



## FORECAST5 TERMS OF SERVICE

Effective Date: July 1, 2020 ([Prior Version](#))

Thank you for selecting the services offered by Forecast5 Analytics, Inc. and its current and future direct and indirect subsidiaries (referred to below as “**Forecast5**”, “**we**”, “**our**”, or “**us**”). Please review these Terms of Service (this “**Agreement**”) thoroughly.

This Agreement is a legal agreement between Forecast5 and your governmental entity (or other Forecast5 customer entity, including an individual subscriber). In most cases, a signed customer agreement with us (“**Customer Agreement**”) was required to subscribe to one or more Forecast5 Services in accordance with this Agreement. This includes any Customer Agreement that may have incorporated this Agreement into it by reference.

If, however, a Customer Agreement was not required in order to get your password, then by clicking “I AGREE,” indicating acceptance electronically, or accessing or using the Services, (a) you represent and warrant to Forecast5 that you are the authorized representative of the entity on behalf of which you are accessing this service, and (b) your entity hereby agrees to this Agreement. If your entity does not agree to this Agreement, then do not indicate acceptance, and do not use the Services.

The applicable government entity (or other Forecast5 customer entity, including an individual subscriber) is referred to below as “**you**” or “**your.**”

### 1. AGREEMENT

1.1 **Overview.** This Agreement describes the terms governing your use of the Forecast5 online services provided to you through any Forecast5 website, including all data, content, updates and new releases (collectively, the “Services”). It includes by reference:

- a. Forecast5’s Legal Notices and Privacy Policy available on this website.
- b. Any terms provided separately to you for the Services, including for example, ordering, activation, pricing and payment terms, if applicable, for the Services.

1.2 **Your Responsibilities.** Forecast5 is not in the business of providing legal, financial, accounting or other professional services or advice. Consult the services of a competent professional when you need this type of assistance. You are solely responsible for the quality of all analysis and decisions you may make as a result of your use of the Services.

### 2. PAYMENT AND RENEWAL

Unless otherwise stated on an applicable Customer Agreement or Work Order: (a) all payments are due within thirty (30) days after the date of the applicable invoice, and (b) all subscriptions are for one (1) year. Once paid, all payments are non-refundable for any reason, including your

cancellation of the Services. For all amounts not paid when due, you agree to pay an additional late fee equal to one and one-half percent (1.5%) of such amounts per month or partial month during which such amounts were owed and unpaid. If you do not pay on time or if Forecast5 cannot process your payment for any reason, Forecast5 reserves the right to either suspend or terminate your access to the Services and terminate this Agreement. You are expressly agreeing that Forecast5 is permitted to bill you for the applicable fees, any applicable tax and any other charges you may incur in connection with your use of the Services and the fees will be billed to your credit card, PayPal or other payment method designated on your initial registration for the Services, and thereafter at regular intervals for the remainder of the term of this Agreement. If you cancel your subscription at any time, you will not receive any refund. If you have a balance due on any account, you agree that Forecast5 may charge such unpaid fees to your account or otherwise bill you for such unpaid fees. This Agreement also incorporates by reference all program ordering and payment terms provided to you. Forecast5 will automatically renew your annual subscriptions at the then-current rates, unless you provide notice that you do not wish to renew your subscription prior to the end of the applicable term or Forecast5 elects not to renew your subscription. You authorize Forecast5 to charge you now and upon each renewal. You will be liable for paying any and all applicable sales and use taxes for the purchase of Services based on the mailing address that you provided in the Customer Agreement, and you authorize Forecast5 to charge you for any such applicable taxes.

### **3. RIGHTS TO USE THE SERVICES AND RESTRICTIONS**

**3.1 Ownership and License.** The Services are protected by copyright, trade secret, and other intellectual property laws. You are only granted the right to use the Services, and Forecast5 (or its applicable licensors or suppliers) reserves all rights of ownership in the Services not granted to you in writing here. Forecast5 hereby grants to you a personal, limited, nonexclusive, nontransferable, nonsublicensable right to use the Services for your own business needs and use, for the period of use specified in the Customer Agreement or order form, and subject to this Agreement and all applicable payment obligations. Except for the foregoing license, you have no other rights in the Services and you may not modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, enhance or in any way exploit any of the Services in any manner.

