

TraceGains Terms and Conditions of Use

Effective Date: July 15, 2022

These Terms and Conditions of Use (the “Terms”) are a binding legal agreement between you and TraceGains that govern your access to and use of the Site and Services. Please review these Terms carefully before accessing or using the Site or the Services. By accessing, using, or registering to access or use our Site or Services, you agree to be bound by these Terms. If you do not agree to these Terms, you must not access or use the Site or the Services. If you are accessing, using, or registering to access or use our Site or Services on behalf of an organization, you represent that you have the requisite authority to do so on behalf of such organization and that you are agreeing to these Terms on behalf of such organization. Any separate written agreement into which you have entered with TraceGains for use of our Services shall govern only to the extent of a conflict with these Terms. Otherwise, all other terms, rules, and guidelines and any other policy where these Terms are referenced) are incorporated into these Terms. Your use of our Services is also subject to our [Privacy Policy](#).

DEFINITIONS

As used in these Terms, the following words have the following meanings:

“TraceGains,” “we,” “us,” or “our” means TraceGains Inc. and its affiliates and subsidiaries, the owner and operator of the Site and Services.

“Site” means the website located at www.tracegains.com, www.tracegains.net and any other subdomains or mobile versions where these Terms are linked.

“Services” means any or all the services we offer.

“Company,” “you,” or “your” means the person registering for an account and the organization for which you are registering your account or with which your account is associated.

1. YOUR ACCOUNT

To become a user of our Services, you must first register for an account. Every account must be associated with an organization. By registering for an account, you represent that you are at least eighteen (18) years old. If you are registering an organization for the first time, you represent that you have the requisite authority to register on behalf of such organization.

You will be required to set a password to protect your account. Choose a strong one because you are solely responsible and liable for all activities conducted through your account, whether by you, your authorized users, or anyone else. We disclaim all liability for any harm you may incur because of someone else using your password or account, either with or without your knowledge. If you believe your account has been compromised, you must immediately notify us. If you ever receive a suspicious email requesting your account information, please immediately contact us at abuse@tracegains.com for investigation and response. TraceGains reserves the right to terminate any account for any reason in its sole discretion including without limitation for violation of these Terms.

As part of registration, you will be asked to provide certain data about yourself and your company, including Personal Data (as defined in our Privacy Policy). By providing this data, you represent that the data is true, accurate, current, and complete, and you agree to maintain and promptly update the user data, including Personal Data, to keep it true, accurate, current, and complete at all times.

TraceGains may process this data as set forth in the TraceGains Privacy Policy, including without limitation by disclosing such information to our customers and the customer’s authorized users and other third parties who may disclose and/or use the information for other lawful purposes. By providing such data, you represent and warrant that you have all necessary right, title, and interest (including any consent or other lawful basis) necessary to provide such

data to TraceGains and any third-party recipients for these and any other applicable purposes described in our Privacy Policy.

TraceGains and certain of its service providers are located in the United States. We will transfer any Personal Data to the United States as necessary for us to provide our Services or otherwise fulfill our contractual obligations. To the extent Personal Data is processed for other purposes, you consent, and represent and warrant that you have obtained any necessary third-party consents, to the transfer of Personal Data you provide to TraceGains to the United States. Please review our Privacy Policy for more information about how we process Personal Data, the rights you grant to TraceGains, and your rights and obligations with respect to Personal Data.

2. CHANGES TO THE SITE, SERVICES, OR THESE TERMS

To ensure that we continue providing the best possible products and services, we reserve the right to modify, suspend, or discontinue all or any portion of our Site or Services with or without notice to you. Ways in which we may modify the Services include, but are not limited to, updates, upgrades, error corrections, enhancements, changes to payment structures and/or amounts, changes to usage parameters or requirements, etc. If, in our sole discretion, we determine that such changes will be material, we will use commercially reasonable efforts to provide you with advance notice of such changes. Unless expressly stated otherwise, all modifications to the Site or Services will be subject to these Terms. We may suspend your access to the Services including without limitation to prevent damage to or degradation of our network integrity or your violation of these Terms.

Additionally, we reserve the right, at any time, to modify, alter, or update these Terms with or without prior notice. All changes and/or modifications will be effective immediately upon being posted to our Services. If you continue to use our Site or any of our Services after such changes and/or modifications are posted, you agree to be bound by the changes and/or modifications to these Terms.

