

Whisker.io® IoT Subscription Agreement

This Whisker.io® IoT Subscription Agreement is between the entity you represent, or, if you do not designate an entity in connection with a Subscription purchase or renewal, you individually ("you" or "your"), and Digital Six Laboratories Inc ("D6 LABS", "we", "us", or "our"). It consists of the terms and conditions below, as well as the Offer Details for your Subscription or renewal (together, the "agreement"). It is effective on the date we provide you with confirmation of your Subscription or the date on which your Subscription is renewed, as applicable. Key terms are defined in Section 8.

I. Use of IoT Services.

A. Right to use.

We grant you the right to access and use the IoT Services and to install and use the Sensors included with your Subscription, as further described in this agreement. We reserve all other rights.

B. Acceptable use.

You may use the Product only in accordance with this agreement. You may not reverse engineer, decompile, disassemble, or work around technical limitations in the Product, except to the extent applicable law permits it despite these limitations. You may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters your use of the IoT Services. You may not rent, lease, lend, resell, transfer, or host the Product, or any portion thereof, to or for third parties except as expressly permitted in this agreement.

Neither Customer, nor those that access an IoT Service through Customer, may use an IoT Service:

- in a way prohibited by law, regulation, governmental order or decree;
- to violate the legal rights of others;
- to try to gain unauthorized access to or disrupt any service, device, data, account or network;
- to spam or distribute malware;
- in a way that could harm the IoT Service or impair anyone else's use of it; or
- in any application or situation where failure of the IoT Service could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.

Violation of the terms in this section may result in suspension and/or cancellation of the IoT Service.

C. End Users.

You control access by End Users, and you are responsible for their use of the Product in accordance with this agreement.

D. Customer Data.

You are solely responsible for the content of all Customer Data. You will secure and maintain all rights in Customer Data necessary for us to provide the IoT Services to you without violating the rights of any third party or otherwise obligating D6 LABS to you or to any third party. D6 LABS does not and will not assume any obligations with respect to Customer Data or to your use of the Product other than as expressly set forth in this agreement or as required by applicable law. D6 LABS reserves the right to use Customer Data for the purposes of customer support, quality assurance, and aggregate statistical reporting. D6 LABS agrees not to directly release Customer Data to any third party, except as required in compliance with State and Federal laws, but does reserve the right to compile Customer Data from multiple customer accounts and release the aggregate data, without specifying the source, to third parties at the discretion of D6 Labs. Customer Data will be retained in the primary Portal database for a period defined in the Offer Details.

E. Responsibility for your accounts.

You are responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of the IoT Services. You must promptly notify our customer support team about any possible misuse of your accounts or authentication credentials or any security incident related to the IoT Services.

F. Administrator Assumption of Control.

If you use an email address provided by an organization you are affiliated with (e.g. an employer or school) to order an IoT Service individually, you represent that you have authority to use that organization's domain to sign up for a Subscription in your capacity as a member of that organization. The organization, as the owner of the domain associated with your email address, may assume control over and manage your use of the IoT Services. In such a case, your organization's designated administrator (your "admin") may (i) control and administer your account, including modifying and terminating your access, (ii) access and process your data, and (iii) modify configuration of IoT Services including, but not limited to, Hardware, alerts, alert contacts, etc. D6 LABS may inform you that your organization has assumed control of the IoT Services covered by your Subscription, but D6 LABS is under no obligation to provide such notice. If your organization is administering your use of the IoT Services associated with your Subscription, direct your data subject requests and privacy inquiries to your

administrator. If your organization is not administering your use of the IoT Service, direct your data subject requests and privacy inquiries to D6 LABS.

G. Additional Software for use with the Portal Services.

To enable optimal access to and use of certain IoT Services, you may install and use certain Software in connection with your use of the IoT. We license Software to you; we do not sell it. Proof of your Software license is (1) this agreement, (2) any order confirmation, and (3) proof of payment. Your rights to access Software on any device do not give you any right to implement D6 LABS patents or other D6 LABS intellectual property in software or devices that access that device.

II. Purchasing services.

A. Available Subscription offers.

The Portal provides Offer Details for available Subscription offers, which generally can be categorized as one or a combination of the following:

1. [SaaS Standard Commitment Offering](#)

This offering includes a complete solution including Hardware, Whisker.io® Portal Services, and Software (if applicable). You commit in advance to purchase a specific quantity of IoT Services for use during a Term and to pay upfront or on a periodic basis in advance of use.

