

Forage Terms of Service

Last Updated April 1, 2020

Welcome, and thank you for your interest in Forage Technology Corporation ("Forage"). The following Terms of Service, together with Forage's [Privacy Policy](#), are a legally binding contract between you and Forage regarding your use of Forage's website, mobile applications, networks, and other related features or services (collectively, the "Service").

PLEASE READ THE FOLLOWING TERMS OF SERVICE CAREFULLY. BY CLICKING "I ACCEPT," REGISTERING FOR AN ACCOUNT, DOWNLOADING A FORAGE MOBILE APPLICATION, ACCESSING, BROWSING, OR OTHERWISE USING THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING THE FORAGE [PRIVACY POLICY](#), ANY APPLICABLE END USER LICENSE AGREEMENT, AND ANY ADDITIONAL TERMS OR FUTURE MODIFICATIONS (COLLECTIVELY, THE "TERMS").

If you are not eligible, or do not agree to all of the Terms, then please do not use the Service.

Eligibility. You must be at least eighteen (18) years old to use the Service. By agreeing to the Terms, you represent and warrant to us: (i) that you are at least eighteen (18) years old, (ii) that you have not previously been suspended, removed or deactivated from the Service, and (iii) that your registration and your use of the Service is in compliance with any and all applicable laws and regulations. Any breach of these representations may result in Forage revoking your permission to use the Service. If you are using the Service on behalf of an entity, organization, or company (collectively "Subscribing Organization"), you are an authorized representative of that Subscribing Organization with the authority to bind such organization to these Terms; and agree to be bound by these Terms on behalf of such Subscribing Organization. In such a case, "you" in these Terms refers to your Subscribing Organization, and any individual authorized to use the Service on behalf of the Subscribing Organization, including you.

[Privacy Policy](#); End User License Agreement; Additional Terms

1. **[Privacy Policy](#).** Please read the Forage [Privacy Policy](#) carefully for information relating to our collection, use, and disclosure of your personal information. The Forage [Privacy Policy](#) is hereby incorporated by reference into, and made a part of, these Terms.
2. **End User License Agreement.** Your use of any mobile application or other downloadable software we may provide (each, an "App") is subject to an End User License Agreement. The applicable End User License Agreement depends on the platform on which the App is designed to run and the features of the App. The End User License Agreement will be presented to you when you download and/or install the App and will be accessible through the App. Apps are deemed part of the Service, and all such End User License

Agreements are hereby incorporated into, and made a part of, the Terms by reference.

3. **Additional Terms.** Your use of the Service is subject to any additional terms, rules, or guidelines applicable to certain services and features which we may post from time to time (the "Additional Terms"). All such Additional Terms are hereby incorporated by reference into, and made a part of, the Terms.

Modification of the Terms. We reserve the right, at our discretion, to change the Terms on a going forward basis at any time. Please check the Terms periodically for changes. Your continued use of the Service after the changes become effective constitutes your binding acceptance of such changes. In the event that a change to the Terms materially modifies your rights or obligations, we will make an effort to notify you of the change at least fifteen days prior to the effective date of such change, such as by sending you an email to the email address we have on file for you, or presenting a pop-up window or other notification to you through the Service when you log in, and we may require that you accept the modified Terms in order to continue to use the Service. Immaterial modifications are effective immediately upon publication, and material changes will be effective upon the earlier of (a) continued use of the Service with actual knowledge of the modification, or (b) fifteen (15) days following the change. However, modifications addressing new functions of the Service or modifications made for legal reasons will be effective immediately. For the avoidance of doubt, disputes arising hereunder will be resolved in accordance with the Terms in effect that the time the dispute arose.

