



## USER AGREEMENT

Last updated on April 28, 2021

**IMPORTANT:** PLEASE READ THIS USER AGREEMENT (“**AGREEMENT**”) CAREFULLY. BY CLICKING ON THE “I AGREE” BUTTON BELOW AND USING THE SUPPLYSHIFT PLATFORM (“**PLATFORM**”) YOU HEREBY ACCEPT AND CONSENT TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT FOR YOURSELF AS AN INDIVIDUAL USER OF THE PLATFORM ON BEHALF OF THE COMPANY UNDER WHOSE COMPANY PROFILE YOUR LOGIN CREDENTIALS ARE GRANTED. SUPPLYSHIFT INC. (“**SUPPLYSHIFT**”) IS WILLING TO GRANT YOU WITH ACCESS TO THE PLATFORM ONLY SUBJECT TO ALL OF THE TERMS CONTAINED IN THIS AGREEMENT. IF YOU DO NOT AGREE OR ARE NOT AUTHORIZED TO AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN SUPPLYSHIFT IS UNWILLING TO GRANT YOU ACCESS TO THE PLATFORM AND YOU MUST IMMEDIATELY (1) CLICK ON THE “I DECLINE” BUTTON, AND (2) CEASE USING THE PLATFORM.

### 1. USE OF PLATFORM

**1.1. Platform Access and Use.** Subject to the terms and conditions of this Agreement, SupplyShift hereby agrees to provide you with limited, revocable, royalty-free, and non-exclusive access to the Platform, solely for use by you for the Permitted Business Purpose until such time as Company or SupplyShift revoke, suspend or terminate your access to the Platform. You represent and warrant that neither you nor the company you work for or represent are a direct competitor of SupplyShift, and that you are not accessing the Platform to engage or permit others to engage in competitive software development activities, including but not limited to, learning, copying, analyzing, studying, testing, or reviewing, the features or functions of the Platform, or materials that describe the same, in order to develop or facilitate the development by you or third parties of a product or service that competes with the Platform (“Warranty Against Competitive Access”). You agree to at all times maintain your user IDs and passwords strictly confidential and not share such login information with anyone. You agree to promptly notify either Company or SupplyShift if you lose your login credentials to the Platform or if you know or reasonably suspect that the security and confidentiality of your user credentials may have been compromised. You are responsible at all times for using the Platform (a) in accordance with this Agreement, (b) in accordance with the lawful and contractually-permitted instructions and directions of the Company that granted you access to their Company Profile, (c) in accordance with applicable local, state, federal and international laws, regulations and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data. SupplyShift will have no liability for actions taken by you in using the Platform.

**1.2. Restrictions on Use.** You may not: (a) sell, rent, lease, license, distribute, provide access to, sublicense, or otherwise make available the Platform to anyone; (b) use the Platform to provide any general purpose supply chain management or data collection service for the benefit of a third party; (c) access the Platform to engage or permit others to engage in any conduct that, in SupplyShift’s reasonable opinion, threatens SupplyShift’s or its licensors’ intellectual property rights, or breaches the Warranty Against Competitive Access, (d) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Platform; (e) remove or obscure any proprietary or other notices contained in the Platform. You agree to keep all information, data and other items displayed, accessed, gleaned or otherwise made available to you through the Platform (including but not limited to data contained in any Assessments) confidential and not to disclose it to anyone other than the Company under whose Company Profile you are using the Platform.

