

Restricted Use License

[Download a PDF version](#)

IMPORTANT - THIS IS A LEGAL AGREEMENT BETWEEN YOU, ON BEHALF OF YOUR ORGANIZATION (“LICENSEE”) AND BELLWETHER CORPORATION. BY CLICKING THE “I ACCEPT” BUTTON, OR, BY DOWNLOADING, INSTALLING, RECEIVING OR USING A PRODUCT OR SERVICE, YOU AGREE TO THESE TERMS, AND THAT YOUR USE OF BELLWETHER’S WEBSITE IS GOVERNED BY BELLWETHER’S TERMS OF USE AVAILABLE AT [HTTPS://WWW.BELLWETHERCORP.COM/RESTRICTED-USE-LICENSE/](https://www.bellwethercorp.com/restricted-use-license/). IF YOU DO NOT AGREE TO THESE TERMS, DO NOT CLICK THE “I ACCEPT” BUTTON, DOWNLOAD, INSTALL, RECEIVE OR USE THE PRODUCT OR SERVICE AND YOU WILL NOT HAVE A RIGHT TO USE ANY PART OF A PRODUCT OR SERVICE. ON OR AFTER THE DATE YOU ACCEPT THESE RESTRICTED USE LICENSE TERMS (“TERMS”), YOUR RIGHTS, OBLIGATIONS AND USE OF PRODUCT OR SERVICE PROVIDED BY BELLWETHER ARE SUBJECT TO THESE TERMS UNLESS YOU HAVE EXECUTED TERMS TO PURCHASE A SPECIFIC PRODUCT OR SERVICE FROM BELLWETHER. “PRODUCT” OR “SERVICE” INCLUDES ALL RELATED USER MANUALS AND TRAINING MATERIALS PROVIDED TO YOU ELECTRONICALLY OR PHYSICALLY (“DOCUMENTATION”), AND REVISIONS AND UPDATES THAT REPLACE OR SUPPLEMENT A PRODUCT OR SERVICE. YOU AGREE TO DO BUSINESS ELECTRONICALLY, INCLUDING CONTRACT FORMATION, ACCEPTANCE, AND ORDER PLACEMENT. YOU REPRESENT THAT YOU ARE AUTHORIZED TO ACCEPT THESE TERMS ON BEHALF OF YOUR ORGANIZATION.

I. RESTRICTED USE

A. “Product” means Bellwether proprietary software products. “SaaS” or “Service” means Software as a Service, as defined below. “Data” means Generic Data and/or Licensee Data, as each are defined below. Bellwether may provide Product or SaaS for Beta, Evaluation, Trial, Demonstration, Freemium, or other limited time and use (“Restricted Use”), generally without charge, as follows:

1. **Demonstration.** Bellwether may provide either Product or SaaS to demonstrate its functionality (“Demonstration” or “Demo”), either at Licensee’s premises or online. Either Bellwether or Licensee will use generic, generally available, non-proprietary data (“Generic Data”) for Demonstration, not Licensee proprietary data and information (“Licensee Data”). Bellwether does not provide Demo Product or SaaS, and Data is not retained, for a specific length of time.
2. **Trial.** Bellwether may provide online access to Product functionality operating as a service for Licensee to use (“Software as a Service”) for a limited time period

(“Trial”) to make a purchase decision. Licensee may use Licensee Data at its own risk or Generic Data for Trial, subject to these Terms.

3. **Evaluation.** Bellwether may provide Product for Licensee’s use at their premises for a limited time period (“Evaluation”) to make a purchase decision. Licensee may use Licensee Data or Generic Data for Evaluation. Bellwether will not have access to Data Licensee uses for Evaluation.
4. **Beta.** Bellwether may provide a pre-release version of Product or SaaS prior to its general commercial release (“Beta”) for testing by Licensee for a limited period of time. Beta versions may be provided for Evaluation or Trial. Licensee may use Licensee Data at its own risk or Generic Data for Beta testing, subject to these Terms.
5. **Freemium.** Bellwether may provide a limited-functionality version of Product or SaaS (“Freemium”), with or without time restriction, for Evaluation or Trial.

