



## PLATFORM TERMS OF SERVICE

*(Last Updated: January 9, 2024)*

These Platform Terms of Service (the “Agreement”) are entered into by and between the Arcadia entity (“Arcadia”), and the entity identified as the Client (“Client”) each as set forth on the signature block of the Order executed by the parties, as of the date specified in such Order (“Effective Date”).

1. **Definitions.** Certain capitalized terms used in this Agreement, not otherwise defined elsewhere in this agreement, shall have the meanings set forth or cross-referenced below.
  1. “**Account**” means Client’s Platform account.
  2. “**Affiliate**” means, with respect to a party, a business entity that directly or indirectly controls, is controlled by or is under common control with, such party, where “control” means the direct or indirect ownership of more than 50% of the voting securities of a business entity.
  3. “**Arcadia Privacy Policy**” means Arcadia’s Privacy Policy at <https://arc-legal.arcadia.com/#arcadia-privacy-policy>.
  4. “**Authorized User**” means an individual employee, agent or contractor of Client or a Participating Affiliate for whom Platform Services have been purchased, and who has been supplied user credentials for the Platform Services by Client or the Participating Affiliate.
  5. “**Brand Feature**” shall mean any one or more of the trademarks, service marks, trade names, domain names, logos, business and product names, slogans, and registrations and applications for registration thereof owned by the respective party as of the Effective Date.
  6. “**Confidential Information**” shall mean all written or oral information, disclosed by either party to the other, related to the operations of either party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential.
  7. “**Connected Account**” shall mean a Client’s or End User’s utility account connected via permissioned access or the front-end component Connect.
  8. “**Connected Account Data**” shall mean utility statements, account metadata, consumption and billing data collected from Connected Accounts used, for example, to confirm the utility serving an End User, what tariff they are served under, their monthly billed consumption (kWh), their billing totals (utility, retail supplier and/or gas charges) and billing history.
  9. “**Documentation**” shall mean the documentation (as may be updated from time to time) in the form made generally available by Arcadia to its customers at <https://docs.arcadia.com/reference/overview>, <https://developer.genability.com/>, or <https://developer.urjanet.com/>, as applicable, for use with the Platform Services.
  10. “**End User**” shall mean any person, organization, or business entity that is a customer of the Client.
  11. “**Indemnified Liabilities**” means any (i) settlement amounts approved by the indemnifying party and (ii) damages and costs finally awarded against the indemnified party by a court of competent jurisdiction.

12. **“Order”** shall mean a document, signed by both parties identifying certain Services to be made available by Arcadia pursuant to this Agreement and referencing this Agreement. An Order may be an SOW.
13. **“Platform Services”** shall mean web-based applications, application programming interfaces, and other services, tools and technology offerings provided by Arcadia as described at <https://developers.arcadia.com/>, <https://developer.urjanet.com/>, <https://developer.genability.com/>, and/or an applicable Order.
14. **“Professional Services”** mean enhanced support services (e.g., configuration, data preparation, reporting) provided by Arcadia pursuant to an Order and/or an SOW.
15. **“Services”** shall mean the Platform Services, Support Services and Professional Services.
16. **“SOW”** shall mean a statement of work specifying Professional Services to be provided by Arcadia.
17. **“Support Services”** means maintenance and support services for applicable Platform Services, as more fully described in the Support Services Policy.
18. **“Support Services Policy”** means Arcadia’s support services policy for the applicable Platform Services at <https://arc-legal.arcadia.com/#arcadia-support-services-policy>. Arcadia reserves the right to reasonably modify the Support Services Policy during the Subscription Term. However, Arcadia agrees not to materially diminish the level of Support Services during the Subscription Term.
19. **“Utility Endpoint Data”** shall mean third party data as may be made available to Client or End Users by Arcadia under this Agreement, including tariff and utility data, such as utility financial and operational data, services areas, baseline areas (territories), services offered, tariff rate plans, incentives, and rebates, definitions of seasons, calendars and times of use; definitions of billing demand formulas and other quantities; typical usage and cost profiles; and typical building usage and cost.