Accounts and Registration. To access most features of the Service you must register for an Forage account. When you register for an account, you may be required to provide us with some information about yourself (such as your email address or other contact information). You agree that the information you provide to us is and will be accurate and up-to-date at all times. When you register, you will be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password. You also agree to use one or more of the following multi-factor authentication methods in order to provide further security to your account: (i) phone number, (ii) email address, or (iii) such other method as may be offered by Forage in its sole discretion. If you are accessing your Forage account from a new device (or if you are logging in to your Forage account for the first time), you must first log in using your username and password, then complete the multi-factor authentication process you have selected. Once you confirm your identity via the multi-factor authentication process, you will have full access to your Forage account. You agree to accept responsibility for all activities that occur within and pursuant to your account. If you have reason to believe that your account is no longer secure for any reason (for example, in the event of a loss, theft or unauthorized disclosure or use of your password), then you agree to notify us immediately by submitting a ticket from within the app or visiting our Help Center. If you are unable to log-in to the Help Center please send an email to contact@joinforage.co.

Location Data. Some features of the Service enable us to tailor your experience in the Service based on your location. If you decline to provide location information, or

if, in our judgment, we cannot verify your location, you will be unable to utilize some features of the Service.

User Offers.

4. **User Offers Generally.** Forage may make available to you from time to time through the Service offers on certain third-party products and services (each an "Offer"). Each Offer may be subject to Additional Terms and may be discontinued by Forage at any time without notice. At any time and in Forage's sole discretion, Forage may determine whether or not you are eligible to redeem an Offer.
5. **Bonuses.** From time to time, Forage may introduce special bonuses or incentives that may be available to you in connection with the Services ("Bonuses"). Such Bonuses may include, for example, a referral bonus to refer others to Forage, using a personal referral code or URL ("Referral Bonus"). You will not be eligible to earn Referral Bonuses if you invite other users who share the same mobile device or if they create multiple accounts in an effort to earn Referral Bonuses for inviting themselves, or if you publish your personal referral code on a public website, store, or forum for the purposes of referring people who you do not know personally. You represent and warrant that you will only refer Forage to those individuals whom you know personally. Such actions violate these Terms of Service and shall be grounds for Forage to terminate your account, or rescind any Referral Bonuses. Where you cannot produce examples of how you made referrals, including screenshots of where you made referrals, Forage reserves the right to decline to award to you Referral Bonuses, rescind Bonuses, or take other remedial actions.
6. **Affiliate Merchant Offers.** Certain Offers require you to click a shopping link within the Service to be directed to an affiliated merchant's website (each an "Affiliate Merchant"), and complete a purchase to earn a discount on your net purchase amount. Please note that the net purchase amount generally excludes taxes, fees, shipping, gift-wrapping, discounts or credits, returns or cancellations and extended warranties.

Certain Affiliate Merchants exclude a limited number of products and purchases from the Offers. A list of exclusions is included in the Additional Terms associated with each Offer and is subject to change without notice. Additionally, to earn discounts, you must complete your purchase during the same shopping session you start after clicking on the shopping link associated with the Offer. If you visit other mobile apps or websites before completing your purchase, your purchase might be associated with a service other than Forage's Service and you might not earn the discount on your purchase.

7. **Claims.** Offers provided under this Section 6 are provided solely by Forage and not underwritten, sponsored, or provided by any other third-party, including Forage's brand and merchant partners. By accepting these Terms of Service you agree not to seek discounts or make any claims for discounts against third-party providers, merchants or manufacturers of products and

services. You agree that Forage may transfer and/or assign its rights and obligations under these Terms of Service at any time.

Prohibited Conduct. BY USING THE SERVICE YOU AGREE NOT TO:

