

Terms of Service

1. Definitions

- (a) “Administrator” shall mean a Subscriber (as defined in Section 1(i)) with authority to designate additional Authorized Users and/or Administrators.
- (b) “Agreement” shall mean this entire User License Agreement and incorporates by reference the Privacy Policy located at <https://www.centerbase.com/privacy/>.
- (c) “Authorized User” shall mean an individual subscriber or the partners, members, employees, temporary employees, and independent contractors of an organization with a subscription to the Service who have been added to the account as users.
- (d) “Confidential Information” shall mean the Content (as defined in Section 1(e)) and any information, technical data, or know-how considered proprietary or confidential by either party to this Agreement including, but not limited to, either party’s research, services, inventions, processes, specifications, designs, drawings, diagrams, concepts, marketing, techniques, documentation, source code, customer information, personally identifiable information, pricing information, procedures, menu concepts, business and marketing plans or strategies, financial information, and business opportunities disclosed by either party before or after the Effective Date of this Agreement, either directly or indirectly in any form whatsoever, including in writing, orally, machine readable form or through access to either party’s premises.
- (e) “Content” shall mean any information you upload or post to the Service and any information provided by you to Centerbase in connection with the Service, including, without limitation, information about your Authorized Users or Registered Clients, as defined in Section 1(g).
- (f) “Originating Subscriber” shall mean the Subscriber who initiated the Services offered by Centerbase and is assumed by Centerbase to have the sole authority to administer the subscription.
- (g) “Registered Client” means an individual who has been invited to use the client-facing features of the Service in a limited capacity as a client of an Authorized User.
- (h) “Service” shall mean any software or services provided by Centerbase.
- (i) “Subscriber” shall refer to the purchaser of the Services provided by Centerbase and shall also include any present or former agent, representative, independent contractor, employee, servant, attorney and any entity or person who had authority to act on your behalf.
- (j) “Security Emergency” shall mean a violation by Subscriber of this Agreement that
 - (a) could disrupt (i) Centerbase’s provision of the Service; (ii) the business of other subscribers to the Service; or (iii) the network or servers used to provide the Service; or
 - (b) provides unauthorized third party access to the Service.

2. Limited License & Use of the Service

2.1 Subscriber is granted a non-exclusive, non-transferable, limited license to access and use the Service.

2.2 Centerbase does not review or pre-screen the contents of electronic data uploaded or posted to the Service ("Content") (Except to the extent automatically performed by firewalls to protect against virus upload) by Authorized Users and Centerbase claims no intellectual property rights with respect to the Content.

2.3 Authorized Users agree not to reproduce, duplicate, copy, sell, resell or exploit access to the Service, use of the Service, or any portion of the Service, including, but not limited to the HTML, Cascading Style Sheet ("CSS") or any visual design elements without the express written permission from Centerbase.

2.4 Authorized Users agree not to modify, reverse engineer, adapt or otherwise tamper with the Service or modify another website so as to falsely imply that it is associated with the Service, Centerbase, or any other software or service provided by Centerbase.

2.5 Authorized Users agree that they will not knowingly use the Service in any manner which may infringe copyright or intellectual property rights or in any manner which is unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or in violation of the terms of this Agreement.

2.6 Authorized Users agree that they will not knowingly use the Service to upload, post, host, or transmit unsolicited bulk e-mail "Spam", short message service "SMS" messages, viruses, self-replicating computer programs "Worms" or any code of a destructive or malicious nature.

2.7 Except for the non-exclusive license granted pursuant to this Agreement, Subscriber acknowledges and agrees that all ownership, license, intellectual property and other rights and interests in and to the Service shall remain solely with Centerbase.

2.8 Authorized Users who configure the Service to share or make available certain Content to the public, are deemed to acknowledge and agree that everyone will have access to the Content ("Public Content"). Centerbase reserves the right, at any time, in its sole discretion, to take any action deemed necessary with respect to Public Content that violates the terms of this Agreement, including, but not limited to, removal of such Public Content.

2.9 Centerbase reserves the right at any time, and from time to time, to modify or discontinue, temporarily or permanently, any feature associated with the Service, with or without notice, except that Centerbase shall provide Subscriber with 30-days' notice of any modification that materially reduces the functionality of the Service. Continued use of the Service following any modification constitutes Subscriber acceptance of the modification.

