



## TERMS & CONDITIONS OF PRODUCT SALE

The following terms and conditions of sale (“Terms and Conditions”) constitute an agreement between Lynxspring, Inc. (“Lynxspring”) and you. Your purchase of Lynxspring products (“Products”) and/or services (“Services”) from Lynxspring constitutes your agreement to be bound by these Terms and Conditions and any additional terms Lynxspring provides for Products and/or Services, including but not limited to Lynxspring’s [Terms of Service](#) and the terms of the Limited Warranty & [End User License Agreement \(EULA\)](#) for a Product, if applicable.

THIS IS A LEGAL AGREEMENT. BY PLACING AN ORDER FOR LYNXSPRING PRODUCTS, YOU ARE ACCEPTING AND AGREEING TO THESE TERMS AND CONDITIONS. YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ACCEPT AND AGREE TO THESE TERMS AND CONDITIONS. YOU REPRESENT THAT YOU ARE OF SUFFICIENT LEGAL AGE IN YOUR JURISDICTION OR RESIDENCE TO PURCHASE AND USE PRODUCTS AND TO ENTER INTO THIS AGREEMENT. IF YOU DO NOT AGREE WITH ANY OF THE PROVISIONS OF THESE TERMS AND CONDITIONS, YOU SHOULD NOT PURCHASE THE PRODUCTS.

Lynxspring reserves the right to change these Terms and Conditions at any time, so please review the Terms and Conditions each time prior to purchasing a Lynxspring Product. Every time you order Products from Lynxspring, the Terms and Conditions in force at that time will apply between Lynxspring and you. If you purchase Lynxspring subscription services in connection with the Purchase of a Product or Products, Lynxspring will provide you with advance notice in the event Lynxspring makes changes to these Terms and Conditions that affect your subscription services. If you have any questions regarding these Terms and Conditions, you can contact Lynxspring at [orders@lynxspring.com](mailto:orders@lynxspring.com).

### **1. RELATIONSHIP TO OTHER CONTRACT REQUIREMENTS.**

(a) Except with respect to an AUTHORIZED LYNXSPRING TECHNOLOGY SOLUTIONS PARTNER (TSP) AGREEMENT between Lynxspring and a Lynxspring Technology Solutions Partner party (the “TSP Party”), in the event of any conflict between these Terms and Conditions and any other applicable customer purchase orders, agreements or contracts which conflict with any of the policies or procedures set forth in these Terms and Conditions, the terms and procedures of these Terms and Conditions shall take precedence. In any event, the terms and provisions of the AUTHORIZED LYNXSPRING TECHNOLOGY SOLUTIONS PARTNER AGREEMENT between Lynxspring and the TSP Party shall prevail over all other documents, understandings and agreements, including these Terms and Conditions.

(b) As a consumer, you have certain legal rights. The disclaimers, exclusions, and limitations of liability under these Terms and Conditions will not apply to the extent prohibited by applicable law. Some jurisdictions do not allow the exclusion of implied warranties, including exclusions relating to products that are faulty or not as described, or the exclusion or limitation of incidental or consequential damages

or other rights. For a full description of your legal rights you should refer to the laws applicable in your country or jurisdiction. Nothing in these Terms and Conditions will affect those other legal rights.

(c) Although Lynxspring.com is accessible worldwide, the Products offered by Lynxspring are not designed and tested for use in all countries. If you choose to use the Products outside the United States, you do so on your own initiative and you are solely responsible for complying with applicable local laws in your country. You understand and accept that Lynxspring and its Products are not designed for use in countries other than the United States and some or all of the features of the Products may not work or be appropriate for use in countries other than the United States. To the extent permissible by law, Lynxspring accepts no responsibility or liability for any damage or loss caused by your access or use of Lynxspring.com or Products outside the United States.

## **2. COMPATIBILITY.**

You acknowledge that you have verified the compatibility of the Products and/or Services you are purchasing with other equipment in your installation. You are solely responsible for determining the compatibility of the Products with other equipment and systems in your installation, and you accept that lack of compatibility is not a valid claim under any warranty provided with your Products and does not otherwise constitute a basis for receiving a refund after the 30-day refund policy described below.