2. [Portal Services Commitment Offering](#)

This offering includes Whisker.io® Portal Services for use with Customer owned Hardware. You commit in advance to purchase a specific quantity of Whisker.io® Portal Services for use during a Term and to pay upfront or on a periodic basis in advance of use.

3. [Trial Offering](#)

You receive a limited quantity of IoT Services for a limited term without charge or as part of another Whisker.io® offering.

B. Ordering.

By ordering or renewing a Subscription, you agree to the Offer Details for that Subscription. Unless otherwise specified in those Offer Details, IoT Services are offered on an "as available" basis. You also may assign the rights granted under Section 1.a. to a third party for use by that third party in your internal business. If you grant any rights to third parties with respect to your Subscription, such third parties will be bound by this

agreement and you agree to be jointly and severally liable for any actions of such third parties related to their use of the Products.

New IoT Services may be ordered and added to your Account at any time. Each new order will require a new Subscription. The Term of the Subscription will start when (1) the order is confirmed, (2) your payment is processed, and (3) your order is shipped.

C. Pricing and payment.

Payments are due and must be made according to the Offer Details for your Subscription.

For Standard Commitment Offerings, the price level may be based on the quantity of IoT Services you ordered. Some offers may permit you to modify the quantity of IoT Services ordered during the Term and your price level may be adjusted accordingly, but price level changes will not be retroactive. During the Term of your Subscription, prices for IoT Services will not be increased, as to your Subscription, from those posted in the Portal at the time your Subscription became effective or was renewed, except where prices are identified as temporary in the Offer Details. All prices are subject to change at the beginning of any Subscription renewal.

D. Renewal

Subscriptions will automatically renew at the end of the Term unless you provide notification of intent to cancel at least 30 days prior to the expiration of the Term. We will provide you with notice of the automatic renewal 60 days prior to the expiration of the Term.

For Trial Offerings, renewal may not be permitted, at the discretion of D6 LABS.

E. Taxes.

Prices are exclusive of any taxes unless otherwise specified on the invoice as tax inclusive. You must pay any applicable value added, goods and services, sales, gross receipts, or other transaction taxes, fees, charges or surcharges, or any regulatory cost recovery surcharges or similar amounts that are owed under this agreement and which we are permitted to collect from you under applicable law. You will be responsible for any applicable stamp taxes and for all other taxes that you are legally obligated to pay including any taxes that arise on the distribution or provision of Products to your Affiliates. We will be responsible for all taxes based on our net income, gross receipts taxes imposed in lieu of taxes on income or profits, or taxes on our property ownership.

If any taxes are required to be withheld on payments you make to us, you may deduct such taxes from the amount owed to us and pay them to the appropriate taxing authority; provided, however, that you promptly secure and deliver an official receipt

for those withholdings and other documents we reasonably request to claim a foreign tax credit or refund. You must ensure that any taxes withheld are minimized to the extent possible under applicable law.

III. Term, termination, and suspension.

A. Agreement term and termination.

This agreement will remain in effect until the expiration, termination, or renewal of your Subscription, whichever is earliest.

B. Subscription termination.

You may terminate a Subscription at any time during its Term; however, you must pay all amounts due and owing before the termination is effective.

If you terminate a Subscription to IoT Services within 90 days of the date on which the Subscription became effective or was renewed, and you must pay for the initial 90 days of the Subscription, but no payments will be due for the remaining portion of the terminated Subscription, and you will receive a refund for any prepayment of services beyond the first 90 days. If you terminate a Subscription to IoT Services at any other time during the term, you must pay for the remainder of the Term, and no refunds will be provided.

We may terminate your Subscription to a Trial Offering at any time during the Term immediately without notice.

Upon termination of Subscription, all Hardware provided to you as part of the IoT Services must be returned in original packaging to D6 LABS within 30 days of termination. If Hardware is not returned within this time period, you will be charged for the Hardware in accordance with the Offer Details provided when you purchased the Subscription.