2.10 Centerbase reserves the right to temporarily suspend access to the Service for operational purposes, including, but not limited to, maintenance, repairs or installation of upgrades, and will provide no less than two business days' notice prior to any such suspension. Such notice shall be provided to you in advance through email. Further, Centerbase shall endeavor to

confine planned operational suspensions with a best effort to minimize disruption to the Subscriber.

2.11 Subscriber grants to Centerbase a non-exclusive, royalty free right during Subscriber's use of the Service, to use the Confidential Information for the sole purpose of performing Centerbase' obligations under the Agreement in accordance with the terms of the Agreement. Such rights shall include permission for Centerbase to generate and publish aggregate, anonymized reports on system usage and Content trends and type, provided they do not conflict with Section 4.1.

3. Access to the Service

3.1 Subscriber is only permitted to access and use the Service if he/she is an Authorized User or a Registered Client. Authorized Users are required to provide their full legal name, a valid email address, and any other information reasonably requested by the Service.

3.2 Each Authorized User will be provided with a unique identifier to access and use the Service ("Username"). The Username shall only be used by the Authorized User to whom it is assigned, and shall not be shared with, or used by any other person, including other Authorized Users.

3.3 The initial Administrator shall be the Originating Subscriber with authority to administer the subscription and designate additional Authorized Users and/or Administrators. Each subscription may designate multiple Authorized Users as Administrator. Any Administrator shall be deemed to have the authority to manage the subscription and any Authorized Users. The Administrator will deactivate an active Username if the Administrator wishes to terminate access to the Service for any Authorized User.

3.4 Administrators are responsible for all use of the Service by Authorized Users on the list of active Authorized Users associated with their subscription to the Service.

3.5 As between Centerbase and the Subscriber, any Content uploaded or posted to the Service remains the property of the Subscriber. Upon Cancellation or Termination of Service as discussed in Section 8 below, Centerbase shall only be responsible for the return of Content directly to the Administrator or a designated Authorized User in the event that the Administrator is unable to be reached.

3.6 All access to and use of the Service via mechanical, programmatic, robotic, scripted or any other automated means not provided as part of the Service is strictly prohibited.

3.7 Authorized Users are permitted to access and use the Service using an Application Program Interface ("API") subject to the following conditions:

(a) any use of the Service using an API, including use of an API through a third-party product that accesses and uses the Service, is governed by these Terms of Service;

(b) Centerbase shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if Centerbase has been advised of the possibility of such

damages), resulting from any use of an API or third-party products that access and use the Service via an API;

(c) Excessive use of the Service using an API may result in temporary or permanent suspension of access to the Service via an API. Centerbase, in its sole discretion, will determine excessive use of the Service via an API, and will make a reasonable attempt to warn the Authorized User prior to suspension; and

(d) Centerbase reserves the right at any time to modify or discontinue, temporarily or permanently, access and use of the Service via an API, with or without notice.

4. Confidentiality

4.1 Each party agrees to treat all Confidential Information as confidential and not to use or disclose such Confidential Information except as necessary to perform its obligations under this Agreement.

4.2 Centerbase and any third party vendors and hosting partners it utilizes to provide the Service shall hold Content in strict confidence and shall not use or disclose Content except (a) as required to perform their obligations under this Agreement; (b) in compliance with Section 6 of this Agreement, or (c) as otherwise authorized by you in writing.

5. Security and Access

5.1 Centerbase is responsible for providing a secure method of authentication and accessing its Service. Centerbase will provide mechanisms that:

- (a) allow for user password management
- (b) transmit passwords in a secure format

5.2 Subscriber will be responsible for protecting the security of usernames and passwords, or any other codes associated to the Service, and for the accuracy and adequacy of personal information provided to the Service.

5.3 Subscriber will implement policies and procedures to prevent unauthorized use of usernames and passwords, and will promptly notify Centerbase upon suspicion that a username and password has been lost, stolen, compromised, or misused.