Pre-Release Services

Occasionally and upon invitation only, we may provide limited access to certain Services that are still being tested and evaluated and that have not yet been released to the full user base (“Pre-Release Services”). If you access and use Pre-Release Services, you consent to us contacting you for the purpose of collecting Feedback (defined below). Until released publicly, Pre-Release Services are TraceGains’ Confidential Information (defined below). Notwithstanding anything in these Terms to the contrary, TraceGains makes no representations or warranties as to the reliability, suitability, or functionality of any Pre-Release Services. TraceGains may, but is under no obligation to, publicly release or to publicly launch any Services that are based on the Pre-Release Services. TraceGains disclaims all liability for any harm occurring while using Pre-Release Services.

3. USE OF THE SERVICES; RESTRICTED ACTIVITIES

Subject to your compliance with these Terms, TraceGains grants to you, for the Term (defined below), a non-exclusive, non-transferable, non-sublicensable license to access and use the Services for your internal business purpose in accordance with these Terms.

You may not engage in any of the following regarding the Site and/or Services:

- Bypass, exploit, or otherwise avoid the TraceGains billing processes, fee or subscription structures, or otherwise affect the fees owed to TraceGains for use of the Services;
- Violate or encourage the violation of any local, state, national, or international laws, rules, or regulations;
- Collect or store personal data about other users of our Site and/or Services or solicit personal information from any individual without proper rights or consents of the individual;
- Send or promote any message that is unlawful; libelous; defamatory; abusive; sexually explicit; threatening; vulgar; obscene; profane; disparaging regarding racial, gender, ethnic background, or religion; any statement you know or have reason to know is false or misleading; or otherwise objectionable messaging, as determined by TraceGains in its sole discretion;

- Infringe any patent, trademark, trade secret, copyright, right of publicity or privacy, or any other right of any party, or distribute any content you do not have the right to make available under any law or under contractual or fiduciary relationships;
- Promote or distribute any unauthorized advertising, promotional materials, or materials which can be characterized as “junk mail,” “spam,” “chain letters,” “pyramid schemes,” or similar materials;
- Disrupt or interfere with the security or use of the Site or Services or any websites or content linked to them
- Interfere with or damage the integrity of the Site or Services, including without limitation through the use of viruses, Trojan horses, harmful code, denial of service attacks, packet or IP spoofing, forged routing or account registration information, or similar methods or technology or disobey any requirements, procedures, policies, or regulations of networks connected to our Site or Services;
- Use the Site or Services to store or transmit code, files, scripts, agents, or programs intended to cause or capable of causing harm, including without limitation viruses, worms, time bombs, Trojan horses, and other similar methods;
- Attempt to use another user’s account, impersonate another person or entity, misrepresent your affiliation with a person or entity, or create or use a false identity;
- Attempt to obtain unauthorized access to the Site or Services or portions restricted from general access;
- Use any meta tags or any other hidden text utilizing TraceGains name, trademarks, product names, or other intellectual property rights;
- Attempt to design, create, or build a service or product that is competitive with the Site or Services, or which uses ideas, features, or functions that are similar to the Site or Services;
- Attempt to reverse engineer or otherwise derive or obtain the code in any form from any software used in the Site or Services;
- Store, upload, or otherwise provide to the Site or Services any protected health information (or similar information) regulated under the Health Insurance Portability and Accountability Act (“HIPAA”) or related laws, rules, or regulations governing the privacy of protected health information;
- Engage in any activity that interferes with any third party’s ability to access or use the Site or Services; or
- Engage in any activity that TraceGains, in its sole discretion, believes to violate the spirit of these Terms
- Assist any third party in engaging in any activity prohibited by these Terms.

In addition to the prohibited activities above, you may not engage in any of the following without the express written consent of an officer or director of TraceGains:

- Reproduce, duplicate, copy, sell, resell, create derivative works, or exploit for any commercial purpose any TraceGains content or any use of or access to the Site or Services or any application programming interfaces or software used in the Site or Services;
- Use any high volume, automated, or electronic means (including without limitation robots, spiders, scripts, or other automated devices) to access the Services or monitor or copy our Site or Services or the content contained therein;
- Deep link to the Site or Services for any purposes; frame the Site or Services, place pop-up windows over any content; or otherwise affect the display of the Site or Services; or
- Access the Site or Services to build a competitive service or to benchmark with a non-TraceGains service

Third Party Transactions

You acknowledge and agree that any transaction for the purchase or sale of goods and/or services by you and any other user or third party that may be initiated, processed, or memorialized, in whole or in part, through the Services is solely between you and such other user or third party, and TraceGains is not a party to such transaction. Further, you acknowledge and agree that any assistance that may be provided to you through your use of the Services in connection with any third-party transaction is offered as an accommodation and convenience, and TraceGains will have no liability arising out of or related to such third-party transaction.

