



Terms of Use Agreement

1. DEFINITIONS

1.1 “Decisionaire” means the combination of a questionnaire and the resulting content that will display when the questions in the questionnaire have been answered.

1.2 “Content” means all text, images, videos, graphics which you use to create your Decisionaire. Content may be provided by you or provided by Decisionaire Inc. via the Services.

1.3 “Services” means the online, web-based software provided by Decisionaire Inc. via www.decisionaire.com and app.decisionaire.com.

1.5 “User License” is an individual to use the Services provided by Decisionaire Inc. Each User License will have a separate username and password in order to access the Services.

1.6 “Decisionaire Inc.” refers to the company who owns and maintains the web site located at www.decisionaire.com and the services provides at app.decisionaire.com.

2. USE OF SERVICES. After a free trial period you will select a license package. This package will specify the number of decisionaires you can have and whether or not you are committing to a User License for a 12-month period of time or on a month by month basis. The Services Decisionaire Inc. provides to you is “as is” without any representation or warranty except as expressly set forth in this Agreement. You agree and understand that your receipt of and payment for use of the Services are not contingent on the delivery of any future functionality or features.

2.1 Acceptable Use Terms. Neither you nor any individual assigned a User License by you shall use the Services, Applications or content in connection with any (i) infringement or misappropriation of any intellectual property right of any third party; (ii) defamation, libel, slander, obscenity, or violation of the rights of privacy publicity of any third party; (iii) other offensive, harassing or illegal conduct; or (iv) collection of any Sensitive Personal Information as defined in Section 3.3.

2.2 Content Limitations. Your account may not exceed the number of decisionaires associated with your license package. If you attempt to add additional decisionaires beyond you license package limit then you will be notified that you must accept moving to a larger license package with a higher monthly fee or delete an existing decisionaire from your account to make room for the creation of a new decisionaire.

2.3 Service Provision. Decisionaire Inc. shall use commercially reasonable efforts to make Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which Decisionaire Inc. will



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use commercially reasonable efforts to give at least 24 hours' notice via the Services), or (b) any unavailability caused by circumstances beyond Decisionaire Inc.'s reasonable control.

2.4 Customer Support. Decisionaire Inc. will provide e-mail customer service support to you during business hours, 9:00AM–5:00PM Eastern Time Monday through Friday, excluding US national and certain state holidays, to assist in resolving problems with the Services.

2.5 Proprietary Rights and License Grant. Decisionaire Inc. owns all right and title in and to the Services and to any Content provided or created by Decisionaire Inc. For the term of the license package you select, Decisionaire Inc. grants to you a non-exclusive, right and license, to use the Services solely to create decisionaires in accordance with all terms and conditions hereof. Decisionaire Inc. shall similarly own all right and title in and to all Content to the extent provided by Decisionaire Inc. via the Services. You shall own all right and title in and to all Content and works to the extent provided by you or created by you using the Services.

2.6 Sweepstakes and Contests. Without limiting the generality of Section 2.1, if you use the Services to create or distribute a decisionaire consisting of or including a giveaway, promotion or sweepstakes, you accept sole responsibility for compliance with local, state and federal laws, and the policies of third party sites where your decisionaire appears.

3. DATA PROTECTION

3.1 "Customer Data" means personally identifiable information collected from you and your employees in connection with your use of the Services and is subject to the Decisionaire Inc. Privacy policy located at <http://www.decisionaire.com/privacy-policy/>

3.2 "End User Data" means data or information submitted to the Services by individuals who interact with decisionaires including any personally identifiable information (name, gender, postal address, email address, phone, and birthdate, etc.) collected as part of the end user's engagement with the decisionaire. You control the End User Data collected via the decisionaires and as such are responsible to the end user for such End User Data. We only store and process such End User Data on your behalf for your benefit. End User Data will therefore be subject to the privacy policy which you establish and communicate to end users and will not be subject to the Decisionaire Inc. Privacy Policy. You agree to ensure that each Decisionaire is made available pursuant to a privacy policy that complies with all applicable laws, rules and regulations and agree that You shall comply with each such privacy policy.



