

Eskalera, Inc
Terms and Conditions
(September 2023)

THE TERMS AND CONDITIONS CONTAINED HEREIN ("**AGREEMENT**") APPLY TO ALL USE OF THE SOFTWARE-AS-A-SERVICE SOLUTION PROVIDED BY ESKALERA, INC. ("**VECTROSHIFT**") TO YOU AND THE ORGANIZATION YOU REPRESENT (TOGETHER, "**CUSTOMER**"). BY ACCESSING OR USING ANY OF ESKALERA'S SERVICES, CUSTOMER AGREES TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT WILL BE DEEMED EFFECTIVE ON THE DATE IT IS ACCEPTED BY CUSTOMER AND ORDER DOCUMENT (AS DEFINED IN SECTION 1 BELOW) ("**EFFECTIVE DATE**").

1. **Agreement and Term.** The products and online services (collectively, "**Services**") that Eskalera will provide to Company pursuant to this Agreement will be described in order form(s) signed by both parties or purchased by Customer via an Eskalera-provided online ordering process (collectively, "**Order Forms**"). If the personal data of any European Union residents will be provided or made available by Customer, the Data Protection Addendum located at <https://www.eskalera.com/eskalera-dpa> will apply (a "**DPA**"), which is incorporated in this Agreement. "Agreement" means this Agreement together with all Order Forms and the DPA. The "**Term**" of this Agreement begins on the Effective Date and ends when all Order Forms have expired or terminated.
2. **Use of Services.** During the Term and subject to the terms of this Agreement, Eskalera grants Company a non-exclusive, non-transferable right to access and use the Services set forth in an Order Form. Eskalera will use commercially reasonable efforts to make its online Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which Eskalera will inform Company in advance), and (b) unavailability caused by circumstances beyond Eskalera's reasonable control.
3. **Company Responsibilities.**
 - 3.1. In its use of the Services, Company will comply with this Agreement (including any usage limits specified in Order Forms) and all applicable laws and regulations. Company will comply with the terms of service or similar policies of any Third-Party Application (as defined below) with which Company uses the Services. Company will use commercially reasonable efforts to prevent unauthorized access to or use of Services and notify Eskalera promptly of any such unauthorized access or use. Company is responsible for its personnel's and agents' compliance with Company's obligations under this Agreement.
 - 3.2. Company will not (a) make any part of the Services available to, or use the Services for the benefit of, any third party; (b) sell, resell, license, sublicense, distribute, make available, rent or lease the Services; (c) modify, copy or create derivative works of the Services (or any part thereof); (d) disassemble, reverse-engineer or decompile the Services; (e) access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes; (f) use the Services or any Third-Party Application to store or transmit materials that are unlawful, misleading, libelous, obscene, hateful or violative of others' privacy rights; or (g) introduce viruses or other malware to a Third-Party Application or the Services, Eskalera's systems or end users. Company will not use the Services or any Third-Party Application in a manner that violates its agreement with any third party or could reasonably be expected to damage the Services or Third-Party Application or reflect unfavorably on the reputation of Eskalera or its partners. Company will not export, re-export, or transfer the Services, in whole or in part, to any country, person, or entity subject to U.S. export restrictions.
4. **Privacy.**
 - 4.1. Each party will take all steps reasonably necessary to enable the other party to comply (or demonstrate its compliance) with applicable privacy laws and regulations (including providing needed documentation).

- 4.2. Each party will conspicuously post and comply with a legally sufficient privacy notice on its properties where data is collected and used in association with the Services. The privacy notice must accurately describe the party's practices relating to data collection, sharing and use.
- 4.3. Company is responsible for the accuracy, quality and legality of Company Data, the means by which Company acquired Company Data, and Company's use of Company Data with the Services or any Third-Party Application. Company will ensure that all necessary rights and permissions are established for the transfer and/or use of Company Data in connection with the Services or the applicable Third-Party Application in compliance with all applicable laws, regulations, and self-regulatory requirements.

