



FirstRain Terms of Use

FirstRain® provides an on-demand intelligence service ("Service") based on its family of software products developed and owned by FirstRain (collectively, "Software"). This Agreement ("Agreement") is effective upon use of the FirstRain Service by a user ("User")

1 Service

1.1 Grant of Rights. Subject to the terms and conditions of this Agreement, FirstRain hereby grants User a non-exclusive, non-transferable right to use the Service solely for User's own internal business purposes. Access to the Service will be provided through login accounts or email digests for specified employees of User ("Users"), and User shall not permit anyone to access or use the same other than such Users authorized by FirstRain.

1.2 Support. FirstRain will use reasonable efforts to provide support for the Service. Except with respect to such support, THE SERVICE IS PROVIDED "AS IS" AND FIRSTRRAIN HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

1.3 Ownership. As between the parties, all right, title and interest in and to the Software and Service including all derivative works, plug-ins, modifications and copies, and intellectual property rights therein are and shall remain the sole and exclusive property of FirstRain. No title to or ownership of any such items, or any intellectual property or proprietary rights in or to such items, is transferred to User under this Agreement. Such items are confidential and proprietary to FirstRain and User shall not disclose or provide access to such items to any third party without the prior written consent of FirstRain.

1.4 Reservations. All rights not expressly granted to User are reserved by FirstRain. User shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way; (ii) modify or make derivative works based upon the Service; (iii) create Internet "links" to the Service from any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) develop, or benchmark against, a competitive product or service, or (b) develop products using, or otherwise copy, features, functions, interfaces or graphics of the Service.

2 Use of Service

2.1 Users: Third Party Services. User is responsible for all activity of its Users on the Service and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with User's use of the Service, including those related to data privacy, copyright, international communications and the transmission of technical or personal data. Users may access and use Internet sites, content and services of third parties through the Service (collectively, "Third Party Services"). Any Third Party Services, and any terms or conditions associated therewith, are solely between User and the applicable third party. FirstRain shall have no liability, obligation or responsibility for any such Third Party Services. FirstRain does not endorse any sites on the Internet that are linked through the Service. FirstRain provides these links to User only as a matter of convenience, and in no event shall FirstRain be responsible for any content, products, or other materials on or available from such sites. FirstRain provides the Service to User pursuant to the terms and conditions of this Agreement. User recognizes, however, that certain third party providers may require User's agreement to additional or different terms prior to use of or access to such third party's Internet sites, content or services.

2.2 User Content and Customizations. Some aspects of the Service may permit User to upload content for indexing and searching by the Service, request the Service to crawl User's corporate intranet or other sites specified by User, or otherwise upload, store, select, transmit, copy or make available content to or from the Service or to request modifications or customizations to the Service, including modifications to the way that content is indexed, searched or stored by the Service and the way that search results are provided to User (collectively, "User Content and Customizations"). User hereby grants to FirstRain a non-exclusive license to use, reproduce, modify and otherwise provide User Content and Customizations for purposes of providing the Service hereunder. User shall be responsible for obtaining all rights necessary for use of User Content and Customizations by the Service. User shall not upload, store, select, transmit, copy or otherwise make available content to or from the Service, without expressly obtaining the rights to do so as set forth in this Section 2.2. FirstRain shall have the right, but not the obligation, to remove content and sites from the Service, in its sole discretion, including any User Content and Customizations believed to violate the rights of any third party or to otherwise be unlawful, vulgar, obscene, defamatory or objectionable.

3 Subscription Sites. Some aspects of the Service may permit User to request the Service to index and search sites that require a subscription, registration or other additional payments or terms of use ("Subscription Sites"). User shall be responsible for obtaining its own account for accessing Subscription Sites, at its own expense, and for obtaining all rights required for use of the Service in connection with Subscription Sites. User shall be solely responsible for paying any additional fees required for access to the Subscription Site by the Service. User shall only access content from the Subscription Site through its own account and not through any additional account established for purposes of allowing the Service to index and search content on the Subscription Site.

4 Limitation of Liability **IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING FOR LOSS OF USE, DATA, BUSINESS OR PROFITS) RELATED TO OR ARISING OUT OF THIS AGREEMENT, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. FIRSTRAIN'S TOTAL LIABILITY RELATED TO OR ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY USER TO FIRSTRAIN FOR THE SERVICE FROM WHICH THE LIABILITY AROSE.**

FIRSTRAIN'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. FIRSTRAIN IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH LIMITATIONS, DELAYS OR PROBLEMS.

THE ABOVE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. However, such limitations shall not apply to gross negligence or willful misconduct to the extent such liability for such claims may not be limited under applicable law. In addition, such limitations shall not be construed as limiting or restricting FirstRain's rights and remedies with respect to unauthorized use of the Service.

5 General

5.1 This Agreement shall remain in effect until the Service is terminated by FirstRain. FirstRain may terminate a free account at any time in its sole discretion.

5.2 Governing Law; Dispute Resolution. This Agreement is made in and shall be governed by the laws of the State of California, without regard to its conflict of laws principles.

5.3 Independent Contractors; Third Parties. FirstRain and User are independent contractors and this Agreement does not establish any partnership, joint venture, employment, franchise or agency between FirstRain and User. Neither party will have the power to bind or incur obligations on the other without the other's prior written consent. This Agreement is solely for the benefit of the parties, and does not confer any rights or remedies to any other person or entity.

5.4 Force Majeure. Except for Responsible Party's payment obligations, neither party will be liable for any failure or delay in its performance due to any cause beyond its reasonable control, including act of war, acts of God, embargo, riot, sabotage, failure of suppliers, labor shortage or dispute, governmental act or failure of the Internet.