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3.3 “Sensitive Information” You may not use the Services to collect, transmit or store Sensitive Information, defined as credit or debit card numbers, personal financial account information, Social Security numbers, passport numbers, driver's license numbers or similar identifiers, racial or ethnic origin, physical or mental health condition or information, or other employment, financial or health information.

3.4 Protection of Data. Decisionaire Inc. shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of your Customer Data and Your End User Data ("Your Data", collectively).

3.5 Ownership of Data. You shall retain all rights and title to all End User Data collected via the Services. You grant Decisionaire Inc. an irrevocable royalty free license to use aggregated, non-identifiable data generated by your use of the Services, including individuals’ interactions with your decisionaires, in order to maintain and improve the Services.

3.6 EU Data. For personal data in the meaning of the European Data Protection Directive 95/45/EC (“Directive 95/46/EC”) originating from the European Union or the European Economic Area (“EU Personal Data”) the following shall apply. With respect to any processing of EU Personal Data by Decisionaire Inc. on behalf of you, Decisionaire Inc. shall be regarded as “data processor” and you shall be regarded as “data controller.” As data processor, Decisionaire Inc. will process EU Personal Data only in accordance with your instructions, and ensure the security of the EU Personal Data pursuant to Section 3.4 above.

You shall give instructions through the technical (self-service) means provided as part of the Services. Only where the Services do not allow you to provide certain instructions, shall you resort to other means to convey instructions to Decisionaire Inc. Decisionaire Inc. can refuse to implement an instruction if such implementation is unreasonable as determined by Decisionaire Inc. You shall bear all costs and expenses incurred in relation with the implementation of an instruction, except in the event that you have no means to implement the instruction yourself and if the instruction relates to a change to Decisionaire Inc.’s platform as such which is required by applicable data protection laws and regulations.

You acknowledge and agree that we may engage third-party sub-processors in connection with the provision of the Services. Upon your written request, we will make available a list of these sub-processors.



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You may seek confirmation at any time that Decisionaire Inc. have taken the technical and organizational measures described in this Agreement in the following manner: Upon your written request, and subject to the confidentiality obligations set forth in the Agreement, Decisionaire Inc. will make available to you information regarding Decisionaire Inc.'s compliance with the obligations set forth in this Agreement primarily in the form of the third-party certifications and audits or by providing a completed version of your questionnaire. We will promptly provide reasonable assistance to you to explain these certifications and audits.

4. PAYMENT

4.1 Invoices and Payment. Fees and payment terms for using the Services fees are stated in the User License Order Form. Except as otherwise specified, (i) fees are quoted and payable in United States dollars (ii) fees are based on Services purchased and not actual usage, and (iii) payment obligations are non-cancelable and fees paid are non-refundable, except in the case of termination for cause by you.

Acceptable payment methods include check and credit card. Other payment methods may be agreed in writing between the parties. If any charges are not received from you by the due date, then at Decisionaire Inc.'s discretion such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lesser, from the date such payment was due until the date paid.

4.2 Suspension of Service. If any amount owing by you under this Agreement is 60 or more days overdue Decisionaire Inc. may, in our sole discretion and without limiting Decisionaire Inc.'s other rights and remedies, suspend your access to the Services. Such suspension shall not limit our rights to collect all fees due.

4.3 Taxes. Our pricing excludes all applicable federal, state and local sales, use, excise or other taxes or assessments, however designated or levied, relating to this Agreement. If applicable, Decisionaire Inc. will clearly indicate on the invoices the amount applicable for any such taxes and you will be responsible to pay such amounts unless you provide a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Decisionaire Inc. are solely responsible for taxes assessable against us based on our income, property and employees.