5.4 At all times, Centerbase, and any third party vendors and hosting partners it utilizes to provide the Service, will:

- (a) use information security best practices for transmitting and storing your Content.
- (b) employ information security best practices with respect to network security techniques, including, but not limited to, firewalls, intrusion detection, and authentication protocols, vulnerability and patch management;

(c) ensure its host facilities maintain industry standards for security and privacy; and

5.5 Centerbase shall report to Subscriber, with all relevant details, any event that Centerbase reasonably believes represents unauthorized access to, disclosure of, use of, or damage to Content (a “Security Breach”). Centerbase shall make such report within 48 hours after learning of the Security Breach.

5.6 In the event of a Security Breach, Centerbase shall (a) cooperate with Subscriber to identify the cause of the breach and to identify any affected Content; (b) assist and cooperate with Subscriber in investigating and preventing the recurrence of the Security Breach; (c) assist and cooperate with Subscriber in any litigation or investigation against third parties that Subscriber undertake to protect the security and integrity of Content; and (d) mitigate any harmful effect of the Security Breach.

6. Legal Compliance

6.1 Centerbase maintains that its primary duty is to protect the Content to the extent the law allows. Centerbase reserves the right to provide the Confidential Information to third parties as required and permitted by law (such as in response to a subpoena or court order), and to cooperate with law enforcement authorities in the investigation of any criminal or civil matter.

If Centerbase is required by law to make any disclosure of the Confidential Information that is prohibited or otherwise constrained by this Agreement, then Centerbase will provide Subscriber with prompt written notice (to the extent permitted by law) prior to such disclosure so that the Subscriber may seek a protective order or other appropriate relief. Subject to the foregoing sentence, Centerbase may furnish that portion (and only that portion) of the Confidential Information that it is legally compelled or otherwise legally required to disclose.

7. Managed Backup and Archiving

7.1 Centerbase’s managed backup services are designed to facilitate restoration of Content to the server or device from which the Content originated in the event the primary data is lost or corrupted. Centerbase shall endeavor to ensure recovery of lost or corrupted Content at no cost to you. Prior to any cancellation or termination of Service for any reason, Subscriber shall have at least ninety days to retrieve any and all Content.

8. Payment, Refunds and Subscription Changes

8.1 Subscribers with paid subscriptions will provide Centerbase with a valid credit card or check for payment of the applicable subscription fees. All subscription fees are exclusive of all federal, state, provincial, municipal or other taxes which Subscribers agree to pay based on where the Subscriber is primarily domiciled. In addition to any fees, the Subscriber may still incur charges incidental to using the Service, for example, charges for Internet access, data roaming, and other data transmission charges.

8.2 Subscribers will be charged annually on the anniversary date of the initial subscription charge. All charges are non-refundable unless other contractual terms or agreements have been agreed upon and documented in a written, signed contract between the subscriber and service provider.

8.3 No refunds or credits will be issued for partial periods of service, upgrade/downgrade refunds, or refunds for periods unused with an active subscription, including, but not limited to, instances involving the removal of a Subscriber, unless other contractual terms or agreements have been agreed upon and documented in a written, signed contract between the subscriber and service provider.

8.4 There are no charges for cancelling a subscription, and paying subscriptions cancelled prior to the end of their current billing cycle will not be charged again in the following cycle.

8.5 The amount charged on the next billing cycle will be automatically updated to reflect any changes to the subscription, including upgrades or downgrades. Subscription changes, including downgrades, may result in loss of access to Content, features, or an increase or reduction in the amount of available capacity for Content provided by the Service.

8.6 All prices are subject to change upon notice. Such notice may be provided by an e-mail message to the Administrator, or in the form of an announcement on the Service.

8.7 Subscriber is responsible for paying all taxes associated with the subscription to the Service. If Centerbase has the legal obligation to pay or collect taxes for which Subscriber is responsible under this section, the appropriate amount shall be invoiced to and paid by Subscriber, unless Subscriber provides Centerbase with a valid tax exemption certificate authorized by the appropriate taxing authority.

8.8 Any and all payments by or on account of the compensation payable under this Agreement shall be made free and clear of and without deduction or withholding for any taxes. If the Subscriber is required to deduct or withhold any taxes from such payments, then the sum payable shall be increased as necessary so that, after making all required deductions or withholdings, Centerbase receives an amount equal to the sum it would have received had no such deduction or withholding been made.

9. Cancellation and Termination

9.1 Administrators are solely responsible for canceling subscriptions. An Administrator may cancel their subscription at any time by emailing Centerbase support or providing written notice. Cancellations shall not be accepted by any other means.