## 2. Orders; Access and Use.

1. **Services Use.** During the Term Arcadia will provide the Services in accordance with this Agreement, Orders, and herein referenced URLs (including the Arcadia Privacy Policy), which are incorporated in this Agreement by reference. Subject to the terms and conditions contained in this Agreement, Arcadia hereby agrees that during the applicable Subscription Term, Client may (i) use the Platform Services internally (internal use includes use as part of the back end of an application owned and operated by the Client (the **“Client Application”**) made available to end users (**“End Users”**)), and (ii) use the End User Connected Account Data, Utility Endpoint Data, and other data provided via the Platform Services (the **“Output”**) solely in such Client Application for such use case. All use of the Services and Output must be only as provided in this Agreement, only in accordance with Arcadia’s applicable technical user documentation and subject to the applicable use case, Client Application, and business unit restrictions (if any). Arcadia may in its discretion modify, enhance or otherwise change the Services from time to time during the Subscription Term, provided that it does not materially diminish the functionality thereof.
2. **Payments and Utility Remittance.** This Section 2.2 only applies if Client uses Arcadia’s Bundle Service as set forth on an applicable Order. Some Platform Services (branded as Bundle) may include integration with a payment processor (**“Processor”**) to facilitate payment of utility bills. Arcadia is not a bank, payment institution, or money services business. The Processor is Stripe Payments Canada, Ltd., which is a technical services provider and may offer the services as an agent of one or more financial institutions in the United States (each, a **“Financial Services Provider”**). The processing and settlement of Transactions (as defined below) (**“Payment Processing”**) is carried out by the Processor and any of the Financial Services Providers under a separate [Stripe Connected Account Agreement](#), including the United States [Stripe Services Agreement](#), and the [Stripe Privacy Policy](#) (collectively, the **“Processor Terms”**). By accepting this Agreement, you are also accepting and agreeing to be bound by the Processor Terms, which is the legal agreement between you and the Processor. Arcadia is not a party to the Processor Terms and is not liable to you in

respect thereof. By accepting this Agreement and the Processor Terms you are agreeing to the creation of an account with the Processor for Payment Processing (the “**Processor Account**”). We reserve the right to change the Processor, subject to the terms of our agreement with the Processor. In the event of any inconsistency between this Agreement and the Processor Terms, this Agreement shall prevail, except in the event of any inconsistency between this Agreement and the Processor Terms concerning Payment Processing or the Processor Account, in which case the Processor Terms shall prevail. To the extent necessary, Client expressly authorizes Arcadia to act as the Client’s limited agent for the purposes of remitting payment on the Client’s behalf to utilities. Client agrees that it will treat any payments received by Arcadia as Client’s agent as being received by the Client.

3. **Authorized Users.** Accounts may not be shared but access may be reassigned to new users replacing former users who no longer require ongoing use of the Services. Depending on the subscription, Client may have the capability to permit additional authorized users to access the Platform Services (“**Authorized Users**”). Client is responsible for: (a) ensuring its employees, agents and subcontractors, including Authorized Users, comply with this Agreement; and (b) any breach of this Agreement by Client’s employees, agents or subcontractors (including Authorized Users).
4. **Brand Licenses.** Subject to the terms and conditions of this Agreement, Client grants to Arcadia a non-exclusive, non-sublicensable, non-transferable right and license to use the Client Brand Features during the Term in accordance with such reasonable branding guidelines as Client may specify for the limited purposes of performing Arcadia’s obligations under this Agreement, including, without limitation, identifying the Services as “powered by” or “run on” Arcadia’s Brand Features. Each party may refer to the other party’s Brand Features in press releases or other promotional materials, provided, however, that such press releases or other promotional materials must be approved in advance by the other party, approval not to be unreasonably withheld. Client shall not remove, delete, or in any manner alter the Arcadia trademark or other intellectual property rights notices appearing on Platform Services as delivered to Client. Arcadia may identify Client as an Arcadia customer and use the Client Brand Features in connection with its customer lists and related marketing materials. Any use of a party’s Brand Features will inure to the benefit of the party holding intellectual property rights to those Brand Features.
5. **Usage Restrictions.** Client will not (i) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the Platform Services are compiled or interpreted; (ii) modify the Platform Services, or create or offer any derivative product from any of the foregoing, except with the prior written consent of Arcadia; or (iii) assign, sublicense, sell, resell, lease, rent or otherwise make available, or pledge as security or otherwise encumber the Platform Services; (iv) sell or rent Utility Endpoint Data to marketers or any other third party; (v) access or use the Platform Services or Output for any unlawful purpose; (vi) use, disclose, or otherwise process any “personal data” other than in compliance with laws applicable to processing of such data; (vii) access or use the Platform Services for competitive evaluation, spying, creating a substitute or similar services to any of the Platform Services; (viii) scan or test (manually or in an automated fashion) the vulnerability of any Arcadia infrastructure without express prior written permission from Arcadia. Arcadia retains the right to perform rate limiting on API requests to ensure that all customers experience the same level of service.
6. **Retained Rights; Ownership.**
  - I. Subject to the rights granted in this Agreement, Client retains all right, title and interest in and to the Client Brand Features and Connected Account Data, and Arcadia acknowledges that it neither owns nor acquires any additional rights in and to the Client Brand or Connected Account Data not expressly granted by this Agreement. Arcadia further acknowledges that Client retains the right to use the Client Brand Feature and Client data for any purpose in Client’s sole discretion.
  - II. Arcadia retains all right, title and interest in and to the (i) Platform Services, the related website

