K2 SERVICENOW TERMS OF USE

Last Updated: September 23, 2024

CAREFULLY READ THESE TERMS OF USE. BY ACCESSING AND USING THE SERVICENOW SERVICES MADE AVAILABLE BY K2, YOU AGREE TO BE BOUND BY THESE TERMS OF USE AND REPRESENT THAT YOU ARE DULY AUTHORIZED TO ACCEPT THESE TERMS OF USE ON BEHALF OF YOUR ORGANIZATION. IF YOU DO NOT ACCEPT THESE TERMS OF USE, DO NOT USE THE SERVICENOW SERVICES.

These Terms of Use, together with the Service Order (as defined below), govern Client's access to the ServiceNow Services made available by **K2 Services LLC**, a Delaware limited liability company on behalf of itself its affiliates including Keno Kozie Services LLC (collectively, "**K2**"), via the K2 ServiceNow Platform.

1. Definitions.

Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Service Order.

1.1 "**Client**" means the person or entity accessing or using ServiceNow Services via the K2 ServiceNow Platform pursuant to the terms of a Service Order.

1.2 "**Client Data**" means electronic data created or uploaded by or for Client to the ServiceNow Services excluding ServiceNow Core Technology and K2 Technology.

1.3 "**Documentation**" means the manuals, instructions and other documents and materials that ServiceNow provides or makes available in any form or medium which describes the functionality, components, features, or requirements of the Software, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

1.4 "**Customization**" means any enhancement or modification of the Software or Subscription Service (excluding Client Data) made by K2 within the K2 ServiceNow Platform, including but not limited to, templates, workflows, business processes, business rules, scripts, UI policies, custom tables, custom fields, and custom applications. Only K2 shall be permitted to generate Customizations.

1.5 "**Development Tools**" means source code, executable software and tools made available by ServiceNow for the implementation, customization, configuration, and use of the ServiceNow Core Technology, such as scripts, code snippets, sample code and development tools, but excluding APIs.

1.6 "**Enhancement**" means any of K2's releases of the K2 Technology for repairs, enhancements, or new features made from time to time at K2's sole discretion.

1.7 "**Intellectual Property Rights**" means all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

1.8 "**K2 ServiceNow Platform**" means either a dedicated or shared instance of the Subscription Service, as indicated in the Service Order, through which K2 delivers the ServiceNow Services to Client, and for which the system-wide maintenance and patching are managed by K2.

1.9 "**K2 Technology**" means the K2 ServiceNow Platform, including all Customizations made by K2, and any other material authored, invented, or licensed by K2 for use with the Software and Subscription Service, excluding the ServiceNow Core Technology.

1.10 "**Losses**" means all claims, losses, damages, demands, liabilities, penalties, judgments, costs and/or expenses (including but not limited to attorneys' fees and disbursements).

1.11 "**Professional Services**" means optional professional services of K2 which are exclusive of the ServiceNow Services, as further described in an applicable Service Order or Statement of Work between Client and K2. The Professional Services are provided subject to the terms of the Service Order.

1.12 "**Service Order**" means the written agreement or order form between K2 and Client pursuant to which K2 has agreed to provide the ServiceNow Services, including any Professional Services, to Client.

1.13 "**ServiceNow Core Technology**" means: (a) the Subscription Service; Software; Development Tools, Documentation; and ServiceNow technology and methodologies (including, without limitation, products, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects and documentation) existing as of the Effective Date or otherwise arising outside of work under a Professional Service; (b) updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related technical or Client documentation or manuals; and (c) intellectual property anywhere in the world relating to the foregoing.

1.14 "**ServiceNow**" means ServiceNow, Inc., the owner and developer of the Software, including the Documentation and all ServiceNow Core Technology.

1.15 "**ServiceNow Services**" means the software-as-a-service accessed by Client via the K2 ServiceNow Platform comprised of the ServiceNow Core Technology, Subscription Service, Software, and K2 Technology which may be generated through Client's request for Professional Services.

1.16 "**Software**" means the ServiceNow software provided to Client by K2 that operates on Client-provided machines solely to facilitate the use of the Subscription Service.

1.17 "**Subscription Service**" means ServiceNow's software as a service (SaaS) offering.

1.18 "**Subscription Term**" means the term of authorized use of the ServiceNow Services as set forth in the Service Order.

1.19 "**Upgrade**" means any of ServiceNow's releases of the Subscription Service for repairs, enhancements, or new features applied by ServiceNow to the Software during the Term of the Subscription Service. Such Upgrade(s) to the software shall be made at the discretion of K2 or ServiceNow.

