

Changes

February 8, 2013	Initial version
April 29, 2015	Terms of Service now reflects Expected Behavior, LLC as owner of Instrumental
June 3, 2015	URL for plans has changed

THIS SERVICE AGREEMENT ("AGREEMENT") GOVERNS YOUR PURCHASE OF SERVICES (AS DEFINED BELOW) FROM EXPECTED BEHAVIOR, LLC ("EXPECTED BEHAVIOR"). THIS AGREEMENT WILL ALSO GOVERN YOUR ONGOING USE OF THOSE SERVICES. BY CLICKING ON THE "ACCEPT" BUTTON, YOU ARE CONSENTING WITHOUT CONDITION TO BE BOUND BY THIS AGREEMENT. YOUR CONTINUED USE OF ANY SERVICES SHALL ALSO CONSTITUTE ASSENT TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

1. DEFINITIONS

"Data" means all of your registration information and other transaction data collected, processed and retained by Expected Behavior in connection with providing the Services, including without limitation information, content and media files uploaded by you to Instrumentalapp.com.

"Plan" means the plan chosen by you during, or subsequent to, the registration process, as applicable and as chosen by you, and as further described at: <https://instrumentalapp.com/pricing>.

"Services" means the services included in your Plan and hosted by Expected Behavior and provided to you under this agreement via the website Instrumentalapp.com.

"Systems" means modems, servers, software, network and communications equipment and ancillary services and hardware that are owned, controlled or procured by you.

2. PURCHASED SERVICES

2.1 Services

Subject to all terms and conditions of this Agreement, Expected Behavior will use commercially reasonable efforts to provide the Services. Expected Behavior may provide the Services using third party vendors or service providers. You agree to pay Expected Behavior the fees, in the amounts and at the times specified in your selected Plan.

2.2 Changes

Expected Behavior reserves the right to modify or discontinue any Services or Plan (in whole or in part) at any time by giving at least 30 days written notice to you.

2.3 Limitations

Expected Behavior will not be responsible or liable for any failure in the Services resulting from or attributable to (a) your Systems, (b) network, telecommunications or other service or equipment, (c) your, or third partys' products, services, negligence, acts or omissions, (d) any force majeure or cause beyond Expected Behavior's reasonable control, (e) scheduled maintenance or (f) unauthorized access or breach by third parties.

2.4 Systems

You shall obtain and operate all Systems needed to use the Services, and provide all corresponding backup, recovery and maintenance services. You shall ensure that all Systems are compatible with the Services.

3. PROPRIETARY RIGHTS

3.1 Data

As between the parties, you shall own all Data. You hereby grant Expected Behavior a nonexclusive and royalty-free right and license to use, copy, perform, display, and distribute said Data and to prepare derivative works of Data solely for the purpose of providing the Services. You agree to indemnify and hold Expected Behavior harmless from all claims, damages, liabilities, losses, costs and expenses (including attorneys' fees) arising out of any use or disclosure of Data permitted hereunder. You agree to create archival copies or backup copies of all Data. You hereby expressly acknowledge that the Services are not intended to be a data backup service, and you agree not to use the Services as a data backup service. Although Expected Behavior does not claim ownership of Data, you represent and warrant that you have the right to grant the foregoing license to Expected Behavior.

3.2 No Implied License

Except for the limited rights and licenses expressly granted hereunder, no other license is granted to you, no other use is permitted and Expected Behavior (and its licensors) shall retain all right, title and interest in and to the Services (including all intellectual property and proprietary rights embodied therein). You shall not take any action inconsistent with such rights.

3.3 Restrictions

Any reproduction, modification, creation of derivative works from or redistribution of the InstrumentalApp.com website, and/or copying or reproducing the InstrumentalApp.com website or any portion thereof to any other server or location for further reproduction or redistribution is prohibited without the express written consent of Expected Behavior. You may not decompile or disassemble, reverse engineer or otherwise attempt to discover any source code contained in the Service. Without limiting the foregoing, you agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any aspect of the Service.

3.4 Trademark

You shall not alter, obscure or remove any printed or on-screen trademark, copyright or other proprietary or legal notice.

4. LEFT INTENTIONALLY BLANK

5. PAYMENTS

5.1 Credit Card Information

In order to set up an account with Expected Behavior, you must provide Expected Behavior with accurate and complete billing information including legal name, address, telephone number, and a valid credit card. By submitting such credit card information, you give Expected Behavior permission to charge all fees incurred for using the Services to the designated credit card, including any recurring fees. Expected Behavior reserves the right to terminate this Agreement in accordance with [Section 8](#) hereto if you do not provide a valid credit card for the payment of fees hereunder.

5.2 Payment Terms

The Services are billed in advance on a monthly basis and such monthly fees are non-refundable. There will be no refunds or credits for partial months of service, upgrade/downgrade refunds, or refunds for months unused with an open account. For any upgrades or downgrade in Plan level, your credit card will automatically be charged the new rate for the next billing cycle.

5.3 Taxes

All payments are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies, withholdings and similar assessments (including without limitation, sales taxes, use taxes and value added taxes), and you agree to bear and be responsible for the payment of all such charges, excluding taxes based upon Expected Behavior's net income. All amounts due hereunder shall be grossed-up for any withholding taxes imposed by any foreign government.