and code, and all other software, hardware, technology, documentation, and data provided by Arcadia in connection with the Platform Services; (ii) all Aggregated Analytics (as defined below); and (iii) all ideas, know-how, and techniques that may be developed, conceived, or invented by Arcadia during its performance under this Agreement. Client acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement and that Arcadia retains the right to use the foregoing for any purpose in Arcadia's sole discretion. From time to time, Arcadia may update, enhance or modify functionality of the Platform Services, provided, however, that such updates, enhancements and modifications shall not materially degrade the functionality of the Platform Services. In the course of performing Professional Services, Arcadia may create new works of authorship (collectively "**Work Product**"). Subject to Client's ownership interest in, and Arcadia's obligations with respect to, Client's Confidential Information (which will not under any circumstances be deemed to constitute Work Product), Arcadia shall own all right title and interest in and to all Work Product, including all intellectual property rights therein and thereto. If any Work Product is delivered to Client pursuant to or in connection with the performance of Professional Services ("**Work Product Deliverable**"), Arcadia hereby grants to Client rights to use such Work Product Deliverable consistent with Section 2.1 above.(c)

III. From time to time, Arcadia may, in its sole discretion, invite Client to use, on a trial basis, sandbox, pre-release or beta features or functions that are not yet generally available ("**Testing Services**"). Testing Services are not part of the Platform Services, and Testing Services may be subject to additional terms and conditions, which Arcadia will provide to Client prior to use of the Testing Services. Such Testing Services and all associated feedback relating thereto will be considered Arcadia Confidential Information and subject to the confidentiality provisions in this agreement. Arcadia makes no representations or warranties that the Testing Services will function. Arcadia may discontinue the Testing Services at any time in its sole discretion. Arcadia will have no liability for any harm or damage arising out of or in connection with a Testing Service.

### 3. Data

- a. **Data Processing.** If and to the extent Arcadia processes any Personal Data of Client, and laws applicable to Client require the execution of a written agreement governing such processing, the parties will comply with the Arcadia Data Processing Agreement ("**DPA**") as mutually executed by the parties.
- b. **Security.** Arcadia shall use commercially reasonable physical, managerial, and technical safeguards as set forth at <https://arc-legal.arcadia.com/#technical-and-organizational-security-measures>.
- c. **Analytics.** The parties acknowledge and agree that Arcadia may use anonymized Connected Account Data ("**Anonymous Aggregated Data**") and other data such as statistical and other information derived from or communicated to the Platform Services (including the Utility Endpoint Data) ("**Usage Data**") (i) as necessary to perform the Arcadia Services; (ii) for research and development including without limitation to generate learnings, logs and data regarding the use of Arcadia's products, services and technologies, in order to improve such products, services and technologies, and to create and distribute reports and other materials that include or are based on Anonymous Aggregated Data related to the provision of Services generally ("**Aggregated Analytics**").
- d. **Utility Endpoint Data.** For Platform Services including the collection and processing of utility data ("**Utility Endpoint Data**") from entities such as electric, gas, and other utility providers ("**Providers**") and its delivery as a data feed, Client acknowledges and agrees that Arcadia's ability to provide Utility Endpoint Data is predicated on the Provider having a website with bill data that is accessible using normal web traversal methods. The parties understand and agree that from time to time Providers make changes to their billing systems, web sites, and direct feed systems, and Arcadia will make commercially reasonable efforts to

provide data to Client that is updated and accurate at all times. Notwithstanding the foregoing, Arcadia shall not be obligated to provide Utility Endpoint Data for any Provider that does not have such a website, or to provide Utility Endpoint Data for a given Provider if such Utility Endpoint Data is or becomes unavailable on the Provider's website.

