

TERMS OF SERVICE

Last updated: August 27, 2024

THIS TERMS OF SERVICE IS MADE AND ENTERED INTO BY AND BETWEEN INCUE LLC (“INCUE”) AND CUSTOMER (“CUSTOMER”) PURSUANT TO THE SERVICE AGREEMENT (“AGREEMENT”) ENTERED INTO BY INCUE AND CUSTOMER. THIS TERMS OF SERVICE GOVERNS CUSTOMERS USE OF THE MOBILE APPLICATION, ONLINE PLATFORM, AND SERVICE (COLLECTIVELY, THE “SERVICE”) PROVIDED BY INCUE. INCUE and Customer are each also referred to as a “Party” and collectively as the “Parties”. Capitalized terms used, but not defined, in this Terms of Service will have the meaning ascribed to such capitalized terms in the Agreement.

1. LIMITED RIGHT OF ACCESS AND USE.

A. Grant. Subject to this Terms of Service and the Agreement, INCUE hereby grants Customer, and Customer hereby accept, a limited, non-exclusive and non-transferable right to electronically access and use the Service for the sole purpose of monitoring the air in hospitals and other healthcare facilities (“Limited Right of Access and Use”).

B. Username and Passwords. CUSTOMER IS SOLELY RESPONSIBLE FOR MAINTAINING THE CONFIDENTIALITY AND USE OF CUSTOMER’S USERNAMES AND PASSWORDS. Customer shall immediately notify INCUE by e-mail of any actual or suspected access to or use of a username, password and/or Customer account by any unauthorized party or any other actual or potential security breach involving a username, password or Customer account. INCUE may, in INCUE’s sole discretion and at any time, require Customer to change a username or password.

C. Maintenance. INCUE conducts periodic maintenance of the Service on a monthly basis to improve the features and functionality of the Service (“Maintenance”). From time to time, INCUE may also need to conduct emergency Maintenance to address issues with the Service. INCUE will endeavor to perform such Maintenance late in the evening and on weekends.

2. TERM AND TERMINATION.

A. Term. The Limited Right of Access and Use is subject to Customer’s compliance with the terms of Agreement and this Terms of Service. The initial term (“Initial Term”) of the Service Agreement is set forth in the Agreement and commences on the Effective Date, and thereafter the Agreement will automatically renew for successive periods of either three (3) months or one (1) year as set forth in the Agreement or otherwise agreed in writing by INCUE and Customer (each, a “Renewal Term” and collectively with the Initial Term, the “Term”), unless and until the Agreement is terminated pursuant to this Terms of Service.

B. Termination. INCUE may suspend or terminate the Limited Right of Access and Use of a Customer end-user (each, an “End-User”), without notice, if such end-user fails to comply with INCUE’s Acceptable Use Policy (“Acceptable Use Policy”). Either Party may terminate the Agreement at the end of the Initial Term or any Renewal Term upon providing the other Party at least fifteen (15) days written notice prior to the end of the Initial Term or then-current Renewal Term. If a Party materially breaches the Agreement, including, without limitation, the failure of Customer to timely pay in full all amounts due, then the other Party may terminate the Agreement immediately if the other Party fails to cure such breach within five (5) days of receipt of written notice from the non-breaching Party. In addition to any other remedy available to INCUE, INCUE reserves the right, at its sole discretion, to immediately suspend the Limited Right of Access and Use upon written notice to Customer if Customer materially breaches the Agreement.

C. Events Upon Termination. On the expiration or earlier termination of the agreement, in addition to any remedies a Party may have (i) the Limited Right of Access and Use will immediately terminate; (ii) Customer shall immediately cease accessing and using the Service; and (iii) Customer shall immediately pay INCUE any and all Fees due INCUE through the date of expiration or earlier termination.

