

USER ACCOUNT TERMS OF USE

OCTOML OPTIMIZATION SERVICES

Last updated November 18, 2020

Welcome to OctoML. Please read these Terms of Use carefully. These Terms of Use govern your access to and use of a User Account (as defined below) that enables you to access and use optimization and packaging products and services offered by OctoML, Inc. (the “**Optimization Services**”).

OctoML, Inc. (“**OctoML**,” “**we**,” “**us**,” and “**our**”) owns, operates, maintains, and provides the Optimization Services, which are designed to help improve and optimize your machine learning models (each, a “**Customer Model**”), such as, but not necessarily limited to, increasing efficiencies with respect to each Customer Model’s latency, processing time, and/or power savings characteristics. The Optimization Services may comprise, among other things, software that enables you to access and use your User Account and the Optimization Services (collectively, the “**Software**”); one or more software development kits that enables you to create executable object code that interacts with the Optimization Services (each, an “**SDK**”); other information, data, and materials provided to you as part of the Optimization Services, including Customer Models on which the Optimization Services have been performed (each, an “**Optimized Model**”); and any related services that we agree to provide to you from time to time via your User Account.

You wish to register a new user account (“**User Account**”) in order to access and use the features and functions of the Optimization Services, including the Software; SDKs; other information, data, and materials provided to you as part of the Optimization Services; and other related services. Registration of, access to, and use of a User Account is expressly conditioned upon agreement to these Terms of Use.

AGREEMENT TO THE TERMS OF USE

Your User Account gives you access to and use of certain features and functions of the Optimization Services, subject to the terms, conditions, limitations, and restrictions set forth in these Terms of Use (this “**Agreement**”). By registering, accessing, or using your User Account, you accept and agree to be bound by this Agreement, including the provisions below that (1) **allow us, in certain circumstances, to cancel, suspend, or otherwise place limits on your User Account** and (2) **require you to resolve disputes with us by binding arbitration involving a class action waiver**.

This Agreement constitutes a legally binding agreement made between OctoML and any person or entity (“**User**,” “**you**,” “**yourself**,” and “**your**”) who registers, accesses, or otherwise uses a User Account. In the event that you purport to be an agent or other representative of an entity (e.g., an officer or employee) or in the event that you otherwise, in fact, act on behalf of such an entity, you hereby acknowledge and agree that references in this Agreement to “**User**,” “**you**,” “**yourself**,” and “**your**” refer to you and such entity, collectively.

You agree that by registering, accessing, or using your User Account, you have read, understood, and agree to be bound by this Agreement on behalf of yourself and any entity that you represent. If you do not agree to all of the terms of this Agreement, do not register, access, or use your User Account.

ELIGIBILITY TO ACCESS AND USE YOUR USER ACCOUNT

In order to register, access, and use your User Account, now or in the future, you must be at least 18 years of age (or the age of legal majority where you live and/or access your User Account). If you are under the age of 18 years or whatever is the age of legal majority where you live and/or access your User Account, you may register your User Account only with the involvement of your parent or other legal guardian, and you represent and warrant that your parent or other legal guardian has read, understood, and agreed to this Agreement.

Optimization Services, including the Optimized Models; the Software; SDKs; and the other information, data, and materials provided by us as part of the Optimization Services are designed, developed, hosted, operated, supported, maintained, and otherwise offered by us in or from the United States. The Optimization Services are not intended for distribution to or use by any person or entity in any jurisdiction where such distribution or use would be contrary to law or that would subject OctoML to any registration requirement within such jurisdiction. Accordingly, those persons and entities that choose to access or use the Optimization Services from locations outside the United States do so on their own initiative and are solely responsible for compliance with local laws. You represent and warrant that you (and, if applicable, any entity that you represent) are not (1) located in a country that is subject to a US government embargo, or that has been designated by the US government as a “terrorist supporting” country; or (2) listed on any US government list of prohibited or restricted parties.

We reserve the right to cancel or suspend your access to and use of your User Account, if you fail to comply with any of these eligibility requirements.

SUPPLEMENTAL TERMS

The Optimization Services that we make available to you via your User Account, including the Optimized Models and, as applicable, the Software; SDKs; the other information, data, and materials provided by us to you as part of the Optimization Services; and any related services, in each case, are subject to additional, supplemental terms (“**Supplemental Terms**”) as shown below:

Terms of Service for Optimization Services

These Terms of Use form a part of those Supplemental Terms and are incorporated therein by this reference. You understand that the terms, conditions, limitations, and restrictions set forth in the Supplemental Terms govern your purchase of, access to, and use of some or all of the Optimization Services, and you hereby affirm that you have read and understand all Supplemental Terms that apply to Optimization Services that you access and use using your User Account.