- e. **Data Maintenance and Backup Procedures.** In the event of any loss or corruption of Connected Account Data, Arcadia shall use its commercially reasonable efforts to restore the lost or corrupted Connected Account Data from the latest backup of such Connected Account Data maintained by Arcadia in accordance with any archival procedure described in an applicable Order. Arcadia shall not be responsible for any loss, destruction, alteration, unauthorized disclosure or corruption of Connected Account Data caused by any third party. ARCADIA'S EFFORTS TO RESTORE LOST OR CORRUPTED CONNECT ACCOUNT DATA PURSUANT TO THIS SECTION 3.5 SHALL CONSTITUTE ARCADIA'S SOLE LIABILITY AND CLIENT'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF CONNECTED ACCOUNT DATA.
- f. **Communication with End Users** As part of the provision of the Services, Arcadia may need to communicate with End Users from time-to-time including for purposes of securing user consents. Client hereby authorizes Arcadia to communicate with End Users as reasonably necessary in connection with the Services.

#### 4. Client Obligations.

- 1. **Connected Account Data.** Client and/or its End Users shall be responsible for all changes to and/or deletions of Connected Account Data and the security of all passwords required in order to access the Services. Client shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Connected Account Data. Subject to the terms and conditions herein, Client grants Arcadia a non-exclusive, non-transferable right to use the Connected Account Data (i) to provide the Services and perform Arcadia's obligations under this Agreement; (ii) to perform research and development to improve the Services; and (iii) to create Aggregated Analytics. Client shall be responsible for, and assumes the risk of any errors resulting from, the delivery, accuracy, completeness and consistency of all Connected Account Data. Client shall make available in a timely manner at no charge to Arcadia all content, graphic files, Client Brand Features or other information and resources of Client reasonably required by Arcadia for the performance of its obligations under this Agreement.
- 2. **Consumer Complaints.** Client shall provide Arcadia with prompt written notification of any consumer complaints about the Services that are made to Client or to a regulatory authority by End Users ("Complaint").
- 3. **Feedback.** Client may voluntarily provide Arcadia with feedback in connection with the Services, but has no obligation to do so. Arcadia may use feedback for any purpose, including incorporating the feedback into, or using the feedback to develop and improve, Services without attribution or compensation, Arcadia will own all right, title and interest in and to such feedback, and Client hereby makes all assignments necessary to achieve such ownership).
- 4. **Assistance to Arcadia.** If Arcadia performs Professional Services, Client shall, at its own expense, provide cooperation and assistance to Arcadia, including, without limitation, by means of access to, and use of, Client's facilities, equipment, and information, as well as by means of assistance from Client's personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Arcadia to perform its obligations under this Agreement, including, without limitation, any obligations under an SOW.

#### 5. Fees And Expenses; Payments.

- 1. **Fees.** In consideration for the Services performed under this Agreement, Client will pay, without offset or deduction, all fees required by each particular Order. Unless otherwise set forth in an Order, Client agrees to pay fees (1) for Platform Services and (2) for Professional Services no later than 30 days after the date of an applicable invoice or upon execution of the applicable Order, as set forth in the Order. All fees shall be non-cancellable and non-refundable.

2. **Taxes.** Client will be responsible for payment of any applicable government imposed sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on Arcadia's income or employment), and any related penalties and interest for the grant of license rights hereunder, or the delivery of related services. Client will make all required payments to Arcadia free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to Arcadia will be Client's sole responsibility, and Client will, upon Arcadia's request, provide Arcadia with official receipts issued by the appropriate taxing authorities, or such other evidence as Arcadia may reasonably request, to establish that such taxes have been paid.
3. **Late Payments; Interest; Payment in Dollars.** Any portion of any amount payable hereunder that is not paid when due will accrue interest at one percent (1%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. All payments to be made under this Agreement shall be made in the currency set forth in an applicable Order.
4. **Invoice Disputes.** If Client disputes in good faith any portion of an invoice or any other amount due under this Agreement, Client shall notify Arcadia within thirty (30) days after receipt of the invoice or from the payment due date with an explanation of the nature of the dispute. Unless a written notice of a dispute as to invoiced or due amounts is received by Arcadia within such thirty (30) day period, the invoice or amount due shall be deemed correct and payable in full by Client.

