

# Discovery Terms & Conditions

## Introduction

Branch Metrics, Inc. ("Branch," "we," or "us"), provides a Discovery service (the "Discovery Services"), that enables developers of mobile applications using the Discovery Services (our "Customers") to provide personalized recommendations and results, and intent-based links into their apps, which give their end users ("User" or "Users") simplified access to completing an action (for example, to identify nearby restaurants). By consenting to these Terms or otherwise using the Discovery Services in apps that have integrated the Discovery Services, you agree to be bound by these End User Discovery Terms & Conditions (the "Terms"). By agreeing to these Terms, you warrant that you are authorized to agree to these Terms. IF YOU DO NOT AGREE TO THESE END USER DISCOVERY TERMS & CONDITIONS, DO NOT ACTIVATE OR OTHERWISE USE THE DISCOVERY SERVICES.

**IMPORTANT NOTICE: THESE TERMS ARE SUBJECT TO BINDING ARBITRATION AND A WAIVER OF CLASS ACTION RIGHTS, AS DESCRIBED BELOW. PLEASE READ CAREFULLY.**

All references to "you" or "your," as applicable, mean the person who accesses, uses, and/or participates in the Discovery Services in any manner, and each of your heirs, assigns, and successors. If you use the Discovery Services on behalf of an entity, you represent and warrant that you have the authority to bind that entity, your acceptance of the Terms will be deemed an acceptance by that entity, and "you" and "your" herein shall refer to that entity, its directors, officers, employees, and agents.

We may make changes to these Terms from time to time. When we do, we will revise the "Last updated" date given above. It is your responsibility to review these Terms frequently and to remain informed of any changes to them. The then-current version of these Terms will supersede all earlier versions. You agree that your continued use of the Discovery Services after such changes have been published will constitute your acceptance of such revised Terms.

Please note that these Terms only apply to the Discovery Services. Branch also offers a website and other services, some of which may be accessible by Users who click on a Branch link or interact with an app or website of a Customer or other entity. For the terms applicable to the Branch website and other Branch services, excluding the Discovery Services, please review the Branch terms posted [here](#). You should also review any terms and conditions that a Customer or other entity may impose on you through your use of its app or website.

# ELIGIBILITY

The Discovery Services are not for use by anyone under the age of 13 (and in certain jurisdictions under 16). By using the Discovery Services, you represent and warrant that you are at least 13 years of age, or older, if the law requires that you be older in order for Branch to provide the Discovery Services to you without parental consent.

# LICENSE TO USE THE DISCOVERY SERVICES

Subject to your compliance with these terms and conditions, Branch grants you a limited, worldwide, non-transferable, non-exclusive, and revocable license to use the Discovery Services. Your rights to use the Discovery Services are limited by all terms and conditions set forth in these Terms, and any other terms that may be imposed on you by our Customers.

# USE OF OUR DISCOVERY SERVICES; POLICIES AND RESTRICTIONS

You are solely responsible for any content and other material that you submit in a query, or for information that you otherwise transmit through or with the Discovery Services. You agree that in using the Discovery Services you will:

1. comply with all applicable laws, including, without limitation, privacy laws, intellectual property laws, anti-spam laws, and regulatory requirements;
2. not transmit any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
3. not interfere with or disrupt the Discovery Services or servers or networks connected to the Discovery Services, or disobey any requirements, procedures, policies, or regulations of networks connected to the Discovery Services;
4. not develop, support, or use any automated tool (e.g., robots, spiders) to access or use the Discovery Services or scrape the Discovery Services or otherwise copy data from the Discovery Services;
5. not circumvent or disable any digital rights management, usage rules, or other features of the Discovery Services;
6. not reverse engineer, decompile, disassemble, decipher, or otherwise attempt to derive the source code for the Discovery Services or any related technology that is not open source; and
7. not engage in "framing," "mirroring," or otherwise simulating the appearance or function of the Discovery Services.