8. submit to Forage purchase information that is false, inaccurate, fabricated, counterfeited, tampered with, adjusted, or otherwise artificial or inauthentic for the purpose of seeking to redeem Offers with Forage;
9. redeem, or attempt to redeem, Forage Offers for products that have not actually been purchased and retained, or for products that have been purchased but returned to a store or online vendor, following purchase;
10. rent, lease, loan, sell, resell, sublicense, distribute or otherwise transfer the licenses granted herein or any Materials (as defined below);
11. post, upload, or distribute any defamatory, libelous, or inaccurate User Content or other content;
12. post, upload, or distribute any User Content or other content that is unlawful or that a reasonable person could deem to be objectionable, profane, offensive, indecent, pornographic, harassing, threatening, embarrassing, distressing, vulgar, hateful, racially or ethnically offensive, or otherwise inappropriate;
13. exploit or attempt to exploit Forage's referral bonus program by inviting yourself to join Forage using another account or invite others who share the same mobile device, in an effort to earn referral bonuses or credit(s), or by publishing your personal referral code on any public website, store, or forum for the purposes of exploiting Forage's referral bonus program by referring people personally unknown to you;
14. make false or misleading claims about Forage's referral program or any other incentive program created by Forage;
15. impersonate any person or entity, falsely claim an affiliation with any person or entity, or access the Service accounts of others without permission, forge another person's digital signature, misrepresent the source, identity, or content of information transmitted via the Service, or perform any other similar fraudulent activity;
16. infringe the copyright or other proprietary rights on the Service or of any User Content;
17. use the Service for any illegal purpose, or in violation of any local, state, national, or international law, including, without limitation, laws governing intellectual property and other proprietary rights, and data protection and privacy, or the collection, storage, transmission, or access of educational records;
18. defame, harass, abuse, threaten or defraud users of the Service, or collect, or attempt to collect, personal information about users or third parties without their consent;
19. use the Service, including Forage's Referral program, for any commercial purpose;
20. remove, circumvent, disable, damage or otherwise interfere with security-related features of the Service or User Content, features that prevent

- or restrict use or copying of any content accessible through the Service, or features that enforce limitations on the use of the Service or User Content;
21. reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Service or any part thereof (including any App), except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;
 22. modify, adapt, translate or create derivative works based upon the Service or any part thereof, except and only to the extent the foregoing restriction is expressly prohibited by applicable law; or
 23. intentionally interfere with or damage the operation of the Service or any user's enjoyment of it, by any means, including uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code.

Pay with Forage.

24. Forage may make available to you through the Service the opportunity to establish a payment account ("Payment Account") that will allow you to complete purchases using a payment method that you store in your Payment Account ("Payment Method"). Payment Methods may include a Credit Card or Debit Card, and are subject to change by Forage at any time. Your Payment Method will be stored in a secure form in accordance with applicable laws and regulations by a third party affiliated with Forage. You may establish more than one Payment Method in your Payment Account (e.g., you may add two or more Credit Cards to your account). You may change the default Payment Method at any time through your Forage Payment Account settings, and if you do not select a default Payment Method Forage may select one of your Payment Methods as a default Payment Method for your Payment Account.
25. Forage may notify you from time to time about specific merchants and/or certain transactions where you can use your Payment Account to make payments through the Service. Forage may also notify you from time to time of certain Offers or other loyalty incentives that you may receive by using your Payment Account to conduct certain transactions through the Service.
26. When you make a purchase through the Service using your Payment Account, your Payment Method may be charged immediately or at a later time, so you must ensure that sufficient funds are always available through your chosen Payment Method to complete all transactions that you authorized through your Payment Account. The funds charged to your Payment Method may be used directly to complete your purchase, or may be converted by Forage through an intermediate payment method (e.g., a gift card, an Automated Clearing House (ACH) payment, or another form of electronic fund transfer (EFT)).
27. No Refunds. When you make a purchase through the Services using your Payment Account, all such purchases, including but not limited to purchases made with a gift card, shall be nonrefundable under any circumstances except where required by law. In the event these Terms are terminated for any reason, no portion of any payments you have made of any kind whatsoever shall be owed or be repayable or refunded to you.

28. Forage may offer you a method to fund your Pay With Forage purchases using an automated clearing house (ACH) service provider. By linking your bank account, you expressly authorize Forage's ACH service provider to electronically initiate debits and credits to your account, in accordance with this Agreement and Forage's ACH service provider's terms of service.

User Content.

29. **User Content Generally.** Certain features of the Service may permit users to post content, including messages, reviews, photos, images, folders, data, text, and other types of works (collectively, "User Content") and to publish User Content on the Service.