B. The following terms apply to all Restricted Use Product and SaaS:

- 1) Licensee’s license and right to use Product or SaaS for Beta, Trial or Evaluation is limited to 365 calendar days from the first day Licensee has access to Product or SaaS; Demo is limited to the timeframe of the Demonstration; and, Freemium is limited by functionality and any specified time period (each, “Restricted Use Period”). Bellwether may, at its sole option, extend the Restricted Use Period.
- 2) Licensee will use Product or SaaS for Demo, Evaluation, Beta, Trial or Freemium for Restricted Use only. Restricted Use Product or SaaS availability is subject to change by Bellwether.
- 3) Data that Licensee uses for Restricted Use purposes will not be encrypted or treated as confidential information. Licensee must not disclose to Bellwether any personally identifiable information regarding any individual (“PII”). Licensee is solely responsible for complying with any requirements regarding its PII. Licensee should use Generic Data for Restricted Use purposes. Licensee uses Licensee Data is at its own risk and Bellwether is not responsible or liable for transmission, handling, storing or backing up Licensee Data, Licensee’s failure to back up or store Data, or deletion, correction, destruction, damage to, or loss of, Data. Bellwether may delete Data and terminate a Restricted Use License without notice in its sole discretion.
- 4) Bellwether does not provide maintenance, support or any other services for Restricted Use Product or SaaS. Bellwether is not obligated to make changes, improvements, or provide a subsequent version of Restricted Use Product or SaaS.

II. LICENSE/RIGHT TO USE

A. Bellwether Grant. Bellwether grants to Licensee a revocable, royalty-free, non-exclusive, non-transferable right to use Product or SaaS (“License”) for Restricted Use according to the Documentation, these Terms, and any specified Measured License, for its own internal business operations at the Licensee site to which it is first provided. “Measured License” means the time period, number and type of Users, transactions,

copies, seats, instructions per second (MIPS) or other quantity or measure for Product or SaaS.

B. Licensee Grant. Licensee grants Bellwether a royalty-free, worldwide, perpetual license to use and incorporate into Bellwether products any suggestion, idea, enhancement, feedback, recommendation or other information Licensee provides to Bellwether relating to Restricted Use Product or SaaS. Licensee grants Bellwether a non-exclusive, nontransferable license to copy, store, transmit and use Licensee Data as necessary for Licensee's use of Product or SaaS hereunder. Licensee represents and warrants that Licensee Data will not violate third party rights or applicable law.

III. DELIVERY

"Delivery" means Bellwether has provided, and Licensee is deemed to have accepted, Product or SaaS through electronic access. Bellwether may provide Product for Licensee to download. Product or SaaS risk of loss passes to Licensee upon Delivery. Licensee is responsible for customs documents, clearance, and paying any customs duties, taxes and import fees.

IV. LICENSEE OBLIGATIONS

A. Licensee will:

- 1) use Product and SaaS according to these Terms, be responsible for its activity in using SaaS, and ensure its end users comply with these Terms;
- 2) be responsible for the accuracy, quality, legality, integrity, ownership, protection, adequate storage, security, privacy and acquisition of Data;
- 3) prevent unauthorized access to Product and SaaS;
- 4) comply with laws and regulations in using SaaS, including: data privacy, technical or personal data transmission, and anti-spam;
- 5) notify Bellwether immediately of unauthorized access to Product or SaaS, or known or suspected breach of SaaS security, and use reasonable efforts to immediately stop unauthorized access, known or suspected violation of law, or these Terms;
- 6) properly configure, program and operate Licensee's hardware, software, websites, Data, content, and internet to access and use SaaS;
- 7) comply with Bellwether protocols and requirements for SaaS;
- 8) define and perform tests to: determine suitability of Beta Product or SaaS for Licensee's business and environment; detect defects, errors and inadequacies; recommend modifications, improvements, corrections; consult with Bellwether to review and analyze representative data; and use reasonable efforts to provide written test and evaluation information to Bellwether for Beta Product or SaaS.

