

## TERMS OF SERVICE

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Welcome to the Back4app, Inc. ("**Back4app**") website located at [www.back4app.com](http://www.back4app.com) (the "**Site**"). Please read these Terms of Service (the "**Terms**") and our [Privacy Notice](#) carefully because they govern your use of our Site and the application hosting services and platform available through the Site. To make these Terms easier to read, the Site, the services, the platform and any software provided to you by Back4app in connection with the foregoing are collectively called the "**Services**".

IMPORTANT NOTICE REGARDING ARBITRATION: WHEN YOU AGREE TO THESE TERMS YOU ARE AGREEING (WITH LIMITED EXCEPTION) TO RESOLVE ANY DISPUTE BETWEEN YOU AND BACK4APP THROUGH BINDING, INDIVIDUAL ARBITRATION RATHER THAN IN COURT. PLEASE REVIEW CAREFULLY SECTION 20 "DISPUTE RESOLUTION" BELOW FOR DETAILS REGARDING ARBITRATION.

### 1. Agreement to Terms

By using our Services, you agree to be bound by these Terms. If you don't agree to be bound by these Terms, do not use the Services. If you are accessing and using the Services on behalf of a company (such as your employer) or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Terms. In that case, "you" and "your" will refer to that company or other legal entity.

### 2. Changes to Terms or Services

We may modify the Terms at any time, in our sole discretion. If we do so, we'll let you know either by posting the modified Terms on the Site or through other communications. It's important that you review the Terms whenever we modify them because if you continue to use the Services after we have posted modified Terms on the Site, you are indicating to us that you agree to be bound by the modified Terms. If you don't agree to be bound by the modified Terms, then you may not use the Services anymore.

Because our Services are evolving over time we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion. For example, we may remove a feature that users don't use very often.

### 3. Who May Use the Services

You may use the Services only if you are 18 years or older and capable of forming a binding contract with Back4app and are not barred from using the Services under applicable law.

### 4. Registration

If you want to use certain features of the Services you'll have to create an account ("**Account**") and become a registered user ("**User**"), which you can do through the Site. It's important that you provide us with accurate, complete and up-to-date information for your Account and you agree to update such information, as needed, to keep it accurate, complete and up-to-date. If you don't, we might have to suspend or terminate your Account. You agree that you won't disclose your Account password to anyone

and you'll notify us immediately of any unauthorized use of your Account. You're responsible for all activities that occur under your Account, whether or not you know about them.

You will not allow any person other than Authorized Users to use the Services. You may permit Authorized Users to use the Services, provided that you ensure that each Authorized User complies with all applicable terms and conditions of these Terms and you are responsible for acts or omissions by Authorized Users in connection with their use of the Services. Back4app may process personal data about you and your Authorized Users' use of the Services ("**Account Data**") in accordance with its Privacy Notice available at: <https://www.back4app.com/privacy.pdf> (as updated from time-to-time). Account Data is not Content or User Content.

You will, and will require all Authorized Users to, use all reasonable means to secure usernames and passwords, hardware and software used to access the Services in accordance with customary security protocols, and will immediately notify Back4app if you know or reasonably suspect that any username and/or password has been compromised or of any unauthorized use of the Account. For purposes of these Terms, "Authorized Users" means any persons authorized by you to use the Services.

## 5. General

### 5.1 Description of Services

You can use the Services to develop, test, host and run a web or mobile device application ("**Application**"). You can optionally designate an Application as public through the Services. Please be aware, however, that other Users will be able to access, copy, and download a public Application.

When developing an Application through the Services, you may also be able add another User as a collaborator ("**Collaborator**"). Collaborators will be able to access, copy, modify and download your Application through their Account for the purposes of collaborating on the development of such Application.

### 5.2 Support and Professional Services

Back4app may provide you with Support and/or Professional Services.

For purposes of these Terms, "**Professional Services**" means the specialized consulting, implementation, and management services Back4app may provide to you subject to the plan you purchase via your Account. Our Professional Services can help you design, deploy, optimize, and maintain cloud infrastructure, applications, and processes. Our Professional Services may include cloud architecture design, migration planning and execution, security and compliance assessments, performance optimization, data migration, deployments, environment setup, integrations, advanced troubleshooting, participating in audits, answering audit questions and requirements, customizations, and software development.

For purposes of these Terms, "**Support Services**" means the assistance and services Back4app offers customers to help them effectively utilize, manage, and troubleshoot the cloud infrastructure, resources, and applications. Support Services may include addressing technical issues, providing guidance on best practices, assisting with configuration, day-to-day maintenance, troubleshooting, data backup, network monitoring, and answering tickets.

