



# Driftscape Corp.

## Driftscape Application End-User License Agreement ("EULA")

Last updated: October 20, 2017

This Agreement is a legal agreement between you (either an individual or a single entity) and Driftscape Corp. and it governs your use of the Application made available to you by Driftscape Corp. The Application is licensed, not sold, to you by Driftscape Corp. for use strictly in accordance with the terms of this Agreement.

### Definitions and Interpretation

**Account:** the personal environment which is created by the End User when he registers for access to the the Driftscape Service.

**Content:** Content that is developed by Driftscape Corp. and/or third parties and made available to the End User through the Driftscape Service; *including* – but not limited to – depictions of points-of-interest, events and tours featuring mobile audio guides, immersive audio experiences and auto-play trail and path audio guides and entertainments and *provided* in the form of text, photos, videos, audio materials, and any other form.

**End User:** a person that is using the Driftscape Service with or without an Account, to access the Content and use such Content for educational and entertainment purposes;

**Driftscape Corp.:** a company with limited liability established and existing under the laws of the Province of Ontario, Canada.

**Driftscape App:** the mobile application Driftscape, that provides the End User with information concerning events, tours, immersive audio experiences, objects and places of interest in his or her environment.

**Driftscape Service:** Services offered by Driftscape Corp. including the Driftscape App, driftscape.com website, third party Content Management Services for the Driftscape App.

**Driftscape Website:** the URLs <http://Driftscape.com> and <http://drifftoronto.ca>, and all their top level and sub domains;

**Login Details:** the username or e-mail address and password which the End User provides when creating his Account and with which the End User gains access to his Account.

**Personal Data:** is the data entered by the End User in the course of creating an Driftscape Service Account and also includes information collected on the use of the Driftscape Service by the End User.

**Third Party Provider:** the (legal) person, which has entered into an agreement with Driftscape Corp. to gain access to the Driftscape Content Management System to incorporate its third party owned Content into the Driftscape App.

## **License**

Driftscape Corp. grants you a limited, personal, revocable, worldwide, non-exclusive, non-sublicensable and non-transferable, limited license to download, install and use the Application solely for your personal, non-commercial purposes strictly in accordance with the terms of this Agreement.

This license does expressly not entail the right for the End User to publish, reproduce or make available the Driftscape Service and/or the Content in another medium or for any third party.

## **Restrictions**

You agree that Driftscape Services contain proprietary content, information and material that is owned by Licensor and/or its agents or licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright, and that you will not use such proprietary content, information or materials in any way whatsoever except for permitted use of the Driftscape Services or in any manner that is inconsistent with the terms of this EULA or that infringes any intellectual property rights of a third party.

You agree not to, and you will not permit others to:

- license, sell, rent, lease, assign, reproduce, distribute, transmit, host, outsource, disclose or otherwise commercially exploit the Application and Application Content or make the Application available and Application Content to any third party;
- copy or use the Application for any purpose other than as permitted under the above section 'License';
- use Driftscape Services to transmit any computer viruses, worms, trojan horses or other malware, or by trespass or burdening network capacity
- modify, attempt to derive the source code of, make derivative works of, disassemble, decrypt, reverse compile or reverse engineer any part of the Application, any updates, or any part thereof (except as and only to the extent that any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open-sourced components included with the Licensed Application). Any attempt to do so is a violation of the rights of the Licensor and its licensors. If you breach this restriction, you may be subject to prosecution and damages
- use the Driftscape Services in any manner to harass, abuse, stalk, threaten, defame or otherwise infringe or violate the rights of any other party, and that neither Licensor nor its agents is in any way responsible for any such use by you, nor for any harassing, threatening, defamatory, offensive, infringing or illegal messages or transmissions that you may receive as a result of using any of the Driftscape Services.
- remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of Driftscape Corp. or its affiliates, partners, suppliers or the licensors of the Application, ;
- use the Driftscape Service and/or Content in a way that is discriminating regarding race, religion, gender, culture or heritage or which is otherwise offensive;
- use the Driftscape Service and/or Content in a way that calls for violence against and/or harassment of others;

