

These Terms of Service provide the terms and conditions pursuant to which POINT380,LLC (“POINT380”) makes its model subscription service available to customers. The Service enables customers to access and use a variety of models, including econometric, statistical, mathematical, problem solving and logistical models (each a “Model”), that are hosted by or on behalf of POINT380.

**ACCEPTANCE OF TERMS.** By using this website (the “Site”) in any way, including using any of the services or functionality (the “Service”) made available or enabled via the Site by POINT380, the organization for which the Services are used (“Customer”) agrees to these Terms of Service. The person registering with POINT380 represents that he or she has the authority to bind Customer to these Terms. POINT380 makes the Service available only if Customer has agreed to pay a fee and created or received a username and password or other log-in ID and password (“Log-In Information”). Certain parts of the Service may also be subject to posted guidelines, rules or terms (“Additional Terms”). If there is any conflict between these Terms and the Additional Terms, the Additional Terms take precedence in relation to the applicable parts of the Service. These Terms, and any applicable Additional Terms, are referred to herein as the “Terms.” POINT380 may change the Terms from time to time at its sole discretion, and if POINT380 makes any material changes, POINT380 will notify Customer by sending an email to the last email address Customer provided and/or by posting notice of the change on the Site. Any material changes to these Terms will be effective upon the earlier of thirty (30) calendar days following dispatch of an email notice to Customer or thirty (30) calendar days following posting of notice of the changes on the Site. These changes will be effective immediately for new users of the Site or Service. POINT380 may require Customer to provide consent to the updated Terms in a specified manner before further use of the Service is permitted. Otherwise, Customer’s continued use of the Site or the Service after the effective date of the new Terms constitutes Customer’s acceptance of the changes.

**DEFINITIONS.** Capitalized terms shall have the meanings set forth in this section or in the section where they are first used.

**“Content”** means, without limitation, any and all information, data, results, ideas, plans, sketches, texts, files, links, images, photos, video, sound, inventions (whether or not patentable), notes, works of authorship, articles, feedback, or other materials. Models are not included in “Content”.

**“Customer Data”** means any Content provided, imported or uploaded to, generated, or otherwise used by Customer or on Customer’s behalf with the Service.

**“Documentation”** means all specifications, user manuals, and other technical materials relating to the Services.

**“Intellectual Property Rights”** means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

**“License Administrator(s)”** means those Users designated by Customer who are authorized to purchase licenses using the POINT380’s online system or by executing written Order Forms and to create User accounts and otherwise administer Customer’s use of the Service.

**“License Term”** means the period during which a specified number of Users are licensed to use the Service pursuant to the Order Form(s).

**“Order Form”** means the form for the initial subscription for the Service and any subsequent order forms submitted and accepted online or in written form and specifying, among other things, the number of Users, the Models licensed, the applicable fees, the billing period, and other charges as agreed to between the parties, each of which becomes incorporated into and a part of these Terms.

**“Users”** means Customer’s employees or contractors who are authorized to utilize the Service and who are provided with access to the Service via username and password.

#### LICENSE GRANT AND RESTRICTIONS.

**License Grant.** Subject to the terms and conditions of this Agreement, POINT380 grants Customer a non-exclusive, non-transferable license to use the Service as specified in Customer’s Order Form solely for Customer’s internal business purposes during the Term.

**Limitations.** Customer agrees that Customer will not: (a) permit any party to access and/or use the Service, other than the Users authorized under this Agreement; (b) rent, lease, loan, or sell access to the Service to any third party; (c) interfere with, disrupt, alter, translate, or modify the Service or any part thereof (d) reverse engineer or access the Service in order to (i) build a competitive product or service, (ii) build a product using similar ideas, features, functions or graphics of the Service, or (iii) copy any ideas, features, functions or graphics of the Service; (e) without POINT380’s express written permission, introduce software or automated agents or scripts to the Service so as to produce multiple accounts, generate automated searches, requests and queries, or to strip or mine data from the Service; (f) perform or publish any performance or benchmark tests or analyses relating to the Service or the use thereof; or (g) cover or obscure any page or part of the Service via HTML/CSS, scripting, or any other means, if any. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Service or any part thereof.

**License to Models.** POINT380 hereby grants Customer a license to execute the Models specified in Customer’s Order Form (“Licensed Models”) as part of the Service. No license is granted to, and Customer agrees not to, use, reproduce, distribute, create derivative works of, perform, display, or execute any Model available through the Service, except through the Service. Customer will not remove any copyright or other proprietary notices contained in the Service (including the Licensed Models). Nothing in this Agreement restricts Customer’s use, distribution, or creation of any derivative works, with respect to any Customer Data.

