

KEGSPEED

THE TERMS OF THIS AGREEMENT CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU ("Client") AND KEGSPEED LLC. ("KegSpeed") AND GOVERN YOUR USE OF THE THE KEGSPEED SYSTEM, INCLUDING ALL HARDWARE, SOFTWARE, FIRMWARE, DATA, APPS, WEB PAGES, SERVERS AND OTHER KEGSPEED PROPERTIES AND SERVICES. TO AGREE TO THESE TERMS OF SERVICE, CLICK "AGREE." IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, DO NOT CLICK "AGREE," AND DO NOT USE THE KEGSPEED SYSTEM. YOU MUST ACCEPT AND ABIDE BY THESE TERMS OF SERVICE AS PRESENTED TO YOU: CHANGES, ADDITIONS, OR DELETIONS ARE NOT ACCEPTABLE, AND KEGSPEED MAY REFUSE ACCESS TO THE KEGSPEED SYSTEM FOR NONCOMPLIANCE WITH ANY PART OF THESE TERMS OF SERVICE.

1. Agreement Structure

1.1. This Agreement shall serve as a software license and equipment use agreement between KegSpeed and Client. Under this Agreement, KegSpeed will provide Client with reports and information via the KegSpeed web application(s) and/or KegSpeed mobile application(s) about assets fitted with hardware trackers (the "Service"). This Agreement sets forth the basic terms that shall apply to the performance of services by KegSpeed during the term of this Agreement and the use of the Service by Client.

1.2. The term of this Agreement shall commence on the Effective Date and shall end 30 days following delivery of written notice of termination by the terminating party to the non-terminating party. The term of this Agreement shall not be deemed to be extended by any modification of or amendment to this Agreement unless such modification or amendment expressly provides that the term is to be extended.

1.3. From time to time KegSpeed may make changes to this Agreement, and when doing so shall notify the Client ahead of time about any such changes.

2. Ownership of Intellectual Property; Client Data.

2.1. Service Ownership and Use. KegSpeed shall own all right, title, and interest in and to the Service, including all modifications, improvements, upgrades, derivative works, and feedback related thereto and all intellectual property rights therein. KegSpeed also owns all right, title, and interest in all intellectual property associated with the Hardware. Client agrees to assign all right, title, and interest it may have in the foregoing to KegSpeed. Any use of the Service not expressly permitted by this Agreement is prohibited. In particular, and without limitation of the foregoing, Client shall not (a) copy, reproduce, translate, disassemble, decompile, or otherwise reverse engineer or attempt to derive the source code of the Service or the Hardware, (b) modify, enhance or create derivative works of the Services without KegSpeed prior written consent, (c) use, evaluate or view the Service for the purpose of designing, modifying, or otherwise creating any environment, program, or infrastructure or any portion thereof, which performs functions similar to the functions performed by the Service, (d)

sublicense access to the Services or engage in application service provider services, rental arrangements or time-sharing arrangements with respect to the Services, (e) use the Service to violate any law or regulation, or (f) remove, obscure, or alter any copyright notice, trademarks, logos and trade names, or other proprietary rights notices affixed to, or contained within the Service. Except for the express rights granted herein, KegSpeed does not grant any other licenses, whether express or implied, to any KegSpeed software, services, or intellectual property.

2.2. Data Ownership. KegSpeed shall own all right, title, and interest in and to any data that is generated by and/or collected by the KegSpeed hardware, software and/or system ("Data"). KegSpeed grants to Client a perpetual, non-exclusive license to use such Data provided during the term of the Agreement to Client, via the KegSpeed reports and/or KegSpeed mobile application, for evaluation and/or operation of Client's existing business. KegSpeed agrees to hold any Data personally identifiable to Client in confidence.

