

TERMS OF USE

Last Updated: 21 August 2018

Please read these terms carefully. THEY REQUIRE THE USE OF MANDATORY BINDING ARBITRATION TO RESOLVE DISPUTES RATHER THAN JURY TRIALS OR CLASS ACTIONS.

These Terms of Use ("Terms" or "Agreement") govern your access to and use of services and products of PURPL Scientific Inc. ("Purpl" or "We"). Purpl provides analytic hardware and software (collectively "Products") in conjunction with web applications ("Web Apps") and mobile applications ("Mobile Apps") that are accessible by means of service subscriptions ("Subscriptions"). The term "Services" collectively refers to Web Apps, Mobile Apps and Subscriptions.

The terms "you" and "your" mean any person or entity who accesses or uses the Services or Products and any person or entity who creates an Account and accepts these Terms, including Owners, Authorized Users, and the family members of Authorized Users, as applicable.

THESE TERMS ARE A LEGAL AGREEMENT. BY ACCEPTING THESE TERMS THROUGH A WEBSITE, WEB APP OR MOBILE APP, OR BY ACCESSING AND USING THE SERVICES (INCLUDING THE WEBSITE) OR PRODUCTS, YOU ARE ACCEPTING AND AGREEING TO THESE TERMS ON BEHALF OF YOURSELF AND/OR YOUR ENTITY. YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ACCEPT AND AGREE TO THESE TERMS ON BEHALF OF YOURSELF OR THE ENTITY YOU REPRESENT. YOU REPRESENT THAT YOU ARE OF SUFFICIENT LEGAL AGE IN YOUR JURISDICTION OR RESIDENCE TO USE OR ACCESS THE SERVICES AND PRODUCTS AND TO ENTER INTO THIS AGREEMENT. IF YOU DO NOT AGREE WITH ANY OF THE PROVISIONS OF THESE TERMS, YOU SHOULD DISCONNECT YOUR PRODUCTS FROM YOUR ACCOUNT AND CEASE ACCESSING OR USING THE SERVICES AND PRODUCTS.

1. Acceptance of Terms of Use

These Terms of Use incorporates by reference the following Purpl agreements and policies: Purpl Privacy Policy (purplscientific.com/support/privacy), Purpl Acceptable Use Policy (purplscientific.com/support/aup), and the Purpl End User License Agreement ("EULA") for the Apple mobile devices (purplscientific.com/support/ioseula) or Android mobile devices (purplscientific.com/support/androideula). By using Purpl Products and Services, you accept and agree to these Terms and the aforementioned policies and agreements incorporated herein.

Subject to this Agreement as well as any other agreement relating to your use of Purpl Services, Purpl hereby grants Customer a worldwide, revocable, non-exclusive, non-transferable right to access and use the applicable Purpl Services.

2. Changes to Terms of Use.

Purpl may, from time to time, change these Terms of Use, including the Privacy Statement and EULA. Such revisions shall be effective immediately; provided however, for existing members, such revisions shall, unless otherwise stated, be effective 30 days after posting. We will endeavor to post prior versions of the Terms of Use, if any, for the preceding 12-month period. You can see these prior versions by visiting our website (purplscientific.com/support/priorterms).

3. Privacy.

All information input by you and collected by Purpl Products and Services is governed by our Privacy Policy (purplscientific.com/support/privacy).

4. Communications & Notices

By using Purpl's Services, you consent to receiving electronic communications from Purpl relating to your account. These communications may involve sending emails to your email address provided during registration, or posting communications on the Purpl service, or in your logged in app account and will include notices about your account (e.g., payment authorizations, change in password or Payment Method, confirmation e-mails and other transactional information) and are part of your relationship with Purpl. You consent to receiving emails from Purpl, and you agree that any notices, agreements, disclosures or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. You should maintain copies of electronic communications by printing a paper copy or saving an electronic copy. Notices sent via email will be deemed given one (1) business day after being sent; notices sent via any other authorized delivery method will be deemed given five (5) business days after being sent. You also consent to receiving certain other communications from us, such as: newsletters about new Purpl features and content, special offers, promotional announcements and customer surveys via email or other methods. If you no longer wish to receive certain non-transactional communications that do not represent legal notice, simply unsubscribe from the email using the unsubscribe link contained within the message.

