

Datawisp – Terms of Use

Effective Date: 2022-11-01

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Welcome to Datawisp! These Terms of Use (“**Agreement**”) constitute an agreement between you and Datawisp, Inc. (“**Datawisp**”, “**we**”, “**us**”, or “**our**”) governing your access and use of our services (“**Services**”).

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1. Acknowledgment and Agreement

Please read this Agreement carefully before accessing and/or using our Services. By accessing and/or using the Services, you agree to be bound by this Agreement. If you do not agree to this Agreement, you must not access and/or use the Services.

2. Arbitration Notice

YOU AGREE THAT DISPUTES BETWEEN YOU AND US CONCERNING YOUR USE OF THE SERVICES WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION. FOR MORE DETAILS ON THIS PROCESS, AND HOW YOU CAN OPT-OUT OF ARBITRATION, SEE SECTION 14 BELOW.

3. Eligibility.

By accessing and/or using our Services, you represent that you are at least 18 years of age, or the age of consent in the jurisdiction in which you access and/or use the Services, to create an account and use the Services. By creating an account with Datawisp, you represent and warrant that:

- You can form a binding contract with Datawisp;
- You are not a person who is barred from using Datawisp under the laws of the United States or any other applicable jurisdiction (i.e., you do not appear on the U.S. Treasury Department list of Specially Designated Nationals or face any other similar prohibition); and
- You will comply with this Agreement and all applicable local, state, national, and international laws, rules, and regulations.

4. Account Setup

To access and/or use the Services, you will be required to become a Registered User. A Registered User is a user who has registered an account through the Services (“**Account**”) and is authorized to use the Services under a specific Datawisp business customer account to which the Account relates.

When creating an account, you agree to provide accurate, true, complete and current information about yourself as prompted by the Services and to promptly update such information to maintain accurate, true, complete and current information. If you provide any inaccurate, false, incomplete, or outdated information, or we in our sole discretion suspect that such information is inaccurate, false, incomplete or outdated, we reserve the right to suspend or terminate your account and prohibit any and all current or future use of the Services.

You are responsible for maintaining the confidentiality of your password and Account, if any, and you’re fully responsible for any and all activities that occur under your Account. You will immediately notify us of any unauthorized use of your password or Account, and ensure that you exit from your Account at the end of each session when accessing the Services.

5. Account Termination

We reserve the right to terminate your account, at any time, with or without notice, for any conduct that we, in our sole discretion, determine is in violation of this Agreement, laws or regulations, or is otherwise harmful to another user of our Services or other third-party interests.

6. Conduct When Using the Services

By accessing and/or using the Services, you agree not to:

- Use the Services for any purpose that runs contrary to this Agreement.
- Use the Services in any manner contrary to local, state, federal, or international laws, or for any illegal purpose or for the transmission of material that is unlawful, harassing, libelous (untrue and damaging to others), invasive of another's privacy, abusive, threatening, or obscene, or that infringes the copyrights (rights of an owner of written material) or other intellectual property of others.
- Copy, modify, transmit, create any derivative works from, make use of, or reproduce in any way any copyrighted materials, images, trademarks, trade names, service marks, or other intellectual property, content or proprietary information accessible through the Services without our prior written consent.
- Express or imply that any statements you make are endorsed by Datawisp.
- Use any robot, bot, spider, crawler, scraper, site search / retrieval application, proxy or other manual or automatic device, method or process to access, retrieve, index, "data mine," or in any way reproduce or circumvent the navigational structure or presentation of the Services or their content.
- Use the Services in any way that could interfere with, disrupt or negatively affect the Services or the servers or networks connected to the Services.
- Upload viruses or other malicious code or otherwise compromise the security of the Services.
- Forge headers or otherwise manipulate identifiers in order to disguise the origin of any information transmitted to or through the Services.
- "Frame" or "mirror" any part of the Services without our prior written consent.
- Use meta tags or code or other devices containing any reference to Datawisp (or any trademark, trade name, service mark, logo or slogan of Datawisp) to direct any person to any other website for any purpose.
- Modify, adapt, sublicense, translate, sell, reverse engineer, decipher, decompile or otherwise disassemble any portion of the Services, or cause others to do so.
- Use or develop any third-party application that interacts with the Services without our prior written consent.
- Probe, scan, or test the vulnerability of our Services or any system or network.
- Encourage or promote any activity that violates this Agreement.