## 6. Confidential Information.

1. **Ownership of Confidential Information.** The parties acknowledge that during the performance of this Agreement, each party will have access to certain of the other party's Confidential Information or Confidential Information of third parties that the disclosing party is required to maintain as confidential. Both parties agree that all items of Confidential Information are proprietary to the disclosing party or such third party, as applicable, and will remain the sole property of the disclosing party or such third party.
2. **Mutual Confidentiality Obligations.** Each party agrees as follows: (i) to use Confidential Information disclosed by the other party only for the purposes described herein; (ii) that such Party will not reproduce Confidential Information disclosed by the other party, and will hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party; (iii) that neither party will create any derivative work from Confidential Information disclosed to such party by the other party; (iv) to restrict access to the Confidential Information disclosed by the other party to such of its personnel, agents, and/or consultants, if any, who have a business need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; (v) notify the other party of any breach of this Section 6; and (vi) to return or destroy, pursuant to Section 11.5, all Confidential Information disclosed by the other party that is in its possession upon request of the disclosing party after termination or expiration of this Agreement.
3. **Confidentiality Exceptions.** Notwithstanding the foregoing, the provisions of Sections 6.1 and 6.2 will not apply to Confidential Information that: (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient without reference to or reliance upon the Confidential Information; or (vi) is approved for release or disclosure by the disclosing party without restriction. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (a) in order to comply with the order of a court or other governmental body, or as otherwise necessary to the extent required to comply with applicable law, provided that the party making the disclosure pursuant to the order shall, if permitted by law, first have given written notice to the other party and cooperated with the disclosing party's efforts (at disclosing party's expense) to obtain a protective order or otherwise limit the disclosure.

4. **Terms of Agreement.** Each party shall be entitled to disclose the existence of this Agreement, but agrees that the terms and conditions of this Agreement (including, without limitation, the fees) shall be the Confidential Information of Arcadia and shall not be disclosed by the Client to any third party; provided, however, that the parties may disclose the terms and conditions of this Agreement, in confidence: (i) to attorneys, accountants, banks, and financing sources and other advisors with a business need to know; (ii) in connection with an actual or proposed merger, acquisition, or similar transaction; or (iii) if applicable, to referral partners.
5. **Equitable Relief.** The parties expressly acknowledge that violation of this Section 6 may result in harm for which monetary damages would be an insufficient remedy; therefore, in the event of a breach or threatened breach of this Section 6 by either party, the other party shall be entitled to seek preliminary and permanent injunctive relief to enforce the provisions hereof and shall be entitled to recover from reasonable attorneys' fees incurred in connection therewith. Notwithstanding the foregoing, the remedies in Section 6.5 shall in no way be considered the exclusive remedies of a breach of this Section 6 by either party.

## 7. Warranties.

1. **Platform Services Warranty.** Arcadia warrants that during an applicable Subscription Term, the Platform Services will conform in all material respects to the standards set forth in the Documentation and the Order, as applicable. In the event of a breach of the foregoing warranty, Arcadia's sole obligation, and Client's exclusive remedy, shall be for Arcadia to correct any material non-conformity in the Platform Service.
2. **Services Warranty.** Arcadia warrants that the Support Services and Professional Services will be performed in a professional, workpersonlike manner. Subject to this Agreement, Arcadia will provide Support Services to Client through the Platform Services and by email. Although resolution times are not guaranteed, Arcadia commits to respond to each request for Support Services from an Authorized User (each, a "Support Request") in accordance with the Support Services Policy. In the event of a breach of the foregoing warranty, Arcadia's sole obligation, and Client's exclusive remedy shall be for Arcadia to re-perform the applicable Support Services and/or Professional Services.