B. Licensee will not:

- 1) permit any party to access or use Product or SaaS other than its employees; sell, resell, rent, lease or sublicense Product or SaaS, or use Product or SaaS to provide time share or other services to third parties;
- 2) create derivative works based on Product or SaaS, copy, frame or mirror any part of SaaS, other than copying or framing Licensee Data, content or intranet for Licensee's internal business operations;
- 3) decompile, disassemble, reverse engineer, access or use SaaS or Product to build a competitive product or service, copy features, functions or graphics;
- 4) use SaaS to store or transmit infringing, libelous, or unlawful or tortious material or transmit material in violation of privacy rights;
- 5) use SaaS to store or transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; interfere with or disrupt the integrity or performance of SaaS or attempt to gain unauthorized access to SaaS or related systems;
- 6) transfer or use Product or SaaS at a site other than that to which it is first provided;
- 7) exceed the Restricted Use Period or any Measured License; use Product or SaaS in Licensee's production environment; or infringe or misappropriate Bellwether or its licensors' Intellectual Property.

C. Verification. Licensee will provide information and certification to Bellwether upon request to verify Licensee's Product or SaaS use according to the Agreement. Licensee will immediately pay Bellwether current fees for Licensee's Product or SaaS use that exceeds the Restricted Use License. **THE LIMITATION OF LIABILITY SET FORTH IN SECTION IX DOES NOT APPLY TO LICENSEE'S USE EXCEEDING ITS LICENSE, OR INFRINGEMENT OR MISAPPROPRIATION OF BELLWETHER INTELLECTUAL PROPERTY OR CONFIDENTIAL INFORMATION.**

V. TERM AND TERMINATION

A. Bellwether may terminate this Agreement or a License at any time without notice. This Agreement is effective until the first to occur: 1) the end of the Restricted Use Period; 2) Licensee purchase of the general release version of Product or SaaS; or, 3) the date of Bellwether's termination notice.

B. Upon termination: 1) Licensee will immediately return or destroy Product and Documentation, cease using SaaS, and provide written certification of destruction upon request, and 2) Bellwether may remove or discard Licensee Data.

VI. INTELLECTUAL PROPERTY OWNERSHIP

"Intellectual Property" means all intellectual property including, without limitation, inventions, patents, copyrights, trademarks, service marks, trade names, trade secrets, know-how, moral rights, licenses, and any other intangible proprietary or property rights,

whether or not patentable or otherwise subject to legally enforceable restrictions or protections against unauthorized third party usage or whether arising by statute or common law. Bellwether, its affiliates or licensors own and retain all right, title and interest to and in all intellectual property in Product and SaaS, including without limitation, inventions, patents, copyrights, trademarks, service marks, trade names, trade secrets, know-how, moral rights, licenses, developments, research data, designs, layout, models, formulae, documents, drawings, plans, specifications and other Bellwether information, proprietary materials and all derivative works, and any other intangible proprietary or property rights, whether or not patentable or otherwise subject to legally enforceable restrictions or protections against unauthorized third party use, or whether arising by statute or common law. To the extent that any right, title or interest in or to any Bellwether Intellectual Property may not automatically vest in Bellwether by operation of law, Licensee irrevocably transfers, assigns and conveys all right, title, and interest therein to Bellwether. At Bellwether's request and expense Licensee will promptly take any action and execute any documents necessary to vest full title in Bellwether or its licensor.

