

## FLUENCE TERMS OF USE

These Terms of Use (“Terms”) are a legal contract between you (“you”) and Fluence DAO (“Fluence”, “us”, “our” or “we”) and govern your use of all the text, data, information, software, graphics, videos, audio, photographs, and other materials (collectively referred to as “Materials”) that we and our affiliates may make available to you through any area of the <https://fluence.network> site (“Site”), any services we may provide through the Site (the “Services”) (collectively with the Site and Materials, the “Platform”). READ THESE TERMS CAREFULLY BEFORE BROWSING THE PLATFORM. USING THE SITE AND/OR ANY SERVICE INDICATES THAT YOU HAVE BOTH READ AND ACCEPTED THESE TERMS. YOU CANNOT USE THE PLATFORM IF YOU DO NOT ACCEPT THESE TERMS.

**NOTE:** THESE TERMS CONTAIN A DISPUTE RESOLUTION AND ARBITRATION PROVISION, INCLUDING A CLASS ACTION WAIVER, THAT AFFECTS YOUR RIGHTS UNDER THESE TERMS AND WITH RESPECT TO DISPUTES YOU MAY HAVE WITH FLUENCE. YOU MAY OPT OUT OF THE BINDING INDIVIDUAL ARBITRATION AND CLASS ACTION WAIVER AS PROVIDED BELOW.

### DEFINITIONS

For the purposes of these Terms:

- **Users** are individuals or entities that use the Platform to access hosting services provided by Providers.
- **Providers** are individuals or entities that offer hosting services on the Platform to Users.
- **Hosting Services** means the computing, storage, and related services that Providers make available to Users through the Platform.

### CHANGES

We may alter the Materials and Services we offer you and/or may choose to modify, suspend, or discontinue any part or all of the Platform at any time and without notifying you. We may also change, update, add, or remove provisions of these Terms from time to time. We will inform you of any modifications to these Terms by posting the modified terms of use on the Site and, if you have registered with us (as described below), by describing the modifications in an email sent to the address associated with your account in our records. To be sure we properly reach your email inbox, please notify us if your preferred email address changes at any time after registration.

If you object to any such modifications, your sole recourse shall be to cease using the Platform. Continued use of the Platform following notice of any modifications indicates you acknowledge and agree to be bound by the modifications. Also, please note that these Terms may be superseded by expressly designated legal notices or terms located on particular pages of the Site or on the sites of our partners; such designated notices are incorporated herein and supersede the corresponding provisions of these Terms.

## **GENERAL USE**

By using the Platform, you agree that you are at least 18 years of age, or if you are under 18 years of age (a “Minor”), that you are using the Platform with the consent of your parent or legal guardian and have received such permission to use the Platform and agree to these Terms. If you are a parent or legal guardian of a Minor, you agree to bind the Minor to these Terms and to fully indemnify and hold us harmless if the Minor breaches any of these Terms. Access to certain Services and content may be subject to additional age restrictions and may not be available to all users of the Platform.

In these Terms, we grant you a limited, personal, non-exclusive, and non-transferable license to access, use, and display the Materials on the Platform; your right to use the Materials is conditioned upon your compliance with these Terms. You may not distribute, publicly display, publicly perform, or otherwise use the Materials outside the Platform. You have no other rights in the Platform or any Materials, and you may not modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, enhance, or otherwise exploit the Platform or any Materials in any manner. If you make copies of any Materials, you must keep all copyright and other proprietary notices intact.

Unfortunately, if you breach any of these Terms, the license granted herein will terminate automatically and you must immediately destroy any downloaded or printed Materials (and any copies thereof).

## **USING THE PLATFORM**

You are responsible for complying with these Terms when you access and use the Platform. It is your responsibility to obtain and maintain all equipment and services needed to access and use the Platform as well as to pay any related charges.

Furthermore, neither the Services nor the Platform are available to users residing in, located in, incorporated in, or otherwise organized or established in the Restricted Jurisdictions or in certain jurisdictions within the U.S., including Alaska, Alabama, Colorado, Connecticut, Delaware, District of Columbia, Florida, Idaho, Louisiana, Michigan, Mississippi, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, and Utah (“Restricted U.S. States”).