All notices to Purpl must be addressed by email at support@purplscientific.com, or by mail at Purpl Scientific Inc, 20 S. Sarah St., St. Louis MO 63108.

5. Subscription Membership, Free Trials, Billing and Cancellation

a. Subscription Membership

- i. **Ongoing Membership.** Your Purpl Subscription, which may start with a free trial, will continue until your membership is cancelled or terminated. You will automatically be billed each month beginning after any free trial or beta period, if applicable. You must have Internet access and provide us with a current, valid, accepted method of payment (as such may be updated from time to time, "Payment Method") to use the Purpl service.

- ii. **Differing Memberships.** We may offer a number of membership plans, including special promotional plans or memberships with differing conditions and limitations. Any materially different terms from those described in these Terms of Use will be disclosed at your sign-up or in other communications made available to you. You can find specific details regarding your subscription membership with Purpl by logging in to your account on the Purpl app. We reserve the right to modify, terminate or otherwise amend our offered membership plans.
- b. **Free Trials**
 - i. Your Purpl Services membership may start with a free trial. The free trial period of your membership will be specified during sign-up. For combinations with other offers, restrictions may apply. Free trials are for new and certain former members only. Purpl reserves the right, in its absolute discretion, to determine your free trial eligibility.
 - ii. Your purchased time period will automatically begin at the end of the free trial period of your membership unless you cancel prior to the end of the free trial period. We may authorize your Payment Method through various methods, including authorizing it up to approximately one month of service as soon as you register. In some instances, your available balance or credit limit may be reduced to reflect the authorization during your free trial period.
 - iii. To cancel your subscription, send an email to support@purplscientific.com or cancel using the Web Apps
- c. **Billing**
 - i. **Price Changes.** We reserve the right to adjust pricing for our service or any components thereof in any manner and at any time as we may determine in our sole and absolute discretion. Except as otherwise expressly provided for in these Terms of Use, any price changes to your service will take effect following email notice to you.
 - ii. **No Refunds.** PAYMENTS ARE NONREFUNDABLE AND THERE ARE NO REFUNDS OR CREDITS FOR PARTIALLY USED PERIODS. If you pre-paid for a subscription period longer than 1 month, cancellation requests will be honored at the end of the current billing cycle, and following previously paid for months will be refunded at a prorated amount, in regards to the original amount paid. Following any cancellation, however, you will continue to have access to the service through the end of your current billing period. At any time, and for any reason, we may provide a refund, discount, or other consideration to some or all of our members ("credits"). The amount and form of such credits, and the decision to provide them, are at our sole and absolute discretion. The provision of credits in one instance does not entitle you to credits in the future for similar instances, nor does it obligate us to provide credits in the future, under any circumstance.
 - iii. **Payment Methods.** If a payment is not successfully settled, due to expiration, insufficient funds, or otherwise, and you do not edit your Payment Method information, you remain responsible for any uncollected amounts and authorize us to continue billing the Payment Method, as it may be updated. We may update your Payment Method with information provided by the applicable payment service provider, and you authorize us to continue to charge the membership fee to the updated Payment Method. For certain Payment Methods, the issuer of your Payment Method may charge you a foreign transaction fee or other charges. Check with your Payment Method service provider for details.
 - iv. **Cancellation.** You may cancel your Purpl Subscription membership at any time, and you will continue to have access to the Purpl Subscription service through the end of your monthly billing period. WE DO NOT PROVIDE REFUNDS OR CREDITS FOR ANY PARTIAL-MONTH MEMBERSHIP PERIODS. To cancel, send an email to support@purplscientific.com or cancel using the Web Apps. If you cancel your membership, your account will automatically close at the end of your current billing period. Cancellation requests will be honored within three business days.
 - v. **Termination.** We reserve the right, at our sole discretion, to suspend or deactivate any account due to nonpayment or noncompliance or suspected noncompliance (at our sole discretion) with our Acceptable Use Policy (purplscientific.com/support/aup). Upon any such suspension, deactivation, or termination, we may delete or remove any information input by or collected with respect to you or your use of Products and Services.

