

# Flote Inc. Terms of Service

*Updated June 2019*

Welcome, and thank you for visiting <https://www.floteinc.com> (this “**Site**”), a Site operated by Flote Inc., a Delaware corporation (“**Flote**”). By accessing or using this Site, you as the user (“**you**”) agree to be bound by the following terms and conditions (these “**Terms**”). Please read these Terms carefully before using this Site. These Terms are a legally binding agreement between you and Flote. **If you are a customer of Flote or an end user accessing an investor portal, additional and/or different Terms of Service may apply to you, as indicated at the time you set up an account to access restricted portions of the Site.**

BY ACCESSING OR USING THIS SITE, YOU REPRESENT THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO THESE TERMS. IF YOU DO NOT SO AGREE, YOU MAY NOT USE THIS SITE.

## **1. Use of this Site.**

a. License. Subject to your compliance with these Terms, Flote grants you a limited, revocable, nonexclusive, nonassignable, nonsublicenseable license and right to access this Site with a generally available web browser to view information and use this Site. Any other use of this Site is strictly prohibited and a violation of these Terms. Flote reserves all rights not expressly granted in these Terms, including, without limitation, rights of title, ownership, intellectual property and all other rights and interests in this Site and all related items.

b. Revision of these Terms. Flote may revise these Terms at any time with or without additional notice to you. Such revised Terms will be effective when posted on this Site. You should revisit these Terms on a regular basis, as revised versions will be binding upon you. You understand and agree that your continued access to or use of this Site after the effective date of changes to these Terms indicates your acceptance of such revisions.

c. Cessation of Service. Flote reserves the right to modify, terminate and suspend the operation of this Site, as well as the provision of any or all products or services via this Site, without notice or liability, at any time and for any or no reason in its sole and absolute discretion.

d. Risks Inherent in Electronic Mail. You understand that communications distributed by this Site may be distributed by electronic mail, which is by its nature insecure and unreliable. Electronic mail is subject to interception, misdirection and loss. In addition, an electronic mail message may be forwarded by its intended recipient to other unintended recipients. Any recipient of an electronic message sent by this Site may access the hyper-links to files contained on this Site, as this Site does not authenticate or validate the identity or authority of any person following a hyper-link contained in any such message.

## **2. Your Account.**

a. Account Creation. In order to access restricted portions of this Site (which may be governed by different Terms of Service and Privacy Policies), you are required to create an account on this Site (your “Account”) and provide your contact information. Flote reserves the right to

refuse or reject any request to create an account for you for any or no reason at Flote's sole discretion.

b. Responsibility. You are solely responsible for your Account, your contact information and other information made available through your Account or otherwise via this Site (your "**Information**"). You assume all risks associated with your Information, including reliance on its quality, accuracy or reliability by any other person or entity.

c. Termination.

i. By You. You may terminate your Account at any time by contacting Flote at [contact@floteinc.com](mailto:contact@floteinc.com).

ii. By Flote. If Flote has reason to suspect that you have breached these Terms, or that any of your Information is not authorized, correct, current and complete, Flote may, in addition to taking or reserving any other remedies against you, terminate your Account. Flote reserves the right to erase any or all of your Information from this Site, as well as to terminate your Account without notice or liability, at any time and for any or no reason in its sole and absolute discretion. Any suspension, termination or cancellation of your Account shall not affect provisions of these Terms, such as indemnification and limitations of liability, that are by their nature intended to survive such suspension, termination or cancellation.

d. Prohibited Uses. You agree that:

i. you will not violate these Terms or any of Flote's rights or use this Site to violate the rights of any third party such as copyright or trademark rights;

ii. you will use your true legal name and true electronic mail address, and only provide accurate and complete information on this Site;

iii. you will provide at your cost all equipment, software, mobile access and Internet access necessary for you to use this Site;

iv. you will copy information from this Site only as necessary for your personal, non-commercial use to view, save, print, fax or e-mail such information;

v. you will not otherwise reproduce, modify, distribute, display or provide access to this Site or its content;

vi. you will not create derivative works from, decompile, disassemble or reverse engineer any portion of this Site;

vii. you will not upload to or distribute through this Site any binary code, macros or other executable code, or any file that contains any viruses, Trojan horses or other components designed to commandeer, limit or harm the functionality of a computer;

viii. you will not record, process or mine information about other users, or access, retrieve or index any portion of this Site;

ix. you will not remove or modify any copyright or other intellectual property notices that appear on this Site;