## **3. RESERVATIONS.**

Lynxspring reserves the right to cancel or refuse any order for any reason at any time prior to shipment, including after an order has been submitted, whether or not the order has been confirmed. Lynxspring may attempt to contact you if all or a portion of your order is cancelled, or if additional information is needed to complete and accept your order.

## **4. PAYMENT**

By providing a credit card or other payment method accepted by Lynxspring, you represent and warrant that you are authorized to use the designated payment method and that you authorize Lynxspring (or Lynxspring's third-party payment processor) to charge your payment method for the total amount of your order (including any applicable taxes and other charges). If the payment method you provide cannot be verified, is invalid or is otherwise not acceptable, your order may be suspended or cancelled. You must resolve any problem Lynxspring encounters in order to proceed with your order.

## **5. AVAILABILITY AND PRICING.**

All Products offered by Lynxspring are subject to availability, and Lynxspring reserves the right to impose quantity limits on any order, to reject all or part of an order and to discontinue offering certain Products without prior notice. Prices for the Products are subject to change at any time, but changes will not affect any order for Products you have already placed. Lynxspring has one price increase for Niagara

related products occurring in September of each calendar year and Prices our third-party products vary according to the respective provider. The current price list can be found on our Resources website (<https://resources.lynxspring.com/>) which you must have a valid login to access. Although Lynxpring does provide an email notification to our partners that our price list has been updated, the customer is responsible for using the current price list on our website at all times. In the event Lynxpring changes the pricing for any subscription services you have purchased in connection with a Product and/or Service, Lynxpring will provide you advance notice of this change in accordance with the notification provisions of Section 16 of these Terms and Conditions. After receiving this notice, you will be deemed to have accepted the change in pricing, unless you cancel your subscription or service by notifying [accounting@lynxspring.com](mailto:accounting@lynxspring.com) of your desire to cancel. Note that merely unpairing a Product from a subscription service will not trigger cancellation of the subscription service. In the event you cancel a subscription service, Lynxpring will provide a prorated refund for the period of time starting the day after cancellation of the subscription service through the remainder of your billing cycle except as otherwise provided in the Terms of Service applicable to such subscription service.

## **6. SALES TAX.**

Depending on the order, Lynxpring calculates and charges sales tax in accordance with applicable laws.

## **7. TITLE TRANSFER.**

Title for Products purchased from Lynxpring passes to the purchaser at the time of delivery by Lynxpring to the freight carrier, but Lynxpring and/or the freight carrier will be responsible for any Product loss or damage that occurs when the Product is in transit to you except as provided in Section 17 of these Terms and Conditions.

## **8. SHIPPING AND DELIVERY.**

Prices for the Products do not include shipping costs. Lynxpring offers four methods of shipment when available: Next Day, Second Day, Ground, or Freight. The estimated arrival or delivery date is not a guaranteed delivery date for your order. Lynxpring's preferred shipping company is UPS. If you have your own UPS account that you prefer us to use, we can ship on your account number. Otherwise, Lynxpring will ship on our account number and add the shipping to the invoice total. International shipments are shipped via DHL unless you have another preferred method. All duties, taxes and tariffs are the responsibility of the customer. Refused deliveries will be returned to Lynxpring's warehouse. It may take up to forty-five (45) days for the returned items to be identified as refused and processed for a refund.

## 9. INSTALLATION.

There may be laws in the jurisdiction that you install a particular Product applicable to where and how to install that Product. You should check and ensure that you are in compliance with all relevant laws in your jurisdiction. Lynxspring is not responsible for any injury or damage caused by improper installation.

## 10. RETURNS OF PRODUCT.

### 10.1 RETURNS FOR REFUND.

(a) If, for any reason, you want to return new, unopened Product you purchased from Lynxspring for a refund, you must notify Lynxspring no later than thirty (30) days following the date of purchase (the "Cancellation Period"). To initiate a return, you must inform Lynxspring of your decision within 30 days by contacting Lynxspring's order fulfillment team at [orders@lynxspring.com](mailto:orders@lynxspring.com) and clearly stating your desire to return the Product. Although it will not affect your right to a refund, please include details on where and when you purchased the Product, the Product model, quantity, serial numbers (if applicable) and your reason for returning the Product. Upon your refund request, Lynxspring will provide you with a return materials authorization ("RMA") and a return shipping address. The RMA must be included with your return shipment to Lynxspring so Lynxspring can identify your shipment. All products requested to be returned are subject to a restocking fee of at least twenty-five percent (25%). Any third-party vendor that has a larger restocking fee will be passed on to the customer. Licenses are non-refundable. If you purchased the Product from somewhere other than Lynxspring, please contact your reseller to obtain a refund.