6. Age Requirement

You must be 21 years of age, or the age of majority in your province, territory or country, to use any Purpl Products or Services, including but not limited to software, hardware, website, or applications.

7. Acceptable Use

You agree that your use of Purpl Products, Services and Subscriptions will conform to these Terms as well as Purpl's Acceptable Use Policy (purplscientific.com/support/aup).

8. Software

We may update the Purpl software, and firmware, including the features. In addition, we continually test various aspects of our service, including our website, user interfaces, service levels, plans, promotional features, supported operating systems, supported testing bases, and delivery and pricing. We reserve the right to, and by using our service you agree that we may, include you in or exclude you from these tests without notice. We reserve the right in our sole and absolute discretion to make changes from time to time and without notice in how we offer and operate our Services, however the measurement capacities and analytical accuracy of our Products and Services will never be intentionally diminished.

You agree to use the Purpl device, application, and Subscription service, including all features and functionalities associated therewith, in accordance with all applicable laws, rules and regulations, and our Acceptable Use Policy (purplscientific.com/support/aup).

Purpl Services is developed by, or for, Purpl. This software may vary by device and medium, and functionalities may also differ between devices. BY USING OUR SERVICES, YOU ACKNOWLEDGE AND AGREE TO THE END USER LICENSE AGREEMENT (www.purplscientific.com/iosEULA or www.purplscientific.com/androidEULA) AND TO RECEIVE, WITHOUT FURTHER NOTICE OR PROMPTING, UPDATED VERSIONS OF THE PURPL APP AND WEB APPS. IF YOU DO NOT ACCEPT THE FOREGOING TERMS, DO NOT USE OUR SERVICE. By using our service, you agree to look solely to the entity that manufactured and/or sold you the device for any issues

related to the device and its compatibility with the Purpl service. (For example, Purpl will not be responsible for failures related to a smart phone manufactured by a third-party.) If your Purpl device is sold, lost or stolen, please deactivate the Subscription service and contact support@purplscientific.com immediately.

9. **Passwords and Account Access**

- a. The member who created the Purpl account and whose Payment Method is charged is referred to here as the Account Owner. The Account Owner has access and control over the Purpl account. The Account Owner's control is exercised through use of the Account Owner's password and therefore to maintain exclusive control, the Account Owner should not reveal the password to anyone. In addition, if the Account Owner wishes to prohibit others from contacting Purpl Customer Service and potentially altering the Account Owner's control, the Account Owner should not reveal the Payment Method details (e.g., last four digits of their credit or debit card) associated with their account. You are responsible for updating and maintaining the truth and accuracy of the information you provide to us relating to your account, as well as for any actions taken by users who access your account by your negligence.
- b. You should be mindful of any communication requesting that you submit credit card or other account information. Providing your information in response to these types of communications can result in identity theft. Always access your sensitive account information by going directly to the Purpl website or application and not through a hyperlink in an email or any other electronic communication, even if it looks official. Purpl reserves the right to place any account on hold anytime with or without notification to the member in order to protect itself and its partners from what it believes to be fraudulent activity. Purpl is not obligated to credit or discount a membership for holds placed on the account by either a representative of Purpl or by the automated processes of Purpl.