2.3. During the course of this Agreement, KegSpeed may use certain items of intellectual property that it owns or owns licenses for ("Tools"). Client agrees that under no circumstances will KegSpeed's use of its own Tools in the course of providing the Services cause Client to own such Tools or KegSpeed's licenses for such Tools. Further, Client agrees that it does not own or have the right to sell, license, or otherwise exploit Tools or other content owned by KegSpeed that is incorporated into products provided to Client without the explicit written consent of KegSpeed.

3. Warranties

3.1. Each of KegSpeed and Client warrant that:

(i) It has full right, power, and capacity to execute, deliver and perform the Agreement, and all corporate action necessary to authorize the execution, delivery and performance by it of the Agreement will have been duly taken prior to the execution of the Agreement. Upon execution and delivery of the Agreement, the Agreement will constitute a valid and binding agreement of it and will be enforceable in accordance with its terms, subject to bankruptcy and other laws of general application affecting the rights and remedies of creditors;

(ii) The execution, delivery and performance by the parties of the Agreement will not violate, conflict with, or constitute a default under, their formation documents or other governing documents, as amended, or any material provision of any material agreement, license, trust, indenture, mortgage, instrument or restriction to which it is a party or by which it or any of its assets or property may be bound, or any statute, applicable to it or any of its material assets or property or result in the creation of any lien upon any of its material property or assets;

(iii) There is no action, suit, proceeding, or investigation pending, or to the best of its knowledge, any basis therefor or threat thereof, against it which questions the validity of the Agreement or its right to enter into such Agreement or to receive or provide Service under the Agreement, or which is likely to result, either individually or in the aggregate, in its inability to perform the transactions contemplated in this Agreement;

3.2. Limitations:

(a) **DISCLAIMER OF WARRANTY: EXCEPT AS EXPRESSLY PROVIDED IN §3 HEREIN, KEGSPEED MAKES NO WARRANTIES OR REPRESENTATIONS**

WHATSOEVER TO CLIENT REGARDING THE SERVICES OR WORK PRODUCT. SPECIFICALLY, KEGSPEED MAKES NO WARRANTIES TO CLIENT, WRITTEN OR ORAL, STATUTORY OR EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

(b) LIMITATION OF REMEDIES: CLIENT'S EXCLUSIVE REMEDY AND KEGSPEED'S ENTIRE LIABILITY UNDER THIS AGREEMENT AND ARISING FROM OR IN CONNECTION WITH THE SERVICES AND THE WORK PRODUCT (INCLUDING WITHOUT LIMITATION FOR BREACH OF WARRANTY OR INFRINGEMENT) SHALL BE, AT KEGSPEED'S SOLE OPTION, THE REPAIR OR REPLACEMENT OF WORK PRODUCT OR A REFUND OF ALL OR PART OF THE FEES FOR THE SERVICE PERFORMED COLLECTED BY KEGSPEED FROM CLIENT.

3.3. KegSpeed shall not be liable for security of Client Data while in transport to KegSpeed unless such security is compromised as a result of KegSpeed's intentional or negligent acts.

3.4. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NEITHER PARTY SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES, EVEN IF ONE PARTY HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

3.5. WITHOUT LIMITING THE FOREGOING, BOTH PARTIES AGREE THAT IF ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT.

3.6. IN NO EVENT SHALL KEGSPEED'S LIABILITY, IF ANY, FOR LOSS OR DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT OR USE OF THE WORK PRODUCT EXCEED THE AMOUNT OF THE FEES PAID BY CLIENT TO KEGSPEED UNDER THIS AGREEMENT.

3.7. CLIENT ACKNOWLEDGES AND AGREES THAT ITS FEES ARE PREMISED IN SUBSTANTIAL PART ON THE PROVISIONS OF §3 RELATING TO DISCLAIMERS OF WARRANTIES, LIMITATIONS OF LIABILITY, AND EXCLUSIONS OF DAMAGES AND THAT SUCH DISCLAIMERS, LIMITATIONS, AND EXCLUSIONS ARE SEVERABLE, UNRELATED, INDEPENDENT ALLOCATIONS OF RISK.