**3.2 Restrictions.** You agree not to use the Services or content on this website in a manner that violates any applicable law, regulation or this Agreement. For example, unless authorized by Forecast5 in writing, you agree you will not:

- a. Provide access to or give any part of the Services to any third party, including by means of providing your password or running reports or downloading data for the benefit of another governmental unit or any other unauthorized person or entity.
- b. Reproduce, duplicate, copy, deconstruct, sell, trade or resell the Services.
- c. Attempt to access any other Forecast5 systems that are not part of your Services.

This list of prohibitions provides examples and is not complete or exclusive. Forecast5 reserves the right to (a) terminate access to your account, your ability to post to this website or use the Services and (b) refuse, delete or remove any Submitted Content, with or without cause and with or without notice, for any reason or no reason, or for any action that Forecast5 determines is inappropriate or disruptive or harmful to this website or the Services, the systems or

infrastructure used by Forecast5 or its service providers, or to any other user of this website and/or Services. ***You acknowledge and agree that if you provide access to the Services to another governmental unit or other third party, or use the Services primarily for the benefit of any such party, then you will be liable for, among other things, additional subscription fees for each such party at the applicable Forecast5 prices.*** Forecast5 may report to law enforcement authorities any actions that may be illegal, and any reports it receives of such conduct. When legally required or at Forecast5's discretion, Forecast5 will cooperate with law enforcement agencies in any investigation of alleged illegal activity on this Site or on the Internet.

3.3 **Requirements for Public Use of Output.** In addition to the right to share information in Forecast5 community forums pursuant to Section 5.4, you may use reports and other output you obtain from the Services for your own internal needs in public meetings or other public disclosures.

#### 4. **PRIVACY AND PERSONAL INFORMATION**

The Forecast5 Services Privacy Policy applies to the personal information and student data that you submit to the Services or that we collect, use and process on behalf of you pursuant to the Services ("Customer Data"). You can view Forecast5 Services Privacy Policy at <https://www.forecast5analytics.com/about/services-privacy-policy>. All Customer Data will be used pursuant to the terms of the Forecast5 Services Privacy Policy. You agree a) to be bound by the Forecast5 Privacy Policy, which is subject to change in accordance with its terms b) to Forecast5 maintaining your Customer Data according to the Forecast5 Services Privacy Policy, as part of the Services.

#### 5. **SUBMITTED CONTENT AND COMMUNITY FORUMS**

5.1 **Submitted Content.** You are legally responsible for all information, data, text, software, music, sound, photographs, graphics, video, messages or other materials ("Submitted Content") uploaded, posted or stored through your use of the Services, including the provision of the financial information that you input into the Services. You are responsible for inputting complete, accurate, timely and correct financial information into the Services. You may not upload, post or otherwise make available through your use of the Services any material protected by copyright, trademark, or any other proprietary right without the express permission of the owner of such copyright, trademark or other proprietary right owned by a third-party, and the burden of determining whether any material is protected by any such right is on you. You shall be solely liable for any damage resulting from any infringement of copyrights, trademarks, proprietary rights, violation of contract, privacy or publicity rights or any other harm resulting from any Submitted Content that you upload. You have full responsibility for all Submitted Content you upload, including its legality, reliability and appropriateness. You hereby grant to Forecast5 a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide license (including the right to sublicense through multiple tiers) to use, reproduce, process, adapt, publicly perform, publicly display, modify, prepare derivative works, publish, transmit and distribute each of your Submitted Content, or any portion thereof, in any form, medium or distribution method now known or hereafter existing, known or developed, and authorize others to use the Submitted Content. We may modify or adapt your Submitted Content in order to transmit, display or distribute them over computer networks and in various media and/or make changes to the Submitted Content as necessary to conform and adapt them to any requirements or limitations of any networks, devices, services or media. Forecast5 agrees to

use any personal information contained in any of your Submitted Content in accordance with the Forecast5 Services Privacy Policy.

You agree to pay for all royalties, fees, damages and any other monies owing any person by reason of any Submitted Content posted by you to or through your use of the Services.