The scope, duration and other aspects of both Professional Services and Support Services depend on the type of plan purchased by you via your Account.

### 5.3 Security

Without limiting Section 16, we will implement reasonable measures designed to help you secure your Content against accidental or unlawful loss, access or disclosure. You are responsible for properly configuring and using the Services and otherwise taking appropriate action to secure, protect and backup your accounts and your Content in a manner that will provide appropriate security and protection.

### 5.4 Documentation

Your usage of the Services must adhere to the relevant technical documentation (including, but not limited to, user, admin, and developer guides) which is available for review on the Back4app Site at <https://www.back4app.com/docs> or any other URL we may provide as an update or replacement.

### 5.5 Licenses

As a user of our Services, you bear the responsibility for acquiring and maintaining applicable licenses, as well as complying with the terms of any software you utilize.

### 5.6 Beta Services

From time to time we may offer a beta version of one of our Services (a “**Beta**”) and if you choose to register to use such Services you acknowledge that: (a) the Beta has not been made commercially available by Back4app; (b) the Beta may not operate properly, be in final form or fully functional; (c) the Beta may contain errors, design flaws or other problems; (d) it may not be possible to make the Beta fully functional; (e) use of the Beta may result in unexpected results, corruption or loss of data, or other unpredictable damage or loss; and (f) Back4app has no obligation to release a commercial version of the Beta. Without limiting any other terms of these Terms, you assume all risk arising from use of the Beta, including, without limitation, the risk of damage to your computer system or the corruption or loss of data.

### 5.7 Artificial Intelligence Components

Back4app may include certain artificial intelligence components and/or offer functionalities with machine learning capabilities (“**AI Components**”), which are governed by their respective terms of use and privacy policies, including, without limitation, [OpenAI Terms & Policies](#) (“Terms and Policies”). If you access or use such AI Components, you acknowledge and agree to abide by the relevant Terms and Policies.

You are responsible for reviewing and complying with the requirements stipulated in the relevant Terms and Policies. If you do not agree with the provisions of the relevant Terms and Policies, you shall refrain from using the corresponding AI Components. Back4app shall not bear any responsibility or liability for any damages or obligations arising from the use of these AI Components.

ALL AI COMPONENTS ARE PROVIDED AS IS AND ANY REPRESENTATION OR WARRANTY CONCERNING THE FOREGOING IS STRICTLY BETWEEN YOU AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH AI COMPONENT.

## 6. Data Processing Addendum

Each party shall comply with its obligations set forth in the Data Processing Addendum available at: <https://www.back4app.com/data-processing-addendum.pdf>, the terms of which are incorporated herein by reference.

## 7. Subscriptions

### 7.1 General

Subject to the Terms, the Services are provided to you for free up to certain limits, as described on our Pricing Page at <https://www.back4app.com/pricing>. Usage over these limits requires your purchase of a prepaid subscription (“**Prepaid Subscription**”) or a postpaid subscription (“**Postpaid Subscription**”) in order to access additional resources or services.

### 7.2 Prepaid Subscription

If you purchase a Prepaid Subscription, you will be able to access the Services up to the limits described on the Pricing page or otherwise provided to you at the time of purchase. Once you reach such limits, your Application’s ability to access and use the Services will be stopped. If you purchase a Prepaid Subscription, you will be charged the then-applicable Prepaid Subscription fee (“**Subscription Fee**”) at the beginning of your Prepaid Subscription and each month, quarter or year thereafter, depending on the term of your Prepaid Subscription, at the then-current rate. The applicable Subscription Fees are outlined on our Pricing Page or will otherwise be provided to you at the time of your purchase.

If you purchase a Prepaid Subscription, we (or our third party payment processor) will automatically charge you in accordance with term of your Subscription (e.g., each month, quarter or year), on the calendar day corresponding to the commencement of your Prepaid Subscription, in accordance with Section 7.4. In the event your Subscription began on a day not contained in a given month, your payment method will be charged on a day in the applicable month or such other day as we deem appropriate. For example, if you started a monthly Subscription on January 31st, your next payment date is likely to be February 28th, and your payment method would be billed on that date.