5. **Data and Proprietary Rights.**

- 5.1. Except as set forth in this Agreement, as between Eskalera and Company, Company owns all right, title and interest (including all intellectual property rights) in all data input into the Services by or on behalf of Company ("**Company Data**"). Eskalera may only use Company Data to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement, and to build or improve the Eskalera's services and offerings to the extent permitted under applicable data protection laws.
- 5.2. Except as set forth in this Agreement, as between Eskalera and Company, Eskalera owns all right, title and interest (including all intellectual property rights) in the Services, including the data within the Services except for Company Data ("**Eskalera Data**"), including system performance metrics and the Services' machine learning, and any future developments, derivatives and enhancements to the Services. Company may only use Eskalera Data in connection with using the Services. Company acknowledges that, as Services are provided to Company and to Eskalera's other customers, the Services and the underlying algorithms are engaged in continual machine learning, and that the results and output of such learning are owned solely by Eskalera. Eskalera will not be restricted from improving its services on the basis of general learning and know-how gained from the provision of the Services to Company and Eskalera's other partners. Eskalera may use any suggestions or feedback perpetually and irrevocably, without accounting, attribution or compensation.
- 5.3. Company grants Eskalera worldwide, limited-term license to host copy, use, transmit, and display any Third-Party Application and program code created by or for Company using a Service or for use by Company with the Services, as appropriate for Eskalera to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement. If Company chooses to use a Third-Party Application with a Service, Company grants Eskalera permission to allow the Third-Party Application and its provider to access Company Data and information about Company's usage of the Third-Party Application as appropriate for the interoperation of that Third-Party Application with the Service.
- 5.4. Notwithstanding anything to the contrary, Eskalera may collect, produce, use, or retain aggregated or other deidentified data related to or generated from Company's use of the Services (e.g. Eskalera may collect aggregated data to create and provide indices showing diversity or compensation measures for a particular market). Eskalera retains all right, title and interest in and to such data.
- 5.5. Each end user may have a user profile on Eskalera's services. While using the Services, a user may add their personal information to their user profile, and notwithstanding anything in this Agreement to the contrary, such data is not Company Data and each User shall control how the data in their user profile is collected, processed, and disclosed. To promote a trusted environment on the Services, Eskalera will not provide Company with users' personal information (e.g. a user's response to a question posed in an Eskalera Experience) that has not been aggregated or otherwise deidentified unless a user chooses to share the data with Company or except as required by applicable law.
- 5.6. Aside from the rights granted herein or in an Order Form, neither party grants the other any other right, express or implied, and each party reserves all rights not expressly granted hereunder.

6. **Third-Party Applications.** The Services may offer features designed to interoperate with third party software applications and services ("**Third-Party Applications**"). Eskalera cannot guarantee the continued availability of any Third-Party Application and is not responsible for the interoperation of Third-Party Applications with the Services. Any use by Company of Third-Party Applications, and any exchange of data between Company and any Third-Party Application provider, is solely between Company and the applicable Third-Party Application provider. Eskalera is not responsible for any act or omission by a Third-Party Application, including, without limitation, any disclosure, modification or deletion of Company Data resulting from access by such Third-Party Application or its provider. If Company receives notice that a Third-Party Application must be removed, modified or disabled in connection with applicable laws or third-party rights, Company will promptly do so. If Company does not do so, or if Eskalera reasonably believes that a violation of applicable laws or third-party rights is likely to occur or continue, Eskalera may disable the Services' ability to interoperate with such Third-Party Application.
7. **Payment, Taxes, and Renewal.**
- 7.1. Company will pay fees specified in each Order Form in US Dollars, within 30 days of the invoice date. If an Order Form specifies payment by credit card, Company will promptly provide credit card billing details and hereby authorizes Eskalera to charge the credit card for Services. Eskalera reserves the right to charge interest on late payments at the lower of 1.5% of the outstanding balance per month, or the maximum permitted by law. Eskalera's fees do not include any present or future taxes, levies, fees or duties of any kind ("**Taxes**"). Except for any Tax that Eskalera has charged to Company, Company is responsible for remitting all Taxes based on or arising from this Agreement (other than Taxes based on Eskalera's net income), without setoff or deduction from the fees. If Eskalera is held responsible for such Taxes, Company will reimburse Eskalera for such payments.
- 7.2. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The pricing during any renewal term will increase by up to 3% above the applicable pricing in the prior term, unless Eskalera provides Company notice of different pricing at least 60 days prior to the applicable renewal term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at Eskalera's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.
8. **Termination and Suspension.** Unless otherwise specified in an Order Form, either party may terminate this Agreement and any Order Form immediately if (a) the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; or (b) the other party is in material breach of this Agreement, has been given notice of such material breach, and has failed to cure within 30 days (or 5 days in the case of failure to pay fees as described in this Agreement). If this Agreement or an Order Form is terminated for Company's uncured breach, Company will promptly pay any minimum amounts that would have been due for the full duration of the Term as it existed prior to the early termination. If an Order Form indicates that Services are provided free of charge, then Eskalera will make the applicable Service(s) available to Company on a trial basis free of charge until the earlier of (a) the end of the free trial period specified on the Order Form, (b) the start date of any purchased Service subscriptions ordered by Company for Service(s) subject to the free trial, or (c) termination by Eskalera in its sole discretion. Eskalera may suspend access to and use of the Services if Eskalera reasonably believes that Company's continuing use of the Services may cause risk of litigation or otherwise be harmful to Eskalera. Upon the termination or expiration of this Agreement, Company's right to use the Services will terminate, and Company will promptly return (or at Eskalera's election, delete) Eskalera's Confidential Information (including any Eskalera Data). All provisions of this Agreement which by their nature should survive termination – shall survive (including, without limitation, all outstanding payment obligations).