30. **Limited License Grant to Forage.** By posting User Content, you grant Forage a worldwide, non-exclusive, transferable, assignable, fully paid-up, royalty-free, perpetual, irrevocable right and license to host, transfer, display, perform, reproduce, modify, distribute and redistribute, and otherwise exploit your User Content, in whole or in part, in any media formats and through any media channels (now known or hereafter developed). You retain copyright and any other proprietary rights you hold in the User Content that you post to the Service.

31. **User Content Representations and Warranties.** You are solely responsible for your User Content and the consequences of posting or publishing User Content. By posting and publishing User Content, you affirm, represent, and warrant that:

- You are the creator and owner of, or have the necessary licenses, rights, consents, and permissions to use and to authorize Forage and users of the Service to use and distribute your User Content as necessary to exercise the licenses granted by you in this Section 9 and in the manner contemplated by Forage and the Terms;
- Your User Content, and the use thereof as contemplated herein, does not and will not: (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (b) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; (c) contain any viruses, adware, spyware, worms, or other malicious code; or (d) violate any applicable law or regulation.

32. **User Content Disclaimer.** We are under no obligation to edit or control User Content that you and other users post or publish, and will not be in any way responsible or liable for User Content. You understand that when using the Service you will be exposed to User Content from a variety of sources and acknowledge that User Content may be inaccurate, offensive, indecent or objectionable. You agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against Forage with respect thereto. We expressly disclaim any and all liability in connection with User Content. If notified by a user or content owner that User Content

allegedly does not conform to the Terms, we may investigate the allegation and determine in our sole discretion whether to remove the User Content, which we reserve the right to do at any time and without notice. For clarity, Forage does not permit copyright infringing activities on the Service.

Monitoring Content. Forage does not control and does not have any obligations to monitor: (a) User Content; (b) any content made available by third parties; or (c) the use of the Service by its users. You acknowledge and agree that Forage reserves the right to, and may from time to time, monitor any and all information transmitted or received through the Service for operational and other purposes. If at any time Forage chooses to monitor the content, Forage still assumes no responsibility or liability for content or any loss or damage incurred as a result of the use of content. During monitoring, information may be examined, recorded, copied, and used in accordance with our [Privacy Policy](#).

Consent to Electronic Communications and SMS

33. By using the Service, you consent to receiving certain electronic communications from us as further described in our [Privacy Policy](#). Please read our [Privacy Policy](#) to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing. In accordance with this Section 11, we may also communicate with you via SMS.
34. By providing us with your contact information, you agree that we may contact you at the address, email, phone number, or other contact information provided.

Digital Millennium Copyright Act; DMCA Notification. We comply with the provisions of the Digital Millennium Copyright Act applicable to internet service providers (17 U.S.C. §512, as amended). If you have any complaints or objections to material posted on the Service, you may contact our Designated Agent at the following address:

Forage Technology Corporation
PO Box 437260
San Ysidro, CA 92143-7260
E-mail: contact@joinforage.co

Any notice alleging that materials hosted by or distributed through the Service infringe intellectual property rights must include the following information:

35. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other right being infringed;
36. a description of the copyrighted work or other intellectual property that you claim has been infringed;
37. a description of the material that you claim is infringing and where it is located on the Service;
38. your address, telephone number, and email address;

39. a statement by you that you have a good faith belief that the use of the materials on the Service of which you are complaining is not authorized by the copyright owner, its agent, or the law; and
40. a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

Third Party Services and Websites. Forage may provide tools through the Service that enable you to export information to third party services, including through use of an API or by linking your account on Forage with an account on the third party service, such as Twitter or Facebook. By using these tools, you agree that we may transfer such User Content and information to the applicable third party service. Such third party services are not under our control, and we are not responsible for the contents of the third party service or the use of your User Content or information by the third party service. The Service, including our websites, may also contain links to third-party websites. The linked sites are not under our control, and we are not responsible for the contents of any linked site. We provide these links as a convenience only, and a link does not imply our endorsement of, sponsorship of, or affiliation with the linked site. You should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any of these third parties services or websites.