### 7.3 Postpaid Subscription

If you purchase a Postpaid Subscription, you will have unlimited access to the Services, subject to payment of a fee that is based on your usage of the Services (“**Usage Fees**”). The applicable Usage Fees are outlined on our Pricing page or will otherwise be provided to you at the time of your purchase. The Usage Fees will be charged at the interval indicated to you at the time of purchase (e.g., each month or quarter). If you purchase a Postpaid Subscription, we (or our third party payment processor) will automatically charge you the applicable Usage Fee based on your usage of the Services, as determined by Back4app in its sole discretion, after the end of the interval over which the Usage Fee was incurred (e.g., each month or quarter). To the fullest extent permitted by law, you waive all claims relating to the amount of Usage Fee charged unless you provide us written notice of a dispute within sixty (60) days of the charge.

### 7.4 Payments

If you purchase a Prepaid Subscription or Postpaid Subscription (each, a “**Subscription**”), we may ask you to supply additional information relevant to your transaction, including, without limitation, your credit-

card number, the expiration date of your credit card, and your address(es) for billing (such information, “**Payment Information**”). You represent and warrant that you have the legal right to use all payment method(s) represented by any such Payment Information. When you purchase a Subscription, you authorize us to provide your Payment Information to our third party payment processors so we can complete your purchase and to charge your payment method for the Subscription Fee or Usage Fee (each, a “**Fee**”) associated with your Subscription, and any associated taxes. You may, in some cases, need to provide additional information to verify your identity before completing your transaction (such information is included within the definition of Payment Information).

BY AGREEING TO THESE TERMS AND PURCHASING A SUBSCRIPTION, YOU ACKNOWLEDGE THAT YOUR SUBSCRIPTION HAS RECURRING PAYMENT FEATURES, AS DESCRIBED ABOVE, AND YOU ACCEPT RESPONSIBILITY FOR ALL RECURRING PAYMENT OBLIGATIONS PRIOR TO CANCELLATION OF YOUR

SUBSCRIPTION BY YOU OR BACK4APP. We may also periodically authorize your payment method in anticipation of applicable fees or related charges. Your Subscription continues until cancelled by you or we terminate your access to or use of the Services or the Subscription in accordance with these Terms.

#### 7.5 Taxes

Unless otherwise stated, the Fees do not include any taxes. You are responsible for paying all taxes associated with your purchases hereunder. If Back4app has the legal obligation to pay or collect taxes for which you are responsible under this paragraph, the appropriate amount will be charged to and paid by you.

#### 7.6 Late Payments

If Back4app does not received payment on the applicable payment date, interest will accrue on past due amounts at the rate of 1.5% per month (or the highest rate permitted by law, if less). You will reimburse Back4app for the reasonable costs of collection in connection with any late payment, including reasonable fees and expenses of attorneys.

#### 7.7 Cancelling Subscriptions

You may cancel your Subscription at any time. PLEASE NOTE, HOWEVER, THAT ALL SALES ARE FINAL. IF YOU CANCEL A PREPAID SUBSCRIPTION, YOU WILL NOT RECEIVE A REFUND OF ANY PORTION OF THE SUBSCRIPTION FEE PAID FOR THE THEN CURRENT SUBSCRIPTION PERIOD AT THE TIME OF CANCELLATION.

To cancel, you can either (i) email us at [community@back4app.com](mailto:community@back4app.com) and follow any instructions we provide to you in response to your cancellation request, or (ii) initiate a cancellation through your Account settings within the Services. You will be responsible for all Fees (plus any applicable taxes and other charges) incurred for the then current Subscription period. If you cancel a Prepaid Subscription, we will allow you to access any resources or services associated with such Subscription until the most recently paid-up Subscription period ends. If you cancel your Postpaid Subscription, your access to any additional resources or services made under such subscription will immediately terminate and any accrued Usage Fees will be immediately due. Cancelling your Subscription won’t cancel your Account. See Section 15 (Termination) below for information on terminating your Account.

## 7.8 Changes to Subscription

Please note that our Subscription Fees, Usage Fees, and any usage limits associated with our Subscriptions are subject to change, although we will notify you 15 days before any changes to your Subscription. You agree that your purchase of a Subscription is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Back4app regarding future functionality or features.

## 7.9 Restrictions

You may not develop multiple Applications to simulate or act as a single Application, or otherwise access the Services in a manner intended to avoid incurring Subscription Fees.

## 7.10 Overage

If your usage of the Services surpasses the usage limits set forth for your Subscription plan, Back4app shall invoice you for the additional usage in accordance with the rates specified in our Pricing Page at <https://www.back4app.com/pricing>.