- use the Driftscape Service and/or Content in a way that is false and/or misleading, including – but not limited to – the adoption of a false identity and/or making the incorrect suggestion that the End User is in any way commercially connected with Driftscape Corp. or its licensors or licensees;
- use the Driftscape Service and/or Content with a (mobile) device which contains viruses, Trojan horses, worms, bots or other software that can damage, disable or delete the Driftscape Service or makes it inaccessible, or which alters, damages or deletes the Content;
- violate the EULA, the Privacy Statement or any applicable laws and/or regulations;
- infringe the rights of Driftscape Corp. and/or third parties, including – but not limited to – Intellectual Property Rights and rights that relate to the protection of privacy;
- harm the interests and reputation of Driftscape Corp.;
- collect data from End Users through the Driftscape Service and use this data for other purposes than those that are listed or intended in the EULA;
- reproduce, publish or sell the Content which is obtained through the Driftscape Service;
- use contact information which is provided by End Users for any commercial, non-commercial or charitable communication as well as any other unsolicited communication other than the intended purposes of the Driftscape Service;
- use the Driftscape Service for advertisement purposes, other than with the express permission of Driftscape Corp.;
- engage third parties to perform any of the abovementioned acts.

The End User acknowledges and agrees that any personal information (such as reviews, comments etcetera) he makes available through the Driftscape Service can be used by other End Users. The End User acknowledges that Driftscape Corp. cannot enforce compliance with the EULA by other End Users.

### **Account**

To use certain features of the Driftscape Service the End User might be required to create an Account, by following the registration process in the Driftscape App or on the Driftscape Website. The End User guarantees that all provided (personal) data is and will be maintained up-to-date, correct and complete. The End User is not allowed to create an Account in someone else's name. The End User indemnifies Driftscape Corp. against any and all damage and costs arising from and/or related to the access to or the use of the Driftscape Service by third parties via the End User's Account.

### **Intellectual Property**

The Application, including without limitation all copyrights, patents, trademarks, trade secrets and other intellectual property rights are, and shall remain, the sole and exclusive property of Driftscape Corp.

The Intellectual Property Rights in relation to the Driftscape Service, including the information made available via the Driftscape Service such as the Content, texts, look-and-feel, templates, video-, audio-photo-material and the website of Driftscape Corp., are held by Driftscape Corp. or its licensors.

Nothing in this EULA is intended to transfer any Intellectual Property Rights to the End User. The End User shall refrain from any act that infringes the Intellectual Property Rights of Driftscape Corp. or its licensors, including – but not limited to – the registration of domain names, trademarks or Google

Adwords that are identical or similar to any object to which Driftscape Corp. or its licensors holds Intellectual Property Rights, as well as the reproduction, modification, reverse engineering or publishing of the Driftscape Service, including the Content, for other purposes than those listed in the EULA, unless permitted by applicable mandatory law.

The End User is not permitted to remove, make illegible, hide or modify notifications or statements with regard to Intellectual Property Rights.

### **Content**

The Driftscape Service offers End Users various Content. The End User can choose which (type of) information he wishes to receive by accessing specific Content on his mobile device through the Driftscape App. Content may be offered under additional terms and conditions, such as –but not limited to- (periodic) payment obligations and restrictions to use.

Driftscape Corp. makes no warranties of any kind, whether express, implied, statutory or otherwise, including but not limited to any warranties of merchantability or fitness for a particular purpose, quality, safety, integrity, availability or accuracy of the Content.

Driftscape Corp. accepts no liability for (in)correctness, (in)completeness or the (in)actuality of the Content that is made available in the Driftscape App or on the Driftscape Website (whether or not this Content originates from third parties).