4. CONTENT ON THE SITE AND SERVICES

Content

All content, copyrights, and other intellectual property rights in the content available on the Site and Services, including without limitation designs, text, graphics, interfaces, and the selection and arrangements thereof (collectively, “Content”) are owned by TraceGains, with all rights reserved, or in some cases may be licensed to TraceGains by third parties. This Content is protected by the intellectual property rights of TraceGains or those owners. All Content which qualifies for protection under U.S. Federal Copyright Law is subject to the exclusive jurisdiction of the Federal Court System, whether registered or unregistered. All trademarks displayed on our Sites and Services are the trademarks of their respective owners and constitute neither an endorsement nor a recommendation of such parties. Use of trademarks or links to the websites of third parties is not intended to imply, directly or indirectly, that those third parties have endorsed or have any affiliation with TraceGains.

User Content

Users are solely responsible for Content they make available on the Services (“User Content”). Under no circumstances will TraceGains be liable in any way for any User Content made available through the Services by you or any third party. Since TraceGains does not control the User Content, we neither guarantee the truthfulness, integrity, suitability, or quality of User Content nor do we endorse User Content. You acknowledge that, by accessing the Services, you may encounter User Content you find objectionable. TraceGains has no responsibility for any User Content, including without limitation any errors or omissions or the accuracy or completeness therein. TraceGains is not liable for any loss or damage of any kind incurred as a result of any User Content on the Services. TraceGains reserves the right (but has no obligation) in its sole discretion to pre-screen, edit, refuse, move, or remove any User Content that is posted on the Services. You acknowledge and agree that TraceGains exercising such discretion does not convert or transform User Content to content owned or provided by TraceGains.

Your Content

You retain ownership of User Content whether uploaded or input by you directly, or uploaded or input into your account on your behalf (“Your Content”). We require certain rights in Your Content to facilitate the exchange of information between connected users and to enable services for other users of the Services. As such, you grant to TraceGains a perpetual, royalty-free, worldwide, non-exclusive, sublicensable right and license to use, reproduce, display, distribute, and prepare derivative works (such as allowing users with whom you have shared Your Content to filter by certain attributes within Your Content) from Your Content. By including Your Content in the Services, you represent and warrant that you have all requisite authority to grant the foregoing license to Your Content.

You have the ability, sole discretion, and control as to how Your Content is displayed and shared within the Services. You are solely responsible for setting access rights for how Your Content is shared and TraceGains accepts no responsibility for incorrect selections. By way of example and not of limitation, a supplier of products and/or services may choose to (1) make its User Content displayed in search results when other users search supplier information, (2) share Your Content with third parties via chat/messaging capabilities within the Services, or (3) share Your Content with third parties via collaboration spaces to work together on projects and business critical operations.

You consent to TraceGains’ identification of you by name and logo as a user of the Services for the sole purpose of identifying your account during the Term.

Usage Data and Aggregated Data

In accordance with our Privacy Policy, we reserve the right to: (a) collect information and data about your use of and interaction with the Services (“Usage Data”), (b) analyze metrics and data included in Your Content, and (c) aggregate such Usage Data and analyses (on an anonymous basis that does not attribute such information or analysis to you or your users) with data and information provided by third parties or produced by us (subsections (a), (b), and (c) collectively, the “Aggregated Data”). We own the Aggregated Data. You acknowledge and agree that Aggregated Data does not constitute your Confidential Information (as defined below) and may be shared by us with third parties.

TraceGains Content

The Services (excluding User Content) and any modification thereof, including all intellectual property rights to any of the foregoing, are and shall remain the exclusive property of TraceGains and its licensors. No licenses or rights are granted to you except for the limited rights expressly granted in these Terms.