# 8. **Proprietary Rights**

## 8.1 Definitions

For purposes of these Terms: (i) “**Content**” means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Services, including any Applications that any User creates using the Services and any source code related thereto; and (ii) “**User Content**” means any Content that any user (including, without limitation, you or an end user of your Application) provide to be made available through the Services. Content includes without limitation User Content.

## 8.2 Ownership Rights

Back4app does not claim any ownership rights in your User Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit your User Content. Subject to the foregoing, Back4app or its licensors (including other Users) exclusively own all right, title and interest in and to the Services and Content (excluding your User Content), including all associated intellectual property rights. You acknowledge that the Services and Content are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services or Content.

## 8.3 Rights Granted by Back4app

Subject to your compliance with these Terms, Back4app grants you a limited, revocable, non-exclusive, non-transferable, non-sublicensable license to (i) access and use the Services solely for the purposes of developing, testing, and running the Applications; (ii) access and view the Content solely in connection with your permitted use of the Services.

Notwithstanding the foregoing, components of the Services released under an open source license are subject to the applicable open source license under which such components were released (the “**Open Source License**”). To the limited extent that an Open Source License expressly supersedes these Terms, such Open Source License governs your access to and use of the applicable component provided under such Open Source License.

#### 8.4 Rights in User Content Granted by You

By making any User Content available through Services you hereby grant to Back4app a non-exclusive, transferable, sublicensable, worldwide, royalty-free license to use, copy, modify, create derivative works based upon, publicly display, publicly perform and distribute your User Content (including your Applications) solely as necessary to: (i) operate and provide the Services and Content to you, (ii) to make your Application available to the end users of your Application, and (iii) to provide other Users, including Collaborators, with access to your User Content to the extent permitted by you through the Services.

You are solely responsible for (and Back4app has no responsibility to you or to any third party for) your User Content. You represent and warrant that you own all your User Content or you have all rights that are necessary to grant us the license rights in your User Content under these Terms. You also represent and warrant that neither your User Content, nor your use and provision of your User Content to be made available through the Services, nor any use of your User Content by Back4app on or through the Services—including, without limitation, the hosting and operation of your Application by Back4app—will infringe, misappropriate or violate a third party’s intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation. You assume all risks associated with your User Content, including anyone’s reliance on its accuracy, completeness or usefulness.

#### 8.5 Removal of Content

You can remove certain User Content through the Services. However, some of your User Content (including, without limitation, posts or comments that have been made on our community pages or any User Content that you designate as public or share with Collaborators through the functionality of the Services) may not be completely removed and copies of your User Content may continue to exist on the Services in archive or backup form.

You agree to immediately take down any User Content that violates Section 11 (General Prohibitions), including, without limitation, if you receive a takedown request from Back4app. In the event you fail to comply with such a request, Back4app reserves the right to take down your User Content and/or disable your Application(s).

Notwithstanding the foregoing, Back4app reserves the right (but will have no obligation) to remove any or all Content from the Services at any time. We may remove or delete your User Content within a reasonable period of time after the termination or cancellation of your Account in accordance with Section 15 (Termination). We are not responsible or liable for the removal or deletion of (or the failure to remove or delete) any of your User Content. You are solely responsible for securing and backing up your User Content.

#### 8.6 Feedback

We welcome feedback, comments and suggestions for improvements to the Services (“**Feedback**”). You can submit Feedback by emailing us at [community@Back4app.com](mailto:community@Back4app.com). You grant to us a non-exclusive,



worldwide, perpetual, irrevocable, fully-paid, royalty-free, sublicensable and transferable license under any and all intellectual property rights that you own or control to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any purpose.

## **9. No Endorsements**

Back4app has not reviewed, and cannot review, all User Content submitted by Users, and cannot therefore be responsible for the User Content. By operating the Services, Back4app does not represent or imply that it endorses the User Content, or that it believes it to be accurate, useful or non-harmful. You are responsible for taking precautions as necessary to protect yourself and your computer systems from viruses, worms, Trojan horses, and other harmful or destructive content. User Content may be offensive, indecent, or otherwise objectionable, as well as may contain technical inaccuracies, typographical mistakes, and other errors. User Content may also contain material that violates the privacy or publicity rights, or infringes the intellectual property and other proprietary rights, of third parties, or the downloading, copying or use of which is subject to additional terms and conditions, stated or unstated. Back4app disclaims any responsibility for any harm resulting from any User Content.

## **10. Publicity**

You agree that Back4app may identify you or your company and use your company's trade names, trademarks, service marks, logos domain names and other distinctive brand features on the Site, in marketing materials, in customer lists and in financial reports to identify you or your company as a user of the Services, and you hereby grant us a non-exclusive, royalty-free license to do so in any media now or later developed in connection with any marketing, promotion or advertising of Back4app or the Services.