5. CONFIDENTIALITY

5.1 "Confidential Information" means all confidential information disclosed by one party to this Agreement ("Disclosing Party") to the other party to this Agreement ("Receiving Party"), whether orally



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or in writing, that is designated as confidential or that reasonably should be understood to be non-public or confidential given the nature of the information and the circumstances of disclosure. Decisionaire Inc.'s Confidential Information shall include, but not be limited to non-public information relating to the Services. Confidential Information of each party shall also include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

5.2 Obligation to Protect Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall not disclose the Confidential Information of the Disclosing Party to any third party, and shall not use such Confidential Information other than as is reasonably necessary in exercising its rights and performing its obligations hereunder, (ii) the Receiving Party shall use the same degree of care that it uses with respect to its own confidential information of like kind (but in no event less than reasonable care) to prevent unauthorized disclosure or use of any Confidential Information of the Disclosing Party, and (iii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for the purposes of this Agreement and who are bound by written confidentiality obligations not materially less protective than the terms of this Section 5. A party shall not be in breach of this Section 5 with respect to a disclosure of Confidential Information required by law or legal process (such as a court order); provided, however, that the party required to disclose Confidential Information shall notify the Disclosing Party as soon as possible after learning of the disclosure obligation and shall cooperate with the Disclosing Party, at the Disclosing Party's expense, in seeking to limit or prevent such disclosure.

5.3 Publicity. Notwithstanding the foregoing, upon execution of this agreement, you agree that Decisionaire Inc. may use your name, logo, trademark, tradename and any publicly available decisionaire that you create using the Services for public relations and marketing purposes.

6. REPRESENTATIONS AND WARRANTIES



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6.1 Decisionaire Inc.'s Responsibilities.

6.1.1 Decisionaire Inc. warrants that we are authorized to enter into this Agreement and provide the Services.

6.1.2 Decisionaire Inc. shall perform the Services in a professional manner consistent with industry standards.

6.1.3 Decisionaire Inc. shall use commercially reasonable efforts to ensure that any software used to provide the Services will not contain Malicious Code, defined as viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

6.1.4 In the event that the Services, or any portion thereof is held, or in Decisionaire Inc.'s reasonable good-faith business judgment is likely to be held, to infringe the rights of any third party, then Decisionaire Inc., in our discretion and at our expense, will use commercially reasonable efforts to (i) secure for you the right to continue to use such Services or the infringing portion(s) thereof; (ii) replace such Services or the infringing portion(s) thereof with a substantially equivalent, non-infringing item; or (iii) modify such Services or the infringing portion(s) thereof (without materially adversely affecting the functions, features of utility of such Services), so that such Services become non-infringing. In the event that Decisionaire Inc. is unable to remedy the infringement, in accordance with the foregoing sentence, then Decisionaire Inc. may terminate your right to continue to use the infringing Services or the infringing portion(s) thereof and refund to you the portion of the fees paid for the infringing Services or the infringing portion(s) thereof, applicable to the unutilized portion of the Term.

6.2 Your Responsibilities. You represent and warrant that you are authorized to enter into this Agreement and shall: (i) be responsible for your employees' and agents' compliance with this Agreement; (ii) prevent unauthorized access to or use of the Services, and notify Decisionaire Inc. promptly in writing of any such unauthorized access; and (iii) use the Services in compliance with this Agreement, the directions Decisionaire Inc. provide and all applicable laws and government regulations. You further warrant that you shall not: (i) sell, license, sublicense, resell, rent or lease the Services to any party; (ii) use the Services to create, store, transmit libelous, or otherwise unlawful or tortious material or content, or to create, store or transmit material in knowing violation of third-party privacy rights; (iii) use the Services to promote any website, product, or service that is involved in unlawful or illegal activities; (iv) attempt to gain unauthorized access to the Services or their related systems or networks;



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(v) access the Services for competitive purposes; or (vi) use the Services to collect or access Sensitive Information.