4. Confidentiality

4.1. For the purposes of this Agreement, "Confidential Information" means any type of information or material disclosed by one party ("Disclosing Party") and/or known by the party to whom such information is disclosed ("Receiving Party") as a consequence of this Agreement or, which is not known to the public and including, without limitation, information which relates to research, development, trade secrets, know-how, inventions, invention records, technical data, computer software, programming, concepts, designs, drawings, procedure, processes, equipment, reports, manuals, documentation, manufacture, purchasing, accounting, engineering, marketing, merchandising and selling, Client lists, business plans or strategies, information entrusted to the Disclosing Party or its principal officers and employees by third parties, and any other confidential or proprietary information. Confidential Information also

includes any information described above which the Receiving Party obtains from a third party or is jointly developed by the parties and which either party treats as proprietary or designates as Confidential Information. Confidential Information also includes all information (including records, notes, analyses, models and studies) that is derived from one party's inspection or evaluation of the other's Confidential Information ("Derivative Information") and information, whether disclosed in writing or orally, which, under all of the circumstances, should be treated as confidential. Client's grant of permission to disclose Client's name on KegSpeed's website shall not constitute a waiver of the confidentiality of this Agreement or its terms.

4.2. The Receiving Party shall exercise the same degree of care, but no less than a reasonable degree of care, to keep confidential the Confidential Information as the Receiving Party uses to protect its own confidential information of a like nature. The Receiving Party may disclose the Confidential Information only to its employees or consultants on a "need to know" basis. The Receiving Party shall execute appropriate written agreements with its consultants and employees sufficient to enable it to comply with all the provisions of this Agreement.

4.3. If the Receiving Party is served with any subpoena or other compulsory judicial or administrative process calling for production of Confidential Information; the Receiving Party may comply with such subpoena or compulsory process but will immediately notify the Disclosing Party in order that it may take such action as it deems necessary to protect its interest. The Receiving Party shall reasonably cooperate with the actions of the Disclosing Party in this regard.

4.4. Notwithstanding anything to the contrary contained herein, the parties shall have no obligation under this Agreement to hold information in confidence which has been or is:

(i) developed by the Receiving Party independently and without the benefit of information disclosed hereunder by the Disclosing Party;

(ii) lawfully obtained by the Receiving Party from a third party without restriction;

(iii) publicly available without breach of this Agreement or from information readily ascertainable in the marketplace by proper means;

(iv) disclosed without restriction by the Disclosing Party to a third party, including the United States government; or

(v) known to the Receiving Party prior to its receipt from the Disclosing Party.

4.5. The obligations of confidentiality in §4 shall remain in place indefinitely.

4.6. Equitable Relief. The Disclosing Party may suffer irreparable harm in the event that the Receiving Party fails to comply with the terms of this agreement. Monetary damages may be inadequate to compensate for such breach. Accordingly, in addition to any other remedies available to it at law or in equity, the Disclosing Party shall be entitled to injunctive relief to enforce the terms of this Agreement.

4.7. Tax Disclosure. Notwithstanding anything to the contrary in this Agreement, no conditions of confidentiality within the meaning of Internal Revenue Code Section 6111 or US Treasury Regulation Section 1.6011-4 are intended and taxpayer may disclose to any and all persons, without limitation of any kind, the United States tax treatment

(federal, state, and local) and tax structure of any transaction and all materials of any kind relating to such tax treatment and tax structure. The Receiving Party agrees to advise the Disclosing Party if it determines that any matter covered by this Agreement will be disclosed as, or is a reportable transaction that is required to be disclosed under US Treasury Regulation Section 1.6011-4.

5. Term and Termination

5.1. The term of this Agreement shall be as stated in Section [1.3](#). The provisions of §§[2](#), [3](#), [4](#), [5](#), and [6](#) shall survive the termination of this Agreement. Following termination, Client shall not have access to, or permission to use, the Service.