## **11. General Prohibitions**

You agree not to do any of the following:

- Post, upload, publish, submit, transmit or otherwise use the Services to develop, host or distribute any User Content that: (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, pornographic, vulgar or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (vii) promotes illegal or harmful activities or substances;
- Use the Services to collect, store, host, process, control, use or share any "Protected Health Information" (PHI) (as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or any biometric information or data, such as fingerprints, voiceprints, facial, hand, iris or retinal scans, DNA, or any other biological, physical or behavioral characteristics that can be used to uniquely identify a person. If you wish to process PHI data using the Services, you must sign a Business Associate Agreement (BAA) with us. Please contact us at [community@Back4app.com](mailto:community@Back4app.com) for information;



- Use the Services to process, store, or handle any “Payment Card Industry” (PCI) data, including but not limited to, credit card transactions, cardholder data, or sensitive authentication data;
- Use, display, mirror or frame the Services or any individual element within the Services, Back4app’s name, any Back4app trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Back4app’s express written consent;
- Access, tamper with, or use non-public areas of the Services, Back4app’s computer systems, or the technical delivery systems of Back4app’s providers;
- Attempt to probe, scan or test the vulnerability of any Back4app system or network or breach any security or authentication measures;
- Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Back4app or any of Back4app’s providers or any other third party (including another user) to protect the Services or User Content;
- Attempt to access or search the Services or Content or download Content from the Services through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Back4app or other generally available third-party web browsers;
- Send any advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation in violation of any applicable law or regulation;
- Use the Services or Content, or any portion thereof, for the benefit of any third party or in any manner not permitted by these Terms;
- Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Services or Content to send altered, deceptive or false source-identifying information;
- Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Services or Content;
- Sell, resell, rent or lease the Services to any third parties;
- Use the Services to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs;
- Interfere with or disrupt the integrity or performance of the Services or third-party data contained therein;
- Collect or store any personally identifiable information from the Services from other users of the Services without their express permission;
- Impersonate or misrepresent your affiliation with any person or entity;

- Access the Services for the purpose of bringing an intellectual property infringement claim against Back4app or for the purpose of creating a product or service competitive with the Services;
- Violate any applicable law or regulation; or
- Encourage or enable any other individual to do any of the foregoing.

In the event you become aware of any violation of the foregoing prohibitions by an end user of an Application, you will immediately terminate such end user's account on your Application.

## **12. Back4app's Enforcement Rights**

Although we're not obligated to monitor access to or use of the Services or User Content or to review or edit any User Content, we have the right to do so for the purpose of operating the Services, to ensure compliance with these Terms, and to comply with applicable law or other legal requirements.

We reserve the right, but are not obligated, to remove or disable access to any User Content, including, without limitation, any Application, at any time and without notice, including, but not limited to, if we, at our sole discretion, consider any User Content to be objectionable or in violation of these Terms. We have the right to investigate violations of these Terms or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

## **13. DMCA/Copyright Policy**

Back4app respects copyright law and expects its users to do the same. It is Back4app's policy to terminate in appropriate circumstances Users who repeatedly infringe or are believed to be repeatedly infringing the rights of copyright holders. Please see Back4app's [Copyright Policy](#) for further information.

## **14. Links to Third Party Websites or Resources**

The Services may contain links to third-party websites or resources. We provide these links only as a convenience and are not responsible for the content, products or services on or available from those websites or resources or links displayed on such websites. You acknowledge sole responsibility for and assume all risk arising from, your use of any third-party websites or resources.

## **15. Termination**

You may cancel your Account at any time by sending an email to us at [community@Back4app.com](mailto:community@Back4app.com). We may terminate your access to and use of the Services, including suspending access to or terminating your Account, at our sole discretion, at any time and without notice to you. If we terminate your access to and use of the Services due to your breach of these Terms or you cancel your Account, you will not receive a refund for any pre-paid Subscription Fees.

You are solely responsible for exporting your User Content from the Services prior to termination of your Account for any reason, provided that if we terminate your Account, we will provide you a reasonable opportunity to retrieve your User Content.

Upon any termination, discontinuation or cancellation of Services or your Account, the following provisions will survive: Section 8.1 (Definitions), Section 8.2 (Ownership Rights), Section 8.6 (Feedback), Section 11 (General Prohibitions), Section 13 (DMCA/Copyright Policy), Section 15 (Termination), Section 16 (Warranty Disclaimers), Section 17 (Indemnity), Section 18 (Limitation of Liability), Section 19 (Governing Law), Section 20 (Dispute Resolution), and Section 21 (General Terms).

