

# END USER AGREEMENT

**IMPORTANT INFORMATION:** You agree to be bound by the terms and conditions of this End User Agreement (a) by using the Toybox Platform, or (b) by indicating your assent in the manner set out below. If you do not agree with these terms and conditions, do not use the Toybox Platform.

## Recitals

At Toybox, we've developed an analytics platform that measures the consistency of your user-interface ("UI") and that, among other features, provides you with various metrics to help you evaluate your UI (the "Toybox Platform"). This End User Agreement ("Agreement") governs our provision and your use of the Toybox Platform.

## Terms And Conditions

- 1. Access and Parsing.** Depending on the scope of the services you request, our Platform will (a) parse your public-facing UI; and/or (b) parse those elements and pages of your customer-facing UI that you designate, so long as you provide us with customer account credentials sufficient to access this UI and associated pages (collectively (a) and (b) are referred to as the "Designated Web Pages"). The Toybox Platform operates through a browser, and we do not require access to any elements of your website or UI other than those you customarily provide to public users and your customers.
- 2. Metrics and Reports.** After parsing the Designated Web Pages in the manner described above, we will generate a set of metrics (the "Toybox Metrics") concerning the visual elements of these Pages, including (depending on our agreement): type styles, colors, spacing, input-fields, buttons, and other elements that you have incorporated in the Designated Web Pages. Depending on our agreement with you, we will display Toybox Metrics in a dashboard format, and/or in a stand-alone report format (each a "Toybox-Metrics Report").
- 3. Grant of Rights.** Subject to the terms and conditions of this Agreement, Toybox hereby grants to you a non-exclusive license to access the Toybox Platform for the purpose reviewing your dashboard and to copy, use, modify, and distribute Toybox Metrics and Toybox-Metrics Reports, on the condition that you engage in these activities for, and limit them to, you internal business purposes only. For example, you agree not to disclose to a third party our Toybox Metrics, Toybox-Metrics Reports, or derivatives you might create from these Metrics or Reports.
- 4. Ownership.** The Toybox Platform, Toybox Metrics, and Toybox-Metrics Reports (and associated intellectual property rights) are and will remain the sole property of Toybox and, except for the license we expressly grant you under in this Agreement, you have no rights in or to these assets.
- 5. Compensation.** In consideration of our parsing the Designated Web Pages and providing you with one or more associated Toybox-Metrics Reports, you agree to pay us the amounts set out in our Order Sheet. Your payment will be due within thirty (30) days of your receipt of our invoice. Late payments will run interest at the rate of 1% per month. If there is no Order Sheet, or if fees are listed as "zero" in the Order Sheet, then this is a beta agreement, and no fees are due for the initial Term.
- 6. Confidentiality.** You acknowledge that the Toybox Platform contains proprietary and confidential information of Toybox, and agree to hold the Toybox Platform in confidence. By way of example (and not by way of limitation), you will not without the express written authorization of Toybox: (i) demonstrate, copy, sell, or market the Toybox Platform, Toybox Metrics, or Toybox-Metric Reports to any third party; (ii) publish or otherwise disclose information relating to the performance or quality of the Toybox Platform to any third party; or (iii) modify, reuse, disassemble, decompile, reverse engineer or otherwise translate the Toybox Platform. The foregoing obligations shall not apply to information (a) that is or becomes publicly known through no fault of yours; or (b) that was previously known to you before your access to the Toybox Platform.

