

Aerial, Inc.
Terms of Service

Last Updated: January 3, 2023

Acceptance of Terms of Service

These Terms of Service (“**Terms**”) are a legal agreement entered into by and between you and Aerial, Inc. (“**Aerial**,” “**we**,” “**our**,” or “**us**”) and govern your access to and use of <https://aerialops.io/> (the “**Site**”) and any content, documentation, software, text, images, video, audio, and services offered on or made available through the Site (collectively, the “**Services**”), whether as a visitor or a registered user. Your access to and use of the Services are conditioned on your acceptance of these Terms and any additional terms that may be provided or presented to you when you use certain features of the Services.

PLEASE READ THESE TERMS CAREFULLY. BY REGISTERING FOR AN ACCOUNT, CLICKING TO INDICATE YOU AGREE TO THESE TERMS, MAKING ANY PURCHASES THROUGH THE SERVICES, OR OTHERWISE ACCESSING OR USING THE SERVICES, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, DO NOT ACCESS OR USE THE SERVICES, CREATE AN ACCOUNT, MAKE A PURCHASE THROUGH THE SERVICES, OR CLICK TO INDICATE THAT YOU AGREE TO THESE TERMS.

THESE TERMS CONTAIN A MANDATORY ARBITRATION PROVISION BELOW THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES OR CLAIMS RELATED TO THESE TERMS OR YOUR USE OF THE SERVICES, RATHER THAN JURY TRIAL OR CLASS ACTIONS. PLEASE SEE THE MANDATORY ARBITRATION SECTION BELOW.

Age Requirements

By using the Services, you represent and warrant that you are: (a) over 18 years of age or the age of majority in your jurisdiction, whichever is greater; (b) of legal age to form a binding contract; and (c) not a person barred from using the Services under the laws of your country of residence or any other applicable jurisdiction.

Privacy Notice

In addition to these Terms, the Aerial Privacy Notice (<https://aerialops.io/terms>) governs all information you provide to us via the Services, and you agree to all actions we may take with respect to your information consistent with our Privacy Notice.

Accessing the Services

(a) You may browse the Services without registering, but some features or functionality may not be accessible unless you register. In registering for the Services, you agree to: (i) provide true, accurate, current, and complete information about yourself as prompted by the Services’ registration form; and (ii) maintain and promptly update the information to keep it true, accurate, current, and complete. If you provide any information that is untrue, inaccurate, not current, or incomplete, or we reasonably suspect that you have done so, we may suspend or terminate your account.

(b) You are fully responsible for all activities that occur under your account. You may not share your account or password with anyone. You agree to notify us immediately of any unauthorized use of your account or password or any other similar breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information.

(c) You are solely responsible for any data, usage, and other charges assessed by mobile, cable, internet, or other communications services providers for your access to and use of the Services. Some features of the Services are free to use, but if there is a fee listed for any portion of the Services, by accessing or using that portion, you agree to pay the fee.

(d) The Services are licensed, not sold, to you, and all rights granted to you under these Terms are subject to your compliance with the Terms. Without limiting our other rights or remedies under these Terms, you agree we have the right to limit and/or disable your access to the Services if you violate any provision of these Terms or your use of the Services would cause a risk of harm to others.

(e) We may release certain features or functionality that we are still testing (“**Beta Services**”). We typically offer Beta Services so that we can collect user feedback, and by using our Beta Services you agree that we may contact you to collect such feedback. You will keep all Beta Services confidential until official launch. If you use any Beta Services, you agree not to disclose any information about those Beta Services to anyone else without our prior written consent.

Content

(a) All information, data, text, software, music, sounds, images, graphics, videos, messages, scripts, tags, and other materials accessible through the Services, whether publicly posted or privately transmitted (“**Content**”), are the sole responsibility of the person from whom such Content originated. This means that you, and not Aerial, are entirely responsible for all Content that you upload, post, transmit, or otherwise make available through the Services (“**Your Content**”), and other users of the Services, and not Aerial, are similarly responsible for all Content they upload, post, transmit, or otherwise make available through the Services (“**User Content**”).

(b) Aerial has no obligation to pre-screen Content (which includes without limitation Your Content and User Content), although we reserve the right in our sole discretion to pre-screen, refuse, or remove any Content. Without limiting the generality of the foregoing sentence, we have the right to remove any Content that violates these Terms. We do not warrant the accuracy, completeness, or usefulness of Content. Any reliance you place on such Content is strictly at your own risk.