1.20 "**User**" means Client and any employee, agent, contractor, or representative of Client who accesses or uses the ServiceNow Services on Client's behalf.

2. License.

2.1 <u>Software License Grant</u>. K2 grants Client a limited, personal, non-sublicensable, non-transferable, non-exclusive license during the Subscription Term to the Software, solely to facilitate Client's authorized access to and use of the ServiceNow Services for its internal business purposes (and not for further distribution to any third party). The Software may include code that is licensed under third-party license agreements, including open source made available or provided with the Software. Software is licensed and not sold even if for convenience ServiceNow or K2 refer to words such as sale or purchase.

2.2 <u>ServiceNow Services</u>. Subject to the terms contained herein, K2 authorizes Client to access and use the ServiceNow Services via the K2 ServiceNow Platform during the Subscription Term as set forth in an applicable Service Order for its internal business purposes (and not for further distribution to any third party) in accordance with the Documentation. Client shall not use or otherwise access the ServiceNow Services in a manner that exceeds the Client's authorized use as set forth herein and in the applicable Service Order. K2 shall retain sole operational and managerial control over the ServiceNow Services during the Term without resale, distribution, sublicense, or transfer to Client or any other third party.

2.3 <u>Client's Users</u>. Client understands that its Users will have access to view and modify Client Data as stored or processed in the K2 ServiceNow Platform, and K2 shall have no responsibility for the action or inaction of any Client User of the ServiceNow Services.

3. Use Restrictions. With respect to the ServiceNow Services, Client will not (and will not permit its Users to): (a) use it in excess of contractual usage limits (including as set forth in the Service Order), or in a manner that circumvents usage limits or technological access control measures; (b) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share, or otherwise make any of it available for access by third-parties; (c) access it for the purpose of developing or operating products or services for third-parties in competition with the ServiceNow Services; (d) disassemble, reverse engineer, or decompile it; (e) copy, create derivative works based on, or otherwise modify it, except as may be otherwise expressly stated in these Terms; (f) remove or modify a copyright or other proprietary rights notice in it; (g) use it to reproduce, distribute, display, transmit, or use material protected by copyright or other Intellectual Property Right (including the rights of publicity) without first obtaining permission of the owner; (h) use it to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or otherwise engage in a malicious act or disrupt its security, integrity, or operation; or (i) access or disable any ServiceNow or third-party data, software, or network. Before Client engages in any of the foregoing acts that it believes it may be entitled to, it will provide ServiceNow with 30-days' prior notice to legalnotices@servicenow.com, and reasonably requested information to allow ServiceNow to assess Client's claim. ServiceNow may, in its discretion, provide alternatives that reduce adverse impacts on ServiceNow's Intellectual Property Rights or other rights.

4. High Risk Activities. Client shall use the ServiceNow Services within the intended business purposes described in the Documentation, and not for any purpose that requires fail-safe performance including,

but not limited to, stock trading, financial transaction processing, management of hazardous facilities or applications for which failure could result in death, personal injury, or severe physical or environmental damage ("**High Risk Activity**"). ServiceNow, its licensors and suppliers, and K2, expressly disclaim all warranties of fitness for any such use and Client shall release and hold ServiceNow, its licensors and suppliers, and K2 harmless from liability arising out of the use of the ServiceNow Services for High-Risk Activity.

5. Use Verification. K2 may review Client's use of the ServiceNow Services, and upon written request, Client will provide reasonable assistance to verify its compliance with these Terms of Use. If K2 determines that Client has exceeded its permitted access and use rights as set forth in the Service Order, K2 will notify Client and within 30 days thereafter Client shall either: (a) disable any unpermitted use, or (b) purchase additional subscriptions commensurate with Client's actual use.

6. Term and Termination.

6.1 Term. Client's right to access the ServiceNow Services shall continue only for the Subscription Term.

6.2 Termination. K2 may terminate the Service Order and Client's access to the ServiceNow Services and Software at any time if Client fails to comply with these Terms of Use, or if it fails to pay, when due, any of the fees for the ServiceNow Services set forth in the Service Order and does not cure such breach within a thirty (30) day notice period. K2 may also terminate the Service Order upon written notice to Client if its authorization to distribute the ServiceNow Services is terminated by ServiceNow.

6.3 Effect of Termination or Expiration. Upon the expiration or earlier termination of the Service Order (unless otherwise expressly stated in the Service Order):

(i) Client shall immediately stop using, and K2 shall stop providing, the ServiceNow Services and all rights, licenses, and authorizations granted to Client under these Terms of Use shall terminate.

(ii) Client shall promptly remove and destroy all copies of the Software, including all backup copies from all devices it owns, possesses, or controls and on which the Software is installed.