## **PAYMENT, BILLING, AND REFUNDS**

### **Payment.**

Fluence bills you through an online billing account for any purchases of products and/or services available on the Platform. You agree to pay Fluence all charges at the prices then in effect for the products or services that you or any person using your account may purchase, and you authorize Fluence to charge your chosen payment provider for such purchases. If you have ordered a product or service that is subject to recurring charges, you consent to Fluence charging your payment method on a recurring basis without requiring your prior approval for each charge, until you cancel the applicable product or service in accordance with our cancellation procedures. Fluence reserves the right to correct any errors or mistakes in pricing even if payment has been requested or received, and applicable sales tax will be added as required. All payments shall be made in U.S. dollars.

**Refunds.**

All payments for services provided on the Platform are final, and no refunds shall be issued unless expressly provided otherwise in these Terms or as required by applicable law. Refunds for any unspent credit balance may be available in our sole discretion, depending on the payment method used and subject to Fluence's refund policies.

**OPERATIONS AND SERVICE (FOR PROVIDERS)**

Providers who offer hosting services on the Platform agree that they shall:

**1. Proper Use of Hardware and Software:**

Use their hardware and software in a careful and proper manner in accordance with all applicable manufacturer, developer, and vendor specifications, solely for the purpose of providing hosting services as part of the Platform. Providers shall comply with and conform to all applicable federal, state, and local laws, ordinances, and regulations related to the possession, use, and maintenance of their hardware and software.

**2. Preventative Maintenance and Updates:**

Provide and perform all necessary preventative maintenance on their hardware during regular business hours and furnish any parts, updates, or repairs required to keep the hardware in good mechanical, operational, and working order to support the hosting services provided on the Platform.

**3. Access for Service Provision:**

Grant Fluence reasonable access to their hardware and related resources during regular business hours (or as otherwise mutually agreed) so that Fluence can provide, support, and monitor the hosting services offered on the Platform.

**4. Error Logging and Data Handling:**

Delete any error logs or troubleshooting data within twenty-four (24) hours, and ensure that any temporary storage of Users' data does not exceed the period necessary to carry out the hosting services.

**5. Data Breach and Security Incidents:**

Promptly notify Fluence in the event of any data breach or security incident related to the hosting services, and, to the fullest extent required by law, indemnify and hold Fluence harmless against any claims or losses arising from such incidents, including the reimbursement of any costs incurred by Fluence.

**AGENCY RELATIONSHIP (FOR PROVIDERS OF HOSTING SERVICES)**

Users can use the Platform to access hosting services provided by Providers. Solely with respect to the payment of funds from Users to Providers that is received by Fluence, the Provider appoints Fluence as its agent to represent and act on its behalf. The Provider acknowledges and agrees that payment of such funds from Users to Fluence for delivery to the Provider satisfies and discharges the Users' obligations to the Provider to the extent of such payment.

**DATA PROTECTION**

In addition to the protections provided in our Privacy Policy, you acknowledge that Fluence employs commercially reasonable security measures designed to safeguard your data; however, you remain solely responsible for maintaining copies of any data you deem important. You agree that Fluence shall not be liable for any loss, corruption, or unauthorized access to your data, and you are responsible for ensuring that your use of the Platform complies with all applicable data protection and privacy laws.

## **SOCIAL MEDIA AND THIRD-PARTY INTEGRATIONS**

If Fluence provides functionality that allows you to link your Platform account with a third-party service or social media account, such linking is subject to the terms, conditions, and privacy policies of the respective third-party service. By linking your account, you consent to such third-party terms and grant Fluence permission to access certain information from your linked account solely for the purpose of enhancing your experience on the Platform. You may disconnect such integrations at any time via your account settings, though doing so may suspend or terminate any benefits provided by the integration.