3. **RESTRICTIONS.** Customer shall not, and shall not cause or permit others to, do or attempt to do any of the following (collectively, the “Restrictions”):

- access or use the Service, except as specifically set forth in this Terms of Service;
- access or use the Service in a manner that violates this Terms of Service or any applicable law, rule, or regulation;
- allow an unauthorized person to use a Customer username and/or password to access and/or use the Service or for any other purpose;
- assign, sublicense, transfer, or otherwise provide another person with access to and/or use of the Service;
- impersonate, or misrepresent your affiliation with, another person or entity;
- upload, post, e-mail, transmit, or otherwise make available through the Service any content, data or other information (i) that is false, inaccurate, incomplete, untimely, misleading, unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, or hateful; (ii) for which you do not have a right to make available (publicly or privately); (iii) that infringes any intellectual property right or other proprietary right of any person or entity; or (iv) that contains malware, software viruses, or any other computer code, files, or programs designed to interrupt, destroy, interfere with, or otherwise limit the functionality of any computer software, hardware, network, telecommunications equipment, or to otherwise interact with the Service in a manner not permitted;
- download, copy, publish, modify, tamper with, adapt, translate, reverse engineer, disassemble, decompile, decode, or decrypt the Service or the software that powers the Service;
- create derivative works from the Service;
- use, remove, alter, obscure, translate, combine, supplement, or otherwise change any screen display, patent, copyright or trademark marking, disclaimer, version or release number, or serial number, which is present in, displayed by, or provided in connection with, the Service;
- give the appearance that you are authorized to display the Service for others;
- probe, scan, or test the vulnerability of the Service;
- act as a service bureau for third parties or act as an outsource agent or outsource provider for third parties, or otherwise utilize the Service for the benefit of any third party;
- use any information from the Service for purposes of monitoring availability, performance or functionality, or for any other benchmarking or competitive purposes;
- enable high volume, automated, electronic processes through the Service;
- use any robot, spider, data miner, crawler, scraper, or other automated means to access or index the Service or content, data or other information associated with the Service;
- interfere with or disrupt the Service or servers or networks connected to the Service, or violate any requirements, procedures, policies, or regulations of networks connected to the Service;
- interfere with the use of the Service by INCUE or other end-users of the Service;
- bypass, breach, or disable any technological safeguard, restricted access, or other protection used by, or in connection with, the Service;
- stalk or otherwise harass any person or entity through the Service;
- facilitate gambling, gaming, lotteries, raffles, contests, sweepstakes, and/or any other activity featuring the award of a prize through the Service;
- use the Service to collect, store, use, share, or otherwise process personal data, personal information, personally identifiable information or any other information which is related to an identified or identifiable natural person, except as (i) allowed by applicable law, (ii) permitted pursuant to this Terms of Service, and (iii) to facilitate a transaction through the Service; or
- disclose any information of or provided by INCUE or another end-user, except as needed to use the Service in accordance with this Terms of Service.

4. **INTELLECTUAL PROPERTY RIGHTS.** INCUE owns all right, title and interest in and to the Service, as well as the software which powers the Service. Other than the Limited Right of Access and Use, no other rights are granted pursuant to this Terms of Use, and all other rights related to the Service are hereby reserved by INCUE and shall remain owned solely and exclusively in their entirety by INCUE. Nothing in this Terms of Service creates for Customer any right of ownership in or to the Service. From time to time, Customer may provide feedback to INCUE

regarding the Service, including, without limitation, usability, bug reports, and test results (collectively, the "Feedback"). INCUE will own all intellectual property rights, title, and interest in and to the Feedback.

5. DATA.

A. Customer Data. As between Customer and INCUE, Customer will own the non-personal factual data that is uploaded to or otherwise provided through the Service by or on behalf of Customer ("Customer Data"); *provided, however*, Customer hereby grants INCUE a worldwide, perpetual, irrevocable right and license to use Customer Data to provide Customer with access to and use of the Service. INCUE is not responsible for any Customer Data or for any action Customer may take relating to any Customer Data, including, without limitation, using the Service to run models and other reports. Although INCUE may choose to do so, INCUE is not obligated to, monitor, supervise, store, or maintain any Customer Data or respond to complaints relating to Customer Data.

B. Third Party Data. INCUE is not responsible for any data, links, content, or other data provided by third parties (collectively, "Third Party Data") or for any action Customer may take relating to any such Third Party Data. All Third Party Data is the sole responsibility of the creator or sender of that Third Party Data. INCUE may, but is not obligated to, monitor, supervise, store, or maintain any Third Party Data or respond to complaints relating to Third Party Data.

