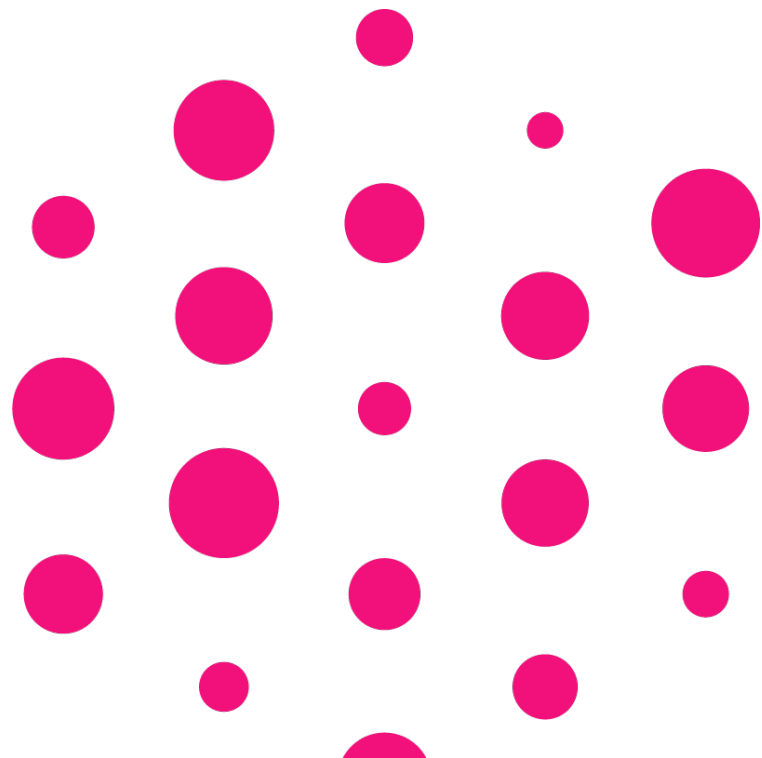


Gridcognition

TERMS OF SERVICE

METROLO PTY LTD ABN 24 632 065 500



INTRODUCTION

Gridcognition is a cloud-hosted software platform that optimises the planning and operations of distributed energy projects. Use of Gridcognition is subject to these Terms of Service.

DEFINITIONS

The following terms are used regularly throughout these Terms of Service and have a particular meaning:

- (a) **ABN** means Australian Business Number.
- (b) **Account** means a registered account within Gridcognition.
- (c) **Account Inclusions** means the scope of services and features available to the Customer as agreed in the Commercial Terms, which may include (without limitation) the maximum number of Authorised Users, Projects and/or Modelled Loads permitted for an Account.
- (d) **Authorised User** means any registered user of Gridcognition authorised to access the Customer's Account.
- (e) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Perth, Australia.
- (f) **Company** means Metrolo Pty Ltd ABN 24 632 065 500.
- (g) **Commercial Terms** means any additional terms agreed between the Company and the Customer with respect to the Customer's licence for the use of Gridcognition, including with regard to Fees and Account Inclusions, and includes any proposal or quotation accepted by the Customer.
- (h) **Confidential Information** means any written or verbal information that:
 - i Is deemed as confidential under these Terms of Service;
 - ii A party informs the other party that it considers it confidential and/or proprietary;
 - iii A party would reasonably consider to be confidential in the circumstances; and
 - iv Is personal information within the meaning of the Privacy Act and GDPR.but does not include information that a party can establish:
 - v Was in the public domain at the time it was given to that party;
 - vi Became part of the public domain, without that party's involvement in any way, after being given to the party;