x. you will not access or use this Site in any manner that could damage, disable, overburden, place an unreasonable load on, interfere or attempt to interfere with the proper working of, or impair, this Site, its computer systems, network or the account of any other user;

xi. you will not attempt to gain unauthorized access to any parts of this Site or any user accounts, or any of this Site's computer systems or networks;

xii. you will not use this Site in any way that is unlawful, harms Flote's business, Flote's service providers, licensors, representatives or any other user, or breaches any policy or notice on this Site;

xiii. you will not impersonate another person or misrepresent your affiliation with another person or entity, such as by using another person's user name, password or other account information or another person's name, likeness, image or photograph;

xiv. you will not charge any person for access to any portion of this Site or any information on this Site;

xv. you will not access this Site through automated queries (such as by screen or database scraping, "spiders," "robots," "crawlers" or any other automated activity with the purpose of obtaining information from this Site) without Flote's prior express written permission;

xvi. you will not engage in "framing" or "mirroring," or otherwise simulate the appearance or functionality of this Site; and

xvii. you will not assist, encourage or enable others to do any of the preceding prohibited activities.

e. Flote's Right to Use Your Information. As between you and Flote, your information that you make available from time to time on the Site (collectively, "**Your Information**") is owned by you. You hereby irrevocably grant Flote a worldwide, perpetual, non-exclusive, royalty-free, fully paid-up, assignable, sublicensable, transferable rights to use, copy, publicly perform and display, reproduce, distribute, modify, translate, remove, analyze, commercialize, and prepare derivative works of Your Information in connection with the Site and the services provided to you by the Site.

**3. Representations and Warranties.** You represent and warrant that:

a. you are 18 years or older and you have all requisite rights and authority to use the Site and to enter into these Terms;

b. the performance of your obligations under these Terms will not violate, conflict with, or result in a default under any other agreement, including confidentiality agreements between you and third parties;

c. you will use the Site and services provided by the Site for lawful purposes only and subject to these Terms;

d. you are responsible for all use of the Site and services provided by the Site by persons accessing the Site and such services through your account;

e. you agree that Flote will not be liable for any losses incurred as a result of a third party's use of the Site and services provided by the Site associated with your account, regardless of whether such use is with or without your knowledge and consent;

f. you will not use the Site and services provided by the Site in any manner that could damage, disable, overburden or impair the Site, or interfere with use of the Site or services by others;

g. any information submitted to the Site or Flote by you is true, accurate, and correct;

h. you understand that, except as expressly stated in these Terms, these Terms do not grant you any license to use, reproduce, distribute, display or provide access to any portion of this Site on third-party Sites, or otherwise;

i. you will not attempt to gain unauthorized access to the Site or services provided by the Site, other accounts, computer systems, or networks under the control or responsibility of Flote through hacking, cracking, password mining, or any other unauthorized means;

j. you agree to immediately notify Flote of any unauthorized use of your account of which you become aware;

k. upon account creation, you are solely responsible for maintaining the confidentiality of your account names and password(s);

l. you are not a competitor of Flote and are not using the Site or services provided by the Site for reasons that are in competition with Flote;

m. if you use this Site in your capacity as an employee, owner or otherwise as an agent of another person or entity, you agree on behalf of yourself and such person or entity, jointly and severally, to be bound by these Terms;

n. you will not impersonate another person or misrepresent your affiliation with another person or entity, including using another person's username, password or other account information or another person's name, likeness, image or photograph; and

o. your consent to be bound to any Electronic Contract, whether by typing your name, checking a box, pressing a button, clicking through a link, or demonstrating other intent to be bound to such Electronic Contract, shall create a legal, valid and binding contract enforceable against you in accordance with its terms.

#### **4. Intellectual Property.**

a. Content of this Site. Flote owns all of the content that is made available in connection with this Site (the “**Site Content**”), including visual interfaces, interactive features, graphics, designs, databases and their data, computer code, products, software and all other elements and components of this Site. Flote also owns the copyrights, trademarks, service marks, trade names and other intellectual and proprietary rights throughout the world associated with this Site and the Site Content, which are protected by copyright, trade dress, patent, trademark and other applicable intellectual property rights and laws. Notwithstanding the foregoing, Flote agrees that Your Information provided by you under these Terms shall remain, as between you and Flote, owned by you.