**1.3. Use of Data.** The Platform is designed, and contains multiple features, that facilitate the display, use, sharing, input, export, modification and other manipulation and exchange of Customer Data and Supplier Data, including but not limited to, via Assessments. You understand and agree that any Customer Data or Supplier Data that is accessible or viewable to you on the Platform is the proprietary and confidential information of the Company that supplied that data, and their third-party licensors. To the extent you are using the Platform on behalf of a Company, you acknowledge and agree that any overall obligations of confidentiality, security, intellectual property ownership, and other compliance duties, responsibilities or obligations that you may have with Company will also apply to your use of the Platform for so long as access is provided to you to the same. You also understand and agree that your use of the Platform may be subject to review, search, monitoring, and other oversight by SupplyShift and the Company granting you access to the Platform, with respect to which you hereby acknowledge and agree you have no expectation of privacy. SupplyShift may also engage in de-identified, statistical analysis of your individual activity within the Platform and aggregate the same together with other similar statistical and de-identified and/or

aggregated data collected in the normal course of SupplyShift’s management of the Platform, and consistent with the applicable Buyer Agreement or Supplier Agreement to which SupplyShift is bound. You consent to SupplyShift’s use of your personal data to the extent needed for SupplyShift to directly or through its affiliates (a) grant, manage, provide assistance with, and monitor your access and use of the Platform, (b) meet obligations owed to the Company that granted you access to their Company Profile, (c) monitor and analyze the security, performance and configuration of the Platform and your use of, and interaction with the Platform, (d) inform you of new features and functionality of the Platform and SupplyShift offerings, (e) provide notices to you, (f) understand you and your preferences regarding the Platform and enhance and personalize your experience of the Platform and SupplyShift’s other products and services; (g) send you marketing and promotional communications requested by you, including collateral, and (h) comply with applicable law, regulation, audit and industry standards governing SupplyShift’s business operations or technology. You agree that you will not disclose or provide to SupplyShift any personal data of yours that is not strictly necessary for the purposes above. SupplyShift agrees to use your personal data solely in compliance with this Agreement, applicable law, regulation or governmental order. To the extent you do provide information to SupplyShift in connection with your use of the Platform, you warrant and represent that you have all necessary rights, permissions and licenses from any persons or third parties to provide that information to SupplyShift and to permit SupplyShift to use the same as noted in this Agreement. SupplyShift reserves the right to remove, discontinue, suspend, limit, excise, edit, or cease to provide any information or data you provide if required to do so by law or regulation or if, in SupplyShift’s reasonable opinion, the information or data is unlawful, offensive, fraudulent, infringing or is provided in breach of the obligations of this Agreement or the rights of third parties, including the Company under whose Company Profile you are accessing the Platform.

**1.4. Security Measures.** SupplyShift will take reasonable and appropriate technical, administrative and procedural measures to protect your personal information. The measures SupplyShift takes to protect your personal information while processing may include: physical access controls, encryption, internet firewalls, intrusion detection and network monitoring depending on the nature of the information and the scope of processing. SupplyShift personnel who may have access to your personal data are required to keep that information confidential.

**1.5. Information Choices And Changes.** You may opt out of receiving promotional emails from SupplyShift by following the instructions in such emails. If you opt out, SupplyShift may still send you non-promotional emails, such as emails about your accounts or the ongoing business relations between you and SupplyShift. You may also send requests about your contact preferences and changes to your information including requests to opt-out of sharing your personal information with third parties by emailing [privacy@supplyshift.net](mailto:privacy@supplyshift.net).

**1.6. EEA and Switzerland Users.** In addition, if you are a resident of countries in the European Economic Area (“EEA”) or Switzerland you have the following data protection rights:

**1.6.1.** If you wish to access, correct, update or request deletion of your personal data, you can do so at any time.

**1.6.2.** You can object to processing of your personal data, ask SupplyShift to restrict processing of your personal data or request portability of your personal data.

**1.6.3.** If SupplyShift has collected and processes your personal data with your consent, then you can withdraw your consent at any time. Withdrawing your consent will not affect the lawfulness of any processing SupplyShift conducted prior to your withdrawal, nor will it affect processing of your personal data conducted in reliance on lawful processing grounds other than consent.

**1.6.4.** You have the right to complain to a data protection authority about SupplyShift's collection and use of your Personal Information.

**1.6.5.** If you wish to exercise any of these rights or want further information, please contact [privacy@supplyshift.net](mailto:privacy@supplyshift.net).