## 8. Compliance with Laws

1. **Personal Data.** Each party shall comply with laws concerning the privacy and protection of personal data. Before any End User engages with the Client Application in a manner that uses the Services, the Client warrants that it will be solely responsible for providing all notices and obtaining all consents required under applicable law to enable Arcadia to process Connected Account Data in accordance with the Arcadia Privacy Policy. Client will not (i) make representations or other statements with respect to End User data that are contrary to or otherwise inconsistent with the Arcadia Privacy Policy or (ii) interfere with any independent efforts by Arcadia to provide End User notice or obtain End User consent.
2. **FCRA.** Client acknowledges and agrees that Arcadia is neither a "consumer reporting agency" nor a "furnisher" of information to consumer reporting agencies under the Fair Credit Reporting Act ("FCRA") and the Output is not a "consumer report" under the FCRA and may not be used as or in such. Client represents and warrants that it will not, and will not permit or enable any third-party to, use the Services (including Output) as a or as part of a "consumer report" as that term is defined in the FCRA or otherwise use the Services (including Output) such that the Services (including Output) would be deemed "consumer reports" under the FCRA.
3. **Anti-bribery and Corruption.** Each party shall comply with laws concerning anti-bribery and anti-corruption, including the U.S. Foreign Corrupt Practices Act of 1977.
4. **Export Control.** Each party shall (a) comply with laws administered by the U.S. Commerce Bureau of Industry and Security, U.S. Treasury Office of Foreign Assets Control or other governmental entity imposing export controls and trade sanctions ("Export Laws"), including designating countries, entities and persons ("Sanctions Targets") and (b) not directly or indirectly export, re-export or otherwise deliver Services to a

Sanctions Target, or broker, finance or otherwise facilitate any transaction in violation of any Export Laws. Client represents that it is not a Sanctions Target or prohibited from receiving Services pursuant to this Agreement under Applicable Laws, including Export Laws.

**9. Disclaimers, Exclusions And Limitations Of Liability.**

1. **Disclaimer.** EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN SECTIONS 7 AND 8, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES, THE UTILITY ENDPOINT DATA, THE CONNECTED ACCOUNT DATA, AND ALL OTHER DATA, MATERIALS, INFORMATION OR SERVICES PROVIDED BY ARCADIA ARE PROVIDED "AS IS," AND ARCADIA DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, SYSTEM INTEGRATION AND/OR DATA ACCURACY. ARCADIA DOES NOT WARRANT THAT THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ANY OR ALL ERRORS WILL BE CORRECTED. SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ARCADIA IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.
2. **Exclusions of Remedies; Limitation of Liability.** EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 10.1 OF THIS AGREEMENT RELATED TO INTELLECTUAL PROPERTY INFRINGEMENT, IN NO EVENT WILL ARCADIA BE LIABLE TO CLIENT FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF ARCADIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE CUMULATIVE LIABILITY OF ARCADIA TO CLIENT FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY INDEMNITY OBLIGATIONS OR ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THE FEES PAID OR PAYABLE TO ARCADIA BY CLIENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THE LIMITATIONS OF LIABILITY IN THIS SECTION 9.2 ARE INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.
3. **Essential Basis of the Agreement.** Client acknowledges and understands that the disclaimers, exclusions and limitations of liability set forth in this Section 9 form an essential basis of the agreement between the parties, that the parties have relied upon such disclaimers, exclusions and limitations of liability in negotiating the terms and conditions in this Agreement, and that absent such disclaimers, exclusions and limitations of liability, the terms and conditions of this Agreement would be substantially different.

**10. Indemnification.**

1. **Arcadia Indemnification Obligations.** Arcadia will defend Client and its Affiliates using the Services under Client's Account and indemnify them against Indemnified Liabilities in any legal proceeding filed by an unaffiliated third party to the extent arising from an allegation that any Service or any Arcadia Brand Feature, in each case used in accordance with the Agreement, infringes such third party's (a) patents issued as of the Effective Date, (b) copyrights, (c) trademarks, or (d) misappropriates such third party's trade secrets, in each case of (a)-(d) under any laws applicable to Arcadia in the United States.
2. **Client Indemnification Obligations.** Client will defend Arcadia and its Affiliates providing the Services and indemnify them against Indemnified Liabilities in any legal proceeding filed by an unaffiliated third party to the extent arising from (a) the Client Application or Client Brand Features; or (b) Client's or an End User's use of the Services or Output in breach of Section 2.5 (Usage Restrictions) or Section 8 (Compliance with Laws).