C. Personal Information. All personal information provided by end-users or otherwise collected or processed by INCUE in connection with access to and/or use of the Service by end-users is governed by INCUE's [Privacy Policy](#) ("Privacy Policy"). Specifically, as between the end-user and INCUE, the end-user will own their personal information uploaded to or otherwise provided through the Service ("End-User Data"); *provided, however*, each end-user will grant INCUE a worldwide, perpetual, irrevocable right and license to use the End-User Data to provide the end-user and Customer with access to and use of the Service.

D. Aggregated Data. Customer hereby acknowledges and agrees that INCUE may create de-identified and aggregated data from End-User Data which cannot be used to identify the end-user or any other natural person (collectively, "Aggregated Data"). Customer acknowledges and agrees that (i) INCUE owns all right, title and interest in the Aggregated Data; and (ii) Customer does not own or have any right in or to the Aggregated Data.

E. Disclosure of Data. To the extent legally permitted, as determined in the sole discretion of INCUE, INCUE may access, use, and disclose Customer Data and Third Party Data (i) if required to do so by applicable law, including, without limitation, responding to a subpoena or request from law enforcement, court, or government agency; (ii) as necessary to comply with a legal obligation to Customer or a contractual parties with Customer of Customer; (iii) protect or defend INCUE's rights, interests, or property; (iv) prevent, investigate, or identify possible wrongdoing in connection with the Service; or (v) protect against legal liability. Unless restricted by applicable law, we will inform you of such a disclosure before sharing the Customer Data or Third Party Data for this purpose.

F. Data Disclaimers. Reports provided through the Service ("Reports") are only as accurate, complete and timely as the Customer Data collected and provided through the Service. Variations in Customer Data may occur due to factors outside the control of INCUE, including, without limitation, conditions in a facility, tampering with a device, device malfunctions, corruption or inaccuracy, or Internet transmission outages. INCUE is not responsible or liable for such factors and Customer is encouraged to use discretion when reviewing and using Reports, as well as to consider the inherent variability in conditions when interpreting and using the Reports. By accessing and using the Service, Customer acknowledges and accepts these inherent uncertainties. Customer should conduct additional research and analysis as Customer deems necessary. Specifically, INCUE Air Quality Monitors are not designed or intended for use as scientific particle counters or precision instruments. INCUE follows the EPA U.S. Air Quality Index (AQI) standard, which ranges from 0 to 500. INCUE measures the presence of PM_{2.5} (1.0–2.5 μm) particles in the air sample at the monitor's location and maps that data to the AQI. It is important to note that INCUE does not provide interpretations or judgments regarding whether the collected data indicates "good" or "bad" air quality. The determination of what constitutes acceptable air quality, as well as the configuration of INCUE alert thresholds, is the sole responsibility of Customer. INCUE Air Quality Monitors and INCUE Applications are intended to serve as early notification and trend detection tools only. They are not a substitute for professional environmental assessments or safety measures. If Customer suspects any air quality issues exist, then it is Customer's sole responsibility to consult with qualified professionals, such as environmental engineers and/or industrial hygienists, for proper evaluation and remediation. By using INCUE Air Quality Monitors and Applications, Customer acknowledges and agrees that Customer assumes all responsibility for the interpretation and use of the data provided by the Service.

6. FEES.

A. Price. In consideration for the Limited Right of Access and Use, Customer shall pay INCUE a fee (“Fee”) per the terms set forth in the Agreement. INCUE may modify the pricing terms for Fees prior to the start of any Renewal Term upon providing Customer with at least fifteen (15) days prior, written notice.