(c) To the extent that you submit any Content, you represent and warrant that: (i) you have all necessary right and authority to grant the rights set forth in these Terms with respect to Your Content; and (ii) Your Content does not violate or misappropriate any intellectual property or other right of any other party.

Intellectual Property Rights

(a) Aerial does not claim ownership of Your Content. However, you grant us and our service providers a worldwide, royalty-free, fully-paid-up, non-exclusive, sublicensable, transferable license to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make and have made Your Content (in any form and any medium, whether now known or later developed) in connection with the Services.

(b) Except with respect to Your Content or as otherwise described in these Terms, Aerial and our licensors own all right, title, and interest in the Services and all Content and other materials within the Service. The Aerial logos and trademarks referenced in the Services are the trademarks of Aerial and our affiliates. Any other company names, product names, service names, and logos referenced in the Services may be the trademarks of their respective owners. Aerial reserves all rights not expressly granted to you.

(c) To the extent the Services provide access to any online software or other similar components, then Aerial grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use the software or components only in connection with the Services.

(d) If you elect to provide or make available to Aerial any suggestions, comments, ideas, improvements, or other feedback relating to the Services (“**Suggestions**”), you grant us the right to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make, have made, assign, pledge, transfer, or otherwise grant rights in your Suggestions in any form and any medium (whether now known or later developed), without credit or compensation to you.

Prohibited Uses

In connection with your access to and use of the Services, you will not:

(a) upload, post, transmit or otherwise make available any Content that: (i) is illegal, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another’s privacy, hateful, or otherwise objectionable; (ii) may not be made available under any law or under contractual or fiduciary relationships; (iii) infringes any intellectual property or other right of any party; (iv) contains software viruses or any harmful code, files, or programs; or (v) consists of information that you know or have reason to know is false or inaccurate.

(b) impersonate any person or entity, including without limitation Aerial personnel, or falsely state or otherwise misrepresent your affiliation with any person or entity;

(c) act in a manner that negatively affects the ability of other users to access or use the Services;

(d) take any action that imposes an unreasonable or disproportionately heavy load on the Services or its infrastructure;

(e) sell, rent, share, transfer, trade, loan, or sublicense any portion of the Services, including without limitation your user account and password;

(f) violate any applicable federal, international, state, or local law or regulation.

(g) except as expressly permitted by applicable law, reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code of the Services;

(h) frame or utilize any framing technique to enclose any Content;

(i) remove or obscure any proprietary notice that appears within the Services; or

(k) access the Services for the purpose of developing, marketing, selling, or distributing any product or service that competes with or includes features substantially similar to the Services or any products or services offered by Aerial.

Third-Party Materials

The Services may provide links to other websites or resources. Aerial does not endorse and is not responsible for any third-party content, advertising, products, services, or other materials on or available through such sites or resources. These sites are subject to different terms and conditions of use, which you are responsible for reviewing. Your dealings with advertisers and other third parties who market, sell, buy, or offer to sell or buy any goods or services on the Services are solely between you and the advertiser or

other third party. You agree that Aerial is not liable for any damage or loss of any kind incurred as a result of any such dealings.

Changes to the Services

(a) Aerial strives to maintain good availability of the Services but reserves the right at any time to modify, suspend, or discontinue the Services (or any portion thereof) with or without notice, and Aerial will not be liable to you or to any third party for any such modification, suspension, or discontinuance; provided that we will attempt to provide you advance notice of any anticipated suspension or discontinuance and refund you on a pro-rata basis for any prepaid fees for the Services not yet received as a result of any suspension or discontinuance of the Services.

(b) Aerial may in its sole discretion from time to time develop patches, bug fixes, updates, upgrades, and other modifications to the Services (“**Updates**”). We may develop Updates that require installation by you before you continue to access or use the Services. Updates may also be automatically installed without providing any additional notice to you or receiving any additional consent from you. The manner in which Updates may be automatically downloaded and installed may be affected by settings on your device and its operating system.

Two Factor Authentication

You may provide us with your mobile phone number in order to turn on two-factor authentication for your account. Your information will be handled in accordance with our Privacy Notice. Two-factor authentication adds an extra layer of security to your account. When this setting is enabled, you will be required to enter a verification code with your password. Verification codes may be sent to you via SMS messages. Standard messaging and data rates will apply.