(iii) Client shall pay to K2 within thirty (30) days any remaining amounts payable for the remainder of the current Subscription Term of the relevant Service Order.

(iv) K2 reserves the right to permanently delete, or disable access to, all Client Data and any Client Customizations from the K2 ServiceNow Platform without liability for such deletion; provided however, that Client may request in writing at least fifteen (15) days prior to any termination, and K2 shall then provide (subject to prior payment of all outstanding amounts owed to K2 under the Service Order), an export of available Client Data in the format facilitated by ServiceNow (excluding the ServiceNow Core Technology and the K2 Technology). Any Professional Services related to the export of Client Data from the K2 ServiceNow Platform, or any other services to facilitate Client's termination or transition ("**Transition Assistance**") shall be subject to additional Professional Services fees payable by Client to K2. **K2 MAKES NO WARRANTY WHATSOEVER AS TO THE FUNCTION OR UTILITY OF SUCH CLIENT DATA ONCE EXPORTED FROM THE K2 SERVICENOW PLATFORM**.

6.4 Surviving Terms. The provisions set forth in the following sections of these Terms of Use, and any other right, obligation or provision contained herein, that, by its nature, should survive termination or expiration of the Service Order, will survive any expiration or termination of the Service Order: Section 6.3 (Effects of Termination), Section 1 (Definitions), Section 7 (Intellectual Property Rights), and Section 11 (General Provisions).

7. Intellectual Property Rights.

7.1 ServiceNow Ownership. All Intellectual Property Rights in the ServiceNow Core Technology are owned exclusively by ServiceNow, notwithstanding any other provision herein. Except as expressly provided herein, ServiceNow reserves all rights in the ServiceNow Core Technology and does not grant Client any rights, express or implied or by estoppel.

7.2 K2 Ownership. All Intellectual Property Rights in the K2 Technology are owned exclusively by K2, notwithstanding any other provision herein. Client's right to access or use the K2 Technology shall terminate upon termination of the Subscription Term.

7.3 Client Ownership. Client shall retain ownership of all Intellectual Property Rights in the Client Data. Client hereby grants to K2 a royalty-free, fully paid, non-exclusive, nontransferable, sub-licensable, worldwide right to use Client Data solely for the purpose of providing the Subscription Service.

8. Cooperation. Client represents and warrants that it has the legal authority to provide K2 access to all Client Data made available to K2 in connection with the ServiceNow Services. Client agrees to provide all reasonable cooperation necessary or appropriate for K2 to fulfill its obligations under these Terms of Use, including (if necessary) providing access to properly equipped facilities and obtaining all Required Consents necessary for K2 to provide the ServiceNow Services. "Required Consents" are any consents or approvals required to give K2 the right or license to access, use, and/or modify any Client Data, third-party software, hardware or other products or information used by Client without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such items. When K2's performance hereunder requires or is contingent upon Client's performance of an obligation (including providing Required Consents, approval or notification or taking a recommended corrective action) hereunder or a relevant Service Order, and Client delays or withholds its performance beyond the agreed time period (or beyond five (5) business days, if a time period is not specified), K2 will be relieved of its obligation to perform its obligations entirely or, if it is reasonable for K2 to perform once Client performs, until a reasonable period following performance of Client's obligation.

9. Copy Protection. The Software may contain technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against any use of the Software that is prohibited under Sections 3 and 4. Client shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.

10. Export Compliance. Each party shall comply with United States and foreign export control laws and regulations. Client acknowledges that the ServiceNow Services, Software, Documentation, and

Development Tools("**Technology**") are subject to the U.S. Export Administration Regulations (the "**EAR**") and that Client shall comply with the EAR. Without limiting the foregoing, Client represents and warrants that: (i) Client is not located in, and shall not use the Technology from, any country that is subject to U.S. export restrictions (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Russia, Sudan and Syria); (ii) Client shall not use the Technology in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, sounding rockets or unmanned air vehicle systems; and (iii) Client is not prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. In addition, Client is responsible for complying with any local laws which may impact Client's right to import, export or use the Technology.

11. Confidentiality and Data Security.

11.1 Each Party shall protect and safeguard the information of the other Party which it receives or otherwise has access to as a result of the Service Order (the "**Confidential Information**"). Client's Confidential Information includes, without limitation, the Client Data. K2 Confidential Information includes, without limitation, K2 proprietary information, technical data, know-how; the fees, charges and invoices supplied under the Service Order; supplier and customer lists; business strategies, marketing and operational plans, trade secrets, and any other information reasonably designated as confidential by K2. As used herein, the term Confidential Information shall not include information that (as can be documented through written evidence): (a) is or becomes a part of the public domain through no act or omission of the Receiving Party; (b) is lawfully disclosed by the Disclosing Party to a third party without any obligation of confidentiality; (c) is independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party; or (d) was known by the Receiving Party prior to its receipt from the Disclosing Party without an obligation of non-disclosure.