- vii Was in party's possession when it was given to the party, without having been acquired (directly or indirectly) from the disclosing party; or
 - viii Was received from another person who had the unrestricted legal right to disclose that information free from any confidentiality obligation.
- (i) **Consulting Services** means any services provided by the Company to the Customer relating to Gridcognition as principally agreed in the Commercial Terms.
- (j) **Customer** means the entity that Gridcognition is licensed to under these Terms of Service (which if in doubt shall be the named Account holder).
- (k) **Gridcognition** means the "Gridcognition" hosted software platform accessible at the Site.
- (l) **Fee** means any fee charged by the Company for access to and use of Gridcognition.
- (m) **GDPR** means the EU General Data Protection Regulation 2016/679.
- (n) **GST** has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (o) **Initial Licence Term** means any fixed term for access to and use of Gridcognition that may be agreed between the Customer and the Company in the Commercial Terms.
- (p) **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property;
- (q) **Intellectual Property Rights** means, for the duration of the rights in any part of the world, any Moral Rights, industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property, applications for the registration of any Intellectual Property and any improvements, enhancements or modifications to any Intellectual Property registrations.
- (r) **Modelled Loads** means any actual or modelled sites, loads, or assets represented within Modelling Results or Modelling Data.
- (s) **Modelling Data** means any data that is input into Gridcognition to produce Modelling Results.
- (t) **Modelling Results** means any written or visual information and data generated by Gridcognition.
- (u) **Moral Rights** means:
 - i Moral rights pursuant to the Copyright Act 1968 (Cth); or
 - ii Any rights analogous to the rights set out in Article 6bis of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended from time to time).

- (v) **Privacy Policy** means the Company's privacy policy as updated from time-to-time, which can be found at the Site.
- (w) **Privacy Act** means the Privacy Act 1989 (Cth).
- (x) **Project** means a specific project or scope of work of the Customer.
- (y) **Site** means the Company's website found at <https://www.gridcognition.com/>, <https://my.gridcognition.com/> or such other URL used by the Company from time-to-time.
- (z) **Subscription Fee** means a Fee charged by the Company for access to and use of Gridcognition as agreed between the Customer and the Company in the Commercial Terms.
- (aa) **Tax Invoice** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (bb) **User** means any Customer or Authorised User.
- (cc) **User Data** means all information, data, documents and other such materials entered into Gridcognition by a User or on behalf of a User by any party but does not include derivative data.

1 AGREEMENT

- 1.1 The licence granted under these Terms of Service shall be ongoing until terminated in accordance with the terms of these Terms of Service and/or Commercial Terms.
- 1.2 The User agrees:
 - (a) To use Gridcognition in accordance with the terms of these Terms of Service and the Commercial Terms; and
 - (b) If creating an Account, that it is authorised to establish, maintain and pay for the Account.
- 1.3 The Customer agrees:
 - (a) To pay the Fees in accordance with the pricing agreed in the Commercial Terms as and when they fall due; and
 - (b) That it is responsible for the conduct of each Authorised User it authorises, who each must agree to and comply with these Terms of Service.
- 1.4 Where there is a conflict between these terms, and any Commercial Terms, the Commercial Terms shall prevail.

2 USING GRIDCOGNITION

2.1 General

- (a) To access and use Gridcognition:
 - i The Customer's Account must be set up and registered; and
 - ii Each User must register with Gridcognition, either as a Customer or as an Authorised User, as the case may be.
- (b) The Company has no liability to the Customer for any User that:
 - i Imports or exports any data to or from Gridcognition;
 - ii Shares any Modelling Results or any information contained therein; and/or
 - iii Accesses any User Data via Gridcognition.
- (c) The Customer may access and use Gridcognition for multiple Projects under the one Account.

2.2 Features

The Company shall provide the Customer with access to and use of the features as agreed between the parties and provided within Gridcognition from time-to-time, which shall primarily be to input Modelling Data into Gridcognition and to access Modelling Results from Gridcognition.

2.3 Modelling Results

- (a) Modelling Results are based upon and generated from Modelling Data only and do not take into account all considerations and factors for a Project.
- (b) The User must not rely on Modelling Results and/or the recommendations of the Company prima facie without regard to other considerations and due diligence.
- (c) The Company makes no representation or guarantee that the Customer will achieve particular results by following the Modelling Results.
- (d) The User may view, download, export and/or share Modelling Results via the Account in their absolute discretion.

3 FEES

3.1 Gridcognition is a paid service and the Customer agrees to pay the Fees to the Company as agreed in the Commercial Terms.

3.2 Unless agreed otherwise, the Customer must provide a credit card, which will be charged in advance for any subscription period in accordance with the Commercial Terms. Without provision of a valid credit card, or other agreed payment method, the Customer agrees that it will have no right to access Gridcognition.

3.3 Currency

All Fees are quoted in Australian dollars, however transactions may be processed in an equivalent foreign currency (such as US dollars or British pounds).

3.4 **GST**

For Customers in Australia, GST is applicable to any Fees charged by the Company to the User. Unless expressed otherwise, all Fees shall be deemed exclusive of GST. The Company will provide the Customer with a Tax Invoice for any payments.