Feedback. If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Service ("Feedback"), you hereby grant Forage an unrestricted, perpetual, irrevocable, non-exclusive, fully paid-up, worldwide, royalty free right to exploit the Feedback in any manner and for any purpose, including to improve the Service and create other products and services.

Limitations on User Accounts. A user may not create more than one (1) Forage account. Each unique mobile device may not be associated with more than two (2) user accounts. Users who attempt to associate an excessive number of mobile devices with a single user account may be deemed to have violated these Terms of Service to the extent they are deemed by Forage to have abused the Service.

Term. These Terms are effective beginning when you accept the Terms or first download, install, access, or use the Service, and ending when terminated as described in Section 17.

Termination of Use; Discontinuation and Modification of the Service. If you engage in Prohibited Conduct or otherwise violate any of the Terms, your permission to use the Service will automatically terminate. You also agree that we may, at any time and without notice to you, suspend or revoke your access to and use of the Service, and any accounts you may have in connection with the Service including: (i) where we determine in our sole discretion that such action is reasonable in order to comply with legal requirements or to protect the rights or interests of Forage or any third party; or (ii) in connection with any general discontinuation of the Service. We also reserve the right to modify the Service at any time without notice to you. We will have no liability whatsoever on account of any change to the Service or any

suspension or revocation of your access to or use of the Service, provided that if we terminate your access to the Service other than for your breach of these Terms. You may terminate your account at any time by emailing contact@joinforage.co.

Effect of Termination. Upon termination of these Terms: (a) in accordance with the applicable End User License Agreement, your license rights will terminate and you must immediately cease use of the Service; (b) you will no longer be authorized to access your account or the Service; and (c) all payment obligations accrued prior to termination and Sections 14, 17, and 18-29 and any other Sections which, by its nature or express terms should survive will survive.

Ownership; Proprietary Rights. The Service is owned and operated by Forage. The visual interfaces, graphics, design, compilation, information, computer code (including source code or object code), products, software, services, and all other elements of the Service provided by Forage (the "Materials") are protected by United States copyright, trade dress, and trademark laws, international conventions, and all other relevant intellectual property and proprietary rights, and applicable laws. Except for any User Content that is provided and owned by users of the Service, all Materials contained in the Service are the property of Forage or its subsidiaries or affiliated companies and/or third-party licensors. All trademarks, service marks, and trade names are proprietary to Forage or its affiliates and/or third-party licensors. Except as expressly authorized by Forage, you agree not to sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorized use of the Materials. Forage reserves all rights to the Materials not expressly granted in the Terms.

Indemnity. To the fullest extent permitted by law, you are responsible for your use of the Service, and you agree to defend, indemnify and hold harmless Forage and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (collectively, the "Forage Entities") from and against any and all claims, liabilities, damages, losses and expenses, including reasonable attorneys' and accounting fees and costs, arising out of or in any way connected with (i) your access to, use of or alleged use of the Service; (ii) your violation of the Terms or any representation, warranty, or agreements referenced herein, or any applicable law or regulation; (iii) your violation of any third party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right; or (iv) any disputes or issues between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defense of such claim.

Disclaimers; No Warranties.

THE SERVICE IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS, WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE Forage ENTITIES SPECIFICALLY (BUT WITHOUT LIMITATION) DISCLAIM (i) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT; (ii) ANY WARRANTIES ARISING OUT OF COURSE-OF-DEALING, USAGE, OR TRADE; (iii) ANY WARRANTIES THAT THE INFORMATION OR RESULTS

PROVIDED IN, OR THAT MAY BE OBTAINED FROM USE OF, THE SERVICE WILL MEET YOUR REQUIREMENTS OR BE ACCURATE, RELIABLE, COMPLETE, OR UP-TO-DATE; AND (iv) ANY WARRANTIES WHATSOEVER REGARDING ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL ADVERTISED, MADE AVAILABLE, OR REFERRED TO YOU THROUGH THE SERVICE. YOU ASSUME ALL RISK FOR ALL DAMAGES, INCLUDING DAMAGE TO YOUR COMPUTER SYSTEM, MOBILE DEVICE OR LOSS OF DATA THAT MAY RESULT FROM YOUR USE OF OR ACCESS TO THE SERVICE. ANY CONTENT, MATERIALS, INFORMATION OR SOFTWARE DOWNLOADED, USED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. FORAGE DOES NOT DISCLAIM ANY WARRANTY OR OTHER RIGHT THAT FORAGE IS PROHIBITED FROM DISCLAIMING UNDER APPLICABLE LAW.