11.2   Use of Confidential Information. Each Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") agrees to (a) use Confidential Information of the Disclosing Party solely if and to the extent necessary to perform its obligations under this Order, (b) protect the Confidential Information from unauthorized disclosure to any third party using at least the same degree of care as such Party uses to protect its own Confidential Information, and in all cases no less than a reasonable level of care; and (c) limit disclosure of the Confidential Information to its own employees, agents and contractors, who are under a written obligation of confidentiality at least as stringent as those set forth in this Order and are on a 'need to know' basis for the purposes set forth in this Order. Each Party agrees to promptly notify the other Party of any unauthorized access, loss, or disclosure of the other Party's Confidential Information upon discovery of the same and shall cooperate with the Disclosing Party to mitigate any harmful effects.

11.3   Legal Disclosure. In the event that the Receiving Party is requested or required by (a) applicable law, or (b) by an order of a court of competent jurisdiction or a valid administrative, congressional or other order, subpoena, civil investigative demand or similar legal process, to disclose Confidential Information of the Disclosing Party, the Receiving Party shall notify the Disclosing Party promptly of the request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with the provisions of this Section 11.3. In the event that no such protective order or other remedy is obtained, the Receiving Party will furnish only that portion of the Confidential Information that it is legally required to disclose as reasonably determined based on advice of its legal counsel and will exercise

reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to all Confidential Information so disclosed.

11.4   Return of Confidential Information. All Confidential Information in a written or other tangible form including all copies, summaries or derivatives thereof will be returned or destroyed by the Receiving Party within a commercially reasonable period of time after receipt from the Disclosing Party of a written request, or upon the termination of the Service Order, whichever occurs first. Intangible forms of Confidential Information must be securely destroyed. Notwithstanding the foregoing, the Receiving Party may retain Confidential Information as necessary to comply with legal and regulatory requirements and may retain intangible forms of Confidential Information which reside only in archival or backup tapes, provided that all such Confidential Information remains subject to these Terms of Use.

11.5   Data Security; Client Data. K2 shall implement and maintain commercially reasonable and appropriate physical, technical, and organizational measures designed to protect the confidentiality, integrity, and availability of Client Data and Confidential Information through a formal, written security program. To the extent Client submits or transmits to K2 any Client Data that is subject to, or otherwise afforded heightened protection under any data protection law, statute or regulation applicable to Client, such as (if applicable), the European Union (EU), General Data Protection Regulation (GDPR), the United Kingdom (UK) Data Protection Act 2018, the California Consumer Privacy Act of 2018, as amended (United States), each Party hereby agrees to comply with its obligations and responsibilities set forth in the K2 Data Processing Addendum set forth at: https://k2services.com/data-processing-addendum/ (the "**DPA**"). The Parties agree that their signature and acceptance of the Service Order shall constitute signature and acceptance of the Data Processing Addendum (if not otherwise separately executed by the Parties) to the extent applicable to the ServiceNow Services.

11.6   Equitable Remedies. The Parties acknowledge that a Party's Confidential Information comprises valuable rights and assets of such Party, and that the breach or misuse thereof would result in substantial harm and irreparable injury for which monetary damages alone may be inadequate. Therefore, each Party agrees that in the event of any actual or threatened breach of such provisions of these Terms of Use, the non-breaching Party shall have the right to seek immediate temporary or permanent injunctive relief, as appropriate, in any court of competent jurisdiction without the requirement of posting a bond. The foregoing right to injunctive relief shall be in addition to any other remedies available to the non-breaching Party at law or in equity.

12. General Provisions.
11.1 Upgrades and Enhancements. K2 may apply Upgrades or Enhancements to the K2 ServiceNow Platform from time to time in its sole discretion. K2 shall use reasonable efforts to give Client prior notice of any Upgrade or Enhancement which in its reasonable judgement may have a materially adverse impact Client's use of the Software.