## **NON-CIRCUMVENTION AND LIQUIDATED DAMAGES**

During the period you use the Platform and for one (1) year following termination of your access, you agree that you will not directly or indirectly, on behalf of yourself or any entity with which you are affiliated, solicit, hire, or engage any User, customer, or Provider in a manner intended to circumvent or deprive Fluence of its legitimate business interests. In the event of a breach of this provision, you agree that Fluence shall be entitled to recover, as liquidated damages and not as a penalty, the sum of Five Thousand U.S. Dollars (\$5,000.00) for each such violation. The parties acknowledge that such liquidated damages represent a genuine pre-estimate of the loss likely to be suffered by Fluence.

## **CONFIDENTIALITY**

Each party agrees to keep confidential and not disclose to any third party any non-public information or trade secrets (“Confidential Information”) disclosed by the other party in connection with these Terms, except as required by law or with the prior written consent of the disclosing party. Confidential Information includes, without limitation, technical data, business plans, financial information, and any other proprietary information that is designated as confidential or that should reasonably be understood as confidential given the nature of the information and the circumstances of its disclosure. This confidentiality obligation shall survive termination of these Terms.

## **EXCLUSIONS**

Except as expressly provided in these Terms, the Platform and Services are provided “as is” and “with all faults” without any warranties, whether express or implied. Fluence does not represent or warrant that (i) the Platform or Services will meet your requirements, (ii) the operation of the Platform will be uninterrupted or error-free, or (iii) any defects in the Platform will be corrected. In no event shall Fluence be liable for any indirect, incidental, consequential, or special damages arising out of or in connection with your use of the Platform or Services. Additionally, Fluence does not warrant the accuracy, reliability,

or completeness of any Materials provided through the Platform and expressly disclaims liability for any errors or omissions in such Materials.

## **UNAUTHORIZED ACTIVITIES**

We authorize your use of the Platform only for individual, commercial purposes (“Permitted Purposes”). Any use of the Platform beyond the Permitted Purposes is prohibited and constitutes unauthorized use. Unauthorized use of the Platform may violate various United States and international copyright laws. Unless you have obtained written permission from Fluence, you are not authorized to use the Platform in any of the following ways (this list is illustrative, not exhaustive):

- In a manner that violates any local, state, national, foreign, or international statute, regulation, rule, order, treaty, or other law;
- In a manner that infringes any copyright, trademark, or other intellectual property or privacy rights of any person;
- To interfere with or disrupt the Platform or the servers or networks connected to the Platform; or
- To attempt to circumvent any content filtering or access control measures used by Fluence (including through hacking or password mining).

Additionally, you represent and warrant that:

- The Platform will not be used for any illegal purpose, including money laundering, terrorist financing, or any other activity that violates applicable law;
- You do not use any proceeds from illegal activities in connection with the Platform; and
- No transactions made through the Platform will be used to facilitate or engage in illegal activities, including sanctions evasion.

Furthermore, you warrant that at the time of using the Platform:

- No criminal or regulatory investigations are pending against you (or, if you are not a natural person, against any of your affiliates, governing bodies, or major shareholders);
- You are not physically located in any Restricted U.S. State;
- You are not listed on any applicable sanctions lists; and
- If you are not a natural person, no shareholder holding more than 25% of your interest is listed on any sanctions list.

Should any of these conditions occur, you agree to immediately notify Fluence and suspend all transactions on the Platform until the matter is resolved.

## **REVIEW STANDARDS**

With respect to unauthorized activities, Fluence may remove you from the Platform if it has a reasonable basis to believe that the Fluence network, any of its participants, or Fluence itself is at risk. Once such a determination is made, you shall have the right to appeal that decision (to the extent permitted by applicable law), and Fluence will, if possible, provide you with the basis for its determination.

You agree to indemnify and hold Fluence and its officers, employees, directors, and agents harmless from any losses, damages, expenses (including reasonable attorneys’ fees), costs, fines, or claims arising out of

your use of the Platform, your violation of these Terms, or your infringement of any rights of another. You are solely responsible for any breach of these Terms by you or anyone using your account, and Fluence reserves the right to assume the exclusive defense of any claim subject to indemnification by you.