Feedback

We welcome your comments and feedback about our Services. All input and suggestions submitted to TraceGains through the Services or otherwise, such as any comments, feedback, ideas, questions, designs, data, or the like regarding or relating to the Services or the business of TraceGains (collectively, "Feedback"), will be considered NON-CONFIDENTIAL and NON-PROPRIETARY with regard to you, but TraceGains reserves the right to treat any such Feedback as our confidential information. You grant to TraceGains an unrestricted, perpetual, irrevocable, non-exclusive, fully paid, royalty-free right to exploit the Feedback in any manner for any reason.

Third Party Content

TraceGains may use third party service providers to provide features and/or services to you. Your interaction with and use of such features and other content or services provided by third parties are not governed by these Terms. You acknowledge and agree that we are not responsible for the availability of, or any content located on or through, any third-party site or service, or any use of your information by those third parties. You further acknowledge that any reliance on representations and warranties provided by any party other than TraceGains will be at your own risk. You expressly agree to hold us harmless for any claims of damages arising from any content, product, or service provided by any third party or for use of your information by those third parties. Your use of those third-party websites and services is subject to the terms of use and privacy policies posted on each site or service, and we encourage you to review those terms of use and privacy policies. All third-party content is the property of its respective owners.

Content Complaints

If you believe that any Content on our Services violates these Terms or is otherwise inappropriate, please report such Content by contacting us at legal@tracegains.com.

Notification of Claimed Copyright Infringement

If you find Content posted on our Services which you believe to be an infringement of the copyright ownership or other intellectual property rights of you or any third party, you are requested to immediately contact TraceGains' Copyright Agent as described below. To report any alleged infringement, please contact us in writing by providing a signed statement containing the following information pursuant to the Digital Millennium Copyright Act ("DMCA"):

Your name, address, telephone number, and email address and, if you are acting on behalf of the owner of the intellectual property, the name of the owner;

- a. a statement made under penalty of perjury that you are the owner of the copyright or are authorized to act on behalf of the owner;
- b. a detailed description of the copyrighted work or other intellectual property that you claim has been infringed;
- c. if your claim is based on a registered work, the registration number, and the date of issuance of the registration;
- d. a description of the infringing material and the URL where such material is located on the Services, or a description of where on our Services you found such material;
- e. your written statement that you believe, in good faith, that the use of the work on our Services has not been authorized by the true owner of the work, its agent, or as a matter of law; and
- f. a statement that all the information you provided is true.

Please send your notice of alleged infringement containing to the foregoing to us:

TraceGains Inc.

10385 Westmoor Drive

Suite 200,

Westminster, CO 80021

Email: legal@tracegains.com, subject line: "DMCA Notice"

In accordance with the DMCA, it is TraceGains' policy to terminate use of our Services by repeat infringers in appropriate circumstances.

5. CONFIDENTIAL INFORMATION

Confidential Information

"Confidential Information" means any information disclosed by one party to the other, whether orally or in writing, that is designated as confidential or that should reasonably be understood by the recipient to be confidential, notwithstanding the failure of the disclosing party to designate it as such. Confidential Information may include information that is proprietary to a third party and is disclosed by one party to another pursuant to these Terms. TraceGains' Confidential Information includes the Content (excluding Your Content), the Services and all features and functions thereof, and related pricing and product plans. Your Confidential Information is Your Content.

Restrictions on Use and Disclosure of Confidential Information

Except as provided herein, each party will (a) protect and safeguard the confidentiality of the other party's Confidential Information with at least the same degree of care as the party would protect its own confidential information, but not less than a reasonable degree of care; (b) not use the other party's Confidential Information, or permit it to be accessed or used, for any purpose other than as expressly set forth in these Terms; (c) not disclose the other party's Confidential Information to any person or entity, except to such party's representatives who: (i) need to know the Confidential Information to fulfil its obligations or exercise its rights under these Terms; (ii) are informed of the confidential nature of the Confidential Information; and (iii) are subject to confidentiality duties or obligations no less restrictive than those contained herein; and (d) be responsible for any breach of these Terms by any of its representatives. **6. FREE AND PURCHASED SERVICES; PAYMENT**

If you register for a free trial or no charge version of the Services ("Free Services"), we will make the Free Services available to you free of charge until the earlier of (a) the end of the free period for which you registered to use the applicable Free Service(s), (b) the start date of any Purchased Services (defined below), or (c) termination of your account pursuant to section below entitled Term. ANY DATA YOU ENTER INTO THE FREE SERVICES WILL BE PERMANENTLY LOST UNLESS YOU UPGRADE TO PURCHASED SERVICES BEFORE THE END OF THE FREE PERIOD OR UPON TERMINATION OF YOUR REGISTRATION FOR FREE SERVICES. NOTWITHSTANDING ANYTHING IN THESE TERMS TO THE CONTRARY, ALL FREE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

Some or all features and functionality of the Services may require you to pay fees prior to accessing ("Purchased Services"). You are responsible for paying the fees presented when selecting your desired Purchased Services. All fees are in U.S. Dollars and are non-refundable, unless otherwise explicitly stated. Unless we agree otherwise, payment for Purchased Services will be made via credit card.

