites.
- 1.8 Necessary Equipment and Software.** You must provide all equipment and software necessary to connect to the Sites, including a computer or mobile device that is suitable for connecting to and using the Sites. You are responsible for all fees, including internet connection or mobile fees, that you incur when connecting to and accessing the Sites. On occasion, Skycatch may require that you accept updates to the version of the Sites installed on your computer or mobile device. You may also need to update third-party software from time to time in order to connect to and use the Sites.
- 1.9 Your Representations and Warranties.** On each occasion that you access and use the Sites, you represent and warrant to Skycatch that you are using the Sites only for the purposes permitted by these Terms of Service and that you have obtained, and are solely responsible for obtaining, all rights or licenses necessary to upload and process any information, including data and images, that you upload to the Sites for processing.
- 1.10 Relationship Between the Parties.** These Terms of Service represent an arm’s-length agreement between you and Skycatch, as independent parties, and do not create a partnership, franchise, joint venture, agency, fiduciary, employment or other relationship between you and Skycatch.

**1.11 Communication Forums.** Skycatch may provide, or the Sites may include, various forums, blogs, chat rooms and other social media venues where you can post your observations, recommendations, proposals, enhancement requests, corrections, comments, ideas and other feedback about or relating to the Sites. By making postings to such venues you grant to Skycatch a perpetual and irrevocable, worldwide, fully paid-up and royalty free, non-exclusive, unlimited license to the content of your postings. Also, Skycatch cannot guarantee that third parties with access to such venues will not copy, reproduce, publish, distribute, or otherwise use the content of your postings. Do not disclose any content or information in such venues that you do not want to be made public.

## **2 DISCLAIMER OF WARRANTIES, LIMITATION OF LIABILITY AND INDEMNIFICATION.**

**2.1 DISCLAIMER OF WARRANTIES.** ACCESS AND USE OF THE SITES IS AT YOUR SOLE RISK AND THE SITES AND ANY PRODUCTS OR SERVICES OFFERED AND SOLD IN CONNECTION WITH THE SITES, INCLUDING ALL RAW AND PROCESSED DATA AND OTHER OUTPUT PRODUCED BY OR THROUGH THE SITES, ARE PROVIDED ON AN “AS IS” BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (EXCEPT TO THE EXTENT THIS WARRANTY DISCLAIMER IS PROHIBITED UNDER ANY APPLICABLE LAW, IN WHICH CASE ANY LEGALLY REQUIRED WARRANTY PERIOD WILL BE THE SHORTER OF 30 DAYS FROM YOUR FIRST ACCESS AND USE OF THE SITES OR THE MINIMUM WARRANTY PERIOD REQUIRED BY APPLICABLE LAW).

WITHOUT LIMITING THE FOREGOING, NEITHER SKYCATCH NOR ITS AFFILIATES OR SUBSIDIARIES, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, THIRD-PARTY SERVICE PROVIDERS, DISTRIBUTORS, LICENSEES OR LICENSORS (COLLECTIVELY, “SKYCATCH PARTIES”) WARRANT THAT THE SITES WILL BE UNINTERRUPTED OR ERROR-FREE.

**2.2 Limitation of Liability.** To the fullest extent permitted by applicable law, the limitation of liability contained in this Section 2.2 applies to all damages or injuries caused by or related to your access and use of, or inability to access and use, the Sites under any claim, demand, suit, proceeding, or other cause of action in any jurisdiction, including, without limitation, actions for breach of warranty, breach of contract or tort (including negligence).

TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, UNDER NO CIRCUMSTANCES WILL SKYCATCH PARTIES BE LIABLE TO YOU FOR MORE THAN THE TOTAL AMOUNT YOU HAVE PAID SKYCATCH IN THE 90 DAYS IMMEDIATELY PRECEDING THE DATE ON WHICH YOU FIRST ASSERT ANY CLAIM, DEMAND, SUIT, PROCEEDING, OR OTHER CAUSE OF ACTION AGAINST SKYCATCH PARTIES. IF YOU HAVE NOT PAID SKYCATCH ANY AMOUNTS IN THE 90 DAYS IMMEDIATELY PRECEDING THE DATE ON WHICH YOU FIRST ASSERT ANY SUCH ACTION, YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH SKYCATCH PARTIES IS TO DISCONTINUE USING THE SITES.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, SKYCATCH PARTIES WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING FOR LOSS OF BUSINESS REVENUES OR PROFITS, GOODWILL OR DATA) ARISING OUT OF YOUR ACCESS AND USE OF, OR YOUR INABILITY TO ACCESS AND USE, THE SITES.

SKYCATCH PARTIES ARE NOT LIABLE FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OTHER SUBSCRIBERS OR USERS OF THE SITES, OUR THIRD PARTY SERVICE PROVIDERS, OUR ADVERTISERS AND ANY OPERATORS OF EXTERNAL SITES.