3.5 **Refunds**

No refunds of Fees are offered other than as required by law.

3.6 **Late Payment**

(a) The Company may suspend the Customer's Account should any Fees be outstanding to the Company at anytime. This may, in time, result in termination of access to Gridcognition for all of a Customer's Authorised Users.

(b) The Customer agrees that the Company shall not be liable in any way for any valid termination or suspension of the Customer's access to Gridcognition.

4 **USER DATA**

4.1 The Company agrees to treat all User Data as Confidential Information under these Terms of Service, however the Customer agrees that the Company is not responsible for the maintaining the confidentiality of any User Data by Users.

4.2 The Company accepts no liability for the content of User Data.

4.3 The Customer is responsible for the accuracy, quality and legality of any content uploaded by their Authorised Users, and the User's acquisition of it, and the Users that create, access and/or use User Data.

4.4 The Customer grants the Company an immediate, worldwide, royalty-free license to use and incorporate the User Data within Gridcognition, for the purposes of providing Gridcognition to the Customer, for the duration of these Terms of Service.

4.5 The Company shall not access, use, modify or otherwise deal with User Data except where required by compulsion of law or upon the User's authority (such as to provide support for Gridcognition).

4.6 The Company may suspend accessibility to User Data that the Company determines is illegal, offensive, indecent or objectionable in its sole discretion.

4.7 The Company may delete User Data from its systems on termination of these Terms of Service.

4.8 Unless agreed otherwise by the parties in writing, the Company shall be permitted to implement and use User Data to further develop and improve Gridcognition in its absolute discretion without claim by the Customer, subject to and in accordance with the Privacy Policy.

5 GENERAL CONDITIONS

5.1 Licence

- (a) By accepting the terms and conditions of these Terms of Service, the User is granted a limited, non-exclusive, non-transferrable and revocable licence to access and use Gridcognition for the duration of these Terms of Service, in accordance with the terms and conditions of these Terms of Service and any Commercial Terms.
- (b) The Company may issue the licence to the User on further terms or limitations as it sees fit.
- (c) The Company may revoke or suspend the User's licence(s) in its absolute discretion for any reason that it sees fit, including for breach of the terms and conditions in these Terms of Service by the User.

5.2 Modification of Terms

- (a) The terms of these Terms of Service may be updated by the Company from time-to-time.
- (b) Where the Company modifies the terms, it will provide the User with written notice, and the User will be required to accept the modified terms in order to continue using Gridcognition.

5.3 Software-as-a-Service

- (a) The User agrees and accepts that Gridcognition is:
 - i Hosted by the Company and shall only be installed, accessed and maintained by the Company, accessed using the internet or other connection to the Company servers and is not available 'locally' from the User's systems; and
 - ii Managed and supported exclusively by the Company from the Company servers and that no 'back-end' access to Gridcognition is available to the User unless expressly agreed in writing.
- (b) As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter Gridcognition.
- (c) The Company shall not exercise its rights under clause (b) in a manner that would fundamentally decrease the utility of Gridcognition to the User, other than in accordance with the terms of these Terms of Service.

5.4 Support

- (a) The Company shall provide reasonable support services in the manner agreed between the Customer and the Company from time-to-time.
- (b) The Company shall endeavour to respond to all support requests within 2 Business Days.

- (c) The Company reserves the right to require the payment of reasonable fees for non-standard support requests prior to the provision of such support.

5.5 Use & Availability

- (a) The User agrees that it shall only use Gridcognition for legal purposes and shall not use it to engage any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.
- (b) The User is solely responsible for the security of its username and password for access to Gridcognition. The User shall notify the Company as soon as it becomes aware of any unauthorised access to its Account.
- (c) The User agrees that the Company shall provide access to Gridcognition to the best of its abilities, however:
 - i Access to Gridcognition may be prevented by issues outside of its control; and
 - ii The Company is not liable to the Customer and/or any User for any User not being able to access Gridcognition.