9.2 Centerbase in its sole discretion has the right to suspend or discontinue providing the Service to any Subscriber without notice for actions that are (a) in material violation of this Agreement and (b) create a Security Emergency.

9.3 If (i) Authorized Users use the Service to materially violate this Agreement in a way that does not create a Security Emergency; (ii) Centerbase provides Subscriber with commercially reasonable notice of this violation; (iii) Centerbase uses commercially reasonable efforts to discuss and resolve the violation with Subscriber; and (iv) despite the foregoing, the violation is not resolved to Centerbase's reasonable satisfaction within thirty (30) days of such notice, then Centerbase reserves the right to suspend access to the Service.

9.4 As required by Section 7 above ("Managed Backup and Archiving"), upon cancellation or termination of a subscription, Content is made available to the Administrator or a designated Authorized User. Following a period of no less than ninety (90) days from the cancellation or termination of a subscription, all Content associated with such subscription will be irrevocably deleted from the Service.

10. Limitation of Liability

10.1 Except in the case of a violation by Centerbase of its obligations under Section 4 above ("Confidentiality"), Section 5 above ("Security and Access"), and Section 7 above ("Managed Backup and Archiving"), and except as provided in Section 12.2 below ("Indemnification"), Centerbase shall not be liable for and Subscriber waives the right to claim any loss, injury, claim, liability or damage of any kind resulting in any way from the Services provided to Subscriber by Centerbase.

10.2 SUBSCRIBER AGREES THAT THE LIABILITY OF CENTERBASE ARISING OUT OF ANY CLAIM IN ANY WAY CONNECTED WITH THE SERVICE WILL NOT EXCEED THE TOTAL AMOUNT YOU HAVE PAID FOR THE SERVICE PURSUANT TO THE AGREEMENT WITHIN THE TWELVE MONTH PERIOD BEFORE THE DATE THE CLAIM AROSE. SUBSCRIBER FURTHER AGREES THAT CENTERBASE IS NOT AND WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION, ATTORNEY FEES) RELATING TO THIS AGREEMENT. THESE DISCLAIMERS APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, WHETHER THOSE DAMAGES ARE FORESEEABLE AND WHETHER CENTERBASE HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. THESE DISCLAIMERS ARE NOT APPLICABLE TO THE INDEMNIFICATION OBLIGATION SET FORTH IN SECTION 12.2.

10.3 Subscriber will solely be responsible for any damage and/or loss of Content contained in Subscriber's technology which occurs as a result of Subscriber's electronic equipment and/or Subscriber's computer system.

11. Disclaimer of Warranties

11.1 Centerbase HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO ANY SERVICES PROVIDED BY CENTERBASE. NOTHING IN THIS SECTION 11.1 SHALL MODIFY CENTERBASE'S OBLIGATION TO INDEMNIFY SUBSCRIBER AS REQUIRED BY SECTION 12.2(A) OF THIS AGREEMENT ("INDEMNIFICATION").

11.2 Centerbase makes no warranty that its services when provided to Subscriber in digital or electronic format will be compatible with Subscriber computer and/or other equipment, or that these Services will be secure or error free. Nor does Centerbase make any warranty as to any results that may be obtained from the use of the Service. Nothing in this Section 11.2 shall modify Centerbase's obligations under Section 4 above ("Confidentiality") or Section 5 above ("Security and Access") or Centerbase's obligation to indemnify you as required by Section 12.2(b) of this Agreement ("Indemnification").

11.3 Centerbase hereby disclaims all warranties of any kind related to Subscriber's hardware or software beyond the warranties provided by the manufacturer of Subscriber's hardware or software.

12. Indemnification

12.1 Subscriber hereby agrees to indemnify and hold harmless Centerbase from and against any claim, action, proceeding, loss, liability, judgment, obligation, penalty, damage, cost or expense, including attorneys' fees, which arise from or relate to the following:

- a. Authorized Users' breach of any obligation stated in this Agreement, and
- b. Authorized Users' negligent acts or omissions.

Centerbase will provide prompt notice to Subscriber of any indemnifiable event or loss.