(b) To receive a refund, you must return your Product (and any promotional merchandise supplied with the Product) with the RMA number within fourteen (14) days following the day on which you notify Lynxspring's product fulfillment team that you desire to return your Product. You will be responsible for all costs associated with returning the Product to Lynxspring, including uninstallation and the cost of shipping the Product back to Lynxspring. Lynxspring will process the refund due to you as soon as possible and, in any case, within thirty (30) days from the date of receipt by Lynxspring of the returned Product.

### 10.2 RETURN FOR WARRANTY.

(a) If you wish to replace a believed defective Product, you will require an RMA number issued by Lynxspring's technical support team ([support@lynxspring.com](mailto:support@lynxspring.com)). Lynxspring is under no obligation to accept any Product without an RMA number on the package.

(b) If you believe the Product is defective, you must submit a ticket to the technical support team as the first step in the RMA process. Lynxspring requires that the support team troubleshoot all Products before considering an RMA. If you and the support team determine that the best course of action is for Lynxspring to evaluate the hardware, the Product can be returned. You have thirty (30)

days to return the unit. Once the product is returned, it will be evaluated by the technical support team. If they determine the product is faulty and covered under the warranty, then you will be given the option to get a replacement device or a refund. If the product is not covered under the warranty as defined in the Lynxspring Limited Warranty Policy, then the device will be returned to the customer or scrapped. No refunds or replacements will be given for units that are not found to be defective or not caused by a product failure.

(c) Lynxspring may provide advance replacement units in Lynxspring's sole discretion upon request by you. If it is determined that an advance replacement unit will be sent, you will be required to provide a credit card or purchase order for the full net price of the replacement unit. Lynxspring will cover the cost of shipping by UPS ground. If faster shipment is required, you must provide your selected shipping carrier's account number. Advance replacements are invoiced the same day that the new unit ships and invoices due in full.

(d) If an advance replacement is ordered, when the replacement unit arrives, you shall re-pack the defective unit in good condition and in the same box in which the replacement unit was shipped with the RMA number displayed. If Lynxspring does not receive the RMA unit along with the RMA number within thirty (30) days from the date of the RMA number being issued, you are not eligible for a credit or replacement device. **If the returned unit is tested and is found not to have any defects, then the original product will be returned to the customer and the customer will still be responsible for the cost of the advance replacement.**

## 11. DISPUTES AND ARBITRATION

(a) Contact Lynxspring First. If a dispute arises between Lynxspring and you, Lynxspring's goal is to learn about and address your concerns. You agree that you will notify Lynxspring about any dispute you have with Lynxspring regarding these Terms and Conditions by contacting Lynxspring.

(b) Binding Arbitration. You and Lynxspring agree, subject to section 11(g) (Protection of Confidentiality and Intellectual Property Rights), to submit any claim, dispute, action, cause of action, issue, or request for relief arising out of or relating to these Terms and Conditions or your use of the Products to binding arbitration rather than by filing any lawsuit in any forum other than set forth in this section. Further you agree arbitration is final and binding and subject to only very limited review by a court. You also waive your right to any form of appeal, review or recourse to any court or other judicial authority, insofar as such waiver may be validly made. This provision is intended to be interpreted broadly to encompass all disputes or claims arising out of or relating to your use of the Products. Subject to section 11(g) (Protection of Confidentiality and Intellectual Property Rights), any dispute or claim made by you against Lynxspring or Lynxspring against you arising out of or relating to these Terms and Conditions or your use of the Products, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, will be resolved by binding arbitration except that you may take claims to small claims court if they qualify for hearing by such a court.