5.6 Privacy

- (a) The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Act and the GDPR with respect to personal information that it collects about the User and other individuals.
- (b) The Privacy Policy does not apply to how the Customer handles personal information. If necessary under the Privacy Act and/or the GDPR, it is the Customer's responsibility to meet the obligations of the Privacy Act and/or GDPR by implementing a privacy policy in accordance with law.
- (c) Gridcognition may use cookies (a small electronic file) to improve a User's experience while browsing, while also sending browsing information back to the Company. The User may manage how it handles cookies in its own browser settings.
- (d) The User acknowledges and agrees that the Company may use User Data, Modelling Results and other information collected via Gridcognition for research, developmental, statistical and analytical purposes, subject to and in accordance with the Privacy Policy.

5.7 Data

- (a) **Security.** The Company takes the security of Gridcognition and the privacy of its Users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.
- (b) **Transmission.** The Company shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards and the Privacy Policy. It is up to the User to ensure that any transmission standards meet the User's operating and legal requirements.

- (c) **Storage.** Data that is stored by the Company shall be stored according to accepted industry standards, and the Privacy Policy.
- (d) **Backup.** The Company shall perform backups of its entire systems in such manner, at such times and intervals as is reasonable for its business purposes. The Company does not warrant that it is able to backup or recover specific User Data from any period of time unless so stated in writing by the Company.

5.8 Intellectual Property

- (a) **Trade marks.** The Company has moral, registered and unregistered rights in its trade marks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.
- (b) **Proprietary Information.** The Company may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of Gridcognition, in particular those rights of a Third Party Data Source.
- (c) **Gridcognition.** The User agrees and accepts that Gridcognition is the Intellectual Property of the Company and the User further warrants that by using Gridcognition the User will not:
 - i Copy Gridcognition or the services that it provides for the User's own commercial purposes; and
 - ii Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in Gridcognition or any documentation associated with it.
- (d) **Content.** All content (excluding User Data) submitted to the Company, whether via Gridcognition or directly by other means, becomes and remains the Intellectual Property of the Company, including (without limitation) any source code, analytics, insights, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to Gridcognition. For clarity, the Company shall be entitled to implement such feedback into Gridcognition in its absolute discretion without claim by the Customer.

5.9 Third Party Dependencies

The User agrees and acknowledges that Gridcognition has third party dependencies which may affect its availability, including (without limitation) internet service providers and hosting services, and that the Company has no means of controlling the availability of such dependencies and shall not be liable for any interruptions to such.

5.10 Confidentiality & Promotion

- (a) The Company agrees to keep all other User Data in the strictest confidence, and to the extent User Data is accessed and/or received by the Company it shall be deemed as Confidential Information for the purposes of these Terms of Service.
- (b) Each party acknowledges and agrees that:
 - i the Confidential Information is secret, confidential and valuable to the disclosing party (**Discloser**);
 - ii it owes an obligation of confidence to the Discloser concerning the Confidential Information;
 - iii it must not disclose the Confidential Information to a third party except as permitted in these Terms of Service;
 - iv all Intellectual Property rights remain vested in the Discloser but disclosure of Confidential Information does not in any way transfer or assign any rights or interests in the Intellectual Property to the receiving party; and
 - v any breach or threatened breach by the receiving party of an obligation under these Terms of Service may cause the Discloser immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently the Discloser has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the receiving party (and its agents, assigns, employees, officers and directors, personally) or to compel specific performance of this clause.
- (c) A party must notify the Discloser in writing, giving full details known to it immediately, when it becomes aware of:
 - i any actual, suspected, likely or threatened breach by it of any obligations it has in relation to the Confidential Information.
 - ii any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information; or
 - iii any actual, suspected, likely or threatened theft, loss, damage, or unauthorized access, use or disclosure of or to any Confidential Information.
- (d) The receiving party must promptly take all steps that the Discloser may reasonably require and must co-operate with any investigation, litigation or other action of the Discloser or of a related body corporate if there is:
 - i any actual, suspected, likely or threatened breach of a term of these Terms of Service; or
 - ii any theft, loss, damage or unauthorized access, use or disclosure of or to any Confidential Information that is or was in its possession or control.

- (e) The Customer irrevocably consents to the Company using the name, logo and/or branding of the Customer in any list of clients, case studies and other promotional material for the Company's own promotional purposes.