When you provide Submitted Content you agree that the Submitted Content shall not be in violation of the "Restrictions on Submitted Content" paragraph below. **Those prohibitions do not require Forecast5 to monitor, police or remove any Submitted Content or other information submitted by you or any other user.**

**5.2 Restrictions on Submitted Content.** You may not make any statement through our online Services, or provide or post any Submitted Content, that:

- a) is defamatory, threatening, obscene, harassing, offensive, inappropriate or objectionable information or communications of any kind, including without limitation conduct that would encourage or constitute an attack or "flaming";
- b) is subject to criminal or civil liability under any local, state, federal or foreign law;
- c) incorporates the proprietary material of another without due authorization;
- d) includes advertisements, solicitations, investment opportunities, chain letters, pyramid schemes, other unsolicited commercial communication, or engages in spamming or flooding;
- e) would impersonate someone else or falsely represent your identity or qualifications, or that constitutes a breach of any individual's privacy, including posting images about children or any third party without their consent (or a parent's consent in the case of a minor); or
- f) includes any virus, Trojan horse, worm or other disruptive or harmful software or data.

**5.3 5Share Community Forums.** The Services may include access to 5Share or other community forums to exchange information with other users of the Services and the public. Please use respect when you interact with other users. Forecast5 does not support and is not responsible for the accuracy of others' content in these community forums. Do not reveal information in the community forum that you do not want to make public. Users may post hypertext links to content hosted and maintained by third parties for which Forecast5 is not responsible.

**5.4 Posting and Use of Data Regarding Third Parties.** Forecast5 desires to promote and facilitate Forecast5 community forum discussions. Therefore, subscribers to other Forecast5 Services (such as 5Sight or 5Cast) may link, post or upload data to 5Share or other Forecast5 community forums that might have ancillary benefits to parties that are not subscribers to such other Services without violating the limitations in Section 3. Similarly, the other participants in the community forum may use such posted information without first obtaining a subscription to the applicable Service that was used to generate the information. Forecast5 reserves the right to limit the amount and type of output from the Services linked, posted or uploaded if it believes

parties are circumventing the requirement to obtain subscriptions to other Forecast5 Services. Any questions on this provision may be raised to the Forecast5 Community Manager.

5.5 **Monitoring.** Forecast5 may, but has no obligation to, monitor Submitted Content or content submitted by others. We may disclose any information necessary or appropriate to satisfy our legal obligations, protect Forecast5 or its customers, or operate the Services properly. Forecast5, in its sole discretion, may refuse to post, remove, or refuse to remove, any Submitted Content or content from others, in whole or in part, alleged to be unacceptable, undesirable, inappropriate, or in violation of this Agreement.

5.6 **Use of Feedback.** If you send or transmit any communications, comments, questions, suggestions, or related materials to Forecast5, whether by letter, email, telephone, or otherwise (collectively, "Feedback"), suggesting or recommending changes to the website or any Services offered through the website, including, without limitation, new features or functionality relating thereto, all such Feedback is, and will be treated as, non-confidential and non-proprietary. Except as prohibited by applicable law, you hereby assign all right, title, and interest in, and Forecast5 is free to use, without any attribution or compensation to you, any ideas, know-how, concepts, techniques, or other intellectual property and proprietary rights contained in the Feedback, whether or not patentable, for any purpose whatsoever, including but not limited to, developing, manufacturing, having manufactured, licensing, marketing, and selling, directly or indirectly, products and services using such Feedback. Where the foregoing assignment is prohibited by law, you hereby grant us an exclusive, transferable, worldwide, royalty-free, fully paid up license (including the right to sublicense) to use and exploit all Feedback as we may determine in our sole discretion. Notwithstanding the foregoing, you understand and agree that Forecast5 is not obligated to use, display, reproduce, or distribute any such ideas, know-how, concepts, or techniques contained in the Feedback, and you have no right to compel such use, display, reproduction, or distribution.

## 6. ADDITIONAL TERMS

6.1 **Responsibility for User Accounts and Passwords.** To use the Services, you may be required to create an account and provide information about yourself to us. We will provide one or more passwords for you and/or your employees (each, a "User") to access and use the Services on your behalf. You are responsible for securely managing your passwords. If you are issued multiple passwords, each password will only be provided with access to the files for that particular password/User. You are responsible for all activities that occur in connection with your account and for maintaining the confidentiality of your account passwords. If you become aware of any unauthorized access to your Services account, theft or loss of your password, you agree to contact Forecast5 as soon as possible. You may not impersonate someone else, provide an email address other than your own, or create multiple accounts for the same individual or business.

6.2 **Reasonable Cooperation.** You will provide reasonable cooperation in correcting any data errors you may find and to secure and perfect our intellectual property rights in the Services. You will promptly provide all relevant facts upon becoming aware of a likelihood of infringement or other illegal use or misuse by any third party of the Services.