## **INTELLECTUAL PROPERTY INFRINGEMENT**

We respect the intellectual property rights of others and encourage you to do the same. Accordingly, we have a policy of removing Materials that infringe the intellectual property rights of others, suspending access to the Platform (in whole or in part) for users who commit such infringements, and, where appropriate, terminating the accounts of repeat infringers.

Pursuant to Title 17 of the United States Code, Section 512, we have implemented procedures for receiving written notifications of copyright infringement and for processing such claims. If you believe that your copyright or other intellectual property right is being infringed by content on the Platform, please provide written notice to: [hello@fluence.network](mailto:hello@fluence.network)

Your written notice must include:

- Your physical or electronic signature;
- Identification of the copyrighted work or other intellectual property claimed to be infringed;
- A description of the allegedly infringing material sufficient for us to locate it;
- Your contact information (including postal address, telephone number, and email address);
- A statement that you have a good faith belief that the use of the material is not authorized by the copyright owner, its agent, or the law;
- A statement that the information in the notice is accurate; and
- A statement, under penalty of perjury, that you are authorized to act on behalf of the copyright or intellectual property owner.

Unless the notice pertains to copyright or other intellectual property infringement, the agent will be unable to address the concern.

## **SUBMITTING A DMCA COUNTER-NOTIFICATION**

If we remove or disable access to Material based on a DMCA take-down notice, you may submit a counter-notification that includes the following:

1. Your physical or electronic signature;
2. Identification of the material that was removed or disabled and its location before removal;
3. A statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification; and
4. Your name, physical address, and telephone number, along with a statement consenting to the jurisdiction of a court in the district of your physical address (or, if outside the United States, any judicial district in which we may be located), and a statement that you will accept service of process from the party that submitted the original DMCA notice.

## **TERMINATION**

Fluence reserves the right to terminate your license to use the Platform if we reasonably determine that:

- (a) your use of the Platform violates these Terms or applicable law;
- (b) you fraudulently use or misuse the Platform; or
- (c) we are unable to continue providing the Platform to you for technical or legitimate business reasons.

To the fullest extent permitted by law, your sole remedy in the event of any dissatisfaction with (i) the Platform, (ii) any provision of these Terms, (iii) any policy or practice of Fluence, or (iv) any content transmitted through the Platform, is to terminate your account and cease using the Platform.

## **DISPUTE RESOLUTION AND ARBITRATION; MASS ARBITRATION; CLASS ACTION WAIVER**

This section is deemed to be a “written agreement to arbitrate” pursuant to the Federal Arbitration Act, and you and Fluence agree that it satisfies the “writing” requirement of that Act.

THE FOLLOWING TERMS CONSIST OF A PRE-DISPUTE RESOLUTION PROCESS, A FINAL, BINDING ARBITRATION PROVISION, A MASS ARBITRATION PROVISION, AND A CLASS-ACTION AND JURY TRIAL WAIVER.

To the fullest extent permitted by law, by using the Platform, you and Fluence agree that any dispute arising out of or relating to the Platform or your use thereof (including any common law or statutory claims) shall be resolved exclusively through confidential, final, and binding arbitration; provided that either party may seek injunctive relief in a court of competent jurisdiction to protect its intellectual property rights. YOU ARE GIVING UP THE RIGHT TO LITIGATE DISPUTES BEFORE A JUDGE OR JURY.

### **Opt-out:**

You may elect to opt-out of the arbitration provisions by sending a written notice (signed personally by you or your legal guardian) to Fluence at [hello@fluence.network](mailto:hello@fluence.network) (the “Notice Address”) within thirty (30) calendar days of your initial acceptance of these Terms. The notice must include your full name, mailing address, email address, and an unequivocal statement that you wish to opt out of the arbitration and class action waiver provisions. If you opt out in accordance with these procedures, all other provisions of these Terms shall remain in effect.