B. Payment. Customer shall pay INCUE the Fee in advance for the Term (i) on or before the Effective Date for the Initial Term; and (ii) on or prior to the first day of the applicable Renewal Term for each Renewal Term. Customer hereby acknowledges and agrees that the entire Fee is deemed due, earned, and payable in advance on or before the first day of the Initial Term or Renewal Term, as applicable. Fees are non-refundable. Any payment not received by INCUE on or before the due date will bear interest commencing on the original due date until paid in full at the lesser of one and one half percent (1.5%) per month or the maximum rate allowed by applicable law. All amounts shall be paid and payable by Customer to INCUE without right of setoff, deduction or demand. Customer shall pay for all collection costs (including, without limitation, reasonable attorneys’ fees and costs) incurred by INCUE with respect to any amounts past due by Customer pursuant to the Agreement.

C. Taxes. Customer shall be solely responsible for all taxes related to the devices (“Devices”) and services provided for use of the Service. If any taxing or governmental authority asserts that INCUE should or should have collected taxes from Customer, then, to the extent not previously paid, Customer hereby agrees to pay INCUE such taxes.

D. Security Interest. CUSTOMER HEREBY GRANTS INCUE A LIEN AND SECURITY INTEREST IN THE DEVICES AND CUSTOMER WILL EXECUTE, DELIVER, AND PAY THE FEES FOR ANY DOCUMENTS INCUE REQUESTS TO CREATE, PERFECT, MAINTAIN, AND ENFORCE THIS SECURITY INTEREST. TO THE EXTENT PERMITTED BY LAW, CUSTOMER IRREVOCABLY AUTHORIZES INCUE TO EXECUTE AND FILE ANY FINANCING STATEMENTS OR OTHER DOCUMENTS RELATED TO THIS SECURITY INTEREST. Customer represents and warrants that no other person or entity has a security interest in the Devices and that this security interest secures Customer’s obligations to INCUE under this Terms of Service. INCUE shall have all rights of a secured party and Customer must obtain the prior written consent of INCUE before granting any subsequent security interest in the Devices. Customer agrees that the Devices shall not be subject to any preference, claim, or stay by reason of any bankruptcy or insolvency law.

7. DISCLAIMER OF WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS OTHERWISE SET FORTH IN THIS TERMS OF SERVICE, THE SERVICE IS PROVIDED "AS IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND INCUE SPECIFICALLY DISCLAIMS AND MAKES NO WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING THE SERVICE, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, AND SATISFACTORY QUALITY. INCUE ALSO SPECIFICALLY DISCLAIMS ANY WARRANTIES REGARDING THE ACCURACY, COMPLETENESS, SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SERVICE AND DATA DISPLAYED THROUGH THE SERVICE. INCUE DOES NOT WARRANT THAT THE RESULTS OF CUSTOMER’S USE OF THE SERVICE WILL MEET CUSTOMER’S SPECIFIC REQUIREMENTS OR EXPECTATIONS. INCUE DISCLAIMS AND MAKES NO WARRANTY AS TO ANY THRID PARTY DATA OR SERVICES PROVIDED BY THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, CLOUD AND/OR INTERNET SERVICE PROVIDERS. INCUE DOES NOT WARRANT THAT DEFECTS IN THE DATA DISPLAYED BY THE SERVICE WILL BE CORRECTED. NO ORAL OR WRITTEN ADVICE GIVEN BY INCUE OR AN AUTHORIZED REPRESENTATIVE OF INCUE SHALL CREATE A WARRANTY WITH RESPECT TO THE SERVICE. CUSTOMER UNDERSTANDS AND AGREES THAT CUSTOMER’S USE OF THE SERVICE IS AT CUSTOMER’S OWN DISCRETION AND RISK. Customer acknowledges and agrees that this disclaimer of warranties was specifically bargained for and are acceptable to Customer and that Customer’s willingness to agree to this disclaimer of warranties is material to INCUE’s decision to enter into this Terms of Service. This disclaimer of warranties will be enforceable to the maximum extent permitted by applicable law.

