



WhatFirst Online Service Product Use Rights

By way of this agreement you agree to the following terms and conditions (the "Agreement") governing your use of Accelare's WhatFirst Online Service (the "WhatFirst Online Service").

1. WhatFirst Online Service

As part of the WhatFirst Online Service, Accelare will provide you with use of the WhatFirst Online Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the WhatFirst Online Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the Accelare website incorporated by reference herein, including but not limited to Accelare's privacy and security policies. For reference, a Definitions section is included at the end of this Agreement.

2. Privacy & Security; Disclosure

Accelare's privacy and security policies are available by contacting Accelare at <http://www.accelare.com>. Accelare reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Note that because the WhatFirst Online Service is a hosted, online application, Accelare occasionally may need to notify all users of the WhatFirst Online Service of important announcements regarding the operation of the WhatFirst Online Service.

3. License Grant & Restrictions

Accelare hereby grants you a non-exclusive, non-transferable, worldwide right to use the WhatFirst Online Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by Accelare.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the WhatFirst Online Service or the Content in any way; (ii) modify or make derivative works based upon the WhatFirst Online Service or the Content; (iii) create Internet "links" to the WhatFirst Online Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the WhatFirst Online Service in order to (a) build a competitive product or WhatFirst Online Service, (b) build a product using similar ideas, features, functions or graphics of the WhatFirst Online Service, or (c) copy any ideas, features, functions or graphics of the WhatFirst Online Service.

You may use the WhatFirst Online Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the WhatFirst

Online Service or the data contained therein; or (v) attempt to gain unauthorized access to the WhatFirst Online Service or its related systems or networks.

4. Your Responsibilities

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the WhatFirst Online Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify Accelare immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Accelare immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another Accelare user or provide false identity information to gain access to or use the WhatFirst Online Service.

5. Account Information and Data

Accelare does not own any data, information or material that you submit to the WhatFirst Online Service in the course of using the WhatFirst Online Service ("Customer Data"). You, not Accelare, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Accelare shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of your breach), Accelare will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination (does not apply to users of Free Community Edition of WhatFirst Online Service). Accelare reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and Accelare shall have no obligation to maintain or forward any Customer Data.

6. Intellectual Property Ownership

Accelare alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Accelare Technology and the WhatFirst Online Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the WhatFirst Online Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the WhatFirst Online Service, the Accelare Technology or the Intellectual Property Rights owned by Accelare. The Accelare name, the Accelare logo, and the product names associated with the WhatFirst Online Service are trademarks of Accelare or third parties, and no right or license is granted to use them.

7. Charges and Payment of Fees (for Enterprise Edition customers)

You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The charges will be based upon the fee schedule in Appendix A, based upon the number of employees in the organization which is the subject of the WhatFirst Online Service (“Target Organization”) plus a per user fee. Payments must be made annually in advance unless otherwise mutually agreed. All payment obligations are noncancelable and all amounts paid are nonrefundable. You are responsible for paying for all licenses ordered for the entire License Term, whether or not such licenses are actively used. Accelare reserves the right to modify its fees and charges and to introduce new charges. All pricing terms are confidential, and you agree not to disclose them to any third party.

8. Excess Data Storage Fees

The maximum disk storage space provided to you at no additional charge is 250 gb for Enterprise Edition Customers and 2 gb for Free Community Edition users. If the amount of disk storage required exceeds these limits, you will be charged the then-current storage fees. Accelare will use reasonable efforts to notify you when the average storage used per license reaches approximately 90% of the maximum; however, any failure by Accelare to so notify you shall not affect your responsibility for such additional storage charges. Accelare reserves the right to establish or modify its general practices and limits relating to storage of Customer Data.

9. Billing and Renewal (for Enterprise Edition customers)

Accelare charges and collects in advance for use of the WhatFirst Online Service. Accelare will automatically issue an invoice to you each year on the subsequent anniversary or as otherwise mutually agreed upon. The renewal charge will be equal to the fee schedule in Appendix A, unless Accelare has given you at least 30 days prior written notice of a fee increase, which shall be effective upon renewal and thereafter. Fees for other WhatFirst Online Services will be charged on an as-quoted basis. Accelare's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Accelare's income.

You agree to provide Accelare with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact. You agree to update this information within 30 days of any change to it.

If you believe your bill is incorrect, you must contact us in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

10. Non-Payment and Suspension

In addition to any other rights granted to Accelare herein, Accelare reserves the right to suspend or terminate this Agreement and your access to the WhatFirst Online Service if your account becomes delinquent (falls into arrears).

Accelare reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the WhatFirst Online Service. You agree and acknowledge that Accelare has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is 30 days or more delinquent.

11. Terms of Agreement

This Agreement commences on the Effective Date. Upon engaging Accelare in a Consulting Services agreement, customer is in the Consulting Term of this WhatFirst Online Services Agreement. Within 30 days of the completion of a Consulting Services Work Order, customer can agree to a one year Initial Term of this WhatFirst Online Services Agreement. Upon the expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms equal in duration to the Initial Term (or one year, if the Initial Term is greater than one year) at Accelare's then current fees. Either party may terminate this Agreement, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least five (5) business days prior to the date of the invoice for the following term. In the event this Agreement is terminated (other than by reason of your breach), Accelare will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. You agree and acknowledge that Accelare has no obligation to retain the Customer Data, and may delete such Customer Data, more than 30 days after termination.