6.3 **Audit.** Upon our written request, you will provide a signed certification (a) verifying the Services are being used in accordance with the terms of this Agreement; and (b) listing the locations in which the Services are run. We may, at our expense and not more than once annually, audit your use of the Services and compliance with the terms of this Agreement,

upon notice to you. Any such audit will be conducted during business hours and will not unreasonably interfere with your business activities. You will provide all reasonable assistance and information required to enable us to determine whether you are in compliance with this Agreement. If such an audit reveals you have underpaid fees, you will be invoiced for the underpaid fees based upon Forecast5's generally available price list at the time the fees would have otherwise been incurred, together with interest thereon at a rate of one and one-half percent (1.5%) per month or partial month or the highest rate allowed by law, whichever is less, during which any amounts were owed and unpaid.

**6.4 Other Services.** You may be offered other services, features, products, applications, online communities, or promotions provided by Forecast5 ("Forecast5 Services"). If you decide to use any of these Forecast5 Services or products, additional terms and conditions and separate fees may apply. You acknowledge that in accessing some Forecast5 Services you may upload or enter data such as names, addresses and phone numbers, purchases, and other data to the Internet. You grant Forecast5 permission to use information you provide and about your experience so that we can provide the Forecast5 Services to you, monitor and analyze your use of the services, maintain and update your data, and address errors or service interruptions. We may use this data to improve services, enhance future services, identify potentially relevant offers, and produce research data. You grant Forecast5 permission to combine the data you have entered or uploaded with that of others. You also grant Forecast5 permission to share or publish results relating to such research data and to distribute or license such data to Forecast5 customers or otherwise provided by law, provided however, that we will not sell such information to any third party that is not a Forecast5 customer.

**6.5 Third Party Products or Services.** Subject to the Forecast5 Privacy Policy, Forecast5 may offer products and services on behalf of third parties who are not affiliated with Forecast5 ("Third Party Products") or the Services may contain links to third party websites ("Third Party Sites"). If you decide to use any Third Party Products or access any Third Party Sites, you are responsible for reviewing the third party's separate product terms, website terms and privacy policies. You agree that the third parties, and not Forecast5, are responsible for their product's performance and the content on their websites. Forecast5 is not affiliated with these Third Party Products or Third Party Sites and has no liability for them. Such Third Party Sites or Products may allow you to configure your privacy settings in your Third Party Site account to permit your activities on this website or through the Services to be shared with your contacts in your Third Party Site account and, in certain situations, you may be transferred to a Third Party Site through a link but it may appear that you are still on this website or using the Services. In any case, you acknowledge and agree that the Third Party Sites or Products may have different privacy policies and terms and conditions and/or user guides and business practices than Forecast5, and you further acknowledge and agree that your use of such Third Party Sites or Products is governed by the respective Third Party Site or Product privacy policy and terms and conditions and/or user guides. You hereby agree to comply with any and all terms and conditions, user guides and privacy policies of any of Third Party Sites or Products. Forecast5 is providing links to the Third Party Sites or Products to you as a convenience, and Forecast5 does not verify, make any representations or take responsibility for such Third Party Sites or Products, including, without limitation, the truthfulness, accuracy, quality or completeness of the content, services, links displayed and/or any other activities conducted on or through such Third Party Sites. YOU AGREE THAT FORECAST5 WILL NOT, UNDER ANY CIRCUMSTANCES, BE RESPONSIBLE OR LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY GOODS, SERVICES, INFORMATION, RESOURCES AND/OR CONTENT AVAILABLE ON OR THROUGH ANY THIRD PARTY SITES OR PRODUCTS AND/OR THIRD-PARTY DEALINGS OR COMMUNICATIONS, OR FOR ANY HARM RELATED THERETO, OR FOR ANY DAMAGES

OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION WITH YOUR USE OR RELIANCE ON THE CONTENT OR BUSINESS PRACTICES OF ANY THIRD PARTY. Any reference on the website or through the Services to any product, service, publication, institution, organization of any third-party entity or individual does not constitute or imply Forecast5's endorsement or recommendation.