5.2. Dispute Resolution. In the event of any continuing dispute between the parties which has not been resolved after reasonable attempts by either party to do so, including without limitation any continuing dispute relating to the interpretation of any provision of this Agreement, the performance or non-performance by either party hereunder, or the amount of any disputed charges arising hereunder, then, upon the written request of either party, each of the parties will appoint a designated executive management representative who does not devote substantially all of his or her time to performance under this Agreement, whose task it will be to meet for the purpose of endeavoring to resolve such dispute. The designated representatives shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the premises of the dispute. The specific format for such discussions will be left to the discretion of the designated representatives but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. Formal proceedings for the resolution of such dispute pursuant to Section [5.3](#) hereof may not be commenced until the earlier to occur of (i) the designated representatives concluding in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely, or (ii) thirty (30) days after the initial request to negotiate such dispute. The parties hereby agree to toll any applicable statute of limitations during such thirty (30) day period and for the thirty (30) days next following. Except where clearly prevented by the area in dispute, both parties agree to continue performing their respective obligations under this Agreement while the dispute is being resolved unless and until this Agreement expires or is terminated in accordance herewith. The provisions of this Section [5.2](#) shall not apply to any actions of the parties for equitable relief.

5.3. Arbitration of Disputes. Any claim or controversy arising out of or relating to this Agreement, or the breach thereof, including any anticipated breach or disagreement as to interpretation of this Agreement, which is not resolved pursuant to Section [5.2](#) hereof, shall be settled by arbitration as follows:

(i) No arbitration governed by this Section [5.3](#) may be commenced until thirty (30) days after the party wishing to commence an arbitration proceeding shall have given the other party written notice describing the dispute to be arbitrated. During that thirty (30) days the parties shall attempt to resolve the dispute amicably by negotiation or, at the request of either party, by non-binding mediation in accordance with the Center for Public Resources Model Procedure for Mediation of Business Disputes. A written request by

either party to resolve a dispute pursuant to Section [5.2](#) hereof shall constitute notice of a dispute for purposes of this Section [5.3\(i\)](#).

(ii) Except as provided below and to the extent the parties may otherwise agree in writing, any arbitration under this Section [5.3](#) (the "Arbitration") shall be conducted in accordance with the Center for Public Resources Rules for Non-Administered Arbitration of Business Disputes ("CPR Rules") by three arbitrators, none of whom shall be an officer, director, or employee of any party hereto or its affiliates, selected by the Center for Public Resources as provided in the CPR Rules.

(iii) The Arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §1 et seq., and judgment upon the award rendered by the arbitrators may be entered by any court of competent jurisdiction.

(iv) The arbitration shall take place in Austin, Texas, as designated by the party to the Arbitration that did not initiate the Arbitration or, if such party fails to designate such location within ten (10) business days after receiving formal notice of the Arbitration, as designated by the Center for Public Resources. The arbitrators may hold individual hearings at any location they deem appropriate.

(v) The arbitrators shall hold a pre-hearing conference as promptly as possible after the selection of the arbitrators and shall hold the first hearing within thirty (30) days after the selection of the arbitrators. If additional hearings are needed, they shall be held as promptly as possible thereafter, so that all hearings that may be required are concluded within ninety (90) days after the selection of the arbitrators. The arbitrators shall render their award within thirty (30) days after the last hearing.

(vi) The parties may by written notice to each other and the arbitrators freely specify further controversies or claims to be arbitrated up until the date of the pre-hearing conference. Thereafter, additional controversies or claims may be added only with the consent of the arbitrators.

(vii) The arbitrators may make interim awards and may award equitable and declaratory relief; provided, however, that the arbitrators may not order the termination of this Agreement for any reason other than as expressly set forth in this Section [7](#).

(viii) The arbitrators shall not consider, nor shall any award include amounts for, punitive or exemplary damages.