We reserve the right to investigate, and take any available action in response to any unauthorized use of the Services, including but not limited to termination of your account.

7. Privacy

By agreeing to this Agreement, you also confirm that you have read and understand our Privacy Policy, available [here](#).

8. Modifying the Services

Datawisp is always striving to improve its Services and bring you additional functionality that you will find engaging and useful. This means we may add new product features or enhancements from time to time, as well as remove some features. If these actions do not materially impact your rights or obligations, we may not provide you with notice of these changes before making them. We may also suspend the Services entirely, in which event we will notify you in advance unless extenuating circumstances, such as safety or security concerns, prevent us from doing so.

9. Fees

To the extent the Services or any portion thereof is made available for a fee, you or the organization purchasing access rights on your behalf will be required to make a purchase as directed by Datawisp. You represent and warrant to Datawisp that you are authorized to make payments using your selected payment method and that related information is true.

10. Datawisp's Rights

By creating an account, you grant to Datawisp a worldwide, transferable, sub-licensable, royalty-free, right and license to host, store, use, copy, display, reproduce, adapt, edit, publish, modify and distribute information you authorize us to access as well as any information you post, upload, display or otherwise make available on the Services (collectively, "**Content**"). Datawisp's license to your Content shall be non-exclusive, except that Datawisp's license shall be exclusive with respect to derivative works created through use of the Services. For example, Datawisp would have an exclusive license to screenshots of the Services that include your Content. In addition, so that Datawisp can prevent the use of your Content outside of the Services, you authorize Datawisp to act on your behalf with respect to infringing uses of your Content taken from the Services by other members or third parties. Our license to your Content is subject to your rights under applicable law (for example laws regarding personal data protection to the extent any Content contains personal information as defined by those laws) and is for the limited purpose of operating, developing, providing, and improving the Services and researching and developing new ones.

You agree that Datawisp may access, preserve and disclose your account information and Content if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary, such as to: (i) comply with legal process; (ii) enforce this Agreement; (iii) respond to claims that any Content violates the rights of third parties; (iv) respond to your requests for customer service; or (v) protect the rights, property or personal safety of Datawisp or any other person.

11. Copyright, Trademark, and other Intellectual Property

You acknowledge that the Services and all materials on the Services, including without limitation to the Services' design, text, graphics, sounds, pictures, software and other files, its look and feel, and the selection and arrangement thereof (collectively, "**Materials**") are our property and are subject to and protected by United States and international copyright or other intellectual property laws and rights. The trademarks, service marks, trade dress, trade names, and logos contained on the Services, including without limitation to trademarks registered in the United States (collectively, "**Marks**") are the sole property of Datawisp. In addition, all page headers, custom graphics, and custom icons are Marks of Datawisp.

Datawisp grants you a personal, worldwide, royalty-free, non-assignable, nonexclusive, revocable, and non-sublicensable license to access and use the Services. This license is for the sole purpose of letting you use and enjoy the Services as intended by Datawisp, and as permitted by this Agreement. All rights not expressly granted herein are reserved by Datawisp. Other copyrights, trademarks, product names, company names, logos or intellectual property are the property of the respective owners with all rights reserved. Site references to third parties or their copyrights, trademarks, or other intellectual property do not constitute or imply affiliation with, endorsement of, or recommendation of Datawisp by the respective trademark owner(s), or by Datawisp of the respective trademark owner(s).