You acknowledge and agree that your use of the Discovery Services is dependent upon access to telecommunications and Internet services. You are solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software

required to access and use the Discovery Services, including, without limitation, any and all costs, fees, expenses, and taxes of any kind related to the foregoing. Branch is not responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such telecommunications and Internet services.

**NOTE FOR EU RESIDENTS:** If are a consumer and have your habitual residence in the EU, depending on the laws in your country, the following may apply: We will do our utmost to ensure that availability of the Discovery Services will be uninterrupted and that transmissions will be error-free. However, due to the nature of the Internet, this cannot be guaranteed. Also, your access to Discovery Services may also be occasionally suspended or restricted to allow for repairs, maintenance, or the introduction of new facilities or services. We will attempt to limit the frequency and duration of any such suspension or restriction.

## TERMINATION

You acknowledge and agree that Branch, in its sole discretion, may terminate its provision of the Discovery Services without prior notice for any reason at any time. You agree that Branch shall not be liable to you for termination by Branch. Those Sections that by their nature would reasonably be expected to survive will survive termination or expiration of these Terms, including but not limited to the Sections on Termination, Privacy Policy & Data Rights, Proprietary Rights, Limitation of Liability, Indemnification and Release, Arbitration and Class Action Waiver, and Legal Notices.

## PRIVACY POLICY & DATA RIGHTS

You acknowledge that you have received, read, and understand the Discovery Privacy Policy. By agreeing to these Terms, you agree to Branch's collection, use and disclosure of data, including, where applicable, personal data, as described in our Discovery Privacy Policy, including to serve you with personalized suggestions and to tailor content results to you.

You grant to Branch a worldwide, non-exclusive, sublicensable, transferable license to use, copy, modify, distribute, publish, process, and/or anonymize, information and content collected through the Discovery Services, including without limitation to (a) provide, maintain, optimize and improve the Discovery Services; (b) conduct research; (c) analyze and aggregate your data (including anonymized data) with data of other users, such aggregate data being "Aggregate Data"; (d) use such Aggregate Data to conduct research and create data and analytics products and services, including to enable Customers to tailor content, ads, or their apps based on information collected via the Discovery Services; and (d) as otherwise described in the Discovery Privacy Policy. You waive any reversion rights that you may have in such information or content under Section 30A of the Copyright Act, 1957 (if you are located in India), or any similar provision under any applicable law.

## LINKS AND THIRD-PARTY CONTENT

The Discovery Services may display, or contain links to, third party products, services, apps, and websites. Any opinions, advice, statements, services, offers, or other information that constitute part of the content expressed, authored, or made available by other users or other third parties

on the Discovery Services, or which is accessible through or may be located using the Discovery Services (collectively, "Third-Party Content") are those of the respective authors or producers and not of Branch or its shareholders, directors, officers, employees, agents, or representatives. Branch does not control Third-Party Content and does not guarantee the accuracy, integrity, or quality of such Third-Party Content. Branch is not responsible for the performance of, does not endorse, and is not responsible or liable for, any Third-Party Content or any information or materials advertised in any Third-Party Content. By using the Discovery Services, you may be exposed to content that is offensive, indecent, or objectionable. We are not responsible or liable, directly or indirectly, for any damage or loss caused to you by your use of or reliance on any goods, services, or information available on or through any third-party service or Third-Party Content. It is your responsibility to evaluate the information, opinion, advice, or other content available on and through the Discovery Services.

Branch may display search results and recommendations based on certain information we collect and receive, as more fully described in our Privacy Policy. Search results and recommendations appear as a result of algorithms adopted by Branch. Branch does not make any representation that the search results or recommendations will be the most suitable to the specific needs of the user.

We may change or discontinue any of the Discovery Services, and you agree that we have no obligation to store, maintain, or provide you a copy of any content or information that you or others provide, except to the extent required by applicable law and as noted in the Discovery Privacy Policy.

## **PROPRIETARY RIGHTS**

Branch and its licensors exclusively own all right, title and interest in and to the Discovery Services, including all associated intellectual property and proprietary rights. You acknowledge that the Discovery Services are protected by copyright, trademark, and other laws of the United States and other countries. You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Discovery Services.