**6.6 Communications Choices.** Forecast5 may be required by law to send you communications about the Services or Third Party Products. You agree that Forecast5 may send these communications to you via email. We may also send business communications such as confirmations or notices that will be delivered to you via email. You are required to receive these communications. You can choose not to receive some types of communication, such as marketing. Please review the Privacy Policy or follow instructions on the communication.

**6.7 Accepting Updates.** The Services may periodically be updated with tools, utilities, improvements, third party applications, or general updates to improve and enhance the features and performance of the Services. You agree to receive these updates automatically as part of the Services.

**6.8 5Cast, 5Cast Plus, and 5Sight Additional Terms.** The following additional terms are applicable to the use of 5Cast, 5Cast+, and 5Sight: At your request, Forecast5 may provide opinions or representations with respect to the financial feasibility and/or fiscal prudence of assumptions and/or projections that you may select for inclusion in 5Cast, 5Cast+, or 5Sight financial projections; provided, however, that it is understood that you are solely responsible for the decision and any associated risk of incorporating any particular assumption in your financial plan. Additionally, Forecast5 duties and responsibilities do not include giving any opinion or advice regarding the issuance of debt instruments. Forecast5 is not liable for any opinions, advice, guidance, or representations that it may provide.

**6.9 5Maps, 5Lab and GuideK12 Suite Additional Terms of Service.** The following additional terms are applicable to the use of 5Maps, 5Lab and the GuideK12 Suite by any school district or other educational agencies or institutions as it relates to an education record within the meaning of the Family Educational Rights and Privacy Act ("FERPA"):

1. You are encouraged to protect any education record within the meaning of FERPA ("FERPA Information") by limiting the submission of such FERPA Information to Forecast5 as required for the performance of the Services, including 5Maps, 5Lab and the GuideK12 Suite. If the submission of such FERPA Information is absolutely necessary, the submission of such content is subject to these additional terms.

2. To the extent that any content submitted by you constitutes an education record within the meaning FERPA, Forecast5 is designated as an eligible third party provider of professional services for the sole purpose of providing the Services. Forecast5 agrees that it shall not disclose that education record except to the customer that submitted the content.

3. For purposes of any FERPA Information, Forecast5 represents that (a) such FERPA Information compiled by Forecast5 or submitted by you is stored on servers located in the United States, (b) Forecast5 and its service providers use industry-standard encryption and security standards to protect such FERPA Information, and (c) Forecast5 uses commercially reasonable efforts to protect user FERPA Information offline.

**4.** Initial data services ordered under this Agreement are reflected in the Customer Agreement. Additional data services may be ordered and will be charged in accordance with the applicable 5Maps, 5Lab and the GuideK12 Suite Fees and Indicative Costs in effect at the time of order placement.

## **7. PROPRIETARY RIGHTS**

Forecast5 is a trademark of Forecast5 in the United States. Other trademarks, names and logos on this website are the property of their respective owners.

Unless otherwise specified in this Agreement, all information and screens appearing on this website and provided through the Services, including documents, services, site design, text, graphics, logos, images and icons, as well as the arrangement thereof, are the sole property of Forecast5. All rights not expressly granted herein to you are reserved to Forecast5. There are no implied rights. Except as otherwise required or limited by applicable law, any reproduction, distribution, modification, retransmission, or publication of any copyrighted material is strictly prohibited without the express written consent of the copyright owner or license.

## **8. LICENSE TO DATA**

You may be permitted to upload certain information and data (collectively "Data") through your use of the Services. You are solely responsible for the accuracy and truthfulness of your Data. You hereby grant Forecast5 a non-exclusive, transferable, worldwide, royalty-free, fully paid up license to use, distribute, display, copy, reproduce, modify, and create derivative works of your Data in order to provide Services to you.

## **9. INTELLECTUAL PROPERTY INFRINGEMENT**

Forecast5 respects the intellectual property rights of others, and we ask you to do the same. Forecast5 may, in appropriate circumstances and at our discretion, terminate service and/or access to the Services for users who infringe the intellectual property rights of others. If you believe that your work is the subject of copyright infringement and/or trademark infringement and appears on our website, please provide Forecast5's designated agent the following information:

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- Identification of the copyrighted and/or trademarked work claimed to have been infringed, or, if multiple works at a single online site are covered by a single notification, a representative list of such works at that site.
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled at the Site, and information reasonably sufficient to permit Forecast5 to locate the material.
- Information reasonably sufficient to permit Forecast5 to contact you as the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which you may be contacted.
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright and/or trademark owner, its agent, or the law.

- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Forecast5's agent for notice of claims of copyright or trademark infringement on this website can be reached as follows:

Misha Kostich  
Forecast5 Analytics, Inc.  
2135 City Gate Lane  
Suite 420  
Naperville, IL 60563  
Phone: 630.955.7500  
Email: [mkostich@forecast5analytics.com](mailto:mkostich@forecast5analytics.com)

Please also note that for copyright infringements under Section 512(f) of the Copyright Act, any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

### **Submitting a DMCA Counter-Notification**

We will notify you that we have removed or disabled access to copyright-protected material that you provided, if such removal is pursuant to a valid DMCA take-down notice that we have received. If you receive such notice from us, you may provide us with a counter-notification in writing to Forecast5's designated agent that includes all of the following information:

1. Your physical or electronic signature;
2. Identification of the material that has been removed or to which access has been disabled, and the location at which the material appeared before it was removed or access to it was disabled;
3. A statement from you under the penalty of perjury, that you have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled; and
4. Your name, physical address and telephone number, and a statement that you consent to the jurisdiction of a court for the judicial district in which your physical address is located, or if your physical address is outside of the United States, for any judicial district in which Forecast5 may be located, and that you will accept service of process from the person who provided notification of allegedly infringing material or an agent of such person.

### **Termination of Repeat Infringers**

Forecast5 reserves the right, in its sole discretion, to terminate the account or access of any user of our web site and/or service who is the subject or repeated DMCA or other infringement notifications.

## **10. DISCLAIMER OF WARRANTIES**

10.1 YOU ACKNOWLEDGE THAT, WHILE WE USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE USABLE DATA, THE DATASETS ARE DERIVED FROM PUBLIC SOURCES AND OTHER THIRD PARTIES AND FORECAST5 CANNOT GUARANTEE THE ACCURACY, COMPLETENESS OR THE APPROPRIATENESS OF USE OF SUCH INFORMATION. IT IS UNDERSTOOD THAT FORECAST5 IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THE CONTENT OR CONTEXT OF THE INFORMATION.

10.2 FORECAST5 CANNOT CORRECT DATA THAT IS OBTAINED FROM PUBLIC SOURCES OR OTHER THIRD PARTIES. YOU MUST PROVIDE CORRECTIONS TO THE APPLICABLE SOURCE IN THE MANNER PROVIDED FOR BY THAT SOURCE. PERIODICALLY FORECAST5 MAY, BUT IS NOT OBLIGATED TO, UPDATE THE SOURCE DATA.

10.3 YOUR USE OF THE WEBSITE, SERVICES, SOFTWARE, AND CONTENT IS ENTIRELY AT YOUR OWN RISK. EXCEPT AS DESCRIBED IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FORECAST5, ITS AFFILIATES, AND ITS THIRD PARTY SERVICE OR DATA PROVIDERS, LICENSORS, DISTRIBUTORS OR SUPPLIERS (COLLECTIVELY REFERRED TO AS, "SUPPLIERS") DISCLAIM AND EXCLUDE ALL WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY REGARDING THE SERVICES BEING FIT FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, DATA LOSS, NONINTERFERENCE WITH OR NON-INFRINGEMENT OF ANY THIRD-PARTY RIGHTS, OR THE ACCURACY, RELIABILITY, QUALITY OR CONTENT IN OR LINKED TO THE SERVICES. FORECAST5 AND ITS AFFILIATES AND SUPPLIERS DO NOT WARRANT THAT THE SERVICES ARE SECURE, FREE FROM BUGS, VIRUSES, MALWARE, SPYWARE, INTERRUPTION, ERRORS, THEFT OR DESTRUCTION OR WILL BE ALWAYS AVAILABLE OR AVAILABLE AT ANY PARTICULAR TIME. IF THE EXCLUSIONS FOR IMPLIED WARRANTIES DO NOT APPLY TO YOU, ANY IMPLIED WARRANTIES ARE LIMITED TO 60 DAYS FROM THE DATE OF PURCHASE OR DELIVERY OF THE SERVICES, WHICHEVER IS SOONER.