(ix) It shall not be inconsistent with this Section [5.3](#) for either party to seek from any court of competent jurisdiction interim relief in aid of arbitration or to protect the rights of either party pending the establishment of the arbitral tribunal.

6. General

6.1. Notices. All notices, requests, demands, and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed given when (i) if delivered via email, on the day when the email is sent, unless the party receives a notice of non-delivery of the email, or (ii) if delivered personally against receipt, on the next business day when sent by overnight Federal Express, Express Mail or similar service and on the third business day after being mailed when mailed by certified first class mail, return receipt requested, to each party at the following address (or to such other address as that party may have specified by notice given to the other pursuant to this provision):

KegSpeed LLC
12500 Pluto Lane
Austin, TX 78727 USA

Attention: Legal Department
Email: legal@kegspeed.com

6.2. Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement and any of the rights, interests or obligations hereunder may be assigned by any party hereto by delivering 10 days' written notice to the other party of such assignment, and provided such assignee agrees in writing (in form and substance reasonably satisfactory to the non-assigning party) to be bound by and comply with all of the terms and conditions of this Agreement.

6.3. Severability. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be deemed restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law, and, if capable of substantial performance, the remaining provisions of this Agreement shall be enforced as if this Agreement was entered into without the invalid provision.

6.4. Attorneys' Fees. In the event attorneys' fees or other out-of-pocket costs are incurred to secure performance of any of the obligations herein provided for, or to establish damages for the breach thereof, or to obtain any other appropriate relief, whether by way of prosecution or defense, each party shall be responsible for its own attorneys' fees and out-of-pocket costs incurred therein.

6.5. Captions. The captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and will not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement will be enforced and construed as if no caption had been used in this Agreement.

6.6. Counterparts. This Agreement may be executed in one or more counterparts all of which taken together will constitute one and the same instrument.

6.7. Relationship of Parties. KegSpeed, in furnishing services to the Client hereunder, is acting only as an independent contractor. Except as otherwise provided herein, KegSpeed does not undertake by this Agreement or otherwise to perform any obligation of the Client, whether regulatory or contractual, or to assume any responsibility for the Client's business or operations, and KegSpeed has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by KegSpeed hereunder unless otherwise provided herein.

6.8. Approvals and Similar Actions. Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld.

6.9. Force Majeure. If either party to this Agreement shall be prevented, hindered, or delayed in the performance or observance of any of its obligations hereunder by reason

of any circumstance beyond its reasonable control, and such delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the party through the use of alternate sources, work-around plans, or other means, then such party shall be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any party so delayed in its performance shall immediately notify the other by telephone (to be confirmed in writing within five (5) days of the inception of such delay) and shall describe at a reasonable level of detail the circumstances causing such delay.

6.10. Modification; Waiver. This Agreement may be modified only by a written instrument duly executed by or on behalf of each party hereto. No delay or omission by either party hereto to exercise any right or power hereunder shall impair such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the obligations to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other obligation herein contained.

6.11. Remedies. Except as otherwise provided in this Agreement, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

6.12. No Third Party Beneficiaries. The parties agree that this Agreement is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any third party, including any employee of either party hereto, and that there are no third party beneficiaries to this Agreement or any part of specific provision of this Agreement.

6.13. Governing Law and Jurisdiction. The laws of the State of Texas will govern all questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement. Subject to the mediation and arbitration clauses herein, the parties submit to the non-exclusive personal jurisdiction of the federal and state courts located in or having jurisdiction over Austin, Texas.

6.14. This Agreement constitutes the entire agreement between Client and KegSpeed governing Client's use of the Service. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. Any failure by KegSpeed to enforce any right or provisions in this Agreement will not constitute a waiver of such provision, or any other provision of this Agreement. KegSpeed will not be responsible for failures to fulfill any obligations due to causes beyond its control.