MODIFICATIONS TO THIS AGREEMENT

We reserve the right to modify the terms, conditions, limitations, and restrictions set forth in this Agreement, including introducing additional Supplement Terms, at any time and in our sole discretion; provided, that, in the event that we make such modifications, we will endeavor to notify you the next time that you access your User Account and allow you to review and accept the modifications prior to continuing to access or use your User Account. In the case of modifications to these Terms of Use, we will also update the “Last updated” date at the top of these Terms of Use. Your continued access to and use of your User Account following notice of such modifications will constitute your acceptance of them. If you do not agree to any such modifications as they occur or are introduced, you will immediately

discontinue accessing or using your User Account and the features and functions of the Optimization Services.

RESPONSIBILITY FOR YOUR USER ACCOUNT

To create a User Account, you will be required to provide certain information, and you will establish a username and a password. You agree to provide accurate, current, and complete information during the registration process and to update such information to keep it accurate, current, and complete. We reserve the right to cancel or suspend your User Account if any information provided during the registration process or thereafter proves to be inaccurate, not current, or incomplete.

Your User Account is assigned to you and you only. You acknowledge that your User Account is only for use by you and is not transferable to any other individual (e.g., other officers, employees, contractors, agents, or representatives of an entity you represent), and you agree you will not create more than one User Account.

You are responsible for maintaining the confidentiality of any account authentication credentials used to access your User Account. You may not share account authentication credentials with anyone else or otherwise permit anyone other than yourself to access or use the Optimization Services using your User Account or your User Account authentication credentials. You are responsible for maintaining the confidentiality of your User Account and account authentication credentials and are responsible for the access to and use of your User Account and the Optimization Services by anyone who obtained your account authentication credentials through you. You will immediately notify us of any unauthorized use of your User Account.

CANCELLING YOUR USER ACCOUNT

You may cancel your User Account at any time by logging into your User Account and electing to cancel or by sending an email to us at contact@octoml.ai. Cancellations will take effect within 30 days after the end of any period of time for which you have paid for access to or use of the Optimization Services. For the avoidance of doubt, canceling your User Account does not relieve you of the obligation to pay any remaining payments owed in connection with your User Account or otherwise accrued prior to the effective date of such cancellation, and all fees paid by you are non-refundable.

PRIVACY

We care about data privacy and security. Our Privacy Policy available by contacting us at contact@octoml.ai. It discloses the information we collect and how we use it. By accessing or using your User Account, you affirm that you have read our Privacy Policy and understand its terms and conditions, so please review it carefully. You agree that we can use the information we collect pursuant to and in accordance with our Privacy Policy, as it may be updated from time to time.

Your User Account; the Optimization Services; the Software; SDKs; and the information, data, and materials provided to you and others as part of the Optimization Services are designed, developed, hosted, operated, supported, maintained, and otherwise offered by us in the United States. If you access your User Account from the European Union, Asia, or any other region of the world with laws or other requirements governing personal data collection, use, processing, or disclosure that differ from applicable laws in the United States, then through your continued access to and use of your User Account, you are transferring your information to the United States, and you expressly consent to have your information transferred to and stored and/or processed in the United States.

TERM AND TERMINATION

The term of this Agreement commences upon your acceptance of this Agreement, as evidenced by your registering, accessing, or using your User Account. You may terminate this Agreement at any time by canceling your User Account, as described above. We may terminate this Agreement by canceling or suspending your User Account in the event that you breach any of the terms, conditions, limitations, restrictions, representations, or warranties set forth in this Agreement, including, without limitation, the terms, conditions, limitations, restrictions, representations, or warranties set forth in any Supplemental Terms, or in the event that you no longer meet the eligibility requirements set forth above. Further, if, pursuant to any Supplemental Terms or any separate, written agreement between you and OctoML (including any agreement between OctoML and the entity that you purport to represent or, in fact, act on behalf of), you no longer have the right to access and use the Optimization, this Agreement shall automatically terminate. We may also terminate this Agreement at any time for any reason or no reason by refunding any pre-paid fees paid by you for access to and use of your User Account not attributable to Optimization Services provided to you prior to the effective date of such cancellation. Following termination of this Agreement for any reason, within 30 days thereafter, we may delete your User Account and any information associated with your User Account at any time, with or without advance notice. If we cancel or suspend your User Account for any reason, you are prohibited from registering and creating a new User Account under your name, a fake or borrowed name, or the name of any third party, even if you may be acting on behalf of an entity. In addition to canceling or suspending your User Account and/or terminating this Agreement, we reserve the right to take appropriate legal action, including, without limitation, pursuing civil and criminal remedies and seeking injunctive relief.