VII. CONFIDENTIALITY

Product, SaaS, Bellwether Intellectual Property, and benchmark test results are Bellwether's confidential information ("Confidential Information"). Licensee will use Confidential Information solely according to the License Terms. Licensee will take commercially reasonable steps to safeguard Bellwether Confidential Information, including no less than the steps taken to protect its own Confidential Information. Licensee must promptly notify Bellwether in writing of unauthorized use or disclosure of Confidential Information and, at its expense, take all reasonable action to recover Confidential Information and prevent further unauthorized use or disclosure, including injunctive relief. If Licensee fails to do so, Bellwether may do so at Licensee's expense. These Terms survive as long as Confidential Information is in Licensee's possession. Confidential Information does not include information that is publicly available without Licensee's breach of these Terms; proven to have been known by Licensee prior to this Agreement or independently developed by Licensee without breach of these Terms; or provided to Licensee without confidentiality obligation. Product is not deemed to be placed in the public domain by Bellwether.

VIII. WARRANTY DISCLAIMER

A. NOTWITHSTANDING ANY OTHER PROVISION, BELLWETHER PROVIDES RESTRICTED USE PRODUCT AND SAAS "AS IS", "AS-AVAILABLE", WITHOUT WARRANTY, REPRESENTATION OR INDEMNITY OF ANY KIND, EXPRESS, IMPLIED, ORAL, WRITTEN, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PURPOSE, OR NON-INFRINGEMENT, OR THAT: 1) PRODUCT OR SAAS WILL BE UNINTERRUPTED, ERROR FREE, OR OPERATE IN COMBINATION WITH ANY HARDWARE, SOFTWARE, SYSTEM, OR DATA; 2) DATA WILL BE ACCURATE OR

RELIABLE; 3) THE QUALITY OF PRODUCT, SAAS, OR RESULTS OR INFORMATION OBTAINED WILL MEET LICENSEE'S REQUIREMENTS OR EXPECTATIONS; 4) ERRORS OR DEFECTS WILL BE CORRECTED; OR 5) THE SERVICE OR SERVER USED TO PROVIDE SAAS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

B. SAAS MAY BE SUBJECT TO LIMITATION, DELAY, AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATION AND BELLWETHER DISCLAIMS LIABILITY FOR RESULTING DELAY OR DELIVERY FAILURE.

C. LICENSEE HAS SOLE RESPONSIBILITY FOR ITS USE OF PRODUCT OR SAAS OR FULFILLING LICENSEE'S REQUIREMENTS OR OBJECTIVES IN USING RESTRICTED USE PRODUCT OR SAAS AND BELLWETHER DISCLAIMS LIABILITY FOR ANY PARTY'S ACT OR OMISSION IN USE OF OR RELIANCE UPON PRODUCT OR SAAS. LICENSEE'S SOLE REMEDY AND RECOURSE IS TO STOP USING PRODUCT OR SAAS AND SECTION V(B) WILL APPLY. THIS SECTION VIII DESCRIBES BELLWETHER'S SOLE LIABILITY FOR PRODUCT OR SAAS WARRANTY.

IX. LIMITATION OF LIABILITY

A. BELLWETHER IS NOT LIABLE FOR (i) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, (ii) ANY INTERRUPTION OF SERVICE, BUSINESS OR OPERATIONS, COST OF COVER, GOODWILL, LOST DATA, PROFITS OR REVENUE, OR FAILURE OF A REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE. BELLWETHER IS NOT LIABLE FOR LOSS OR DAMAGES, DIRECT OR INDIRECT, RESULTING FROM LICENSEE'S USE OR ATTEMPTED USE OF PRODUCT OR SAAS, INCLUDING, WITHOUT LIMITATION, CLAIMS BASED UPON THEIR SUFFICIENCY, RELIABILITY, TIMELINESS, QUALITY, SECURITY, SUITABILITY, TRUTH, AVAILABILITY, COMPLETENESS OR ACCURACY.