**1.7. Data Retention And Deletion.** SupplyShift may retain personal information it collects from you where SupplyShift has an ongoing legitimate business need to do so, for example, to comply with applicable legal, tax or accounting requirements, to enforce SupplyShift's agreements or comply with SupplyShift's legal obligations. When SupplyShift has no ongoing legitimate business need to process your personal information, SupplyShift will either delete or anonymize it or, if this is not possible (for example, because your personal information has been stored in backup archives), then SupplyShift will securely store your personal information and isolate it from any further processing, until deletion is possible. When SupplyShift is acting as processor, SupplyShift will retain Customer Data or Buyer Data for as long as the relevant Company instructs SupplyShift to do so, and/or as required by applicable law, regulation or governmental order. In such case, you should contact the Company on whose behalf you are using the Platform.

**2. RETAINED RIGHTS.** You obtain no right, title or interest in or to the Platform, any Assessments, or any other data or information displayed or visible on or through the Company Profile or the Platform (excluding your personal data, of course). Except for the limited rights to access and use the Platform as noted in this Agreement, all other rights are reserved by SupplyShift, Buyers and Suppliers, and their respective licensors. You acknowledge and agree that the Platform is offered as an online, hosted solution, and that you have no right to obtain a copy of the underlying computer code for the Platform.

**3. FEEDBACK.** Notwithstanding anything to the contrary in this Agreement, SupplyShift may freely use and incorporate into SupplyShift's products and services any suggestions, enhancement requests, recommendations, corrections, or other feedback provided by you relating to SupplyShift's products or services ("**Feedback**"). Feedback will not incorporate any personal data of yours, or ever identify you. You may not provide SupplyShift with any Feedback that you know, have reason to know, or should reasonably know contains or reflects any confidential or proprietary information of Company or a third party, or that you are not authorized to provide to SupplyShift. SupplyShift assumes no liability to you for any Feedback you choose to provide.

**4. SUSPENSION, TERMINATION OF ACCESS.** In addition to any of its other rights or remedies (including, without limitation, any termination rights) set forth in this Agreement or applicable by law, SupplyShift reserves the right to revoke, suspend, or terminate your access to the Platform at any time, with or without advance notice to you, and without any liability to you if: (a) requested by your Company for any reason or no reason, (b) SupplyShift believes, knows, or reasonably suspects that you have committed, engaged, or helped others engage in any unlawful, fraudulent, harmful, violative act or omission, including, but not limited to, any act or omission that constitutes a breach of the terms of this Agreement or the Buyer Agreement, (c) if SupplyShift determines suspension is necessary to avoid material harm to SupplyShift, the Company, or its other customers, (d) as required by law, judicial order, or at the request of governmental entities, or (e) if you are determined to be an employee or agent of a competitor of SupplyShift or if you have breached the Warranty Against Competitive Access.

**5. WARRANTY DISCLAIMER. THE PLATFORM IS PROVIDED TO YOU SOLELY AND EXCLUSIVE ON AN "AS IS" WITHOUT WARRANTIES, LIABILITIES, OR REPRESENTATIONS OF ANY KIND. YOU ASSUME ALL RISKS AND LIABILITIES PERTAINING TO YOUR USE OF THE PLATFORM. SUPPLYSHIFT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. SUPPLYSHIFT DOES NOT WARRANT THAT YOUR USE OF THE PLATFORM WILL BE UNINTERRUPTED OR ERROR-FREE, TIMELY, OR SECURE. SUPPLYSHIFT SHALL NOT BE LIABLE TO YOU FOR ANY DELAYS, INTERRUPTIONS, PLATFORM FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR FOR ISSUES OUTSIDE OF SUPPLYSHIFT'S CONTROL. SUPPLYSHIFT DOES NOT MAKE ANY WARRANTIES AND SHALL HAVE NO OBLIGATIONS TO YOU RELATED TO ANY ASPECT OF YOUR USE OF THE PLATFORM, EXCEPT AS STRICTLY REQUIRED UNDER APPLICABLE LAW. SHOULD YOU HAVE OTHER STATUTORY RIGHTS, THE DURATION OF ANY STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.**