C. Suspension.

We may suspend your use of the IoT Services if: (1) it is reasonably needed to prevent unauthorized access to Customer Data; (2) you fail to respond to a claim of alleged infringement under Section 5 within a reasonable time; (3) you do not pay amounts due under this agreement; (4) you do not abide by the Acceptable Use terms as defined in 1.B or you violate other terms of this agreement; or (5) for Limited Offerings, the Subscription becomes inactive from your failure to access the IoT Services as described in the Offer Details. If one or more of these conditions occurs, then:

(i) For Trial Offerings, we may suspend your use of the IoT Services, your Subscription and your account immediately without notice.

(ii) For all other Subscriptions, a suspension will apply to the minimum necessary part of the IoT Services and will be in effect only while the condition or need exists. We will give notice before we suspend, except where we reasonably believe we need to suspend immediately. We will give at least 30 days' notice before suspending for non-payment. If you do not fully address the reasons for the suspension within 60 days after we suspend, we may terminate your Subscription and delete your Customer Data without any retention period. We may also terminate your Subscription if your use of the Online Services is suspended more than twice in any 12-month period. If your account is terminated, all Hardware provided to you as part of the IoT Service must be returned in original packaging to D6 LABS within 30 days of termination. If Hardware is not returned within this period, you will be charged for the Hardware in accordance with the Offer Details provided when you purchased the Subscription.

IV. Warranties.

A. Limited warranty.

1. Portal.

We warrant for the Term of the Subscription that the Portal will perform substantially as described in the applicable user documentation, if used in accordance with that documentation. If the Portal fails to meet this warranty we will, at our option and as your exclusive remedy, either (1) return the price paid for the use of the IoT Services or (2) repair or replace the Portal.

2. Software

We warrant for the Term of the Subscription the Software that it will perform substantially as described in the applicable user documentation, if used in accordance with that documentation. If Software fails to meet this warranty we will, at our option and as your exclusive remedy, either (1) return the price paid for the use of the Software or (2) repair or replace the Software.

3. Hardware

We warrant for the Term of the Subscription the Hardware will perform substantially as described in the applicable user documentation, if used in accordance with that documentation, and that the Hardware will be free from component (including batteries) and/or manufacturing defects. If the Hardware fails to meet this warranty, we will repair or replace the Hardware. This warranty does not cover misuse or use outside the guidelines provided in applicable user documentation.

B. Limited warranty exclusions.

This limited warranty is subject to the following limitations:

- (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
- (ii) this limited warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement or our published documentation or guidance, or resulting from events beyond our reasonable control;
- (iii) this limited warranty does not apply to problems caused by a failure to meet minimum system requirements; and
- (iv) this limited warranty does not apply to Trial Offerings.

C. DISCLAIMER.

Other than this warranty, we provide no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply except to the extent applicable law does not permit them.

V. Defense of claims.

A. Defense.

We will defend you against any claims made by an unaffiliated third party that a Product infringes that third party's patent, copyright or trademark or makes unlawful use of its trade secret.

You will defend us against any claims made by an unaffiliated third party that (1) any Customer Data, Customer Solution, or Non-D6 LABS' Products, or services you provide, directly or indirectly, in using a Product infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret; or (2) arises from violation of the Acceptable Use terms defined in 1.B.

B. Limitations.

Our obligations in Section 5.a. will not apply to a claim or award based on:

- (i) any Customer Solution, Customer Data, Non-D6 LABS' Products, modifications you make to the Product, or services or materials you provide or make available as part of using the Product;
- (ii) your combination of the Product with, or damages based upon the value of, Customer Data or a Non-D6 LABS Product, data, or business process;
- (iii) your use of any of the D6 LABS owned trademark without our express written consent, or your use of the Product after we notify you to stop due to a third-party claim;
- (iv) your redistribution of the Product to, or use for the benefit of, any unaffiliated third party;
- (v) Products provided free of charge.

C. Remedies.

If we reasonably believe that a claim under Section 5.a.(i). may bar your use of the Product, we will seek to:(i) obtain the right for you to keep using it; or (ii) modify or replace it with a functional equivalent and notify you to stop use of the prior version of the Product. If these options are not commercially reasonable, we may terminate your rights to use the Product and then refund any advance payments for unused Subscription rights.

D. Obligations.

Each party must notify the other promptly of a claim under this Section. The party seeking protection must (i) give the other sole control over the defense and settlement of the claim; and (ii) give reasonable help in defending the claim. The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment or settlement. The parties' respective rights to defense and payment of judgments (or settlement the other consents to) under this Section 5 are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights.