5.11 **Liability & Indemnity**

- (a) The User agrees that it uses Gridcognition at its own risk.
- (b) The Company makes no representation that the Customer will achieve particular results or benefits from using Gridcognition.
- (c) The User acknowledges that the Company is not responsible for the conduct or activities of any User and that the Company is not liable for such under any circumstances.
- (d) The Customer agrees to indemnify the Company for any loss, damage, cost or expense that the Company may suffer or incur as a result of or in connection with their Authorised User's use of or conduct in connection with Gridcognition, including any breach by the User of these Terms, whether or not such use was authorised by the Customer.
- (e) In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, personal injury, death, damage to property, loss of property, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the User's access to, or use of, or inability to use Gridcognition, and in particular any decisions made in reliance on Modelling Results, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not the Company knew or should have known of the possibility of such damage, loss, personal injury or death, or business interruption of any type, whether in tort, contract or otherwise.
- (f) Certain rights and remedies may be available under the *Competition and Consumer Act 2010* (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company and the Company's related entities exclude all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:
 - i The re-supply of services or payment of the cost of re-supply of services; or
 - ii The replacement or repair of goods or payment of the cost of replacement or repair.

5.12 **Termination**

- (a) Unless agreed otherwise in the Commercial Terms, either party may terminate these Terms of Service by giving the other party no less than 1 months' written notice, provided that the effective date of termination is at or after the expiry of the any Initial Licence Term (where applicable).

- (b) Where an Initial Licence Term is in place and termination does not occur prior to the expiry of the Initial Licence Term, the Customer agrees to the automatic successive renewal of its Account for the same duration and on the same terms, and to be charged the Subscription Fee accordingly.
- (c) Access to Gridcognition shall terminate at the end of the Customer's billing cycle active at the expiry of the notice period.
- (d) Termination of these Terms of Service is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of these Terms of Service up to the date of expiry or termination.

5.13 **Dispute Resolution**

- (a) If any dispute arises between the parties in connection with these Terms of Service (**Dispute**), then either party may notify the other of the Dispute with a notice (**Dispute Notice**) which:
 - i Includes or is accompanied by full and detailed particulars of the Dispute; and
 - ii Is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.
- (b) Within 10 Business Days after a Dispute Notice is given, a representative (with the authority to resolve the dispute) parties must meet (virtually or otherwise) and seek to resolve the Dispute.
- (c) Subject to clause (d), a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.
- (d) Nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.
- (e) Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this document and any related agreements.

5.14 **Electronic Communication, Amendment & Assignment**

- (a) The words in this clause that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning.
- (b) The User can direct notices, enquiries, complaints and so forth to the Company as set out in these Terms of Service. The Company will notify the User of a change of details from time-to-time.
- (c) The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the Company of from time-to-time. It is the User's responsibility to update its contact details as they change.

- (d) A consent, notice or communication under these Terms of Service is effective if it is sent as an electronic communication unless required to be physically delivered under law.
- (e) Notices must be sent to the parties' most recent known contact details.
- (f) The User may not assign or otherwise create an interest in these Terms of Service without prior written consent of the Company (which shall not be unreasonably withheld).
- (g) The Company may assign or otherwise create an interest in its rights under these Terms of Service by giving written notice to the User.

5.15 **General**

- (a) **Special Conditions.** The parties may agree to any Special Conditions to these Terms of Service in writing.
- (b) **Prevalence.** To the extent these Terms of Service is in conflict with, or inconsistent with, the terms of any other agreement between the Company and the User, any Commercial Terms, or any special conditions made under these Terms of Service, as relevant, the terms of those other agreements or special conditions shall prevail.
- (c) **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in these Terms of Service.
- (d) **Relationship.** The relationship of the parties to these Terms of Service does not form a joint venture or partnership.
- (e) **Waiver.** No clause of these Terms of Service will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- (f) **Further Assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to these Terms of Service and the transaction facilitated by it.
- (g) **Governing Law.** These Terms of Service are governed by the laws of Western Australia, Australia. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.
- (h) **Severability.** Any clause of these Terms of Service, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of these Terms of Service.
- (i) **Interpretation.** The following rules apply unless the context requires otherwise:
 - i Headings are only for convenience and do not affect interpretation.
 - ii The singular includes the plural and the opposite also applies.
 - iii If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

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- iv A reference to a clause refers to clauses in these Terms of Service.
- v A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- vi Mentioning anything after *includes, including,* or similar expressions, does not limit anything else that might be included.
- vii A reference to a *party* to these Terms of Service or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
- viii A reference to a *person, corporation, trust, partnership, unincorporated body* or other entity includes any of them.
- ix A reference to *information* is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

END TERMS OF SERVICE