10.4 FORECAST5 AND ITS AFFILIATES AND SUPPLIERS DISCLAIM ANY REPRESENTATIONS OR WARRANTIES THAT YOUR USE OF THE SERVICES WILL SATISFY OR ENSURE COMPLIANCE WITH ANY LEGAL OBLIGATIONS OR LAWS OR REGULATIONS. THIS DISCLAIMER APPLIES TO BUT IS NOT LIMITED TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"), THE GRAMM-LEACH-BLILEY ACT OF 1999, THE SARBANES-OXLEY ACT OF 2002, OR OTHER FEDERAL OR STATE STATUTES OR REGULATIONS. YOU ARE SOLELY RESPONSIBLE FOR ENSURING THAT YOUR USE OF THE SERVICES IS IN ACCORDANCE WITH APPLICABLE LAW.

## **11. LIMITATION OF LIABILITY AND INDEMNITY**

11.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ENTIRE LIABILITY OF FORECAST5, AND ITS AFFILIATES AND SUPPLIERS (INCLUDING THEIR OFFICERS, DIRECTORS AND AGENTS) FOR ALL MATTERS OR CLAIMS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT YOU PAID FOR THE SERVICES DURING THE TWELVE (12) MONTHS PRIOR TO SUCH CLAIM. FORECAST5 SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES RESULTING FROM YOUR DISPLAYING,

COPYING, OR DOWNLOADING ANY MATERIALS TO OR FROM THIS SITE. UNLESS OTHERWISE REQUIRED BY APPLICABLE LAW, FORECAST5 AND ITS AFFILIATES AND SUPPLIERS ARE NOT LIABLE FOR ANY OF THE FOLLOWING: (A) INDIRECT, EXTRAORDINARY, EXEMPLARY, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) HOWEVER ARISING, EVEN IF FORECAST5 KNOWS THERE IS A POSSIBILITY OF SUCH DAMAGE; OR (B) DAMAGES RELATING TO FAILURES OF TELECOMMUNICATIONS, THE INTERNET, ELECTRONIC COMMUNICATIONS, CORRUPTION, SECURITY, LOSS OR THEFT OF DATA, VIRUSES, SPYWARE, LOSS OF BUSINESS, REVENUE, PROFITS OR INVESTMENT, OR USE OF SOFTWARE OR HARDWARE THAT DOES NOT MEET FORECAST5 SYSTEM REQUIREMENTS. THE ABOVE LIMITATIONS APPLY EVEN IF FORECAST5 AND ITS AFFILIATES AND SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS AGREEMENT SETS FORTH THE ENTIRE LIABILITY OF FORECAST5 AND ITS AFFILIATES, AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO THE SERVICES AND ITS USE.

11.2 To the extent permitted by law, you agree to indemnify and hold Forecast5 and its affiliates, and suppliers harmless from any and all claims, liability and expenses, including reasonable attorneys' fees and costs, arising out of your use of the Services or breach of this Agreement or that your use of the Services violates any applicable law or regulation, or the copyrights, trademark rights or other rights of any third-party (collectively referred to as "Claims"). Forecast5 reserves the right, in its sole discretion and at its own expense, to assume the exclusive defense and control of any Claims. You agree to reasonably cooperate as requested by Forecast5 in the defense of any Claims.

## **12. ESSENTIAL BASIS OF BARGAIN**

You acknowledge and agree that the fees we charge reflect the overall allocation of risk between us, including by means of the provisions for limitation of liability, indemnity and exclusive remedies described in this Agreement. Such provisions form an essential basis of the bargain between us and a modification of such provisions would affect substantially the fees charged by Forecast5 hereunder. In consideration of such fees, you agree to such allocation of risk and hereby waive any and all rights, through equitable relief or otherwise, to subsequently seek a modification of such provisions or allocation of risk.

## **13. CHANGES TO THE SERVICES; CHANGES TO THIS AGREEMENT**

We may change or discontinue the Services, in whole or in part, including but not limited to, the Internet based services, pricing, technical support options, and other product-related policies. Except as otherwise agreed in writing by the parties, changes to pricing (if any) will be effective upon 30 days' notice to you, which may include notice by email. Your continued use of the Services after the effective date of the changes indicates your agreement to the changes. Forecast5 may have you amend this Agreement from time to time by having you agree to an amended version (which may include an amended accepted electronically). To amend this Agreement, Forecast5 will give you 30 days advance notice (except where a change is in response to legal requirements, preventing ongoing abuse or other urgent situations) and the opportunity to review the changes. If you do not agree to the new terms, you may terminate your subscription in accordance with Section 2.