YOUR REPRESENTATIONS AND WARRANTIES

By registering, accessing, or using your User Account, you represent and warrant that: (1) you meet the eligibility requirements for accessing and using your User Account set forth in this Agreement; (2) all registration information you submit to us is true, accurate, current, and complete and will be maintained as such by you; (3) you are authorized to accept this Agreement on behalf of any entity that you purport to represent as an agent or other representative (e.g., as an officer or employee) or that you otherwise, in fact, act on behalf of; (4) you have not, and will not, access or use your User Account or any features or functions of the Optimization Services for any illegal or unauthorized purpose, and your access to and use of your User Account will not cause OctoML to be in violation of any applicable law or regulation; and (5) you have not, and will not, access or use your User Account or any feature or functions of the Optimization Services in a manner that misappropriates the intellectual property or otherwise infringes on the intellectual property rights of any third party. If you breach these representations and warranties, in addition to any other remedies that we may have at law or equity, we will have the right to cancel or suspend your access to and use of your User Account and refuse to allow you (and, if applicable, the entity you represent) to access and use any or all of the features and functions of the Optimization Services, now and in the future.

LIMITATIONS OF LIABILITY

Please read carefully the [Performance Warranty](#) and [Limitations of Liability](#) sections of any Supplemental Terms that apply to Optimization Services that you access and use using your User Account, because they describe, in detail, the limitations on our liability arising from your access to and use of your User Account and the features and functions of the Optimization Services and are hereby expressly incorporated into these Terms of Use by this reference (with all necessary changes in points of detail).

DISPUTE RESOLUTION; MANDATORY BINDING ARBITRATION

Please read carefully the Dispute Resolution; Mandatory Binding Arbitration section of any Supplemental Terms that apply to Optimization Services that you access and use using your User Account, because it describes, in detail, the exclusive means by which disputes, controversies, and claims related to these Terms of Use and arising from your access to and use of a User Account will be resolved by you and OctoML; requires you to waive the right to a jury trial; requires you to arbitrate such disputes, controversies, and claims with OctoML; limits the manner in which you can seek relief from OctoML; and is hereby expressly incorporated into these Terms of Use by this reference (with all necessary changes in points of detail). No class or representative actions or arbitrations are allowed.

GOVERNING LAW

This Agreement and your access to and use of your User Account and the Optimization Services are governed by the laws of the State of Washington, without regard to its conflict of laws principles. Any dispute between you and OctoML that is not subject to arbitration will be resolved in the state or federal courts of the State of Washington and the United States of America sitting in or having jurisdiction in King County, Washington.

NOTICES

Notices from you to us or us to you shall be in writing and may be sent via email or via your User Account. In any event, you can notify us or send questions, complaints, or claims related to your User Account to us by contacting us using the contact information set forth below. Notices from us to you will be sent to the email address or mailing address provided by you as part of your User Account.

MISCELLANEOUS

These Terms of Use and any Supplemental Terms incorporated into these Terms of Use or into which these Terms of Use are incorporated constitute the entire agreement and understanding between you and us concerning your User Account and the Optimization Services, including the Optimized Models; the Software; SDKs; the other information, data, and materials provided to you as part of the Optimization Services; and any related services. Our failure to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. This Agreement operates to the fullest extent permissible by law. If any provision of this Agreement is adjudged to be invalid, void, or unenforceable, you and OctoML hereby agree that the remaining provisions of this Agreement shall not be affected thereby, that the provision in question may be replaced by the lawful provision that most nearly embodies the original intention of you and OctoML, and that this Agreement shall in any event otherwise remain valid and enforceable. In no event will either party be deemed in default hereunder based on delay in, or failure of, performance (other than the payment of money) if caused by floods, fires, storms, or other acts of God, by war or acts of public enemy, including terrorism, or civil disturbance, strikes, lockouts, shortage of labor, labor disputes or labor trouble, problems in obtaining raw materials or production facilities, power failure, equipment failure, transportation shortages or failures, actions of any governmental or other authority (including in response to any epidemic or pandemic), or any other cause not within its reasonable control. This Agreement is for the benefit of, and shall be binding upon OctoML and you. No third party shall be considered a third-party beneficiary hereunder. We may assign any or all of our rights and obligations under this Agreement to others at any time. You may not assign or transfer your rights or obligations under this Agreement without our prior written consent. You and OctoML are independent contractors with respect to this Agreement, your User

Account, and the Optimization Services. There is no joint venture, partnership, employment or agency relationship created between you and us as a result of this Agreement. You agree that this Agreement will not be construed against us by virtue of having drafted them. You hereby waive any and all defenses you may have based on the electronic form of this Agreement and the lack of written or electronic signatures by the parties hereto to execute this Agreement.

CONTACT US

In order to resolve a complaint regarding your User Account or to receive further information from us about the Optimization Services, please contact us at:

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