If a End User is of the opinion that certain Content infringes his rights and/or the rights of other End Users or a third party the End User should notify Driftscape CORP. immediately by sending an email to [abuse@Driftscape.com](mailto:abuse@Driftscape.com).

You understand that by using any of the Driftscape Services, you may encounter Content that may be deemed offensive, indecent, or objectionable, which Content may or may not be identified as having explicit language, and that the results of any search or entering of a particular URL may automatically and unintentionally generate links or references to objectionable material. Nevertheless, you agree to use the Driftscape Services at your sole risk and that neither the Licensor nor its agents shall have any liability to you for content that may be found to be offensive, indecent, or objectionable.

Certain Content may display, include or make available data, information, applications or materials from third parties (“Third Party Materials”) or provide links to certain third party web sites. By using the Driftscape Services, you acknowledge and agree that neither the Licensor nor its agents is responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Materials or web sites. Neither the Licensor nor its agents warrant or endorse and does not assume and will not have any liability or responsibility to you or any other person for any third-party services, Third Party Materials or web sites, or for any other materials, products, or services of third parties. Third Party Materials and links to other web sites are provided solely as a convenience to you.

### **Prices and payment**

For the use of the Driftscape Service, or a part thereof, a fee might be due. Content may be offered for a fee, or free of charge. The End User will receive the relevant payment details prior to adding the Content to the device or Account.

## **Comments**

Any feedback, comments, ideas, improvements or suggestions (collectively, "Suggestions") provided by you to Driftscape Corp. with respect to the Application shall remain the sole and exclusive property of Driftscape Corp.

Driftscape Corp. shall be free to use, copy, modify, publish, or redistribute the Suggestions for any purpose and in any way without any credit or any compensation to you.

## **Personal Data**

The End User agrees in advance to all processing by or on behalf of Driftscape Corp. of the Personal Data for the purposes of:

- a. developing and offering the Driftscape Service, the Driftscape App and the Driftscape Website;
- b. communicating with the End User about Driftscape Corp. and its products and services;
- c. generating statistical data (including by means of Google Analytics);
- d. protecting Driftscape Corp.'s information systems.

Driftscape Corp. shall implement appropriate technical and organizational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access.

## **Modifications to Application**

Driftscape Corp. reserves the right to modify, suspend or discontinue, temporarily or permanently, the Application or any service to which it connects, with or without notice and without liability to you.

## **Updates to Application**

Driftscape Corp. may from time to time provide enhancements or improvements to the features/functionality of the Application, which may include patches, bug fixes, updates, upgrades and other modifications ("Updates").

Updates may modify or delete certain features and/or functionalities of the Application. You agree that Driftscape Corp. has no obligation to (i) provide any Updates, or (ii) continue to provide or enable any particular features and/or functionalities of the Application to you.

You further agree that all Updates will be (i) deemed to constitute an integral part of the Application, and (ii) subject to the terms and conditions of this Agreement.

## **Third-Party Services**

The Application may display, include or make available third-party content (including data, information, applications and other products services) or provide links to third-party websites or services ("Third-Party Services").

You acknowledge and agree that Driftscape Corp. shall not be responsible for any Third-Party Services, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. Driftscape Corp. does not assume and shall not have any liability or responsibility to you or any other person or entity for any Third-Party Services.

Third-Party Services and links thereto are provided solely as a convenience to you and you access and use them entirely at your own risk and subject to such third parties' terms and conditions.

You agree that the Third-Party Services contain proprietary content, information and material that is owned by Licensor and/or its agents or licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright, and that you will not use such proprietary content, information or materials in any way whatsoever except for permitted use of the Third-Party Services or in any manner that is inconsistent with the terms of this EULA.

### **Term and Termination**

This Agreement shall remain in effect until terminated by you or Driftscape Corp..

Driftscape Corp. may, in its sole discretion, at any time and for any or no reason, suspend or terminate this Agreement with or without prior notice.