Subscriber will undertake, at Subscriber's own cost, the defense of any claim, suit or proceeding with counsel reasonably acceptable to Centerbase. Centerbase reserves the right to participate in the defense of the claim, suit, or proceeding, at Centerbase' expense, with counsel of Centerbase' choosing.

12.2 Centerbase shall defend, indemnify and hold Subscriber harmless against any loss, damage or costs (including reasonable attorneys' fees) in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Subscriber by a third party

a. alleging that the Service, or use of the Service as contemplated hereunder, infringes a U.S. patent issued as of the date of final execution of this Agreement, or a trademark of a third party; provided, however, that Subscriber:

(a) promptly gives written notice of the Claim to Centerbase (provided, however, that the failure to so notify shall not relieve Centerbase of its indemnification obligations unless Centerbase can show that it was materially prejudiced by such delay and then only to the extent of such prejudice); (b) gives Centerbase sole control of the defense and settlement of

the Claim (provided that Centerbase may not settle any Claim unless it unconditionally releases Subscriber of all liability); and (c) provides to Centerbase, at Centerbase's cost, all reasonable assistance. Centerbase shall not be required to indemnify Subscriber in the event of: (x) modification of the Service by Subscriber in conflict with Subscriber's obligations or as a result of any prohibited activity as set forth herein to the extent that the infringement or misappropriation would not have occurred but for such modification; (y) use of the Service in combination with any other product or service not provided by Centerbase to the extent that the infringement or misappropriation would not have occurred but for such use; or (z) use of the Service in a manner not otherwise contemplated by this Agreement to the extent that the infringement or misappropriation would not have occurred but for such use; or

b. arising out of or related to a violation by Centerbase of its obligations under Section 4 above ("Confidentiality") or Section 5 above ("Security and Access").

13. Miscellaneous

13.1 Technical support and training are available to Authorized Users with active subscriptions, and is available by telephone and/or email according to the subscription plan you have purchased.

13.2 Subscriber acknowledges and agrees that Centerbase may use third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to run the Service.

13.3 Centerbase may provide the ability to integrate the Service with third party products and services that Subscriber may use at Subscriber's option and risk. Access to and use of any third party products and services are subject to the separate terms and conditions required by the providers of the third party products and services. Subscriber agrees that Centerbase has no liability arising from Subscriber's use of any integrations or arising from the third party products and services. Centerbase can modify or cancel the integrations at any time without notice

13.4 Subscriber acknowledges the risk that information and the Content stored and transmitted electronically through the Service may be intercepted by third parties. Subscriber agrees to accept that risk and will not hold Centerbase liable for any loss, damage, or injury resulting from the interception of information. The Content is stored securely. Only Centerbase, with strict business reasons, may access and transfer the Content and only to provide Subscriber with the Service. Centerbase will make reasonable efforts to provide notice to Subscriber prior to such access and transfer. Centerbase' actions will comply with its obligations under Sections 4 and 5 of this Agreement.

13.5 The failure of either party to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.

13.6 This Agreement constitutes the entire agreement between Authorized Users and Centerbase and governs Authorized Users use of the Service, superseding any prior agreements

between Authorized Users and Centerbase (including, but not limited to, any prior versions of this agreement).

13.7 Centerbase reserves the right to amend this Agreement. In the event of material changes to the Agreement, Centerbase will notify Subscribers, by email, or by other reasonable means of these changes prior to their enactment. Continued use of the Service by the Subscriber after reasonable notice will be considered acceptance of any new terms.

13.8 Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets provided the assignee has agreed to be bound by all of the terms of this Agreement. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect.

13.9 Arbitration

Any controversy or claim arising out of or relating to the Agreement shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The decision of the arbitrator shall be final and unappealable. The arbitration shall be conducted in Dallas, Texas and judgment on the arbitration award may be entered into any court having jurisdiction thereof. Notwithstanding anything to the contrary, Centerbase may at any time seek injunctions or other forms of equitable relief from any court of competent jurisdiction.

13.10 Governing Law and Venue. This Agreement and your relationship with Centerbase shall be governed exclusively by, and will be enforced, construed, and interpreted exclusively in accordance with, the laws applicable in the state of Texas, and shall be considered to have been made and accepted in Dallas, TX, without regard to its conflict of law provisions. All disputes under this Agreement will be resolved by the courts of Dallas, Texas.