7. **Your Feedback.** Although we certainly appreciate it, you're not obligated to provide us with feedback or suggestions on our Platform, Metrics, or Reports. If you choose to provide us with feedback, though, please understand: we'll own the right to use, modify, and otherwise exploit that feedback for our Platform and for our other purposes, and we won't be obligated to compensate you for these uses.
8. **Representations and Warranties: Information Security.** Toybox represents and warrants, during the Term, that it has implemented and will maintain processes and controls designed to safeguard the integrity and security of (a) your UI and (b) all other features of your website or network with which our Toybox Platform interacts.
9. **Disclaimer of Other Warranties.** OTHER THAN OUR INFORMATION SECURITY WARRANTY SET OUT ABOVE IN SECTION 8(Representations and Warranties: Information Security), WE PROVIDE THE TOYBOX PLATFORM "AS IS," AND TOYBOX DOES NOT REPRESENT OR WARRANT THAT THE PLATFORM IS RELIABLE OR ERROR-FREE; THAT THE TOYBOX METRICS OR TOYBOX-METRIC REPORTS WILL BE ACCURATE OR USEFUL, OR THAT DEFECTS IN THE PLATFORM OR REPORTS WILL BE CORRECTED. OTHER THAN THE WARRANTY SET OUT IN SECTION 8, ABOVE, TOYBOX DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.
10. **Limitation of Liability.**
  - 10.1. **Extended Limit for Breach of Warranty.** Toybox will not be liable for damage arising out of a breach of the warranty set out in Section 8 (Representations and Warranties: Information Security) in an amount that exceeds twice (2x) the amount paid or due from you to Toybox under this agreement.
  - 10.2. **Limit in All Other Circumstances.** In all other instances, Toybox shall have no liability for damage arising out of the use of, inability to use, or circumstances surrounding the Toybox Platform, Toybox Metrics, or Toybox-Metric Reports, even if Toybox has been advised of the possibility of such damages.
11. **Acceptance.** This Agreement begins on the date you assent to its terms and conditions (a) by providing us a return email, in response to our request, that indicates your acceptance of this Agreement; (b) by clicking "I accept" when prompted on your registration for the Toybox Platform; or (c) by using the Toybox Platform (collectively, the "**Start Date**").
12. **Term.** This Agreement will expire at the end of the period specified in our Order Sheet. If there is no Order Sheet, or if there is no period specified in the Order Sheet, this Agreement will expire sixty (60) days after the Start Date (collectively, the "**Term**").
13. **Frequency of Reports.** Unless we mutually agree otherwise in the Order Sheet, we will provide one Toybox-Metrics Report during a Term.
14. **Early Termination; Effect of Termination.** You may terminate this Agreement at any time before expiration of the Term by notifying us that you are ceasing use of the Toybox Platform. Without prejudice to Toybox's other rights, this Agreement will terminate immediately, and without need for notice, if you fail to comply with this Agreement's terms and conditions. Upon termination, you must cease use of the Toybox Platform, Toybox Metrics, and Toybox-Metrics Reports.
15. **Survival.** The following provisions shall survive expiration or termination of this Agreement: 7 (Your Feedback); Section 4 (Ownership); Section 6 (Confidentiality); and Section 10 (Limitation of Liability).
16. **General.**
  - 16.1. **Your Authority.** If you are acting as an employee or other representative of an organization ("**Your Organization**"), you represent and warrant that you have authority to legally bind Your Organization to the terms and conditions of this Agreement.

- 16.2. Choice of Law; Jurisdiction.** This License Agreement shall be governed, construed and enforced in accordance with the laws of the United States of America and of the State of New York. The exclusive jurisdiction for resolving disputes under this Agreement shall be the state or federal courts in New York, in the judicial district in which Toybox resides.
- 16.3. Notice.** Any notice required by this Agreement shall be given by (i) prepaid certified mail, return receipt requested; (ii) first class mail; (iii) fax with a confirmation; or (iv) properly addressed email. Notice shall be given to Toybox at the address set out in Section 14, and to the address you provided during the ordering or registration process. Notice is effective upon receipt by the addressee, or if not received by reason of the addressee's fault, when delivered.
- 16.4. Entire Agreement; Modifications.** This Agreement constitutes the entire and only agreement between the parties for the Toybox Platform, and all other prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.
- 16.5. No Waiver.** Failure of Toybox to enforce a right under this Agreement shall not act as a waiver of that right or the ability to later assert that right relative to the particular situation involved.
- 16.6. Severability.** If any provision of this Agreement shall be found by a court to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.
- 17. Contact Information.** If you have any questions about this Agreement, you may contact Toybox at:

Attention:	MAHKO, CORP. d/b/a Toybox
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