**Usernames and Passwords.** POINT380 may provide each User (or allow each User to specify) a unique username and password to enable such User to access the Service pursuant to this Agreement. Each username and password may only be used to access the Service during one (1) concurrent login session. If POINT380 requires it, Customer will ensure that each username and password issued to a User will be used only by that User. Customer is responsible for maintaining the confidentiality of all Users’ usernames and passwords, and is

solely responsible for all activities that occur under these usernames. Customer agrees (a) not to allow a third party to use Customer's account, usernames or passwords at any time; and (b) to notify POINT380 promptly of any actual or suspected unauthorized use of Customer's account, usernames or passwords, or any other breach or suspected breach of these Terms. POINT380 reserves the right to terminate any username and password, which POINT380 reasonably determines may have been used by an unauthorized third party. User licenses cannot be shared or used by more than one individual User, but may be reassigned from time to time to a new User who is replacing a former User who has terminated employment or otherwise changed job status or function and no longer uses the Service.

**IP Ownership.** The Service and all Intellectual Property Rights in the Service, and any of the POINT380 proprietary technology, including software, hardware, products, processes, algorithms, user interfaces, know-how, technologies, designs and other tangible or intangible technical material or information made available to Customer by POINT380 in providing the Service (including the Models), but excluding the Customer Data (the "POINT380 Technology"), is the exclusive property of POINT380 or its suppliers. Customer hereby assigns to POINT380 any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer related to the Service or the POINT380 Technology. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Service, the POINT380 Technology, or any part of the foregoing, including any right to obtain possession of any source code, data or other technical material relating to the POINT380 Technology. All rights not expressly granted to Customer are reserved to POINT380.

## PAYMENT.

**Charges.** Customer shall pay all fees or charges to Customer's account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. Payments must be made in advance unless otherwise mutually agreed upon. All payment obligations are non-cancelable and all amounts paid are nonrefundable. POINT380 may require a valid credit card as a condition to signing up for the Service. An authorized License Administrator may add license rights by executing an additional written Order Form and paying the applicable fees. POINT380 reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least thirty (30) days prior notice to Customer, which notice may be provided by email.

**Billing and Renewal.** POINT380 charges and collects in advance for use of the Service. Any amounts not paid when due shall bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate, if less. POINT380 shall be entitled to withhold performance and discontinue service until all amounts due are paid in full. POINT380's fees are exclusive of all taxes, levies or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties, excluding only United States taxes based solely on POINT380's income. Customer agrees to provide POINT380 with complete and accurate billing and contact information. This information includes Customer's legal company name, street address, email address and name and telephone number of an authorized billing contact and License Administrator. Customer agrees to update this information within thirty (30) days of any change to it. If the contact information Customer have provided is false or fraudulent, POINT380 may terminate Customer's access to the Service in addition to any other legal remedies.

## CUSTOMER DATA AND CONDUCT.

**Customer Logos.** Customer grants POINT380 a non-exclusive, worldwide, royalty-free and fully paid license to display Customer's logos on customer lists that that POINT380 may disclose publicly.

**Content and Conduct.** Customer represents and warrants that any Customer Data shall not (a) infringe any copyright, trademark, or patent; (b) misappropriate any trade secret; (c) contain any viruses, worms or other malicious computer programming codes able to damage the Service or any systems that provide the Service; or (d) otherwise violate the rights of a third party.

**Systems Use and Security.** POINT380 reserves the right to establish or modify its general rules and limits relating to the storage and processing of Customer Data. POINT380 shall provide reasonable logical and physical security designed to protect the Service and Customer Data. POINT380 generally use the services of a hosting provider to run the Service, which is currently Microsoft's Azure platform, and POINT380 and Customer will rely on the security policies and practices of that provider. The logical and physical security provided by POINT380 will include, but not be limited to (a) a defined security administration practice and process including account and password administration; and (b) ensuring that only authorized POINT380 employees and contractors who have a need for physical access to provide the Service will have such access to the equipment and Customer Data.