Geographic Restrictions

We make no claims that the Services are accessible or appropriate outside of the United States. Access to the Services may not be legal by certain persons or in certain countries. If you access the Services from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

DISCLAIMER OF WARRANTIES

YOU UNDERSTAND THAT WE CANNOT AND DO NOT GUARANTEE OR WARRANT THAT CONTENT AVAILABLE FROM THE SERVICES WILL BE ACCURATE, HARMLESS, OR ERROR-FREE. YOU ARE RESPONSIBLE FOR IMPLEMENTING SUFFICIENT PROCEDURES TO SATISFY YOUR PARTICULAR REQUIREMENTS FOR ANTI-VIRUS PROTECTION AND ACCURACY OF DATA INPUT AND OUTPUT.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE SERVICES AND CONTENT IS AT YOUR OWN RISK, THE SERVICES AND CONTENT ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND AERIAL EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

Indemnification

You agree to defend, indemnify, and hold harmless Aerial, its affiliates, licensors, and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors, and assigns (“**Aerial Parties**”) from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys’ fees) arising out of or relating to

your violation of these Terms or your use of the Services other than as expressly authorized in these Terms, except to the extent caused by the Aerial Parties' gross negligence, fraud, or intentional misconduct.

LIMITATION ON LIABILITY

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AERIAL PARTIES WILL NOT BE LIABLE FOR ANY LOST PROFITS OR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, EVEN IF AERIAL PARTIES HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, AND IF YOU USE THE SERVICES FOR ANY COMMERCIAL OR BUSINESS PURPOSES, AERIAL PARTIES WILL HAVE NO LIABILITY TO YOU FOR ANY LOSS OF BUSINESS OR BUSINESS OPPORTUNITY OR BUSINESS INTERRUPTION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL AERIAL PARTIES' TOTAL LIABILITY TO YOU FOR ALL CLAIMS ARISING FROM OR RELATING TO THESE TERMS OR YOUR ACCESS TO OR USE OF (OR INABILITY TO ACCESS OR USE) THE SERVICES EXCEED THE GREATER OF \$25 OR THE AMOUNT PAID BY YOU TO AERIAL FOR ACCESS TO THE SERVICES (OR PORTION THEREOF) AT ISSUE WITHIN THE 6 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE APPLICABLE CLAIM AROSE. THIS LIMITATION OF LIABILITY DOES NOT APPLY TO LIABILITY RESULTING FROM AERIAL PARTIES' GROSS NEGLIGENCE, FRAUD, OR INTENTIONAL MISCONDUCT.

GOVERNING LAW, MANDATORY ARBITRATION, AND CLASS ACTION WAIVER

(a) All matters relating to or arising from the Services and these Terms will be governed by and construed in accordance with the internal laws of the State of Washington without giving effect to any choice or conflict of law provision or rule (whether of the State of Washington or any other jurisdiction).

(b) ALL CLAIMS WILL BE RESOLVED BY BINDING ARBITRATION RATHER THAN IN COURT, EXCEPT THAT YOU MAY ASSERT CLAIMS IN SMALL CLAIMS COURT IF YOUR CLAIMS QUALIFY. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED.