**6. LIMITATION OF LIABILITY. YOU ACKNOWLEDGE AND AGREE**

**THAT YOUR USE OF THE PLATFORM IS NOT PERSONAL TO YOU BUT AT ALL TIMES FOR THE BENEFIT OF THE COMPANY UNDER WHOSE PROFILE YOUR ACCESS HAS BEEN GRANTED. TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU UNDERSTAND AND AGREE THAT NEITHER SUPPLYSHIFT NOR ITS AFFILIATES SHALL BE LIABLE TO YOU OR ANYONE ELSE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, INTERRUPTION OF BUSINESS, COSTS OF DELAY, LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF CUSTOMERS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) ARISING FROM YOUR USE OF THE PLATFORM, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUPPLYSHIFT'S ENTIRE LIABILITY TO YOU FOR DAMAGES OR LIABILITY OF ANY TYPE UNDER THIS AGREEMENT OR OTHERWISE, SHALL NOT EXCEED \$1. THIS LIMITATION IS DIFFERENT FROM AND DOES NOT LIMIT OR VOID ANY LIABILITY THAT SUPPLYSHIFT MAY SEPARATELY ASSUME WITH RESPECT TO A COMPANY PURSUANT TO A SUPPLIER AGREEMENT OR BUYER AGREEMENT, AS APPLICABLE. THIS LIABILITY LIMITATION APPROPRIATELY ALLOCATES THE RISKS BETWEEN THE PARTIES.**

**7. GENERAL TERMS.** If a court of competent jurisdiction holds any provision of this Agreement to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect. Section headings are inserted for convenience only and shall not affect the construction of the agreement. This Agreement will be governed by the laws of the State of California and the United States without regard to conflicts of law provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. The jurisdiction and venue for actions related to the subject matter hereof will be the state and federal courts located in San Jose, California, in the United States, and both parties hereby submit to the personal jurisdiction of such courts. SupplyShift may update this Agreement from time to time. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement. This Agreement is the complete and exclusive statement of the mutual understanding between you and SupplyShift related to the subject matter of this Agreement. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between you and SupplyShift. You agree to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) you represent and warrant that you are not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) 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, (ii) you will not access or use the Platform in violation of any U.S. export embargo, prohibition or restriction, and (iii) you will not submit to the Platform any information that is controlled under the U.S. International Traffic in Arms Regulations.

## **9. DEFINITIONS**

**"Assessment"** is a grouping of questions within the Platform in unanswered form that are submitted by Buyer for completion by a Supplier.

**"Buyer"** means a Company whose Company Profile is designated as "Buyer" within the Platform and who is a party to a Buyer Agreement. Buyers access and use the Platform for the purpose of submitting Assessments, and collecting Supplier Data, as further detailed in the Buyer Agreement.

**"Buyer Agreement"** means the agreement between SupplyShift and a Buyer governing the Buyer's use of the Platform.

**"Company"** means either a Buyer or a Supplier.

**"Company Profile"** means a Company's unique account within the Platform.

**"Customer Data"** means all the data that a Buyer uploads into or generates within its own Company Profile.

**"Permitted Business Use"** means the use of the Platform as set forth in either the Buyer Agreement or Supplier Agreement, as applicable to the Company on whose behalf you access the Platform.

**"Platform"** means the SupplyShift software-as-a-service offering made generally available to Company.

**"Supplier"** means a Company whose Company Profile is designated as "Supplier" or a "Limited Buyer" within the Platform. Supplier's access and use the Platform for the purpose of responding to Assessments provided by Buyers by providing Supplier Data, as further detailed in the Supplier Agreement.

**“Supplier Agreement”** means the agreement between SupplyShift and the Supplier governing the Supplier’s use of the Platform.

**“Supplier Data”** means the information that is entered into a Assessment by a Supplier.