12.2 Limited Warranties. K2 warrants that, during the Subscription Term, the ServiceNow Services will materially conform to the Documentation. To submit a warranty claim under this Section 12.2, Client shall provide written notice to K2 of the non-conformity. If the non-conformity persists without relief more than 30 days after notice of a warranty claim is provided to K2 under this Section 12.2, then Client may terminate the ServiceNow Services, and K2 will refund to Client any prepaid but unused subscription fees

for access to the ServiceNow Services after the effective date of termination. Notwithstanding the foregoing, this warranty will not apply to any non-conformity that is due to a modification of, or defect in the ServiceNow Services that is caused by Clients or its Users, including Customizations of the ServiceNow Services to Client's specifications. This Section 12.2 sets forth Client's exclusive remedies and K2's sole liability in connection with any breach of this warranty. K2 EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES EITHER EXPRESSED OR IMPLIED, RELATED TO SERVICENOW SERVICES, SOFTWARE AND DOCUMENTATION, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY OF NONINFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, K2 MAKES NO WARRANTY OF ANY KIND THAT THE K2 SERVICENOW SERVICES WILL PERFORM WITHOUT ERROR OR RUN WITHOUT INTERRUPTION.

12.3 <u>Indemnification</u>.

12.3.1 K2 shall defend Client and its affiliates, officers, directors, and employees against any third-party action, suit, claim or proceeding ("**Claim**") to the extent alleging that the ServiceNow Services infringe any third-party patent, copyright, or trademark, or misappropriates any third-party trade secret and shall pay any settlement amount or any court-ordered award of damages to the extent arising from such Claim. To the extent any Claim alleges any part of the ServiceNow Services infringe any third-party patent, copyright, or trademark, or misappropriates any third-party trade secret, K2 or ServiceNow may: (a) contest the Claim; (b) obtain permission for Client's continued use of the ServiceNow Services or any applicable ServiceNow Core Technology; (c) avoid such Claim by replacing or modifying Client's access to and use of the ServiceNow Services or any applicable ServiceNow Core Technology so long as the replacement provides substantially similar functionality, or, if K2 or ServiceNow determines the foregoing (a), (b), and (c) are not commercially practicable, then (d) terminate Client's access to and use of the ServiceNow Services and refund to Client any prepaid subscription fees covering the terminated ServiceNow Services for the period after the effective date of termination. Notwithstanding the above, K2 will have no obligation or liability for any Claim under this Section 12.3 to the extent arising in whole or in part from: (a) any access to or use of any ServiceNow Services not expressly authorized under these Terms of Use, to the extent the Claim would have been avoided without such unauthorized access or use; (b) Client Data; or (c) access to or use of the ServiceNow Services: (i) in violation of law; (ii) after termination of the Subscription Term; (iii) as modified by Client or its Users tors, if the Claim would have been avoided but for such modifications; or (iv) combined by Client or its Users with anything not provided by ServiceNow or K2, if the Claim would have been avoided but for such combination. This Section 12.3 states K2's entire liability and Client's exclusive remedy for any IP Claim.

12.3.2 Client shall defend, indemnify, and hold K2 and the officers, directors, employees, agents, and representatives of K2 ("**K2 Indemnitees**") harmless from and against all Losses incurred or suffered by such K2 Indemnitees arising out of, or in connection with, any third-party claim, demand, or cause of action (each, a "**Claim**") to the extent the Claim arises from Client's breach of these Terms of Use or from the Client Data.

12.4 <u>Limitation of Liability</u>. EXCEPT WITH REGARD TO CLAIMS UNDER SECTION 12.3.1, K2'S LIABILITY FOR ANY CLAIM ARISING UNDER THESE TERMS OF USE OR RELATED TO THE SERVICENOW SERVICES SHALL

NOT EXCEED, IN THE AGGREGATE, AN AMOUNT IN EXCESS OF THE FEES PAID OR PAYABLE BY CLIENT TO K2 FOR THE SERVICENOW SERVICES UNDER THE SERVICE ORDER IN THE TWELVE (12) MONTH PERIOD BEFORE THE CLAIM AROSE. K2 SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR LOST PROFITS, DAMAGES RESULTING FROM LOST DATA, FAILURE TO ACHIEVE ANTICIPATED SAVINGS, OR BUSINESS INTERRUPTION, REPUTATIONAL DAMAGE OR LOST OPPORTUNITY COSTS. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL APPLY TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW AND REGARDLESS OF THE FORM OF ACTION, (WHETHER FOR BREACH OF CONTRACT, STATUTE, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND), STRICT LIABILITY, MISREPRESENTATIONS, CLAIMS FOR FAILURE TO EXERCISE DUE CARE IN THE PERFORMANCE OF SERVICES HEREUNDER OR OTHERWISE), AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

12.5 Third-Party Beneficiary. The Parties acknowledge that ServiceNow, as the entire legal and beneficial owner of the ServiceNow Core Technology, shall be a third-party beneficiary under these Terms of Use.