(c) THE ARBITRATION WILL BE CONDUCTED BY THE AMERICAN ARBITRATION ASSOCIATION (AAA) UNDER ITS THEN-APPLICABLE RULES, INCLUDING (AS APPROPRIATE) ITS SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES. THE AAA'S RULES ARE AVAILABLE AT [HTTP://WWW.ADR.ORG/](http://www.adr.org/). PAYMENT OF ALL FILING, ADMINISTRATION AND ARBITRATOR FEES WILL BE GOVERNED BY THE AAA'S RULES, EXCEPT FOR CONSUMER CUSTOMERS WHERE AERIAL WILL PAY ALL ARBITRATION ADMINISTRATIVE OR FILING FEES FOR INDIVIDUAL NON-FRIVOLOUS CLAIMS LESS THAN \$50,000, INCLUDING THE ARBITRATOR FEES (OTHER THAN ARBITRATOR FEES UP TO THE AMOUNT OF THE THEN-APPLICABLE FEE FOR FILING A CIVIL ACTION IN FEDERAL COURT IN THE JUDICIAL DISTRICT WHERE YOU LIVE IN ANY DISPUTE WHERE YOU ASSERT A CLAIM AGAINST AERIAL, UNLESS YOU DEMONSTRATE TO THE ARBITRATOR THAT YOU WOULD BE ENTITLED TO FILE THAT CIVIL ACTION IN FEDERAL COURT WITHOUT PAYMENT OF THE THEN-APPLICABLE FEE). THE ARBITRATION WILL BE CONDUCTED IN THE ENGLISH LANGUAGE BY A SINGLE INDEPENDENT AND NEUTRAL ARBITRATOR. FOR ANY HEARING CONDUCTED IN PERSON AS PART OF THE ARBITRATION, YOU AGREE THAT THE HEARING WILL BE CONDUCTED IN SEATTLE, WASHINGTON OR AT AN ALTERNATIVE LOCATION MUTUALLY AGREED BY AERIAL AND YOU. THE DECISION OF THE ARBITRATOR WILL BE FINAL AND BINDING. JUDGMENT ON THE ARBITRAL AWARD MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION.

(D) WE EACH AGREE THAT ALL CLAIMS WILL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED, OR REPRESENTATIVE ACTION OR ARBITRATION. IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION, WE EACH WAIVE ANY RIGHT TO A JURY TRIAL AND AGREE THAT SUCH CLAIM WILL BE BROUGHT ONLY IN THE STATE OR FEDERAL COURTS LOCATED IN SEATTLE, WASHINGTON. YOU HEREBY SUBMIT TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS AND WAIVE ANY OBJECTION ON THE GROUNDS OF VENUE, FORUM NON-CONVENIENS OR ANY SIMILAR GROUNDS WITH RESPECT TO ANY SUCH CLAIM.

(e) Notwithstanding anything to the contrary, Aerial may seek injunctive relief and any other equitable remedies from any court of competent jurisdiction to protect our intellectual property rights, whether in aid of, pending or independently of the resolution of any dispute pursuant to the arbitration procedures set forth above.

Copyright

If you believe that your work or content has been made available through the Services in a way that constitutes copyright infringement, please provide Aerial's Agent for Notice of Copyright Claims the following information: (i) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (ii) identification of the copyrighted work claimed to have been infringed, or, if multiple works are on a single site, a representative list of such works; (iii) identification of the infringing material or activity (or the reference or link to such material) and information reasonably sufficient to permit us to locate the material (or the reference or link); (iv) contact information for the copyright owner or authorized agent; (v) a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (vi) a statement by you that the information in the notice is accurate, and under penalty of perjury, that you are authorized to act on behalf of the copyright owner.

Aerial's Agent for Notice of Copyright Claims can be reached at:

Aerial, Inc.

505 Broadway Ave E, PMB 348

Seattle, Washington 98102

Email: legal@aerialops.io

Changes to these Terms

Aerial reserves the right to change these Terms any time upon notice to you. We may give notice by making the updated Terms available in the Services or by any other reasonable means. You can access and review the most current version of these Terms at any time at: <https://aerialops.io/terms>. If you do not agree to the updated Terms, you must stop using the Services. Your continued use of the Services after the effective date posted at the top of these Terms will constitute your acceptance of the updated Terms.

Miscellaneous

These Terms constitutes the entire agreement between you and Aerial concerning your access to and use of the Services. It supersedes all prior or contemporaneous oral or written negotiations and agreements between you and Aerial with respect to its subject matter. You may not assign, transfer, or delegate any right or obligation under these Terms without our prior written consent. Any attempted assignment, transfer, or delegation by you in violation of this Section is null and void in each instance. We may assign or transfer these Terms to any affiliate or in connection with a merger, acquisition, or sale of substantially all of our assets without your consent. The failure of Aerial to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision. If any provision of these Terms is held to be invalid or unenforceable under applicable law, then such provision will be construed, limited, modified, or,

if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of these Terms. Any prevention of or delay in performance by Aerial due to labor disputes, acts of god, governmental restrictions, enemy or hostile governmental action, fire or other casualty, or other causes beyond its reasonable control will excuse the performance of its obligations for a period equal to the duration of any such prevention or delay.

Contact Us

The Services are operated by Aerial, Inc. If you have any questions or concerns related to these Terms or the Services, please contact us at: legal@aerialops.io.