12. Termination for Cause

Any breach of your payment obligations or unauthorized use of the Accelare WhatFirst Online Service will be deemed a material breach of this Agreement. Accelare, in its sole discretion, may terminate your password, account or use of the WhatFirst Online Service if you breach or otherwise fail to comply with this Agreement. You agree and acknowledge that Accelare has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

13. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Accelare represents and warrants that it will provide the WhatFirst Online Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the WhatFirst Online Service will perform substantially in accordance with the online Accelare help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the WhatFirst Online Service and that your billing information is correct.

14. Mutual Indemnification

You shall indemnify and hold Accelare, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against

any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that Accelare (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release Accelare of all liability and such settlement does not affect Accelare's business or WhatFirst Online Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

Accelare shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the WhatFirst Online Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by Accelare of its representations or warranties; or (iii) a claim arising from breach of this Agreement by Accelare; provided that you (a) promptly give written notice of the claim to Accelare; (b) give Accelare sole control of the defense and settlement of the claim (provided that Accelare may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to Accelare all available information and assistance; and (d) have not compromised or settled such claim. Accelare shall have no indemnification obligation, and you shall indemnify Accelare pursuant to this Agreement, for claims arising from any infringement arising from the combination of the WhatFirst Online Service with any of your products, WhatFirst Online Service, hardware or business process(s).

15. Disclaimer of Warranties

Accelare and its licensors make no representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the WhatFirst Online Service or any content. Accelare and its licensors do not represent or warrant that (a) the use of the WhatFirst Online Service will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data, (b) the WhatFirst Online Service will meet your requirements or expectations, (c) any stored data will be accurate or reliable, (d) the quality of any products, WhatFirst Online Services, information, or other material purchased or obtained by you through the WhatFirst Online Service will meet your requirements or expectations, (e) errors or defects will be corrected, or (f) the WhatFirst Online Service or the server(s) that make the WhatFirst Online Service available are free of viruses or other harmful components. The WhatFirst Online Service and all content is provided to you strictly on an "as is" basis. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by Accelare and its licensors.

16. Internet Delays

Accelare's WhatFirst Online Services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Accelare is not responsible for any delays, delivery failures, or other damage resulting from such problems.

17. Limitation of Liability

In no event shall either party's aggregate liability exceed the amounts actually paid by and/or due from you in the twelve (12) month period immediately preceding the event giving rise to such claim. In no event shall either party and/or its licensors be liable to anyone for any indirect, punitive, special, exemplary, incidental, consequential or other damages of any type or kind (including loss of data, revenue, profits, use or other economic advantage) arising out of, or in any way connected with this WhatFirst Online Service, including but not limited to the use or inability to use the WhatFirst Online Service, or for any content obtained from or through the WhatFirst Online Service, any interruption, inaccuracy, error or omission, regardless of cause in the content, even if the party from which damages are being sought or such party's licensors have been previously advised of the possibility of such damages.

18. Notice

Accelare may give notice by means of a general notice to your e-mail address on record in Accelare's account information, or by written communication sent by first class mail or pre-paid post to your address on record in Accelare's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Accelare (such notice shall be deemed given when received by Accelare) at any time by any of the following: email sent to whatfirst@accelare.com or letter delivered to Accelare at the following address: Accelare, Inc., 15 Pacella Park Drive, Randolph, MA, 02368.

19. Modification to Terms

Accelare reserves the right to modify the terms and conditions of this Agreement or its policies relating to the WhatFirst Online Service at any time, effective upon posting of an updated version of this Agreement on the WhatFirst Online Service. You are responsible for regularly reviewing this Agreement. Continued use of the WhatFirst Online Service after any such changes shall constitute your consent to such changes.

20. Assignment; Change in Control

This Agreement may not be assigned by you without the prior written approval of Accelare but may be assigned without your consent by Accelare to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of you that results or would result in a direct competitor of Accelare directly or indirectly owning or controlling 50% or more of you shall entitle Accelare to terminate this Agreement for cause immediately upon written notice.

21. General

This Agreement shall be governed by Massachusetts law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the WhatFirst Online Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Massachusetts. This Agreement comprises the entire agreement between you and Accelare, with regards to Accelare's WhatFirst Online Services, and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

22. Definitions

As used in this Agreement now or hereafter associated herewith: "Agreement" means these online terms of use, and any materials available on the Accelare website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by Accelare from time to time in its sole discretion; "Consulting Term" means the contract term, beginning on the start date of an Accelare Consulting Services Work Order and ending at the completion of an Accelare Consulting Services Work Order or at the beginning of the Initial Term specified on the applicable Appendix A; "Content" means the audio and visual information, documents, software, products and WhatFirst Online Services contained or made available to you in the course of using the WhatFirst Online Service; "Customer Data" means any data, information or material provided or submitted by you to the WhatFirst Online Service in the course of using the WhatFirst Online Service; "Effective Date" means the the date this Agreement or the date you begin using the WhatFirst Online Service; "Initial Term" means the contract term, beginning on the contract start date and ending on the contract end date, specified on the applicable Appendix A; "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, WhatFirst Online Service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world; "License Term(s)" means the period(s) during which Users are licensed to use the WhatFirst Online Service pursuant to the Appendix A; "Target Organization" means the total number of your employees, representatives, consultants, contractors or agents who are a member of the organization intended for use of the WhatFirst Online Service. "WhatFirst Online Service(s)" means the specific edition of Accelare's WhatFirst WhatFirst Online Service or other WhatFirst Online Service, developed, operated, and maintained by Accelare; "User(s)" means your employees, representatives, consultants, contractors or agents who are the user(s) of the WhatFirst Online Service.