Limitation of Liability.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER THE FORAGE ENTITIES NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OPERATING OR DELIVERING THE SERVICE WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR ANY OTHER LEGAL THEORY, WHETHER OR NOT THE FORAGE ENTITIES HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE WHERE SUCH DAMAGES RESULT FROM: (i) YOUR ACCESS TO OR USE OF, OR INABILITY TO ACCESS OR USE, THE SERVICE, OR (ii) ANY PURCHASE OF A THIRD PARTY PRODUCT OR SERVICE BASED ON INFORMATION CONTAINED IN THE FORAGE SERVICE, INCLUDING THE AVAILABILITY OF A COUPON. YOU SPECIFICALLY ACKNOWLEDGE THAT THE FORAGE ENTITIES ARE NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU. FURTHER, THE FORAGE ENTITIES WILL HAVE NO LIABILITY TO YOU OR TO ANY THIRD PARTY FOR ANY THIRD-PARTY CONTENT UPLOADED ONTO OR DOWNLOADED FROM THE SITE OR THROUGH THE SERVICE. EXCEPT AS PROVIDED IN SECTION 23.5 AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE FORAGE ENTITIES TO YOU FOR ANY AND ALL CLAIMS ARISING FROM OR RELATED TO THE USE OF THE SERVICE IS LIMITED TO THE GREATER OF (i) THE AMOUNTS YOU HAVE PAID TO FORAGE FOR ACCESS TO AND USE OF THE SERVICE GIVING RISE TO SUCH LIABILITY IN THE TWELVE (12) MONTHS PRIOR TO THE CLAIM OR (ii) \$100. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN FORAGE AND YOU. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY IN CERTAIN CIRCUMSTANCES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF

LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 22 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

Dispute Resolution and Arbitration

ARBITRATION NOTICE. Except for certain kinds of disputes described in this Section 23, you agree that disputes arising under these Terms will be resolved by binding, individual arbitration, and BY ACCEPTING THESE TERMS, YOU AND FORAGE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury.

41. **Generally.** In the interest of resolving disputes between you and Forage in the most expedient and cost effective manner, you and Forage agree that any and all disputes arising in connection with these Terms of Service shall be resolved by binding arbitration. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Our agreement to arbitrate disputes includes, but is not limited to, all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, and regardless of whether the claims arise during or after the termination of these Terms. *You understand and agree that, by entering into these Terms, you and Forage are each waiving the right to a trial by jury or to participate in a class action.*
42. **Exceptions.** Notwithstanding subsection 23.1, we both agree that nothing herein shall be deemed to waive, preclude, or otherwise limit either of our right to (i) bring an individual action in small claims court, (ii) pursue enforcement actions through applicable federal, state, or local agencies where such actions are available, (iii) seek injunctive relief in a court of law, or (iv) to file suit in a court of law to address intellectual property infringement claims.
43. **Arbitrator.** Any arbitration between you and Forage will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by contacting Forage.