6.3 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

7. INDEMNIFICATION

7.1 Indemnification by Decisionaire Inc. Decisionaire Inc. shall indemnify, defend, and hold harmless you, your parent company, subsidiaries, affiliates, directors, owners, shareholders, officers, employees, consultants and agents ("Your Group") against any damages or settlement amounts agreed to by Decisionaire Inc. to the extent arising from any claim, demand, suit, or proceeding ("Claim") made or brought against you by a third party to the extent alleging that Decisionaire Inc.'s technology underlying the Services infringes or misappropriates the intellectual property rights of a third party, provided that you (i) promptly notify Decisionaire Inc. of the Claim (provided that failure to provide prompt notice shall excuse the obligation only to the extent the delay materially prejudices Decisionaire Inc.'s ability to defend the Claim); (ii) tender sole control of the defense and settlement of such Claim to Decisionaire Inc., provided that Decisionaire Inc. shall not agree to any settlement which admits fault on your behalf or imposes any restrictions on your business without your prior written consent (not to be unreasonably withheld, delayed or conditioned) and (iii) provides to Decisionaire Inc. all reasonable and necessary assistance in defending such Claim, at Decisionaire Inc.'s expense. Decisionaire Inc. shall have no obligation under the foregoing with respect to: (1) the combination or use of Decisionaire Inc.'s Services with any technology, software, hardware or services not provided by us where the infringement would not have occurred but for such combination or use, unless there is no commercially reasonable non-infringing use of the Services without such use or combination; (2) any Claim for which you are obligated under Section 7.2; or (3) any Claim which would not have occurred but for our modification or enhancement of the Services in accordance with your request. The foregoing obligations of this Section 7.1 and Decisionaire Inc.'s obligations under Section 6.1 constitute your sole remedy, and Decisionaire Inc.'s exclusive liability, with respect to any infringement or misappropriation of third party intellectual property rights relating to the Services.



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7.2 Indemnification by You. You shall indemnify, defend, and hold harmless Decisionaire Inc., and our parent company, subsidiaries, affiliates, directors, owners, shareholders, officers, employees, consultants and agents (“Our Group”) against any damages or settlement amounts agreed to by you to the extent arising from any Claim made or brought against Our Group by a third party to the extent alleging that your content, your decisionaire(s), or your use of the Services infringes or misappropriates the rights of a third party or violates applicable law, provided, that Decisionaire Inc. (i) promptly gives you written notice of the Claim (provided that failure to provide prompt notice shall excuse the obligation only to the extent the delay materially prejudices your ability to defend the Claim); (ii) tender sole control of the defense and settlement of the Claim to you, provided that you shall not agree to any settlement which admits fault on Decisionaire Inc.’s behalf or imposes any restrictions on our business without Decisionaire Inc.’s prior written consent (not to be unreasonably withheld, delayed or conditioned) and (iii) provide to you all reasonable assistance in defending such Claim, at your expense.

8. Limitation on Liability

8.1 Cap on Liability. Except for matters for which we have agreed to indemnify you under Section 7.1(a) or you have agreed to indemnify Decisionaire Inc. under Section 7.2(a), a breach of your obligations under Section 2 or Section 3.3, or if either party breaches its obligations under Section 5.2, each party’s liability arising out of or in connection with this Agreement, whether based on warranty, contract, tort or otherwise shall not exceed the amount of fees paid or payable in the twelve months preceding the date that such liability arose.

8.2 No Indirect Damages. Except for matters for which we have agreed to indemnify you under Section 7.1(a) or you have agreed to indemnify Decisionaire Inc. under Section 7.2(a), a breach of your obligations under Section 2 or if either party breaches its obligations under Section 5.2, neither party will be liable for any consequential, incidental, indirect, punitive or special damages whatsoever arising from any cause or connected in any way with this Agreement, even if the possibility thereof is known or should have been known.