### **Pre-Arbitration Dispute Resolution:**

Before initiating arbitration, you and Fluence agree to attempt to resolve any dispute by first sending a written demand (“Demand”) to the other party at the Notice Address. This Demand must include (i) a detailed description of the dispute and the date it arose; (ii) your full contact information; and (iii) be personally signed. Upon receipt of a Demand, the recipient may request an individualized video or telephone conference (to be held within twenty (20) business days of receipt) to attempt in good faith to resolve the dispute. No legal action or arbitration shall be initiated until after this resolution period expires.

**Arbitration Procedure:**

If the dispute is not resolved within ten (10) business days following the conference (or the time by which such a conference should have been held), you agree to file a demand for arbitration with JAMS in accordance with its Comprehensive Rules & Procedures (including any applicable consumer rules), available at <https://www.jamsadr.com/rules-comprehensive-arbitration/>. The arbitrator shall have exclusive authority to resolve all disputes arising out of or relating to these Terms, except that a court of competent jurisdiction may enjoin the arbitration proceedings if the pre-arbitration requirements have not been met.

The arbitration shall be held in the county in which you reside, or at another mutually agreed location. If the amount in controversy is \$10,000 or less, the arbitration may be conducted via telephone or video conference or based solely on written submissions, at the arbitrator's discretion. The arbitrator's decision shall be final and binding, and any award rendered may be entered in any court of competent jurisdiction. All arbitration fees shall be governed by JAMS's rules.

**Class Action Waiver:**

You and Fluence agree that any claims must be brought solely on an individual basis and not as part of any class or representative action. Unless both parties agree otherwise or the Mass Arbitration provisions below are triggered, the arbitrator shall not consolidate claims or preside over any class proceedings.

**Mass Arbitration:**

If 25 or more claimants (including you) seek arbitration for similar claims against Fluence, such claims will be handled pursuant to the procedures set forth in the NAM Mass Filing Supplemental Dispute Resolution Rules (available at <https://www.namadr.com/resources/rules-fees-forms/>). Under such circumstances, a Procedural Arbitrator shall be appointed to determine issues of jurisdiction and arbitrability and to coordinate the arbitration process. The parties agree to cooperate in good faith during any mass arbitration proceeding. If a court determines that the mass arbitration provisions are unenforceable for your claim, then your claim will proceed under the individual arbitration provisions set forth above.

**DISPUTES BETWEEN USERS, PROVIDERS, AND THIRD PARTIES**

If any dispute arises between Users and Providers, between Users and other Users, or between Users and any third party arising out of or in connection with the Platform—including disputes relating to transactions or the provision of hosting services—you understand and agree that Fluence is under no obligation to intervene, mediate, or otherwise resolve such disputes. Any such dispute is solely between the respective parties, and you hereby release and hold harmless Fluence, its officers, employees, agents, and affiliates from any and all claims, demands, damages, or other losses of any kind arising out of or in connection with any dispute between Users, between a User and a Provider, or between a User and any third party.



## **GENERAL PROVISIONS**

We prefer to advise you if we feel you are not complying with these Terms and to recommend any necessary corrective action; however, certain violations may result in the immediate termination of your access to the Platform without prior notice. These Terms shall be governed by the Federal Arbitration Act, the laws of Texas, and applicable U.S. federal law, without regard to any conflicts of law principles. Foreign laws do not apply. The United Nations Convention on Contracts for the International Sale of Goods and any laws based on the Uniform Computer Information Transactions Act (UCITA) shall not apply. Any disputes relating to these Terms or the Platform will be heard in the courts located in Dallas in the State of Texas. If any provision of these Terms is found to be inconsistent with applicable law, that provision shall be interpreted to reflect the parties' intentions without modifying the remaining provisions. Our failure to enforce any provision shall not constitute a waiver thereof. These Terms constitute the entire agreement between you and Fluence and supersede all prior negotiations, discussions, or agreements regarding the Platform. The rights, warranties, representations, indemnities, limitations of liability, and other general provisions shall survive termination of these Terms.

## **CONTACT US**

If you have any questions about these Terms or need to contact us for any reason, you can reach us at: [hello@fluence.network](mailto:hello@fluence.network)