10. **Disclaimers of Warranties and Limitations on Liability re Products (Hardware)**

THIS LIMITED WARRANTY CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS CONCERNING PURPL PRODUCTS (HARDWARE) AND WEB APPS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU.

a. **WHAT THIS LIMITED WARRANTY COVERS; PERIOD OF COVERAGE**

Purpl warrants to the owner of the hardware it produces and sells will be free from defects in materials and workmanship for a period of one (1) year from the date of delivery following the original purchase. If the Product fails to conform to this Limited Warranty during the Warranty Period, Purpl will, at its sole discretion, either (a) repair or replace any defective Product or component; or (b) accept the return of the Product and refund the money actually paid by the original purchaser for the Product. Repair or replacement may be made with a new or refurbished product or components, at Purpl's sole discretion. If the Product or a component incorporated within it is no longer available, Purpl may, at Purpl's sole discretion, replace the Product with a similar product of similar function. This is your sole and exclusive remedy for breach of this Limited Warranty. Any Product that has either been repaired or replaced under this Limited Warranty will be covered by the terms of this Limited Warranty for the longer of (a) ninety (90) days from the date of delivery of the repaired Product or replacement Product, or (b) the remaining Warranty Period. This Limited Warranty is transferable from the original purchaser to subsequent owners, but the Warranty Period will not be extended in duration or expanded in coverage for any such transfer.

b. **WARRANTY CONDITIONS; HOW TO GET SERVICE IF YOU WANT TO CLAIM UNDER THIS LIMITED WARRANTY**

Before making a claim under this Limited Warranty, the owner of the Product must (a) notify Purpl of the intention to claim by contacting support@purplscientific.com during the Warranty Period and providing a description of the alleged failure, and (b) comply with Purpl's return shipping instructions. Purpl will have no warranty obligations with respect to a returned Product if it determines, in its reasonable discretion after examination of the returned Product, that the Product is an Ineligible Product (defined below).

c. **WHAT THIS LIMITED WARRANTY DOES NOT COVER**

This Limited Warranty does not cover the following (collectively "Ineligible Products"): (i) Products marked as "sample" or "Not for Sale", or sold "AS IS"; (ii) Products that have been subject to: (a) modifications, alterations, tampering, or improper maintenance or repairs; (b) handling, storage, installation, testing, or use not in accordance with the User's Guide or other instructions provided by Purpl; (c) abuse or misuse of the Product; (d) breakdowns, fluctuations, or interruptions in electric power or the telecommunications network; or (e) Acts of God, including but not limited to lightning, flood, tornado, earthquake, or hurricane; or (iii) any non-Purpl branded hardware products, even if packaged or sold with Purpl hardware. Purpl recommends that you use only authorized service providers for maintenance or repair. Unauthorized use of the Product or software can impair the Product's performance and may invalidate this Limited Warranty.

d. **DISCLAIMER OF WARRANTIES**

EXCEPT AS STATED ABOVE IN THIS LIMITED WARRANTY, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PURPL DISCLAIMS ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES AND CONDITIONS WITH RESPECT TO THE PRODUCT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, Purpl ALSO LIMITS THE DURATION OF ANY APPLICABLE IMPLIED WARRANTIES OR CONDITIONS TO THE DURATION OF THIS LIMITED WARRANTY.

e. **LIMITATION OF DAMAGES**

IN ADDITION TO THE ABOVE WARRANTY DISCLAIMERS, IN NO EVENT WILL Purpl BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR SPECIAL DAMAGES, INCLUDING ANY DAMAGES FOR LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THIS LIMITED WARRANTY OR THE PRODUCT, AND PURPL'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS LIMITED WARRANTY OR THE PRODUCT WILL NOT EXCEED THE AMOUNT ACTUALLY PAID FOR THE PRODUCT BY THE ORIGINAL PURCHASER.

- f. **LIMITATION OF LIABILITY** YOU USE ALL PRODUCT INFORMATION, THE SERVICES, AND THE PRODUCT AT YOUR OWN DISCRETION AND RISK. YOU WILL BE SOLELY RESPONSIBLE FOR (AND Purpl DISCLAIMS) ANY AND ALL LOSS, LIABILITY, OR DAMAGES, INCLUDING TO YOUR WIRING, FIXTURES, ELECTRICITY, HOME, PRODUCT, PRODUCT PERIPHERALS, COMPUTER, MOBILE DEVICE, AND ALL OTHER ITEMS AND PETS IN YOUR HOME, RESULTING FROM YOUR USE OF THE PRODUCT INFORMATION, SERVICES, OR PRODUCT. PRODUCT INFORMATION PROVIDED BY THE SERVICES IS NOT INTENDED AS A SUBSTITUTE FOR DIRECT MEANS OF OBTAINING THE INFORMATION.