9. **Confidentiality.** “**Confidential Information**” means information that the disclosing party identifies as confidential or the receiving party should reasonably understand to be confidential given the circumstances and the type of information. Confidential Information does not include information that the receiving party can demonstrate (a) it knew without restriction before receipt from the disclosing party, (b) is publicly available through no fault of the receiving party, (c) it rightfully received from a third party without a duty of confidentiality or (d) is independently developed without use of the disclosing party’s Confidential Information. The receiving party may use the disclosing party’s Confidential Information only as permitted under this Agreement and must use at least reasonable care to prevent any unauthorized use or disclosure of the disclosing party’s Confidential Information. The receiving party may share the disclosing party’s Confidential Information with its employees, agents and contractors, and in the case of Eskalera with a Third-Party Application provider, who need to know it, as long as they are bound to confidentiality obligations that are consistent with this Agreement and provided that a party that makes a permitted disclosure will remain responsible for the recipient’s compliance with this section. If compelled to do so by law, the receiving party may disclose the disclosing party’s Confidential Information as long as it provides reasonable prior notice to the disclosing party (unless legally prohibited). The terms of the Agreement will be Confidential Information of Eskalera (but Customer may disclose this Agreement to its professional advisors and as required by law).
10. **Disclaimer.** **ESKALERA PROVIDES ALL SERVICES “AS IS” AND “AS AVAILABLE,” WITHOUT WARRANTY OF ANY KIND, AND DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY AND NON-INFRINGEMENT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. ESKALERA DOES NOT WARRANT THE SERVICES WILL BE UNINTERUPPTED OR ERROR FREE.**
11. **Limitation on Liability.** **ESKALERA WILL NOT BE LIABLE IN CONNECTION WITH THIS AGREEMENT FOR ANY (I) INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, EVEN IF FORSEEABLE (INCLUDING, WITHOUT LIMITATION, FOR LOSS OF PROFITS, BUSINESS, OR DATA), (II) AMOUNTS IN THE AGGREGATE IN EXCESS OF THE AMOUNTS PAID TO ESKALERA HEREUNDER FOR THE THEN-CURRENT TERM (OR, IF NO AMOUNTS HAVE BEEN PAID, SUCH CAP WILL BE US\$100, OR (III) MATTERS BEYOND ESKALERA’S REASONABLE CONTROL.**
12. **Logo Use.** Customer agrees that Eskalera may use Customer's name and logo on Eskalera’s web site and in Eskalera promotional and marketing materials.
13. **General.**
- 13.1. **Assignment.** Customer will not assign or transfer this Agreement (in whole or part). Any attempt to transfer or assign this Agreement except as expressly authorized above will be null and void. Eskalera may freely assign this Agreement.
- 13.2. **Force Majeure.** Eskalera will not liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of Eskalera, such as a strike, blockade, war, act of terrorism, pandemic, riot, natural disaster, failure or diminishment of telecommunications, supply chain issues, issues with Eskalera’s providers (such as its hosting provider), or refusal of a license by a government agency.
- 13.3. **Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. Except for claims for injunctive or equitable relief or claims regarding intellectual property rights (which may be brought in any competent court), any dispute arising under this Agreement shall be finally settled in accordance with the Rules of the Judicial Arbitration and Mediation Service (“**JAMS**”) in accordance with such Rules. To the extent the JAMS streamlined rules are available – they shall apply. The arbitration shall take place in Santa Clara, California, in the English language and the arbitral decision may be enforced in any court. To the extent a claim cannot legally be arbitrated (as determined by an arbitrator), the jurisdiction and venue for actions related to the subject matter hereof shall

be the state and United States federal courts located in Santa Clara, California and both parties hereby submit to the personal jurisdiction of such courts.

13.4. **Notice.** All notices to Customer may be provided by Eskalera via email or account notification. Any legal notices to Eskalera must be sent to Eskalera, Inc., 23 Geary Street, Suite 600, San Francisco, CA 94108. In addition, legal notices must also be sent to debra@eskalera.com (but, notwithstanding earlier receipt via email, legal notices will be deemed received when the physical notice is received as set forth in preceding sentence).

13.5. **Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. This Agreement may be updated by Eskalera on notice. If Customer does not agree to any amendment, its sole remedy is to terminate use of the Service within thirty (30) days from receipt of the amendment notice (otherwise Customer will be bound to the updated Agreement). If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect. This Agreement may be executed electronically.