(c) Arbitration Procedures. You must first present any claim or dispute to Lynxspring by contacting Lynxspring to allow us an opportunity to resolve the dispute. You may request arbitration if your claim or dispute cannot be resolved within ninety (90) days after presenting the claim or dispute to Lynxspring. Lynxspring may request arbitration against you at any time after it has notified you of a claim or dispute in accordance with Section 16 (Notifications) of these Terms and Conditions. The arbitration of any dispute or claim shall be conducted in accordance with the then current and applicable rules of the American Arbitration Association as modified by this agreement. The place of any arbitration will be Kansas City, Missouri, USA, and will be conducted in the English language. Claims will be heard by a single arbitrator. The arbitrator may not award relief in excess of or contrary to what this agreement provides, order consolidation or arbitration on a class wide or representative basis, award punitive or consequential damages or any other damages aside from the prevailing party's actual damages, or order injunctive or declaratory relief, except that the arbitrator may award on an individual basis damages required by statute and may order injunctive or declaratory relief pursuant to an applicable consumer protection statute. Any arbitration shall be confidential, and neither you, nor Lynxspring nor the arbitrator may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement or appeal of the arbitration award. Judgment on any arbitration award may be entered in any court having proper jurisdiction. If any portion of this arbitration section is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

(d) No Class Actions. There shall be no right or authority for any claims subject to this arbitration section to be arbitrated on a class action or consolidated basis or on bases involving claims brought in a purported representative capacity on behalf of the general public (*including, but not limited to, as a private attorney general*).

(e) Fees and Expenses. All administrative fees and expenses of arbitration will be divided equally between you and Lynxspring. Each party will bear the expense of its own counsel, experts, witnesses and preparation and presentation of evidence at the arbitration hearing.

(f) LIMITATION. YOU MUST CONTACT LYNXSPRING WITHIN ONE (1) YEAR OF THE DATE OF THE OCCURRENCE OF THE EVENT OR FACTS GIVING RISE TO A DISPUTE, OR YOU WAIVE THE RIGHT TO PURSUE ANY CLAIM BASED UPON SUCH EVENT, FACTS, OR DISPUTE.

(g) Protection of Confidentiality and Intellectual Property Rights. Notwithstanding the foregoing, Lynxspring may seek injunctive or other equitable relief to protect its confidential information and intellectual property rights or to prevent loss of data or damage to its servers in any court of competent jurisdiction.

## **12. WARRANTIES AND DISCLAIMERS.**

(a) TO THE EXTENT PERMITTED BY APPLICABLE LAW, LYNXSPRING, AND ALL CONTENT AVAILABLE FROM LYNXSPRING, IS PROVIDED ON AN "AS-IS" BASIS WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND,

EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LYNXSPRING, ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY.

(b) All products and services purchased through Lynxpring are warranted for a period of eighteen (18) months from date of shipment (the "Warranty Period") unless otherwise noted in a Limited Warranty included with a Product. The Warranty Period does not cover damage by abuse, accident, misuse, neglect, alteration, self-repair, improper installation, failure of supporting products and systems including electric power or exposure to conditions that exceed the Product stated recommendations.

(c) You may choose whether to make a claim under these Terms and Conditions or the Limited Warranty or both, but you may not recover twice in respect of the same loss. To initiate a return under the Limited Warranty, you should contact Lynxpring's technical support team.

(d) YOU USE OUR PRODUCTS AT YOUR OWN DISCRETION AND RISK. YOU WILL BE SOLELY RESPONSIBLE FOR (AND LYNXSPRING DISCLAIMS) ANY AND ALL LOSS, LIABILITY OR DAMAGES RESULTING FROM YOUR USE OF A PRODUCT, INCLUDING DAMAGE OR LOSS TO YOUR EQUIPMENT AND/OR SYSTEM(S), BUILDING, PRODUCT, OTHER PERIPHERALS CONNECTED TO THE PRODUCT, COMPUTER, MOBILE DEVICE, AND ALL OTHER ITEMS. UNLESS EXPLICITLY PROMISING A "GUARANTEE," LYNXSPRING DOES NOT GUARANTEE OR PROMISE ANY SPECIFIC LEVEL OF ENERGY SAVINGS OR OTHER MONETARY BENEFIT FROM THE USE OF A PRODUCT OR ANY FEATURE THEREOF. ACTUAL ENERGY SAVINGS AND MONETARY BENEFITS VARY WITH FACTORS BEYOND LYNXSPRING'S CONTROL OR KNOWLEDGE.