Branch may provide you with a mechanism to provide feedback, suggestions, and ideas, if you choose, about the Discovery Services ("Feedback"). You agree that Branch may, in its sole discretion, use the Feedback you provide to Branch in any way, including in future enhancements and modifications to the Discovery Services. You hereby grant to Branch and its assigns a perpetual, worldwide, fully transferable, sub-licensable, fully paid-up, irrevocable, royalty-free license to use, reproduce, modify, create derivative works from, distribute, and display the Feedback in any manner for any purpose, in any media, software, or technology of any kind now existing or developed in the future, without any obligation to provide attribution or compensation to you or any third party. You waive any reversion rights that you may have in such information or content under Section 30A of the Copyright Act, 1957 (if you are located in India), or any similar provision under any applicable law.

## **DISCLAIMER OF WARRANTIES**

The Discovery Services are provided "AS IS," without warranty of any kind. **WITHOUT LIMITING THE FOREGOING, BRANCH EXPLICITLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, NON-INFRINGEMENT, OR ACCURACY OF DATA, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.** Branch does not guarantee the accuracy, completeness, or usefulness of the Discovery Services. You use and rely on the Discovery Services at your own risk. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES IN CERTAIN CIRCUMSTANCES. ACCORDINGLY, SOME OF THE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY.

## LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANYTHING TO THE CONTRARY, BRANCH SHALL NOT BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, INFRINGEMENT OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY LOSS OF USE OF THE DISCOVERY SERVICES OR ANY DAMAGES OF ANY KIND WHATSOEVER, WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF BRANCH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM YOUR USE OF THE DISCOVERY SERVICES.

THIS LIMITATION OF LIABILITY IS PART OF THE BASIS OF THE BARGAIN BETWEEN YOU AND BRANCH AND SHALL APPLY TO ALL CLAIMS OF LIABILITY (E.G. WARRANTY, TORT, NEGLIGENCE, CONTRACT, LAW) AND EVEN IF BRANCH HAS BEEN TOLD OF THE POSSIBILITY OF ANY SUCH DAMAGE.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY. ACCORDINGLY, SOME OF THE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY.

**NOTE FOR EU RESIDENTS:** If are a consumer and have your habitual residence in the EU, depending on the laws in your country, the following may apply: We will not be responsible for (i) losses that were not caused by any breach on our part, or (ii) any business loss (including loss of profits, revenue, contracts, anticipated savings, data, goodwill or wasted expenditure), or (iii) any indirect or consequential losses that were not foreseeable to both you and us when you commenced using the Discovery Services. We will not be held responsible for any delay or failure to comply with our obligations under these conditions if the delay or failure arises from any cause which is beyond our reasonable control. The laws of some countries do not allow some or all of the limitations described above. If these laws apply to you, some or all of the above limitations may not apply to you and you might have additional rights.

## INDEMNIFICATION AND RELEASE

You agree to release and to indemnify, defend, and hold harmless Branch and its parents, subsidiaries, affiliates, and agents, as well as the officers, directors, employees, shareholders, and representatives of any of the foregoing entities, from and against any and all losses, liabilities, expenses, damages, costs (including attorneys' fees and court costs), claims, actions, inquiries, or investigations of any kind whatsoever arising out of or resulting from your violation

of these Terms. Branch reserves the right, at its own expense, to assume exclusive defense and control of any matter otherwise subject to indemnification by you and, in such case, you agree to cooperate with Branch in the defense of such matter.

If you are a California resident, you waive California Civil Code Section 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

If you are not a California resident, you waive your rights under any statute or common law principle similar to Section 1542 that governs your rights in the jurisdiction of your residence.