NOTHING IN THIS LIMITATION OF LIABILITY SECTION WILL AFFECT YOUR STATUTORY RIGHTS OR EXCLUDE OR RESTRICT SKYCATCH FROM ANY LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM NEGLIGENCE OR FRAUD.

**2.3 Indemnification.** You agree to indemnify, save, and hold the Skycatch Parties harmless from any claims, demands, suits, proceedings, settlements, or similar actions for losses, damages, and liabilities, including legal fees and expenses, arising out of (a) third-party allegations that your access to and use of the Sites infringes or misappropriates any third party's intellectual property rights or violates applicable laws, (b) your use of the Sites, including any use of the Sites in connection with unmanned aerial vehicles or other hardware, whether or not manufactured by or purchased from Skycatch, (c) any representation by you regarding the accuracy or reliability of any Content, raw data, processed data, reports or other output of the Sites, or (d) any violation by you of these Terms of Service, or any breach of the representations and warranties made by you herein. Skycatch reserves the right, at your expense, to assume the exclusive defense and control of any action for which you are required to indemnify Skycatch, and you agree to cooperate with Skycatch's defense and control of any such action. Skycatch will use reasonable efforts to notify you of any such action upon becoming aware of it.

### **3 GENERAL PROVISIONS.**

**3.1 Local Laws; Export Controls.** Skycatch operates and manages the Sites from the United States and makes no representation that access and use of the Sites are appropriate or available for other countries. If you access and use the Sites from other countries, you are responsible for compliance with applicable local laws, including export and import regulations of such countries. Content may be subject to United States Export Administration Laws and Regulations and any diversion of such Content in violation of such laws and regulations is strictly prohibited.

**3.2 Assignment.** Skycatch may assign or delegate our rights and obligations under these Terms of Service and our Privacy Policy, in whole or in part, whether by operation of law or otherwise, to any person or entity, without your consent, and these Terms of Service and our Privacy Policy will bind and inure to the benefit of any such person or entity. You may not assign or delegate any of your rights or obligations under these Terms of Service without our prior written consent, and any unauthorized assignment and delegation by you is void.

- 3.3 Waivers.** The failure of Skycatch to require or enforce performance by you of any provision of these Terms of Service, our Privacy Policy, or any other policies we may implement regarding the Sites, or failure to exercise any right under these Terms of Service or such policies, will not be construed as a waiver of our right to assert or rely upon any such provision in that or any other instance. The express waiver by Skycatch of any provision of these Terms of Service or such policies will not constitute a waiver of any future obligation that you have to comply with such provision.
- 3.4 Modifications.** These Terms of Service may not be modified without the express consent of Skycatch.
- 3.5 Severability.** If any provision of these Terms of Service is found to be illegal or unenforceable, in whole or in part, by any court of competent jurisdiction, such provision will, as to such jurisdiction only, be ineffective solely to the extent of such determination of invalidity or unenforceability without affecting the validity or enforceability of the remaining provisions of these Terms of Service.
- 3.6 Governing Law; Forum for Legal Disputes.** These Terms of Service and any dispute arising out of or related to them or the Sites will be governed in all respects by the laws of California, without regard to the principles of conflict of law. Any such claim or dispute must be resolved exclusively by a state or federal court located in San Francisco County, California. You agree to submit to the personal jurisdiction of the courts located within San Francisco County, California for the purpose of litigating any such claim or dispute.
- 3.7 Equitable Remedies.** The rights you have granted and obligations you have made under these Terms of Service are of a unique nature, the loss of which will irreparably harm Skycatch and cannot be replaced by monetary damages alone. Accordingly, Skycatch may seek injunctive or other equitable relief (without the obligations of posting any bond or surety or showing proof of any damages) in the event of any breach or anticipatory breach by you of these Terms of Service.
- 3.8 Force Majeure.** Skycatch will not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including without limitation any failure to perform under these Terms of Service or provide access and use of the Sites due to circumstances beyond our control, such as acts of God, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, network infrastructure failures, strikes, or shortages of transportation facilities, fuel, energy, labor, or materials.
- 3.9 Notices.** Skycatch may provide you with written notices under these Terms of Service by postings such notices in the Sites and/or sending such notices to you by e-mail or other electronic communication means. You may provide us with written notices under these Terms of Service by sending such notices to us at [terms@skycatch.com](mailto:terms@skycatch.com).

**3.10 Entire Agreement.** These Terms of Service, Skycatch's Privacy Policy, and any Service Agreement between you and Skycatch contain the entire understanding and agreement between you and us regarding your access and use of the Sites, and supersede all prior understandings and agreements between you and us relating to the subject matter hereof, whether in electronic, oral, or written form or whether established by custom, practice, policy, or precedent between you and us with respect to the Sites.