This Agreement will terminate immediately, without prior notice from Driftscape Corp., in the event that you fail to comply with any provision of this Agreement. You may also terminate this Agreement by deleting the Application and all copies thereof from your mobile device or from your computer.

Upon termination of this Agreement, you shall cease all use of the Application and delete all copies of the Application from your mobile device or from your computer.

Termination of this Agreement will not limit any of Driftscape Corp.'s rights or remedies at law or in equity in case of breach by you (during the term of this Agreement) of any of your obligations under the present Agreement.

### **Indemnification**

You agree to indemnify and hold Driftscape Corp. and its parents, subsidiaries, affiliates, officers, employees, agents, partners and licensors (if any) harmless from any claim or demand, including reasonable attorneys' fees, due to or arising out of your: (a) use of the Application; (b) violation of this Agreement or any law or regulation; or (c) violation of any right of a third party.

### **No Warranties**

The Application is provided to you "AS IS" and "AS AVAILABLE" and with all faults and defects without warranty of any kind. To the maximum extent permitted under applicable law, Driftscape Corp., on its own behalf and on behalf of its affiliates and its and their respective licensors and service providers, expressly disclaims all warranties, whether express, implied, statutory or otherwise, with respect to the Application, including all implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, and warranties that may arise out of course of dealing, course of performance, usage or trade practice. Without limitation to the foregoing, Driftscape Corp. provides no warranty or undertaking, and makes no representation of any kind that the Application will meet your requirements, achieve any intended results, be compatible or work with any other software, applications, systems or services, operate without interruption, meet any performance or reliability standards or be error free or that any errors or defects can or will be corrected.

Without limiting the foregoing, neither Driftscape Corp. nor any Driftscape Corp.'s provider makes any representation or warranty of any kind, express or implied: (i) as to the operation or availability of the Application, or the information, content, and materials or products included thereon; (ii) that the Application will be uninterrupted or error-free; (iii) as to the accuracy, reliability, or currency of any information or content provided through the Application; or (iv) that the Application, its servers, the content, or e-mails sent from or on behalf of Driftscape Corp. are free of viruses, scripts, trojan horses, worms, malware, timebombs or other harmful components.

Some jurisdictions do not allow the exclusion of or limitations on implied warranties or the limitations on the applicable statutory rights of a consumer, so some or all of the above exclusions and limitations may not apply to you.

The Service may contain links to third party websites that are not owned or controlled by Driftscape Corp. Driftscape Corp. has no control over, and assumes no responsibility or liability for, the content, privacy policies, or practices of any third party websites.

The End User is solely responsible for the purchase and/or the proper operation of the infrastructure necessary to use the Driftscape Service, including any mobile device with functions for (GPS) localization. Driftscape Corp. is never liable for damage or costs on account of transmission errors, malfunctions or non-availability of computer, data or telecom facilities, including the internet.

Driftscape Corp. may at all times (i) make functional, procedural or technical changes or improvements to the Driftscape Service, including the Driftscape App, the Driftscape Website and Content, (ii) (temporarily or permanently) take out (part of) the Driftscape Service for whatever reason, and/or (iii) take out of service, restrict the use of or terminate Accounts, without becoming liable to the End User.

Driftscape Corp. is in no way whatsoever liable to the End User for any damage or costs arising out of or resulting from (parts of) the Driftscape Service being (temporarily) unavailable or for failures or outages of the Driftscape Service.

### **Warranties**

The End User warrants and guarantees that he is entitled to use the Driftscape Service and that he will act in accordance with the EULA.

The End User agrees to indemnify, defend and hold harmless Driftscape Corp., its successors, assigns, affiliates, agents, directors, officers, employees and shareholders from and against any and all claims, actions, proceedings, damages, obligations, losses, expenses and costs, including reasonable attorneys' fees and other litigation expenses, resulting from (i) an attributable breach of the EULA by the End User, (ii) any use the End User makes of the Driftscape Service, including Content, or (iii) an unlawful act performed by the End User, or (iv) any third party claims resulting from the above.