44. **Notice; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other, by certified mail, Federal Express (signature required), or in the event that we do not have a physical address on file for you, we may send notice to you by electronic mail ("Notice"). Forage's address for Notice is: Forage Technology Corporation, Atten: Legal, PO Box 437260, San Ysidro, CA 92143-7260
45. The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). We agree to use good faith efforts to resolve the claim directly, but if we do not reach an agreement to do so within 120 days after the Notice is received, you or Forage may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Forage shall not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any; provided that if our dispute is finally resolved through arbitration in your favor, Forage shall pay you the greater of (i) the amount awarded by the arbitrator, if any, or (ii) the greatest amount offered by Forage in settlement of the dispute prior to the arbitrator's award.
46. **Fees.** In the event that you commence arbitration in accordance with these Terms, Forage will reimburse you for your payment of the filing fee, unless your claim is for greater than \$10,000, in which case the payment of any fees shall be decided by the AAA Rules. Any arbitration hearings will take place at a location to be agreed upon in San Diego, California, provided that if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a non-appearance based telephonic hearing, or by an in-person hearing as established by the AAA Rules. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In such a case, you agree to reimburse Forage for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.
47. **No class actions.** *YOU AND FORAGE 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, unless both you and Forage agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.
48. **Modifications.** In the event that Forage makes any future change to this arbitration provision (other than a change to Forage's address for Notice), you may reject any such change by sending us written notice within 30 days of

the change to Forage's address for Notice, in which case your account with Forage shall be immediately terminated and this arbitration provision, as in effect immediately prior to the amendments you reject, shall survive.

49. **Enforceability** If only Subsection 23.6 is found to be unenforceable or the entirety of this Section 23 is found to be unenforceable, then the entirety of this Section 23 shall be null and void and, in such case, the parties agree that the exclusive jurisdiction and venue described in Section 24 shall govern any action arising out of or related to these Terms.

Governing Law; Venue. These Terms, whether interpreted in a court of law or in arbitration, shall be governed by the laws of the State of California as they apply to agreements entered into and to be performed entirely within California by California residents, and without regard to conflict of law principles. To the extent that any lawsuit or court proceeding is permitted hereunder, you and Forage agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within San Diego, California for the purpose of litigating all such claims or disputes. The Service is intended for visitors located within the United States. We make no representation that the Service is appropriate or available for use outside of the United States. Access to the Service from countries or territories or by individuals where such access is illegal is prohibited.

General. The Terms, together with the [Privacy Policy](#) and any other agreements expressly incorporated by reference herein, constitute the entire and exclusive understanding and agreement between you and Forage regarding your use of and access to the Service, and except as expressly permitted above may only be amended by a written agreement signed by authorized representatives of the parties. You may not assign or transfer the Terms or your rights hereunder, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign the Terms at any time without notice. The failure to require performance of any provision shall not affect our right to require performance at any time thereafter, nor shall a waiver of any breach or default of the Terms constitute a waiver of any subsequent breach or default or a waiver of the provision itself. Use of paragraph headers in the Terms is for convenience only and shall not have any impact on the interpretation of particular provisions. In the event that any part of the Terms is held to be invalid or unenforceable, the unenforceable part shall be given effect to the greatest extent possible and the remaining parts will remain in full force and effect.

Contact Information. If you have any questions regarding Forage, the Service, or the Terms please send an email to contact@joinforage.co.

Notice to California Residents. If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the Service or to receive further information regarding use of the Service.

No Support. We are under no obligation to provide support for the Service. In instances where we may offer support, the support will be subject to published policies.

Notice Regarding Apple. This Section 29 only applies to the extent you are using our mobile application on an iOS device. You acknowledge that these Terms are between you and Forage only, not with Apple Inc. (“Apple”), and Apple is not responsible for the Service or the content thereof. Apple has no obligation to furnish any maintenance and support services with respect to the Service. If the Service fails to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for the mobile application to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation with respect to the Service. Apple is not responsible for addressing any claims by you or any third party relating to the Service or your possession and/or use of the Service, including: (a) product liability claims; (b) any claim that the Service fails to conform to any applicable legal or regulatory requirement; or (c) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third party claim that the Service and/or your possession and use of the Service infringe a third party’s intellectual property rights. You agree to comply with any applicable third party terms when using the Service. Apple and Apple’s subsidiaries are third party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary of these Terms. You hereby represent and warrant that: (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. Government “watch list” of prohibited or restricted parties, including the Specially Designated Nationals list published by the Office of Foreign Assets Control of the U.S. Treasury or the Denied Persons List published by the U.S. Department of Commerce.