All amounts payable under these Terms are exclusive of any tax, levy, or similar governmental charge that may be assessed by any jurisdiction, whether based on gross revenue; the delivery, sale, or use of the Services; or otherwise arising out of the execution or performance of these Terms (including without limitation all sales, use, excise, import or export, value added, governmental permit, license, customs fees or taxes, or withholding taxes); provided, however, that you shall have no liability for any net income, net worth, or franchise tax assessed on TraceGains by the United States or any state thereof. Upon advance notice to you, we may change fees effective upon your next renewal. Such changes may include without limitation the right to charge a fee for new features or functions, or for features or functions that have previously been offered at no charge.

Downgrades from Purchased Services

When you downgrade from some or all Purchased Services, you may lose some or all the functionality you received with Purchased Services at the end of your then-current Subscription Term. After expiration of your then-current Subscription Term you have downgraded, your usage parameters will reset to those offered as part of Free Services. Any area of the Services where you are out of compliance will become read only access and you will not be allowed to upload new content until your account is in compliance. If your account remains out of compliance for a period of ninety (90) days after the effective date of your downgrade, then your account will be reset, and you will lose all of Your Content.

7. TERM AND TERMINATION

These Terms begin on the date you register your account and will continue until you cancel your account, unless terminated earlier in accordance with this Section. If you subscribe to any Purchased Services, your first subscription (“Your Initial Subscription”) will begin on the date you first subscribe for the initial period you choose when subscribing (the “Initial Subscription Period”). Any additional subscriptions you make (each, an “Additional Subscription”) will begin on the date you first subscribe and continue until co-terminus with Your Initial Subscription. After the Initial Subscription Period, your subscription will automatically renew for consecutive periods equal to your Initial Subscription Period until you downgrade from Purchased Services to Free Services, you cancel your account, or your account is terminated in accordance with these Terms (each, a “Renewal Subscription Term” and together with the Initial Subscription Term, the “Subscription Term”). Cancellations or downgrades from Purchased Services by you will be effective at the end of the then-current term, and you remain responsible for paying any outstanding fees. You must retrieve all Your Content prior to the effective date of cancellation. Any of Your Content remaining in your account after the effective date of cancellation will be deleted.

TraceGains may automatically terminate your account with immediate effect if you violate these Terms.

Upon termination for any reason, the rights and licenses granted to you to use the Services will terminate and all outstanding amounts owed to use become immediately due and payable.

The following sections of these Terms will survive any expiration or termination of these Terms: Your Content, TraceGains Content, Usage and Aggregated Data, Payment, Term and Termination, Warranties and Disclaimer of Warranties, Limited Liability, Indemnification, General

8. WARRANTIES AND DISCLAIMER OF WARRANTIES

Each party represents and warrants that it has validly entered these Terms and has the full power and authority to do so and to perform its obligations hereunder.

EXCEPT AS PROVIDED HEREIN THE SERVICES ARE PROVIDED WITHOUT ANY WARRANTY OF ANY KIND. TRACEGAINS EXPRESSLY DISCLAIMS (TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW) ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, RELATING TO THE SUBJECT MATTER OF THESE TERMS, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. TRACEGAINS DOES NOT WARRANT THAT (A) YOUR CONTENT INPUT INTO THE SERVICES WILL BE ACCURATE OR FREE FROM ERRORS; (B) THE OPERATION OF THE SERVICES WILL BE COMPLETELY SECURE, ERROR-FREE, OR UNINTERRUPTED; OR (C) ALL ERRORS WILL BE CORRECTED. FURTHER, TRACEGAINS SHALL HAVE NO LIABILITY FOR ANY DELAYS OR INTERRUPTIONS IN YOUR ACCESS TO OR USE OF THE SERVICES RESULTING FROM USE OF THE INTERNET AND/OR TELECOMMUNICATIONS CONNECTIONS OR EQUIPMENT.