#### **14. TERMINATION**

Forecast5 may immediately and without notice suspend or permanently discontinue the Services provided to you, if you fail to comply with this Agreement, or if you no longer agree to receive electronic communications (see Section 6.6). You may also terminate your subscriptions in accordance with Section 2. Upon termination you must immediately stop using the applicable Services. Any termination of this Agreement shall not affect Forecast5's rights to any payments due to it. Forecast5 may terminate a free Service/account at any time. Other requirements regarding termination or cancellation of the Services may apply based on the specific ordering terms for the Services provided to you. Sections 1, 2, 4, 5.1, 5.4, and 8 through 15 will survive and remain in effect even if the Agreement is terminated, cancelled or rescinded.

#### **15. LOCAL LAWS; EXPORT CONTROL**

Forecast5 controls and operates this website and the Services from its headquarters in the United States of America and the Services may not be appropriate or available for use in other locations. If you use the Services outside the United States of America, you are responsible for following applicable local laws.

#### **16. SERVICE PROVIDER TERMS**

Forecast5 may be obliged to pass through certain terms from its service providers. You must comply with all such service provider terms. The current service provider terms are set forth at the end of this Agreement. Forecast5 may also make them available on its website.

#### **17. GOVERNING LAW, JURISDICTION, LEGAL FEES, ETC**

Illinois state law governs all matters arising out of this Agreement without regard to its conflicts of laws provisions. With respect to any suit, action or proceeding relating to this Agreement the undersigned irrevocably submits to the jurisdiction of the federal court located in Chicago, Illinois or state court in DuPage County, Illinois, which submission shall be exclusive unless (a) none of such courts has lawful jurisdiction over such proceedings, (b) we elect to pursue injunctive relief in another court having jurisdiction. Forecast5 prohibits accessing materials from countries or states where contents are illegal. You are accessing this website on your own initiative and you are responsible for compliance with all applicable laws. In the event of legal action to enforce rights under this Agreement, all costs and expenses incurred by the prevailing party, including reasonable attorneys' fees and court costs, will be paid by the other party. BOTH PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT.

#### **18. NO WAIVER**

No failure on the part of either of us to exercise, and no delay in exercising, any right, power, or privilege will operate as a waiver thereof; nor will any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The waiver by either of us of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.

## 19. GENERAL

This Agreement is the entire agreement between you and Forecast5 with respect to its subject matter, and replaces all prior and contemporaneous understandings, communications and agreements, oral or written, regarding its subject matter. This Agreement may be modified only by a written amendment signed by the parties (including electronically). If any court of law, having the jurisdiction, rules that any part of this Agreement is invalid, that provision will be removed without affecting the remainder of the Agreement. The remaining terms will be valid and enforceable. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. This Agreement is an agreement between the Parties, and confers no rights upon any of the Parties' employees, agents, contractors or customers, or upon any other person or entity, except as may be set forth in Sections 2.5, 10 or 11. The words "hereof," "herein" and "hereunder" and other words of similar import refer to this Agreement as a whole, as the same may from time to time be amended or supplemented, and not to any subdivision contained in this Agreement. The word "including" when used herein is not intended to be exclusive and means "including, but not limited to." The word "or" when used herein is not intended to be exclusive unless the context clearly requires otherwise. You cannot assign or transfer your rights under this Agreement to anyone without the prior written approval of Forecast5. However, Forecast5 may assign or transfer it without your consent to a Forecast5 affiliate or in connection with a merger, acquisition, sale of all or substantially all of its assets, spin-out, divestiture, or other corporate or business combination transaction. Any attempted assignment in violation of this Section shall be void.

**Last Revised: May 2020**

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### **Third Party Service Provider Terms (as of 5/15/2020):**

\* Here: By accepting this Agreement, you hereby agree to be bound by and accept the terms of service (<https://legal.here.com/terms/b2bserviceterms/en>) and privacy policy of Here and other terms found at <https://legal.here.com/>.

\* Tableau: You acknowledge and agree that Forecast5's service provider Tableau has no warranty, support or other obligation or liability to you.

\* Google Maps: You are bound by the Google Maps/Google Earth Additional Terms of Service [https://maps.google.com/help/terms\\_maps.html](https://maps.google.com/help/terms_maps.html) (including the Google Privacy Policy <https://www.google.com/intl/ALL/policies/privacy/index.html>).