8. LIMITATION ON LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LIABILITY OF INCUE, IF ANY, AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES

FOR ANY CLAIM OF ANY KIND WHATSOEVER WITH RESPECT TO THE SERVICE, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE, INFRINGEMENT OF ANY THIRD PARTY RIGHTS, PRODUCT LIABILITY, INDEMNITY, SUBROGATION OR CONTRIBUTION, AND REGARDLESS OF THE LEGAL THEORY, SHALL NOT EXCEED, IN THE AGGREGATE, THE ACTUAL FEES PAID TO INCUE BY CUSTOMER WITH RESPECT TO THE SERVICE DURING THE THEN IMMEDIATELY PAST TWELVE (12) MONTHS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, UNDER NO CIRCUMSTANCE WILL INCUE BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING COMPENSATION, REIMBURSEMENT OR DAMAGES ON ACCOUNT OF DAMAGES FOR SUBSTITUTE SERVICES, LOSS OF USE, LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF PRIVACY, LOSS OF DATA, LOSS OF OPPORTUNITY, OR OTHER INTANGIBLE LOSSES (EVEN IF INCUE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). INCUE ASSUMES NO RISK AND SHALL BE SUBJECT TO NO LIABILITY FOR DAMAGES OR LOSS RESULTING FROM THE SPECIFIC USE OR APPLICATION MADE OF THE DATA DISPLAYED BY THE SERVICE. Customer acknowledges and agrees that this limitation of liability was specifically bargained for and is acceptable to Customer and that Customer's willingness to agree to this limitation of liability is material to INCUE's decision to enter into this Terms of Service. This limitation of liability will be enforceable to the maximum extent permitted by applicable law.

9. INDEMNIFICATION. Customer shall indemnify, defend and hold INCUE and each of INCUE's members, managers, officers, directors, employees and other representatives (each, an "Indemnified Party") harmless from and against any and all third party claims, suits, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and court costs (each, a "Claim"), arising out of or relating to (i) the Customer Data provided to the Service; (ii) Customer's use of the data displayed through the Service; (iii) Customer's performance of Customer's services for third party's; (iv) Customer's breach of the Agreement; or (v) Customer's violation of applicable law.

10. GENERAL.

A. Entire Agreement; Amendment. The Agreement, which includes this Terms of Service, the Privacy Policy, and the Acceptable Use Policy (each of which is hereby incorporated into and made a part of the Agreement by this reference), constitutes the entire understanding and agreement between INCUE and Customer with respect to the Agreement and supersedes any and all prior or contemporaneous oral or written communications with respect to the subject matter of this Terms of Service.

B. Amendments and Modifications. The Agreement may only be amended, changed or modified by a document accepted by both INCUE and Customer; *provided, however*, INCUE may update this Terms of Service, including, without limitation, the Privacy Policy, at any time and from time to time by posting such updates on the Service and either providing notice to the last e-mail address on record for Customer or providing Customer with notice by other similar means, including, without limitation, providing Customer with notice upon Customer's next access of the Service. If an update changes how INCUE uses Personal Information or applicable law otherwise requires Customer's consent, then INCUE will also seek Customer's consent prior to such update applying to Customer. Upon providing notice as noted above, updates which do not require Customer consent will be effective regardless of whether Customer's consent is obtained.

C. No Waiver. No waiver of any provision of the Agreement or any rights or obligations of any Party under the Agreement will be effective, except pursuant to a written instrument signed by the Party or Parties waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing.

D. Assignment. Customer may not assign or transfer the Agreement or any right, interest or obligation set forth in the Agreement, without the prior written consent of INCUE.

E. Binding Effect. The Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their successors and permitted assigns. The Agreement shall not be construed to give any person other than the Parties any legal or equitable right, remedy or claim under or with respect to the Agreement.

If to Customer: To the address set forth in the Service Agreement

O. Survival. All payment obligations incurred pursuant to the Agreement and each of the provisions in Sections 2.B, 2.C, 3 through 5, and 7 through 10 of this Terms of Service will survive the expiration or earlier termination of the Agreement.

P. Counterparts; Electronic Signature and Version. The Agreement may be executed in multiple counterparts, each of which will be deemed an original and of equal force and effect, and all of which taken together shall constitute one and the same instrument. The Agreement may be executed with either a digital signature or via other electronic means. Each Party reserves the right to maintain an executed copy of the Agreement in electronic form only, and each Party hereby agrees that a print-out of such electronic form of the Agreement will be deemed an original for all purposes relating to the enforceability the Agreement.