12. Disclaimer of Warranties; Limitation of Liability; Indemnification

- **DISCLAIMER OF WARRANTIES.** SUBJECT TO APPLICABLE LAW, DATAWISP MAKES THE FOLLOWING DISCLAIMERS OF WARRANTIES. DATAWISP DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY FOR THE ACCURACY, CONTENT, COMPLETENESS, LEGALITY, RELIABILITY, OR OPERABILITY OR AVAILABILITY OF INFORMATION OR MATERIAL DISPLAYED IN RESULTS PROVIDED ON THE SERVICES. DATAWISP DISCLAIMS ANY RESPONSIBILITY OR LIABILITY FOR THE DELETION, FAILURE TO STORE, MISDELIVERY, OR UNTIMELY DELIVERY OF ANY INFORMATION OR MATERIAL MADE AVAILABLE THROUGH THE SERVICES. DATAWISP DISCLAIMS ANY RESPONSIBILITY OR LIABILITY FOR ANY HARM RESULTING FROM DOWNLOADING OR ACCESSING INFORMATION OR MATERIAL ON THE INTERNET THROUGH THE SERVICES. DATAWISP PROVIDES THE SERVICES ON AN “AS IS” AND “AS AVAILABLE” BASIS WITH NO WARRANTIES WHATSOEVER. DATAWISP EXPRESSLY DISCLAIMS TO THE FULLEST EXTENT PERMITTED BY LAW ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. DATAWISP FURTHER DISCLAIMS ANY WARRANTIES REGARDING THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SERVICES. DATAWISP FURTHER DISCLAIMS ANY WARRANTIES RELATING TO ANY INFORMATION OBTAINED THROUGH THE SERVICES, ANY LINKS PROVIDED BY THE SERVICES, AS WELL AS ANY INFORMATION RECEIVED THROUGH ANY OF THE LINKS PROVIDED IN THE SERVICES.
- **LIMITATION OF LIABILITY.** SUBJECT TO APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL DATAWISP BE LIABLE TO ANY USER OF THE SERVICES, OR ANY OTHER THIRD PARTY THAT HAS AGREED TO THIS AGREEMENT, FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND/OR PUNITIVE DAMAGES, WHETHER SUCH DAMAGES OR A CLAIM FOR SUCH DAMAGES IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHER CLAIM AVAILABLE UNDER APPLICABLE LAW, EVEN IF DATAWISP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE SERVICES, FROM INABILITY TO USE THE SERVICES, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE SERVICES (INCLUDING SUCH DAMAGES INCURRED BY ANY THIRD PARTIES). THIS LIMITATION SHALL ALSO APPLY WITH REGARD TO DAMAGES INCURRED BY REASON OF OTHER SERVICES OR GOODS RECEIVED THROUGH THE SERVICES OR RECEIVED THROUGH LINKS PROVIDED ON THE SERVICES, AS WELL AS BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH THE SERVICES OR THROUGH LINKS PROVIDED ON THE SERVICES. THIS LIMITATION SHALL ALSO APPLY, WITHOUT LIMITATION, TO THE COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOST DATA, LOSS OF BUSINESS GOODWILL, LOSS OF REPUTATIONAL GOODWILL, OR OTHER SUCH DAMAGES. SUCH LIMITATION SHALL FURTHER APPLY WITH REGARD TO THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES OR ANY INFORMATION THAT APPEARS ON, OR IS LINKED OR RELATED IN ANY WAY TO THE SERVICES. TO THE EXTENT ANY SUCH DAMAGES ARE REQUIRED BY APPLICABLE LAW, THEY SHALL BE CAPPED AT ONE THOUSAND DOLLARS (\$10,000) OR THE TOTAL AMOUNT OF FEES PAID TO DATAWISP IN THE THREE MONTHS PRECEDING THE DATE OF THE UNDERLYING INJURY, WHICHEVER IS LESS.
- **INDEMNITY.** YOU AGREE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS DATAWISP AND ITS RESPECTIVE

OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM ANY AND ALL COMPLAINTS, DEMANDS, CLAIMS, DAMAGES, LOSSES, COSTS (INCLUDING ATTORNEYS' FEES), PENALTIES AND/OR OTHER EXPENSES, DUE TO, ARISING OUT OF, OR RELATING IN ANY WAY TO YOUR ACCESS OR USE OF THE SERVICES, OR YOUR VIOLATION OF THIS AGREEMENT.