9. TERM AND TERMINATION

9.1 Term. This Agreement shall commence as of the date and shall continue for the period set forth in the User License Order Form.

9.2 Termination For Cause. Either party may terminate this Agreement for cause: (i) upon thirty (30) business days written notice to the other party of a material breach if such breach remains uncured at



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the expiration of such thirty (30) day period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Additionally, Decisionaire Inc. may terminate this Agreement for cause without prior notice to you if you violate Section 3.3 (Sensitive Information).

9.3 Effects of Termination. Upon any termination for cause by you, Decisionaire Inc. shall refund you any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Decisionaire Inc., you shall pay any unpaid fees covering the remainder of the Term. In no event shall any termination relieve you of the obligation to pay any fees payable to Decisionaire Inc. for the period prior to the effective date of termination.

9.4 Return of Your End User Data. Upon written request by you made within 30 days after the effective date of termination, Decisionaire Inc. will make available to you for download a file of your End User Data in comma separated value (.csv) format. After such 30-day period, Decisionaire Inc. shall have no obligation to maintain or provide any of your data.

9.5 No Return of Your Application(s). Your decisionaire(s) are created within the Services and are dependent upon the Services for their instantiation. As such, we will not export, reproduce, or deliver to you a file containing your decisionaire(s) in any format.

9.6 Surviving Provisions. Sections 1 (Definitions), 2.5 (Proprietary Rights), 3.5 Ownership of Data, 4 (Payment), 5 (Confidentiality), 6.3 (Disclaimer), 7 (Indemnification), 8 (Limitation on Liability), 9.3 (Effects of Termination), 9.4 (Return of Your End-User Data), 9.6 (Surviving Provisions) and 10 (General Provisions) shall survive any termination or expiration of this Agreement.

10. GENERAL PROVISIONS

10.1 Controlling Law. This Agreement shall be governed by and construed according to the laws of the State of Maryland, without regard to any conflict of laws provisions. The parties agree that jurisdiction and venue for any dispute relating to or arising out of this Agreement shall occur solely and exclusively in any federal or state court within Baltimore, Maryland, and the parties voluntarily and irrevocably consent to jurisdiction of such courts for the adjudication of any such dispute.

10.2 Notices. Any notices required or permitted by this Agreement shall be in writing and shall be delivered to the persons identified on the User License Order Form: (i) by overnight courier upon written verification of receipt; (ii) or email; or (iii) by certified or registered mail, return receipt requested, upon



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verification of receipt. Notices shall be sent to the addresses set forth on the User License Order Form or as amended in writing by the parties.

10.3 Export. Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and you shall not permit your employees or third parties to access or use Services in violation of any U.S. export embargo, prohibition or restriction.

10.4 Assignment. Neither party may assign this Agreement or any rights or delegate any duties hereunder without the prior written consent of the other party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all User License Order Forms), without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any entity that assumes this Agreement agrees to be bound by all of its terms without modification as a condition to the consent to assign the Agreement.

10.5 Waiver and Amendments. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of that party's rights or the provision, nor shall it be construed as a waiver of any succeeding breach of such provision or the waiver of the provision itself. All waivers must be in writing and signed by the party charged with the waiver. This Agreement may only be amended in a subsequently-dated writing signed by authorized representatives of the parties.

10.6 Severability. If any provision of this Agreement is determined to be unenforceable or invalid under applicable law or be so held by applicable court decision, then such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, the invalid or unenforceable provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law and court decisions.

10.7 Independent Contractors. The relationship of the parties under this Agreement is that of independent contractors. Nothing in this Agreement shall be construed to create a joint venture, partnership, employment or agency relationship. Neither party has the right or authority to assume or create any obligation or responsibility on behalf of the other party.



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10.8 Entire Agreement. This Agreement states the complete understanding and agreement of the parties regarding the subject matter herein. It supersedes all prior or contemporaneous proposals, agreements or other communications between the parties, oral or written, regarding the subject matter.