#### **ARBITRATION AND CLASS ACTION WAIVER**

YOU SHOULD READ THIS SECTION CAREFULLY, AS IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

**Scope:** You and Branch agree that these Terms affect interstate commerce and that the Federal Arbitration Act governs the interpretation and enforcement of these arbitration provisions. This Section is intended to be interpreted broadly and governs any and all disputes between us, including but not limited to claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; claims that arose before these Terms or any prior agreement (including, but not limited to, claims related to advertising); and claims that may arise after the termination of these Terms. The only disputes excluded from this broad prohibition are the litigation of certain intellectual property and small court claims, as provided below.

**Initial Dispute Resolution:** You may contact us at [info@branch.io](mailto:info@branch.io) to address any concerns you may have regarding the Discovery Services. Branch is able to resolve most concerns quickly to our users' satisfaction. You and Branch agree to use best efforts through Branch's internal dispute resolution processes to settle any dispute, claim, question, or disagreement and engage in good faith negotiations, which shall be a condition to either party initiating a lawsuit or arbitration.

**Binding Arbitration:** If the parties do not reach an agreed upon solution within a period of thirty (30) days from the time informal dispute resolution is initiated under the initial dispute resolution provision, then either party may initiate binding arbitration as the sole means to resolve claims, subject to the exceptions and terms set forth below. Except as set forth below, any claim that you might have against Branch must be resolved through binding arbitration before the American Arbitration Association ("AAA") using its Consumer Arbitration Rules, as modified by these Terms, and will be administered by AAA and resolved by a single arbitrator. The AAA rules are available online at [www.adr.org](http://www.adr.org) or by calling AAA at 1-800-778-7879. The arbitrator is bound by the Terms herein.

The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of these Terms, including, but not limited to any claim that all or any part of these

Terms are void or voidable, or whether a claim is subject to arbitration. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be written, and binding on the parties and may be entered as a judgment in any court of competent jurisdiction.

You understand and agree that by entering into these Terms, you and Branch are each waiving the right to a jury trial or a trial before a judge in a public court. In the absence of this arbitration provision, you and Branch might otherwise have had a right or opportunity to bring disputes in a court, before a judge or jury, and/or to participate or be represented in a case filed in court by others (including class actions). Other rights that you would have if you went to court, such as the right to appeal and to certain types of Discovery, may be more limited or may also be waived.

If you are a resident of the United States, arbitration may take place in the county where you reside at the time of filing. For individuals residing outside the United States, arbitration shall be initiated in the State of California, United States of America. You and Branch further agree to submit to the personal jurisdiction of any federal or state court in the Northern District of California in order to compel arbitration, to stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.

**Costs of Arbitration:** Payment of all filing, administration, and arbitrator costs and expenses imposed by AAA will be governed by the AAA rules, provided that if you are initiating an arbitration against Branch and the value of the relief sought is ten thousand dollars (\$10,000) or less, then Branch will advance all filing, administrative and arbitration costs and expenses imposed by AAA (subject to reimbursement as set forth below). If the circumstances in the preceding sentence apply, but the value of relief sought is more than ten thousand dollars (\$10,000) and you demonstrate to the arbitrator that such costs and expenses would be prohibitively more expensive than a court proceeding, then Branch will pay the amount of any such costs and expenses that the arbitrator determines are necessary to prevent the arbitration from being prohibitively more expensive than a court proceeding (subject to reimbursement as set forth below). In the event that the arbitrator determines that all of the claims you assert in arbitration are frivolous according to Federal Rule of Civil Procedure 11, you agree to reimburse Branch for all such cost and expenses that Branch paid and that you would have been obligated to pay under the AAA rules.

**Class Action Waiver:** YOU UNDERSTAND AND AGREE THAT YOU AND BRANCH WILL EACH ARBITRATE IN YOUR INDIVIDUAL CAPACITY, NOT AS A REPRESENTATIVE OR MEMBER OF A CLASS. This means that you and Branch may not join a claim with any other person or entity, and there shall not be authority for any dispute to be arbitrated on a class-action basis. If any court or arbitrator determines that the class action waiver set forth in this Arbitration and Class Action Waiver section is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provisions in this section shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

**Exceptions:** Notwithstanding the parties' decision to resolve all disputes through arbitration, either party may bring an action in state or federal court to protect its intellectual property rights (meaning patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights). Either party may also seek relief in a small claims court for disputes or claims within the scope of that court's jurisdiction.