### **Limitation of Liability**

Notwithstanding any damages that you might incur, the entire liability of Driftscape Corp. and any of its suppliers under any provision of this Agreement and your exclusive remedy for all of the foregoing shall be limited to lesser of C\$50.00 or the amount actually paid by you for the Application.

To the maximum extent permitted by applicable law, in no event shall Driftscape Corp. or its suppliers be liable for any special, incidental, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits, for loss of data or other information, for business interruption, for personal injury, for loss of privacy arising out of or in any way related to the use of or inability to use the Application, third-party software and/or third-party hardware used with the Application, or otherwise in connection with any provision of this Agreement), even if Driftscape Corp. or any supplier has been advised of the possibility of such damages and even if the remedy fails of its essential purpose.

Some states/jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

## **Severability**

If any provision of this Agreement is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

## **Waiver**

Except as provided herein, the failure to exercise a right or to require performance of an obligation under this Agreement shall not effect a party's ability to exercise such right or require such performance at any time thereafter nor shall be the waiver of a breach constitute waiver of any subsequent breach.

## **Amendments to this Agreement**

Driftscape Corp. reserves the right, at its sole discretion, to modify or replace this Agreement at any time. If a revision is material, the amended or supplemented Terms of Service will be brought to the End User's attention during the End User's use of the Driftscape Service. What constitutes a material change will be determined at our sole discretion.

By continuing to access or use our Application after any revisions become effective, you agree to be bound by the revised terms. If you do not agree to the new terms, you are no longer authorized to use the Application.

## **Force majeure**

Neither party to this EULA is liable to perform any obligation, including any warranty obligation agreed between the Parties, if prevented there from by force majeure. Force majeure is taken to mean inter alia: illness of employees and/or absence of key employees needed for Driftscape Corp., power failures, strikes, riots, government measures, fire, natural disasters, floods, failure of suppliers or licensors of Driftscape Corp., shortcomings by third parties which were engaged by Driftscape Corp., disruption of the internet connection, hardware failures and failures in (telecommunication) networks.

## **Governing Law**

The laws of Ontario, Canada, excluding its conflicts of law rules, shall govern this Agreement and your use of the Application. Your use of the Application may also be subject to other local, state, national, or international laws.

## **Contact Information**

If you have any questions about this Agreement, please contact us.

## **Duration and termination**

The agreement between the End User and Driftscape Corp. comes into effect at the moment the End User accepts these EULA when installing the Driftscape App on his mobile device or when the End User visits the Driftscape Website and accesses secure services.

The End User is at any moment entitled to discontinue the use of the Driftscape Service and to terminate his Account for convenience.

Driftscape Corp. reserves the right to terminate the End User's Account (temporarily or permanently) at any time, without notice and without becoming liable to pay compensation, specifically in, but not limited to, cases in which the End User, in Driftscape Corp.'s opinion, has breached any of the



provisions in these EU Terms, without prejudice to Driftscape CORP.'s right to take further legal action and/or its entitlement to compensation.

In the event of termination for cause, no reversal will take place of that which Driftscape Corp. has already delivered and/or performed and the End User has paid.

Upon termination of the agreement for the use of the Driftscape Service for any reason whatsoever, (i) the End User's right to use the Driftscape Service terminates immediately and (ii) Driftscape Corp. will remove the End User's Account. However, Driftscape Corp. in these circumstances, remains entitled to use the End User's Personal Data.

### **Entire Agreement**

The Agreement constitutes the entire agreement between you and Driftscape Corp. regarding your use of the Application and supersedes all prior and contemporaneous written or oral agreements between you and Driftscape Corp..

You may be subject to additional terms and conditions that apply when you use or purchase other Driftscape Corp.'s services, which Driftscape Corp. will provide to you at the time of such use or purchase.