B. THE LIMITATIONS IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT, MISREPRESENTATION, NEGLIGENCE, USE OR PERFORMANCE OF PRODUCT OR SAAS, OR OTHERWISE, AND REGARDLESS OF WHETHER DAMAGES WERE FORESEEABLE OR NOT. BELLWETHER WILL NOT BE LIABLE FOR ANY CLAIM BROUGHT MORE THAN 12 MONTHS AFTER LICENSEE BECAME AWARE OF THE ISSUE GIVING RISE TO THE CLAIM.

C. EXCEPT FOR DEATH, BODILY INJURY, TANGIBLE PROPERTY DAMAGE, WILLFUL MISCONDUCT OR FRAUD, AND SOLELY TO THE EXTENT PROXIMATELY CAUSED BY BELLWETHER, BELLWETHER IS NOT LIABLE FOR ANY DAMAGES THAT EXCEED THE AMOUNT BELLWETHER RECEIVED FROM LICENSEE FOR THE RESTRICTED USE PRODUCT OR SAAS GIVING RISE TO A CLAIM. THIS SECTION IX DESCRIBES THE TOTAL EXTENT OF BELLWETHER'S LIABILITY FOR PRODUCT OR SAAS.

X. COMPLIANCE WITH LAWS; EXPORT

Licensee must comply with U.S., foreign, and international laws and regulations, including without limitation the U.S. Export Administration and Treasury Department's Office of Foreign Assets Control regulations, and other anti-boycott and import regulations. Licensee agrees: (i) that the export, re-export, transfer, re-transfer, sale, supply, access to, or use of Product or SaaS to or in a country other than the country in which the Product or SaaS was first provided to Licensee, or to, by, or for a different end user or end use, may require a U.S. or other government license or other authorization; and (ii) not to, directly or indirectly, export, re-export, transfer, re-transfer, sell, supply, or allow access to or use of Product or SaaS to, in, by, or for sanctioned, embargoed, or prohibited countries, persons, or end uses under U.S. or other applicable law (collectively, "Prohibited Use"). Licensee is responsible for screening for Prohibited Use and obtaining any required licenses or other authorizations and shall indemnify Bellwether for any violation by Licensee of any applicable export controls and/or economic sanctions laws and regulations. Bellwether may terminate the Agreement and License immediately if Bellwether determines, in its sole discretion, that Licensee has breached, intends to breach, or insists upon breaching any of the provisions in this clause.

XI. U.S. GOVERNMENT USERS

Product and SaaS includes "Commercial Computer Software" and "Commercial Computer Software Documentation." In accordance with Section 12.212 of the Federal Acquisition Regulations (FAR) and Sections 227.7202-1 through 227.7202-4 of the Defense Federal Acquisition Regulation Supplement (DFARS), any use, duplication or disclosure of Product or SaaS by the U.S. Government or any of its agencies will be governed by and subject to all of the Terms, conditions, restrictions, and limitations of the Agreement. Use of Product or SaaS is agreement by the U.S. Government that Product or SaaS includes "commercial computer software" and "commercial computer software documentation" and is acceptance of the rights and restrictions in the Agreement. If for any reason Product or SaaS is not considered commercial or the Agreement Terms are otherwise deemed not to apply, the Product or SaaS will be deemed to be provided with "Restricted Rights" as defined in FAR 52.227-14(a) and FAR 52.227-14(g)(4) (Alt III), or DFARS 252.227-7014(a)(15) and DFARS 252.227-7014(b)(3), as applicable.

XII. MISCELLANEOUS

A. Integration. The Agreement sets forth the entire agreement of the parties and supersedes all prior oral and written agreements and understandings with respect to its subject matter. No waiver or modification of any provision of the Agreement is binding unless in writing signed by both parties. Bellwether's failure to exercise a right or remedy is not a waiver. If an Agreement term is invalid, illegal or unenforceable, it will

not affect any other Agreement term. The Agreement may not be assigned by Licensee.

B. Law. The laws of Kentucky, USA, govern the Agreement, excluding conflict of law principles which would require application of the law of any other jurisdiction. Each party waives the right to jury trial for any legal action. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act as adopted do not apply.