3. **Exclusions.** Sections 10.1 (Arcadia Indemnification Obligations) and 10.2 (Client Indemnification Obligations) will not apply to the extent the underlying allegation arises from (a) the indemnified party's breach of the Agreement, (b) a combination of the indemnifying party's technology or Brand Features with materials not provided by the indemnifying party under the Agreement, unless the combination is required by the Agreement, and (c) in the case of Arcadia or any of its Affiliates as the indemnifying party, any Services provided to Client free of charge.
4. **Conditions.** Sections 10.1 (Arcadia Indemnification Obligations) and 10.2 (Client Indemnification Obligations) are conditioned on the following: (a) Any indemnified party must promptly notify the indemnifying party in writing of any allegation(s) that preceded the legal proceeding and cooperate reasonably with the indemnifying party to resolve the allegation(s). If breach of this Section 10.4(a) prejudices the defense in the legal proceeding, the indemnifying party's obligations under Section 10.1 (Arcadia Indemnification Obligations) or 10.2 (Client Indemnification Obligations) (as applicable) will be reduced in proportion to the prejudice; (b) any indemnified party must tender sole control of the indemnified portion of the proceeding to the indemnifying party, subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.
5. **Remedies.** (a) If Arcadia reasonably believes the Services might infringe a third party's Intellectual Property Rights, then Arcadia may, at its sole option and expense (i) procure the right for Client to continue using the Services; (ii) modify the Services to make them non-infringing without materially reducing their functionality; or (iii) replace the Services with a non-infringing, functionally equivalent alternative. (b) If Arcadia does not believe the remedies in Section 10.5(a) are commercially reasonable, then Arcadia may suspend or terminate Client's use of the impacted Services.
6. **Sole Rights and Obligations.** Without affecting either party's termination rights, this Section 10 (Indemnification) states the parties' sole and exclusive remedy under this Agreement for any third-party allegations of intellectual property infringement or misappropriation of trade secrets.

## 11. TERM AND TERMINATION.

1. **Term.** The term of this Agreement will commence on the Effective Date and will continue until the date which is six (6) months after there are no active Orders or SOWs hereunder (the "Term"), unless earlier terminated in accordance with this Section 11. The term of the Order shall be set forth therein (the "Subscription Term"). As applied to any Order, the Term shall be coterminous to the Subscription Term.
2. **Termination for Breach.** Either party may, at its option, terminate this Agreement or any Order or SOW in the event of a material breach by the other party. Such termination may be effected only through a written notice to the breaching party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching party will have a right to cure such breach or breaches within thirty (30) days of receipt of such notice, and this Agreement will terminate in the event that such cure is not made within such thirty (30)-day period.
3. **Suspension of Access.** Arcadia may suspend access to any or all of the Services in the event any amount due under this Agreement is not received by Arcadia within ten (10) days after it became due.
4. **Termination Upon Bankruptcy or Insolvency.** Either party may, at its option, terminate this Agreement immediately upon written notice to the other party, in the event: (i) that the other party becomes insolvent or unable to pay its debts when due; (ii) the other party files a petition in bankruptcy, reorganization or similar proceeding, or, if filed against, such petition is not removed within ninety (90) days after such filing; (iii) the other party discontinues its business; or (iv) a receiver is appointed or there is an assignment for the benefit of such other party's creditors.

5. **Effect of Termination.** Upon any termination of this Agreement: (i) Client will immediately discontinue all use of the Services, the Application Documentation, and any Arcadia Confidential Information; (ii) Client will delete any Arcadia Confidential Information from Client's computer storage or any other media including, but not limited to, online and off-line libraries; (iii) Client will return to Arcadia or, at Arcadia's option, destroy, all copies of Arcadia Confidential Information then in Client's possession; (iv) each party will discontinue use of the other party's Brand Features; (v) Client will promptly pay to Arcadia all current and future amounts due and payable hereunder; and (vi) Arcadia shall have no further obligation to provide any of the Services.
6. **Survival.** The provisions of Sections 1, 2.5, 2.6, 5, 6, 9, 10, 11, and 12 will survive the termination of this Agreement.

## 12. General.

1. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the parties with respect to the subject matter hereof, and neither of the parties will be bound by any conditions, inducements or representations other than as expressly provided for herein.
2. **Independent Contractors.** In making and performing this Agreement, Client and Arcadia act and will act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either party make commitments or incur any charges or expenses for, or in the name of, the other party.
3. **Notices.** Arcadia may also provide any notice under this Agreement by sending a message to the email address associated with an Account. You will be deemed to have received any email sent to the email address then associated with your Account when we send the email, whether or not you actually receive the email. To give Arcadia notice under this Agreement, you must email us at [legal@arcadia.com](mailto:legal@arcadia.com) with a copy of your notice by certified mail, return receipt requested, to Arcadia Power, Inc.  
Attn: Legal  
5600 S Quebec St D320  
Greenwood Village, CO 80111
4. **Amendments; Modifications.** This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both parties.
5. **Assignment; Delegation.** Client shall not assign any of its rights or delegate any of its duties under this Agreement without the express, prior written consent of Arcadia, and, absent such consent, any attempted assignment or delegation will be null, void and of no effect. Arcadia may, without the prior consent of Client, assign this Agreement in connection with any corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets. This Agreement shall be binding upon and inure the benefit of all permitted successors and assigns.
6. **No Third Party Beneficiaries.** The parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.
7. **Severability.** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or

unenforceable whatsoever.