9. LIMITED LIABILITY

WHERE PERMITTED, UNDER NO CIRCUMSTANCES WILL TRACEGAINS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY

KIND OR NATURE WHATSOEVER ARISING OUT OF THESE TERMS OR THE SERVICES INCLUDING WITHOUT LIMITATION ANY COST OF COVER OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES (WHICH THE PARTIES AGREE MAY NOT BE CONSIDERED DIRECT DAMAGES), LOST GOODWILL, LOST PROFITS, LOSS OF DATA, OR WORK STOPPAGE. WHERE PERMITTED, TRACEGAINS' MAXIMUM LIABILITY ARISING OUT OF OR RELATED TO THE SERVICES OR THESE TERMS SHALL BE LIMITED TO THE GREATER OF THE FEES YOU HAVE PAID TO US PURSUANT TO THE TERMS IN THE PRIOR SIX (6) MONTHS LEADING UP TO THE EVENT(S) GIVING RISE TO SUCH LIABILITY OR ONE THOUSAND DOLLARS (\$1,000). TRACEGAINS SHALL HAVE NO LIABILITY OR RESPONSIBILITY WHATSOEVER FOR ANY DATA PROVIDED BY YOU OR FOR THE ACCURACY OF ANY OF YOUR CONTENT. THE LIMITATIONS SET FORTH IN THIS SECTION APPLY REGARDLESS OF THE LEGAL THEORY ON WHICH A CLAIM IS BROUGHT (WHETHER ON THE BASIS OF CONTRACT, NEGLIGENCE, OTHER TORTS, OR STRICT LIABILITY), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE REMEDY PROVIDED HEREIN.

10. INDEMNITY

You are responsible for your use of the Services, Your Content, and all activities that take place within your account. You agree to indemnify, defend, and hold harmless TraceGains and our officers, directors, employees, consultants, affiliates, subsidiaries, and agents (together, the "TraceGains Entities") from and against any claim, legal action, demand, suit, liability, damage, loss, and expense, including attorneys' fees and cost (collectively, "Indemnifiable Claims"), arising out of or related to Your Content, your use of the Services, or any activity within your account. TraceGains shall have the right, but not the obligation, to take over the defense of any Indemnifiable Claims.

11. GENERAL

Assignment

You may, without the prior consent of us, assign these Terms to a successor in interest or to an entity that acquires all or substantially all your assets in connection with a merger or acquisition, provided that you provide us with reasonable advance notice of such assignment. Except as provided in the immediately preceding sentence, you may neither assign nor transfer these Terms or any of the rights or obligations hereunder in whole or in part without the prior written consent of TraceGains. We reserve the right to assign these Terms, in our sole discretion, with or without notice to you and without your prior consent to such assignment.

Governing Law; Jurisdiction and Venue

These Terms shall be governed by and construed in all respects in accordance with the laws of the state of Delaware, without reference to conflict of laws principles. Each party hereby consents to the exclusive venue and jurisdiction of the courts of Delaware.

Force Majeure

Neither party will be liable hereunder by reason of any failure or delay in the performance of its obligations (except for your payment of fees for Purchased Services) on account of events beyond such party's reasonable control, such as strikes, shortages, riots, insurrection, fires, flood, storm, explosion, acts of God, war, governmental action, labor conditions, earthquakes, material shortages, pandemics, and epidemics.

No Agency

Nothing contained in these Terms shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

Notices and Electronic Communications

We may communicate with you electronically in accordance with our Privacy Policy. All such electronic communications shall satisfy any requirement under these Terms that notices, disclosures, or other communications be in writing.

Severability

If any provision of these Terms is held by a court of competent jurisdiction to be unenforceable or invalid, such provision shall be changed and interpreted to best accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of these Terms shall remain in full force and effect.

Waiver; Amendment

Any waiver of failure to enforce any provision of these Terms will not be deemed a waiver of future enforcement of that or any other provision.

Except as expressly provided for herein, these Terms may only be amended in writing signed by an authorized officer of TraceGains.

Entire Agreement; Order of Precedence

These Terms, together with the Privacy Policy, and other agreements referenced herein constitute the entire agreement between you and TraceGains regarding your use of the Services and, except as otherwise provided herein, all other prior agreement between you and TraceGains are superseded by these Terms.