VI. [Limitation of liability.](#)

A. Limitation.

The aggregate liability of each party for all claims under this agreement is limited to direct damages up to the amount paid under this agreement for the IoT Service during the 12 months before the cause of action arose; provided, that in no event will a party's aggregate liability for any IoT Service exceed the amount paid for that Online Service during the Subscription. For Products provided free of charge, D6 LABS' liability is limited to direct damages up to \$5,000.00 USD.

B. EXCLUSION.

Neither party will be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the party knew they were possible or reasonably foreseeable.

C. Exceptions to limitations.

The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 5; or (2) violation of the other's intellectual property rights.

VII. Miscellaneous.

A. Notices.

Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or fax confirmation of delivery. Notices to Whisker.io® must be sent to the following address:

Digital Six Laboratories Inc
425 North Meridian Avenue
Oklahoma City, OK 73107
USA

Notices to you will be sent to the address that you identify on your account as your contact for notices. D6 LABS may send notices and other information to you by email or other electronic form.

B. License Transfers and Assignment.

You may not assign this agreement either in whole or in part or transfer licenses without D6 LABS' consent.

C. Severability.

If any part of this agreement is held unenforceable, the rest remains in full force and effect.

D. Waiver.

Failure to enforce any provision of this agreement will not constitute a waiver.

E. No agency.

This agreement does not create an agency, partnership, or joint venture.

F. No third-party beneficiaries.

There are no third-party beneficiaries to this agreement.

G. Applicable law and venue.

This agreement is governed by Oklahoma law, without regard to its conflict of laws principles, except that (i) if you are a U.S. Government entity, this agreement is governed by the laws of the United States, and (ii) if you are a state or local government entity in the United States, this agreement is governed by the laws of that state. Any action to enforce this agreement must be brought in the State of Oklahoma. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to a violation of intellectual property rights.

H. Entire agreement.

This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this Whisker.io® IoT Subscription Agreement, (2) the applicable Offer Details, and (3) any other documents in this agreement.

I. Survival.

The terms in Sections 1, 2.c., 2.e., 4, 5, 6, 7, and 8 will survive termination or expiration of this agreement.

J. U.S. export jurisdiction.

The Products are subject to U.S. export jurisdiction. You must comply with all applicable laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments.

K. Force majeure.

Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of

IoT Services)). This Section will not, however, apply to your payment obligations under this agreement.

L. Contracting authority.

If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf. If you specify an entity, or you use an email address provided by an entity you are affiliated with (such as an employer) in connection with a Subscription purchase or renewal, that entity will be treated as the owner of the Subscription for purposes of this agreement.

M. Government customers.

Government customers should consult with D6 LABS prior to acceptance. By accepting this agreement, you represent that you have complied and will continue to comply with all applicable laws and governmental procurement requirements.

8. Definitions.

Any reference in this agreement to "day" will be a calendar day.

"Customer Data" is data collected and stored while providing IoT Services. For example, Customer Data would include historical temperature readings recorded by Fridge.Trak™ sensors.

"Customer Solution" is any software developed or otherwise provided by the Customer that interacts with the Portal and Customer Data.

"End User" means any person you permit to access Customer Data hosted in the IoT Services or otherwise use the IoT Services, or any user of a Customer Solution.

"Hardware" means any physical device, such as a wireless sensor, provided as a component of IoT Services.

"Non-D6 LABS Product" any product, software, or other component not provided by D6 LABS.

"Offer Details" means the pricing and related terms applicable to a Subscription offer, as provided when the order is placed.

"IoT Services" means any combination of the Whisker.io® Portal Services, Software, and Hardware to which you subscribe under this agreement.

"Portal" means the services provided by the online Whisker.io™ web application hosted at www.whisker.io or at any other HTTP address we specify.

"Product" means any IoT Service (including any Software and Hardware).

"Software" means Whisker.io® software we provide for installation on your device as part of your Subscription or to use with the IoT Service to enable certain functionality.

"Subscription" means an enrollment for IoT Services for a defined Term as specified in the Offer Details. You may purchase multiple Subscriptions, which may be administered separately, and which will be governed by the terms of a separate Whisker.io® IoT Subscription Agreement.

"Term" means the duration of a Subscription (e.g., 30 days or 12 months).

Whisker.io® Portal Services means any services provided by Whisker.io® portal.