**Content Loss.** Customer represents and warrants that Customer shall keep and maintain Customer's own copy of all Customer Data that is provided to the Service and POINT380. POINT380 is not obligated to back up any Customer Data that is posted on the Service. POINT380 therefore recommends that Customer create backup copies of any Customer Data uploaded to or generated by the Service at Customer's sole cost and expense. Customer agrees that any use of the Service contrary to or in violation of Customer's representations and warranties in this section constitutes improper and unauthorized use of the Service. Customer agrees that POINT380 may (but has no obligation to), in POINT380's sole discretion, remove or modify any Customer Data which it deems to violate Customer's representations and warranties in this section. In the event of a loss of Customer Data caused by POINT380, POINT380 will use commercially reasonable efforts to recover the Customer Data. If POINT380 performs recovery services for a loss of Customer Data not caused by POINT380, Customer agrees to pay POINT380's then-current time and materials rate to recover the Customer Data. The foregoing constitutes Customer's sole and exclusive remedy for any loss of Customer Data.

**Access to Customer Data On Termination.** In the event Customer's access to the Service is terminated (other than by reason of Customer's breach), POINT380 will make available to Customer a file of the Customer Data if requested in writing by Customer within thirty (30) days after such termination. Customer agrees and acknowledges that POINT380 has no obligation to retain the Customer Data, and may delete such Customer Data, at any time on or after the thirty-first (31st) day following termination. POINT380 reserves the right to withhold, remove and/or discard Customer Data, without notice, for any breach, including, without limitation, Customer's non-payment. Upon termination for cause, Customer's right to access or use Customer Data shall immediately cease, and POINT380 will have no obligation to maintain or provide any Customer Data.

**THIRD PARTY CONTENT.** Customer represents and warrants that any Content from any third party that Customer uses or has access to shall not (a) be copied, altered, or redistributed by

Customer without the prior written consent of the owner of such Content; or (b) be used in any documents, reports, presentations or publications by Customer without the prior written consent and without attribution to the owner and/or author of such Content or to any other sources of such Content as may be appropriate.

**POINT380 USE OF INFORMATION.** POINT380 collects information and data on how the Service is used by customers (such as, but not limited to, data set sizes, Model run-times, frequency of Model runs) and reserves the right to disclose to and share such information and data with third parties in an anonymous and aggregated form at its discretion.

#### LIMITED WARRANTY AND DISCLAIMER.

**Limited Warranty.** POINT380 warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will materially conform to POINT380's then-current documentation for the Service under normal use and circumstances. If Customer notifies POINT380 of a breach of warranty, POINT380 will re-perform the nonconforming service. The foregoing constitutes Customer's sole and exclusive remedy for any breach of warranty.

**Disclaimer.** THE LIMITED WARRANTY SET FORTH IN THESE TERMS IS MADE FOR CUSTOMER'S BENEFIT ONLY. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED "AS IS," AND POINT380 MAKES NO (AND HEREBY DISCLAIMS ALL) WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE SERVICE (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY POINT380. POINT380 DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICE SHALL BE UNINTERRUPTED OR ERROR-FREE.

**Internet Delays.** THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. POINT380 IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

#### LIMITATION OF LIABILITY.

**Types of Damages.** TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL POINT380, OR ITS SUPPLIERS, BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, USE OR GOODWILL, PERSONAL OR PROPERTY DAMAGE RESULTING FROM OR IN CONNECTION WITH POINT380'S PERFORMANCE HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE THE SERVICE OR OTHER PRODUCTS OR SERVICES HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF POINT380 HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES. IN NO EVENT SHALL POINT380 BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES.

**Amount of Damages.** THE MAXIMUM LIABILITY OF POINT380 ARISING OUT OF OR IN ANY WAY CONNECTED TO THESE TERMS SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO POINT380 DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM. THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THESE TERMS WILL NOT INCREASE POINT380'S LIABILITY. IN NO EVENT SHALL POINT380'S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THESE TERMS.

**Basis of the Bargain.** The parties agree that the limitations of liability set forth in this section shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

#### INDEMNIFICATION.

**By POINT380.** POINT380 will defend at its expense any suit brought against Customer, and will pay any settlement POINT380 makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Service misappropriates any trade secret recognized under the Uniform Trade Secrets Act or infringes any United States copyright. If any portion of the Service becomes, or in POINT380's opinion is likely to become, the subject of a claim of infringement, POINT380 may, at POINT380's option: (a) procure for Customer the right to continue using the Service; (b) replace the Service with non-infringing services which do not materially impair the functionality of the Service; (c) modify the Service so that it becomes non-infringing; or (d) terminate the Service and refund any fees actually paid by Customer to POINT380 for the remainder of the License Term then in effect, and upon such termination, Customer will immediately cease all use of the Service. Notwithstanding the foregoing, POINT380 shall have no obligation under this section or otherwise with respect to any infringement claim based upon (w) any use of the Service not in accordance with these Terms or the documentation; (x) POINT380's conformance to Customer's specifications; (y) any use of the Service in combination with other products, equipment, software or Content not supplied by POINT380; or (z) any modification of the Service by any person other than POINT380 or its authorized agents. This subsection states Customer's sole and exclusive remedy for infringement claims and actions.