13. Force Majeure.

Under no circumstances shall Datawisp be held responsible or liable for any delay or failure in performance resulting directly or indirectly from acts of nature, forces, or causes beyond its reasonable control, including, without limitation, Internet failures, computer equipment failures, telecommunication equipment failures, other equipment failures, electrical power failures, strikes, labor disputes, riots, insurrections, civil disturbances, shortages of labor or materials, fires, floods, storms, explosions, acts of God, war (including but not limited to cyber related events and/or occurrences attributed to state and/or quasi-state actors by either public or privacy organizations and/or entities and/or governments), governmental actions, orders of domestic or foreign courts or tribunals, non-performance of third parties, or loss of or fluctuations in heat, lighting, or air conditioning.

14. Dispute Resolution, Arbitration, Class-Action Waiver, and Jury Waiver

- **Disputes**. The terms of this Section 14 shall apply to all Disputes between you and Datawisp. For the purposes of this Section, “**Dispute**” shall mean any dispute, claim, controversy or action between you and Datawisp arising under or relating to your use of the Services, this Agreement, or any other transaction involving you and Datawisp, whether in contract, warranty, misrepresentation, fraud, tort, intentional tort, statute, regulation, ordinance, or any other legal or equitable basis, and shall be interpreted to be given the broadest meaning allowable under law. YOU AND DATAWISP AGREE THAT “DISPUTE” AS DEFINED IN THIS AGREEMENT SHALL NOT INCLUDE ANY CLAIM OR CAUSE OF ACTION BY YOU OR DATAWISP FOR: (1) TRADE SECRET MISAPPROPRIATION; (2) PATENT INFRINGEMENT; (3) COPYRIGHT INFRINGEMENT OR MISUSE; AND (4) TRADEMARK INFRINGEMENT OR DILUTION.
- **Binding Arbitration**. You and Datawisp agree: (1) to arbitrate all Disputes between you and Datawisp pursuant to the provision of this Agreement; (2) this Agreement memorializes a transaction in interstate commerce; (3) the Federal Arbitration Act (9 U.S.C. § 1, et seq.) governs the interpretation and enforcement of this Section (notwithstanding the choice-of-law provision contained herein); and (4) this Section shall survive termination in this Agreement.
- **Dispute Notice**. In the event of a Dispute, you or Datawisp must first send to the other party a notice of the Dispute that shall include a written statement that sets forth the name, address, and contact information of the party giving it, the facts giving rise to the Dispute, and the relief requested (the “**Dispute Notice**”). The Dispute Notice to Datawisp must be addressed to Datawisp Inc, 14 Alicia court, 11550 Hempstead, NY (“**Datawisp Notice Address**”). The Dispute Notice to you will be sent by certified mail to the most recent address we have on file or otherwise in our records for you, or via email if we do not have any such address on file. If Datawisp and you do not reach an agreement to resolve the Dispute within sixty (60) days after the Dispute Notice is received, you or Datawisp may commence an arbitration proceeding pursuant to this Section. Following submission and receipt of the Dispute Notice, each party agrees to act in good faith to seek to resolve the Dispute before commencing arbitration.