**Right to Opt Out:** You have the right to opt out and not be bound by the arbitration and class action waiver provisions set forth in this Arbitration and Class Action Waiver section by sending written notice of your decision to opt out to the following address: Branch Metrics, Inc., 1975 W El Camino Real, Suite 102, Mountain View, CA 94040. The notice must be sent within 30 days of December 30, 2024, or your first use of the Discovery Services, whichever is later, otherwise you shall be bound to arbitrate disputes in accordance with the terms of those paragraphs. If you opt-out of these arbitration provisions, Branch also will not be bound by them.

**Changes to this Section:** Branch will provide thirty (30) days' notice of any changes affecting the substance of this Arbitration and Class Action Waiver section by updating these Terms, sending you a message, or otherwise notifying you when you are using the Discovery Services. Amendments will become effective thirty (30) days after they are updated on these Terms or sent to you.

Changes to this section will otherwise apply prospectively only to claims arising after the thirtieth (30th) day. If a court or arbitrator decides that this subsection on "Changes to This Section" is not enforceable or valid, then this subsection shall be severed from the section entitled "Arbitration and Class Action Waiver," and the court or arbitrator shall apply the first Arbitration and Class Action Waiver section in existence after you began using the Discovery Services.

## LEGAL NOTICES

**Governing Law.** These Terms and all matters arising out of or relating to these Terms shall be governed by the laws of the State of California, without regard to its conflict of law provisions; excluding the United Nations Convention on Contracts for the International Sale of Goods.

**Venue.** Any legal action or proceeding arising out of or relating to these Terms and not subject to arbitration shall be brought exclusively in the state or federal courts located in the Northern District of California. You and Branch hereby agree to submit to the jurisdiction of, and agree that venue is proper in, those courts in any such legal action or proceeding.

**Service of Process.** You further agree to accept service of process by mail, and hereby waive any and all jurisdictional and venue defenses otherwise available.

**No Waiver.** Our failure to enforce any right or provision in these Terms will not constitute a waiver of such right or provision unless acknowledged and agreed to by us in writing.

**Assignment.** These Terms are not assignable, transferable or sublicensable by you except with Branch's prior written consent. Branch may transfer and assign any of its rights and obligations under these Terms freely and without consent.

**Statute of Limitations:** You agree that regardless of any statute or law to the contrary, any claim arising out of or relating to the Discovery Services must commence within one (1) year after the cause of action accrues. Otherwise, such cause of action is permanently barred. Notwithstanding the foregoing, this statute of limitations shall not apply to residents of New Jersey.

**Section Headings:** The section headings in these Terms are for convenience only and have no legal or contractual effect.

**Entire Agreement.** These Terms, together with the Discovery Privacy Policy and any other legal notices or additional terms and conditions or policies governing use of the Discovery Services, shall constitute the entire agreement between you and Branch concerning the Discovery Services. Except as explicitly stated herein, if any provision of the Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of the Terms, which shall remain in full force and effect.

**NOTE FOR EU RESIDENTS:** If you are a consumer and have your habitual residence in the EU, depending on the laws in your country, the following may apply: You additionally enjoy the protection afforded to you by mandatory provisions of the law of your country of residence. We both agree to submit to the non-exclusive jurisdiction of the courts of the State of California, which means that you may bring a claim to enforce your consumer protection rights in connection with these Terms in California or in the EU country in which you live. If you reside in the EU, the European Commission provides for an online dispute resolution platform, which you can access here: <https://ec.europa.eu/consumers/odr>. We do not take part in this platform so if you would like to bring a matter to our attention, please contact us.

## CONTACTING US

If you have any questions or suggestions regarding these Terms, please contact us at:

Branch Metrics, Inc. 1975 W El Camino Real Ste. 102 Mountain View, CA 94040 or by email at [discoveryprivacy@branch.io](mailto:discoveryprivacy@branch.io)