b. Restrictions. You may not modify, reproduce, distribute, create derivative works or adaptations of, publicly display, perform or in any way exploit any of the Site Content in whole or in part, except as expressly authorized by the applicable rights holder. Except as expressly and unambiguously provided by these Terms, Flote does not transfer to you any of Flote’s technology or other intellectual property or technology rights. All right, title and interest in and to Flote’s technology and intellectual property will remain solely with Flote.

c. Feedback. By providing ideas, suggestions, documents or proposals (“**Feedback**”) concerning this Site, you represent, warrant and agree that:

- i. your Feedback does not contain the confidential proprietary information of third parties,
- ii. Flote is not under any obligation of confidentiality, express or implied, with respect to the Feedback; and
- iii. Flote may have something similar to the Feedback already under consideration or in development.

You hereby grant Flote a worldwide, perpetual, non-exclusive, royalty-free, fully paid-up, irrevocable, assignable, sublicensable, transferable license to use, modify, prepare derivative works of, publish, distribute and sublicense all Feedback, and you irrevocably waive, and cause to be waived, against Flote and the users of this Site, all claims and assertions of any moral rights contained in such Feedback.

**5. Privacy.** Flote respects your privacy and limits the sharing of data about you with third parties. Please consult Flote’s Privacy Policy for more information. By agreeing to these Terms, you acknowledge and consent to the use, sharing and disclosure of your personal information and data as described in such Flote Privacy Policy, as it may be amended from time to time.

**6. Indemnification.** You agree to indemnify, defend and hold Flote, as well as Flote’s parents, subsidiaries, affiliates, any related companies, suppliers, licensors and partners, including the shareholders, officers, directors, employees, agents and representatives of each of them (collectively, the “**Flote Parties**”) harmless from any and all claims, liability, damages and costs (including, but not limited to, attorneys’ fees) arising out of or relating to:

- a. your access to or use of this Site;
- b. your violation of these Terms, including without limitation your breach of any representation or warranty;

c. your infringement, or the infringement of any third party using your Account, of any intellectual property or other right of any person or entity; or

d. the nature and content of all materials, Electronic Contracts, works, data, statements and other visual, graphical, written or audible communications of any nature submitted by you or otherwise processed through your Account.

Flote reserves the right to, but is not obligated to, assume the exclusive defense and control of any matter for which you are required to indemnify the Flote Parties, and you agree to cooperate with Flote's defense of such claims. You agree not to settle any such matter without Flote's prior written consent. Flote will use reasonable efforts to notify you of any such claim, action or proceeding when Flote becomes aware of it. Each of the Flote Parties is an express third party beneficiary of this indemnification provision, with full rights to enforce its terms.

**7. Third Party Services.** This Site includes links to third-party products, services and Sites, as well as materials provided by third parties (collectively, "**Third-Party Content**"). Neither these Terms nor this Site endorse or take responsibility for any Third-Party Content. You agree that the Flote Parties are not responsible for the availability or contents of Third-Party Content. You understand that the Flote Parties have no obligation to, and generally do not, approve or monitor materials provided by third parties through this Site. Your use of Third-Party Content is at your own risk.

## **8. Limitations of Liability.**

a. No Consequential Damages. Flote shall not be liable for any indirect, special, incidental, exemplary, punitive or consequential loss or damage of any kind, including without limitation, lost business or profits, whether arising in tort (including negligence), equity, breach of contract or otherwise (and whether or not such damages are foreseeable or Flote has been advised of the possibility of such loss or damage). In no event will any of the officers, trustees, directors, partners, employees, consultants, beneficiaries, joint venturers, members, stockholders or other principals or representatives of Flote, ever be personally liable to you under, arising out of, or related to these Terms (including for direct or consequential damages), and you hereby waive the right to recover damages from any such persons.

b. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE FLOTE PARTIES' MAXIMUM AGGREGATE CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS AND THE SITE SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100.00). THE ABOVE LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT, EQUITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND REGARDLESS OF THE THEORY OF LIABILITY. If applicable law limits the application of the above limitation of liability, Flote's liability will be limited to the maximum extent permitted by law.