11. No Warranty For Web Apps

YOUR USE OF THE WEB APPS IS AT YOUR SOLE RISK. THE WEB APPS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. PURPL SCIENTIFIC EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN NO EVENT WILL Purpl BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR SPECIAL DAMAGES, INCLUDING ANY DAMAGES FOR LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THIS LIMITED WARRANTY OR THE PRODUCT, AND PURPLS' TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS LIMITED WARRANTY WILL NOT EXCEED THE AMOUNT ACTUALLY PAID FOR THE PRODUCT BY THE ORIGINAL PURCHASER.

12. Proprietary Rights

Purpl Scientific retains all rights, title and interest in and to: (a) the Services, Products and the technology and software used to provide them, and all intellectual property and proprietary rights therein; and (b) all electronic and print documentation and other content and data (excluding Customer Content) made available through the Service. Except for the licenses as set forth in this Agreement, this Agreement does not convey any of Purpl Scientific's intellectual property or proprietary rights to anyone, including Customer. Customer agrees that Purpl Scientific will have a perpetual right to use and incorporate any feedback or suggestions for enhancement that Customer provides to Purpl Scientific regarding the Service without any obligation of compensation.

13. Governing Law

Terms of Use shall be governed by and construed in accordance with the laws of the State of Missouri, U.S.A. without regard to conflict of laws provisions.

14. Mandatory Bilateral Arbitration

ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE BREACH THEREOF, EXCEPT AS OTHERWISE PROVIDED, SHALL BE SETTLED BY BILATERAL ARBITRATION ADMINISTERED BY UNITED STATES ARBITRATION & MEDIATION (USA&M) UNDER THEIR CONSOLIDATED ARBITRATION RULES IN ST. LOUIS MISSOURI. THE PARTIES TO THIS AGREEMENT WAIVE THEIR RIGHTS TO JURY TRIAL AND CLASS ACTION. JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION.

Any intellectual property claim by Purpl concerning its Products or Services shall not be considered as arising from these Terms for the purpose of arbitration. The parties agree the venue and jurisdiction for any intellectual property dispute shall be the Federal District Court for the Eastern District of Missouri.

15. Federal Government Customers

The Purpl Service is a "commercial item" consisting of "commercial computer software" as defined in FAR 2.101. Purpl Scientific provides the Purpl Service for federal government end use in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), and for Department of Defense agencies in accordance with DFAR 227.7202 (Commercial Computer Software and Commercial Computer Software Documentation).

16. Complete Agreement

This agreement, those documents by reference herein, and the Order Form or Beta Test Contract represent the entire agreement between the parties with respect to use of Purpl Services and Products. Any modification of these terms must be agreed upon in writing by all parties and must reference these Terms.

17. Product Safety & Warnings

By using Purpl's Products and Services, you represent that you have read the Product Safety Warnings (purplscientific.com/support/safety) and will not use Purpl Products in a manner that is unsafe or contrary to its intended purposes.

18. Assignment

Either party may assign this Agreement and all other terms incorporated herein in connection with merger or similar transaction, or to a company acquiring substantially all of its assets, equity, or business, without any requirement to obtain permission for such assignment. This Agreement will bind and benefit the parties, their successors, and their permitted assigns. Any party involved in such an assignment shall provide prompt notice to the other party to this Agreement.

Customer Support. To find more information about our service and its features, or if you need assistance with your account, please visit www.purplscientific.com and contact support through support@purplscientific.com. In the event of any conflict between these Terms of Use and information provided by Customer Support or other portions of our website, these Terms of Use will control.