6. LIMITED WARRANTY AND DISCLAIMERS

6.1 Services

Expected Behavior warrants that it will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision thereof. Notwithstanding the foregoing, Services may be temporarily unavailable, when deemed reasonably

necessary or prudent by Expected Behavior to repair, maintain or upgrade the Services or for causes beyond Expected Behavior's reasonable control.

6.2 Disclaimers

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. EXPECTED BEHAVIOR DOES NOT WARRANT THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR THAT THEIR OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED BY LAW, EXPECTED BEHAVIOR HEREBY DISCLAIMS (FOR ITSELF AND ITS SUPPLIERS) ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, INTEGRATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

7. LIMITATION OF LIABILITY

EXCEPT TO THE EXTENT THAT ANY EXCLUSION OR LIMITATION OF ITS LIABILITY IS VOID, PROHIBITED OR UNENFORCEABLE BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY (OR ITS SUPPLIERS) BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) MATTER BEYOND ITS REASONABLE CONTROL (INCLUDING ANY ERROR OR DAMAGE ATTRIBUTABLE TO ANY NETWORK OR SYSTEM), (B) LOSS OR INACCURACY OF DATA, LOSS OR INTERRUPTION OF USE, OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (C) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS OR GOODWILL, OR (D) ANY DIRECT DAMAGES, IN THE AGGREGATE, IN EXCESS OF THE AMOUNTS PAID TO EXPECTED BEHAVIOR HEREUNDER WITH RESPECT TO THE SERVICES THAT GAVE RISE TO THE CLAIM DURING THE TWELVE-MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

8. TERM AND TERMINATION

8.1 Term

This Agreement shall commence on the date that this Agreement is accepted and shall continue in effect for the initial term specified in the Plan. Unless terminated earlier as permitted herein, the Agreement will be extended automatically for additional terms of 1 month at the end of the initial term and each renewal term. Either party may elect not to renew this Agreement by giving written notice thereof, which shall include notice via email, to the other party at least 30 days prior to the end of the then current initial or renewal term.

8.2 Termination

This Agreement may be earlier terminated by either party (a) if the other party materially breaches a provision of this Agreement and fails to cure such breach within 10 days (5 days in the case of non-payment) after receiving written notice of such breach from the non-breaching party, (b) upon 30 days written notice to the other party for any reason, or (c) immediately upon written notice, if the other party makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other party's property, or the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or such a proceeding is instituted against the other party and is not dismissed within 90 days, or the other party becomes insolvent or, without a successor, dissolves, liquidates or otherwise fails to operate in the ordinary course.

8.3 Effects of Termination

Upon any expiration or termination of this Agreement, all rights, obligations and licenses of the parties shall cease, except that (a) all obligations that accrued prior to the effective date of termination (including without limitation, all payment obligations) shall survive, (b) Expected Behavior may, but shall not be obligated to, delete Data and (c) the provisions of [Sections 3 \(Proprietary Rights\)](#), [5 \(Payments\)](#), [6.2 \(Disclaimers\)](#), [7 \(Limitation of Liability\)](#), [9 \(General Provisions\)](#) and this Section 8.3 shall survive.

9. GENERAL PROVISIONS

9.1 Entire Agreement

This Agreement (together with the applicable Plan(s)) constitutes the entire agreement, and supersedes all prior negotiations, understandings or agreements (oral or written), between the parties about the subject matter of this Agreement. In the event of any conflict or inconsistency between the Services Agreement and the Plan, the terms and conditions in the Plan will prevail and be controlling. No waiver, consent or, except as expressly provided herein, modification of this Agreement shall bind either party unless in writing and signed by the party against which enforcement is sought. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. If this Agreement is required to be registered with any governmental authority, you shall cause such registration to be made and shall bear any expense or tax payable in respect thereof.

9.2 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Indiana, USA, without regard to its conflicts of law provisions. Neither the United Nations Convention on Contracts for the International Sale of Goods nor any enactment of the Uniform Computer Information Transactions Act shall apply to this Agreement. The sole jurisdiction and venue for actions related to this Agreement will be the state or federal courts located in Indiana having jurisdiction over Expected Behavior's offices, and both parties consent to the jurisdiction of such courts with respect to any such action. In any action or proceeding to enforce or interpret this Agreement, the prevailing party will be entitled to recover from the other party its costs and expenses (including reasonable attorneys' fees) incurred in connection with such action or proceeding and enforcing any judgment or order obtained.

9.3 Remedies

Except as specifically provided otherwise, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity. Each party agrees that, in the event of any breach or threatened breach of [Section 4](#) or [5](#), the non-breaching party will suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, the non-breaching party shall be entitled to injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without the necessity of posting any bond.

9.4 Notices

Any notice or communication hereunder shall be in writing and either personally delivered or sent via confirmed email, recognized express delivery courier or certified or registered mail, prepaid and return receipt requested, addressed to the other party at its address specified in the Plan, or at such other address designated in a subsequent notice. All notices shall be in English, effective upon receipt.

9.5 Assignment

This Agreement and the rights and obligations hereunder may not be assigned, in whole or in part, by either party without the other party's written consent (which shall not be unreasonably withheld). However, without consent, either party may assign this Agreement to any successor to all or substantially all of its business which concerns this Agreement (whether by sale of assets or equity, merger, consolidation or otherwise). This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto.

9.6 Independent Contractors

The parties shall be independent contractors under this Agreement, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.