8. **Waiver.** No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the party granting such waiver in any other respect or at any other time. Any delay or forbearance by either party in exercising any right hereunder will not be deemed a waiver of that right.
9. **Force Majeure.** Except with respect to payment obligations hereunder, if a party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such party's reasonable control, including, by way of example, war, terror, riot, fires, floods, pandemics, failure of public utilities or public transportation systems, governmental actions and requirements, or acts and omissions of Arcadia's data suppliers, such failure or delay will not be deemed to constitute a material breach of this Agreement, but such obligation will remain in full force and effect, and will be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such party is prevented or delayed from performing for more than ninety (90) days, the other party may terminate this Agreement upon thirty (30) days' written notice.
10. **Governing Law; Waiver of Jury Trial.** THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF WASHINGTON, DC, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF OR TO THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS. ANY LEGAL ACTION OR PROCEEDING ARISING UNDER THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS LOCATED IN WASHINGTON, DC, AND THE PARTIES EXPRESSLY CONSENT TO PERSONAL JURISDICTION AND VENUE IN THOSE COURTS. EACH PARTY HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS RELATING TO ITS SUBJECT MATTER.
11. **Dispute Resolution.** In the event of any dispute arising out of or in connection with this Agreement or the transactions relating to its subject matter, the parties shall attempt to resolve such dispute by first entering into negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled pursuant to the foregoing within a period of thirty (30) calendar days following appointment by the parties of the mediator, such dispute shall be settled by arbitration in Washington, D.C. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and, unless either party objects, in accordance with the Expedited Procedures in those Rules. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Notwithstanding anything to the contrary in this Section 12.11, the parties expressly acknowledge that violation of Sections 2.5, 2.6 or 6 may result in harm for which monetary damages would be an insufficient remedy; therefore, in the event of a breach or threatened breach of Section 2.5, 2.6 or 6, the other party shall be entitled to seek, without any requirement to first submit to mediation or arbitration, in any court having jurisdiction, preliminary and permanent injunctive relief to enforce the provisions hereof and shall be entitled to recover from reasonable attorneys' fees incurred in connection therewith.
12. **U.S. Government End-Users.** The Platform Services and Documentation constitutes "commercial items", "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Services and Documentation. If Client or any Authorized User is using Services and Documentation on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Client and Client's Authorized Users must immediately discontinue use of the Services and Documentation. The terms listed above are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

13. **Client Affiliates.** Where an Affiliate of Client has not entered into an Order or other separate agreement directly with Arcadia, Client may authorize that Affiliate (each, a "Participating Affiliate") to access and use the Platform Services under an existing Order between Arcadia and Client. In such cases, references to "Client" in the applicable Order and this Agreement will be deemed references to both Client and the Participating Affiliate, and Client and its Participating Affiliates will be jointly and severally liable for compliance with this Agreement and all Order Forms hereunder. As between Arcadia and Client, Client accepts full liability for the acts and omissions of its Participating Affiliates.
14. **Purchase Orders.** For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if Client issues any purchase orders or similar documents in connection with its purchase of Services, it shall do so only for its own internal, administrative purposes and not with the intent to provide any contractual terms. By entering into this Agreement, whether prior to or following receipt of Client's purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound by the contents of any such purchase order or similar document, which are hereby deemed rejected and extraneous to this Agreement, and Arcadia's performance of this Agreement shall not amount to: (a) an acceptance by conduct of any terms set out or referred to in the purchase order or similar document; (b) an amendment of this Agreement, nor (c) an agreement to amend this Agreement.
15. **Joint Drafting.** This Agreement shall be deemed to have been drafted jointly by the parties hereto, and no rule of construction or other inference or interpretation against any party shall be made or invoked respecting the authorship of this Agreement.
16. **Counterparts.** This Agreement may be executed electronically and in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement.
17. **Headings.** The headings in this Agreement are inserted merely for the purpose of convenience and will not affect the meaning or interpretation of this Agreement.