LYNXSPRING GIVES NO WARRANTY REGARDING THE LIFE OF THE BATTERIES USED IN A PRODUCT. ACTUAL BATTERY LIFE MAY VARY DEPENDING ON A NUMBER OF FACTORS, INCLUDING THE CONFIGURATION AND USAGE OF A PRODUCT.

### **13. LIMITATION OF LIABILITY.**

Nothing in these Terms and Conditions and in particular within this "Limitation of Liability" section shall attempt to exclude or limit liability that cannot be excluded under applicable law.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN ADDITION TO THE ABOVE WARRANTY DISCLAIMERS, IN NO EVENT WILL (A) LYNXSPRING BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY DAMAGES FOR LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THE PRODUCTS, EVEN IF LYNXSPRING KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) LYNXSPRING'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THE PRODUCTS, WHETHER IN CONTRACT OR TORT OR OTHERWISE, EXCEED THE FEES ACTUALLY PAID BY YOU TO LYNXSPRING OR LYNXSPRING'S AUTHORIZED RESELLER FOR THE PRODUCT AT ISSUE IN THE PRIOR SIX (6) MONTHS (IF ANY). THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR

CLAIM. LYNXSPRING DISCLAIMS ALL LIABILITY OF ANY KIND OF LYNXSPRING'S LICENSORS AND SUPPLIERS.

#### **14. DATA PROTECTION.**

By placing an order for Products, you agree and understand that Lynxpring may store, share, process and use data collected from your order form or phone/fax/email order for the purposes of processing the order. Lynxpring may also share such data globally with its subsidiaries and with Lynxpring offices. All Lynxpring companies shall protect your information in accordance with the Lynxpring's [Website Privacy Policy](#). Lynxpring works with other companies that help Lynxpring provide Products to you, such as freight carriers and credit card processing companies, and Lynxpring may have to share certain information with these companies for this purpose.

#### **15. ELECTRONIC COMMUNICATIONS.**

You are communicating with Lynxpring electronically when you use Lynxpring.com or send email to Lynxpring. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. When you order from Lynxpring.com, we collect and store your email address. From that point forward, your email address is used to send you information about Lynxpring's products and services unless you opt-out of such emails using the opt-out link in the emails.

#### **16. NOTIFICATIONS.**

Lynxpring may provide notifications to you as required by law or for marketing or other purposes via (*at its option*) email to the primary email associated with your Lynxpring account, hard copy, or posting of such notice on the Lynxpring website. Lynxpring is not responsible for any automatic filtering you or your network provider may apply to email notifications. Lynxpring recommends that you add @Lynxpring.com URLs to your email address book to help ensure you receive email notifications from Lynxpring.

#### **17. FORCE MAJEURE.**

Lynxpring will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a contract that is caused by an act or event beyond our reasonable control, including without limitation acts of God, strikes, lock-outs or other industrial action by third parties, civil commotion, riot, terrorist attack, war, fire, explosion, storm, flood, earthquake, epidemic or other natural disaster, failure of public or private telecommunications networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

#### **18. SEVERABILITY.**



If any part of these Terms and Conditions becomes illegal, invalid, unenforceable, or prohibited in any respect under any applicable law or regulation, such provision or part thereof will be deemed to not form part of the contract between us. The legality, validity or enforceability of the remainder of these Terms and Conditions will remain in full force and effect.

**19. SURVIVABILITY.**

The obligations in Sections 11, 12, 13, and 14 through 21 will survive any expiration or termination of these Terms.

**20. WAIVER.**

Failure or delay by us to enforce any these Terms and Conditions will not constitute a waiver of our rights against you and does not affect our right to require future performance thereof.

**21. GOVERNING LAW AND JURISDICTION.**

These Terms and Conditions are governed by the laws of the State of Missouri without giving effect to any conflict of laws principles that may provide the application of the law of another jurisdiction. You agree to submit to the personal jurisdiction of the state and federal courts in or for Jackson County, Missouri for the purpose of litigating all such claims or disputes, unless such claim or dispute is required to be arbitrated as set forth in an above section.

**Last Updated: 5/11/2020**