**9. DISCLAIMER OF WARRANTIES.** THIS SITE IS PROVIDED "AS IS," AND FLOTE: (i) MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER; (ii) EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, AND TITLE; AND (iii) DOES NOT WARRANT THAT THIS SITE IS OR WILL BE ERROR-FREE, WILL MEET YOUR REQUIREMENTS, OR BE TIMELY OR SECURE. YOU WILL BE

SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THE USE OF THIS SITE. YOU WILL NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF FLOTE TO ANY THIRD PARTY. USE OF THIS SITE IS AT YOUR SOLE RISK. FLOTE MAKES NO GUARANTY OF CONFIDENTIALITY OR PRIVACY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED ON THIS SITE. Because some states and jurisdictions do not allow limitations on implied warranties, the above limitation may not apply to you. In such event, such warranties are limited to the minimum warranty period allowed by the applicable law. Without limiting the generality of the foregoing, Flote does not make any warranty of any kind with respect to freedom from patent, trademark, or copyright infringement, or theft of trade secrets and Flote does not assume any liability hereunder for any infringement of any patent, trademark, or copyright arising from the use of the Site or rights granted or provided by Flote hereunder.

## **10. Miscellaneous.**

a. Governing Law. These Terms shall be governed by the laws of the State of California, regardless of conflict of laws principles.

b. Arbitration. Any dispute, controversy or claim arising out of or in connection with or relating to your use of this Site or these Terms, or any breach or alleged breach these Terms, shall be submitted to a single arbitrator and settled by binding arbitration pursuant to the Commercial Rules then in effect of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be conducted in the City and County of San Francisco, California. Judgment upon the award may be entered in any court of competent jurisdiction. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE ARISING OUT OF, UNDER OR IN CONNECTION WITH THESE TERMS.

c. Export Laws. You acknowledge that technology utilized by this Site and any related products, information, documentation, software, technology, technical data, and any derivatives thereof, that Flote makes available to its users (collectively “*Excluded Data*”), may be subject to export control laws and regulations of the United States and other jurisdictions (collectively “*Export Laws*”). You represent and warrant that: (i) you are not located in, under the control of, or a national or resident of an embargoed country or prohibited end user under Export Laws; and (ii) you will not access, download, use, export or re-export, directly or indirectly, the Excluded Data to any location, entity, government or person prohibited by export laws, without first complying with all Export Laws that may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction it operates or does business. You are solely responsible for complying with Export Laws for all Excluded Data and any of its content transmitted through the Site and Services. You shall advise Flote in the event the Excluded Data requires Flote to obtain additional licenses, permits and/or approvals from any government in the jurisdiction where you intend to use the Site or Services. Upon being advised of such a requirement, Flote may at its sole discretion: (a) terminate your Account; (b) obtain such licenses, permits, and/or approvals as may be required; or (c) modify these Terms such that additional licenses, permits, and/or approvals are no longer required to be obtained by Flote.

d. No Assignment. These Terms, and any rights or obligations under these Terms, are not assignable, transferable or sublicensable by you except with Flote’s prior written consent, but

may be assigned or transferred by Flote without restriction. Any attempted assignment by you shall violate these Terms and be void. Flote may assign these Terms of Service without your consent.

e. Beneficiaries. Except as otherwise expressly stated in these Terms, nothing in these Terms is intended to, nor will be deemed to, confer rights or remedies upon any third party.

f. Amendments; Waivers. Flote may modify these Terms as provided in Section 1(b) (Revision of these Terms). These Terms may not be modified, amended, terminated or waived, in whole or in part, by you except by a written instrument signed by Flote. Except as expressly set forth herein, any failure of a party to take action in response to any breach of these Terms by the other party shall not constitute a waiver of such breach or of performance required by the other party; and no waiver of any provision of these Terms shall constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless expressly provided therein.

g. Force Majeure. Neither party will be liable for, or be considered to be in breach of or default under these Terms on account of any delay or failure to perform as required by these Terms as a result of any cause or condition beyond such party's reasonable control, so long as such party uses all commercially reasonable efforts to avoid or remove such causes of non-performance or delay.

h. Notices. To send notices to Flote, or if you have any questions regarding these Terms, please contact Flote contact@floteinc.com. Flote may provide you with notices, including notices of changes to these Terms, by electronic mail, regular mail or communications through this Site.

i. Entire Agreement. These Terms contain the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous representations, promises, agreements and understandings, whether oral or written, between the parties concerning the subject matter hereof. You may from time to time enter into binding legal agreements relating to certain services available through the Site, which may have terms that are different from those of these Terms. In the event of any inconsistency, the terms of such other agreement shall control with respect to such services.

j. Severability. If any provision of these Terms is deemed to be invalid or unenforceable, the remaining provisions of these Terms shall be valid and binding and of like effect as though such provision were not included.