**By Customer.** Customer will defend at Customer's expense any suit brought against POINT380 and will pay any settlement Customer makes or approves or any damages finally awarded in such suit insofar as such suit is based on a claim by any third party based upon, resulting from or related to any improper or unauthorized use of the Service by Customer or Customer's Users. This section states the sole and exclusive remedy of POINT380 for such claims and actions.

**Procedure.** The indemnifying party's obligations as set forth above are expressly conditioned upon each of the following: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party shall have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party shall cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

#### TERMINATION.

**Term.** These Terms will continue to apply until terminated by either Customer or POINT380 as set forth below (the “Term”).

**Termination by Customer.** If Customer wants to terminate Customer’s agreement with POINT380, Customer may do so by (a) notifying POINT380 at any time; and (b) closing Customer’s accounts for the Service, where POINT380 has made this option available to Customer. Customer’s notice should be sent, in writing, to POINT380’s address set forth below.

**Termination by POINT380.** POINT380 may at any time terminate its agreement with Customer if (a) Customer has breached any provision of these Terms (or have acted in a manner that clearly shows Customer does not intend to, or is unable to, comply with these Terms); (b) POINT380 is required to do so by law (for example, where the provision of the Site or Service to Customer is, or becomes, unlawful); (c) the provision of the Service to Customer by POINT380 is, in POINT380’s opinion, no longer commercially viable; or (d) POINT380 has elected to discontinue the Site or the Service (or any part thereof).

**Effect of Termination.** Termination of Customer’s account includes: (a) removal of access to all offerings within the Service; (b) deletion of Customer’s password and all related information; and (c) barring of further use of the Service. Upon expiration or termination, Customer shall promptly discontinue use of the Site and the Service. However, the sections titled IP Ownership, Payment, Customer Data License, Content Loss, Third Party Content, Limited Warranty and Disclaimer, Limitation of Liability, Indemnification, Termination and Miscellaneous of these Terms will survive any termination of the Terms.

#### MISCELLANEOUS.

**Governing Law and Venue.** These Terms and any action related thereto will be governed and interpreted by and under the laws of the State of Colorado, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Customer hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for the county in which POINT380’s principal place of business is located for any lawsuit filed there against Customer by POINT380 arising from or related to these Terms. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms. Customer shall always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Service hereunder.

**Export.** Customer will not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from POINT380, or any products utilizing such data, in violation of the United States export laws or regulations.

**Local Laws.** POINT380 and its suppliers make no representation that the Service is appropriate or available for use in locations other than the United States. If Customer use the Service from outside the United States, Customer is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States law is prohibited.

**Severability.** If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Without limiting the generality of the foregoing, Customer

agrees that the section titled Limitation of Liability will remain in effect notwithstanding the unenforceability of any provision in the section titled Limited Warranty and Disclaimer.

**Waiver.** Any waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**Remedies.** The parties acknowledge that any actual or threatened breach of the section titled License Grant and Restrictions will constitute immediate, irreparable harm to the non-breaching party for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce these Terms, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**No Assignment.** Neither party shall assign, subcontract, delegate, or otherwise transfer these Terms, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign these Terms in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of the other party. These Terms shall be binding upon the parties and their respective successors and permitted assigns.

**Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of these Terms if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

**Independent Contractors.** Customer's relationship to POINT380 is that of an independent contractor, and neither party is an agent or partner of the other. Customer will not have, and will not represent to any third party that it has, any authority to act on behalf of POINT380.

**Notices.** Customer is responsible for updating Customer's data to provide POINT380 with Customer's most current email address. In the event that the last email address Customer have provided to POINT380 is not valid, or for any reason is not capable of delivering to Customer any notices required by these Terms, POINT380's dispatch of the email containing such notice will nonetheless constitute effective notice of the changes described on the notice. Any notice provided to POINT380 pursuant to these Terms should be sent to the POINT380 address specified on the Site.

**Entire Agreement.** These Terms are the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersede and merge all prior discussions between the parties with respect to such subject matters. No modification of or amendment to these Terms, or any waiver of any rights under these Terms, will be effective unless in writing and signed by an authorized signatory of Customer and an officer of POINT380.