- **Small Claims Court**. Notwithstanding the foregoing, you may bring an individual action in the small claims court of your state, municipality, province or territory if the action is within that court's jurisdiction and is pending only in that court.
- **WAIVER OF CLASS ACTIONS AND CLASS ARBITRATIONS**. YOU AND DATAWISP AGREE THAT EACH PARTY MAY BRING DISPUTES AGAINST THE OTHER PARTY IN AN INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, INCLUDING WITHOUT LIMITATION FEDERAL OR STATE CLASS ACTIONS, OR CLASS ARBITRATIONS. ACCORDINGLY, UNDER THE ARBITRATION PROCEDURES OUTLINED IN THIS SECTION, AN ARBITRATOR SHALL NOT COMBINE OR CONSOLIDATE MORE THAN ONE PARTY'S CLAIMS WITHOUT THE WRITTEN CONSENT OF ALL AFFECTED PARTIES TO AN ARBITRATION PROCEEDING. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, YOU AND DATAWISP AGREE THAT NO DISPUTE SHALL PROCEED BY WAY OF CLASS ARBITRATION WITHOUT THE WRITTEN CONSENT OF ALL AFFECTED PARTIES.
- **Arbitration Procedure**. If a party elects to commence arbitration, the arbitration shall be administered by the American Arbitration Association (AAA) and be governed by the AAA Commercial Arbitration Rules; except AAA may not administer any multiple claimant or class arbitration, as the parties agree that the arbitration shall be limited to the resolution only of individual claims. If there is a conflict between the AAA Rules and the rules set forth in this Agreement, the rules set forth in this Agreement shall govern. All Disputes shall be resolved by a single neutral arbitrator, and both parties shall have a reasonable opportunity to participate in the selection of the arbitrator. The arbitrator is bound by the terms of this Agreement. The arbitrator, and not any federal, state, provincial, territorial or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of this Agreement, including, but not limited to, any claim that all or any part of this Agreement is void or voidable. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction.
- **Hearing Format**. Unless otherwise agreed, the arbitration shall take place in New York City, but may proceed telephonically in the event the total amount of the claim does not exceed \$2,500 U.S. dollars (if the claimant so chooses). In all hearing formats, the arbitrator shall issue a written decision that explains the essential findings and conclusions on which an award, in any, is based. During the arbitration, the amount of any settlement offer made by Datawisp or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Datawisp is entitled. The discovery or exchange of non-privileged information relevant to the Dispute may be allowed during the arbitration.
- **Arbitration Fees**. The party initiating arbitration will pay for all applicable filing, administration, and arbitration fees for any arbitration commenced or as otherwise agreed between the Parties. Each Party will be responsible for all additional costs incurred in the arbitration, including without limitation, fees for attorneys or expert witnesses.
- **Severability**. If any provision in this Section is found to be unenforceable, that provision shall be severed with the remainder of this Agreement remaining in full force and effect. The foregoing shall not apply to the prohibition against class or representative actions; if the prohibition against

class or representative actions is found to be unenforceable, this entire Section shall be null and void. The terms of this Section shall otherwise survive any termination of this Agreement.

- **Exclusive Venue for Other Controversies.** Datawisp and you agree that any controversy excluded from the dispute resolution procedure and class action waiver provisions in this Section (other than an individual action filed in small claims court) shall be filed only in the courts located within New York City, and each party hereby irrevocably and unconditionally consents and submits to the exclusive jurisdiction of such courts for any such controversy.

15. Governing Law; Jurisdiction and Venue

This Agreement will be governed by and construed in accordance with the laws of the state of New York, without giving effect to its conflict of laws provisions or the laws of your state. If for any reason a court of competent jurisdiction or arbitrator finds any provision or portion of this Agreement to be unenforceable, the remaining portion of this Agreement will continue in full force and effect.

16. Termination

This Agreement are effective until terminated either by Datawisp or you. We, in our sole discretion, may suspend or terminate this Agreement at any time with or without notice, and may deny you access to the Services or any portion thereof as a result. You may also terminate this Agreement at any time by discontinuing your use of the Services and terminating your account. Upon termination of this Agreement by us or you, you must destroy all materials obtained from the Services, including any and all copies of such materials whether made under this Agreement or otherwise.

17. Non-Assignability

You may not assign this Agreement, by operation of law or otherwise, without our prior written consent. Subject to that restriction, this Agreement will be binding upon, inure to the benefit of, and be enforceable against the parties and their respective successors and assigns.

18. Statute of Limitations

You agree that regardless of any statute or law to the contrary, any claim or cause of action by you against Datawisp arising from or relating to the use of the Services must be filed within one (1) year after such claim or cause of action arose or such claim or cause of action will be permanently barred.

19. Entire Agreement; Severability; Relationship

This Agreement constitutes the entire agreement between you and Datawisp. If any part of this Agreement are determined to be invalid or unenforceable, then such invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the allocation of risks, and the remainder of this Agreement will continue in effect. If any provision(s) is found to be contrary to law, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. Any failure to exercise or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof. You agree that your Datawisp account is non-transferable and all of your rights to your account terminate upon your death. No agency, partnership, joint venture, fiduciary or other special relationship or employment is created as a result of this Agreement, and you may not make any representations on behalf of or bind Datawisp.

20. Contact Us

If you have any questions about this Agreement, contact us at support@datawisp.io.