## **16. Warranty Disclaimers**

THE SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS, STATUTORY OR IMPLIED. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness or reliability of any Content.

## **17. Indemnity**

You will indemnify, defend and hold harmless Back4app, its affiliates and licensors, officers, directors, employee and agents, from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (i) access to or use of the Services or Content by you, your Authorized Users, or end users of your Application, (ii) your User Content, or (iii) any violation of these Terms by you, your Authorized Users, or end users of your Application.

## **18. Limitation of Liability**

NEITHER BACK4APP NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT BACK4APP HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

IN NO EVENT WILL BACK4APP'S TOTAL LIABILITY TO YOU OR YOUR AUTHORIZED USERS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES EXCEED THE AMOUNTS YOU HAVE PAID TO BACK4APP FOR USE OF THE SERVICES IN THE 12 MONTHS PRIOR TO THE EVENT GIVING THE RISE TO THE CLAIM OR ONE HUNDRED DOLLARS (\$100), IF YOU HAVE NOT HAD ANY PAYMENT OBLIGATIONS TO BACK4APP, AS APPLICABLE.

THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN BACK4APP AND YOU.

## 19. Governing Law

These Terms and any action related thereto will be governed by the Federal Arbitration Act, federal arbitration law, and the laws of the State of California without regard to its conflict of laws provisions. Except as otherwise expressly set forth in Section 20 “Dispute Resolution,” the exclusive jurisdiction for all disputes that you and Back4app are not required to arbitrate will be the state and federal courts located in Santa Clara County, and you and Back4app each waive any objection to jurisdiction and venue in such courts.

## 20. Dispute Resolution

### 20.1 Mandatory Arbitration of Disputes; Consent to Service of Process

All claims arising under or related to these Terms (other than claims for equitable or injunctive relief) shall be settled finally and exclusively by arbitration in accordance with the Commercial Arbitration Rules of the AAA. The AAA Commercial Arbitration Rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. Arbitration shall take place in Santa Clara County, California (unless another location is agreed to by the parties). There shall be three (3) arbitrators for claims in excess of one million United States Dollars (\$1,000,000) and a single arbitrator for claims equal to or less than one million United States Dollars (\$1,000,000). A single impartial arbitrator shall be selected jointly by the parties or, if not agreed, according to the Commercial Arbitration Rules. A three (3)-arbitrator panel shall be selected according to the Commercial Arbitration Rules. The parties shall inform AAA of the nature of the dispute so that AAA shall only propose competent impartial arbitrators. AAA shall designate the chair the arbitration. The arbitrators shall have authority to enter both interim and final relief. You and Back4app agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of these Terms, and that you and Back4app are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of these Terms.

### 20.2 Exceptions

As limited exceptions to Section 20.1 above: (i) we both may seek to resolve a dispute in small claims court if it qualifies; and (ii) we each retain the right to seek injunctive or other equitable relief from a court to prevent (or enjoin) the infringement or misappropriation of our intellectual property rights.

### 20.3 Class Action Waiver

YOU AND BACK4APP AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, if the parties’ dispute is resolved through arbitration, the arbitrator may not consolidate another person’s claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this Dispute Resolution section shall be null and void.

### 20.4 Severability

With the exception of any of the provisions in Section 20.3 of these Terms (“**Class Action Waiver**”), if an arbitrator or court of competent jurisdiction decides that any part of these Terms is invalid or unenforceable, the other parts of these Terms will still apply.

## **21. General Terms**

### **21.1 Entire Agreement**

These Terms constitute the entire and exclusive understanding and agreement between Back4app and you regarding the Services and Content, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Back4app and you regarding the Services and Content. If any provision of these Terms is held invalid or unenforceable by an arbitrator or a court of competent jurisdiction that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect. Except where provided by applicable law in your jurisdiction, you may not assign or transfer these Terms, by operation of law or otherwise, without Back4app's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. Back4app may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

### **21.2 Notices**

Any notices or other communications provided by Back4app under these Terms, including those regarding modifications to these Terms, will be given: (i) via email; or (ii) by posting to the Services. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

### **21.3 Waiver**

Back4app's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Back4app. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

## **22. Contact Information**

If you have any questions about these Terms or the Services, please contact Back4app at [community@back4app.com](mailto:community@back4app.com).