

Metrological Terms and Conditions

These terms and conditions (the “Terms”) apply to your access to, and use of, our applications named Sudoku, Fireplace, SugarBoost, Aquarium, True or False, Sunset, Beach, SunRise and any other app that links to these Terms (collectively, the “App”). The App is provided by Metrological Media Innovations B.V., a Dutch limited liability company, having its principal place of business at 3011NK Rotterdam, Mariniersweg 151, The Netherlands (“Metrological”, “we”, “our”, “us”).

Please read these Terms carefully. By accessing and/or using our App, you acknowledge that you have read, understood and agree to be bound by the Terms as described herein and all terms incorporated by reference. If you do not agree to all of these Terms, you must not use our App.

If you are under the age of 13, you must not use the App. If you are between the ages of 13 and 18 (or the relevant age in your jurisdiction where you are considered a minor), your parent or guardian must agree to these Terms (both for themselves and on your behalf) before you can use App.

If you are using the App on behalf of a company, partnership, association, government or other organization (your “**Organization**”), you warrant that you are authorized to do so and that you are authorized to bind your Organization to these Terms. In such circumstances, “you” will include your Organization.

NOTE: IF YOU ARE A USER OF THE APP BASED IN THE UNITED STATES OF AMERICA, THESE TERMS CONTAIN A BINDING ARBITRATION PROVISION IN SECTION 10 THAT AFFECTS YOUR RIGHTS UNDER THESE TERMS. THE ARBITRATION PROVISION REQUIRES THAT DISPUTES BE RESOLVED IN INDIVIDUAL BINDING ARBITRATIONS OR SMALL CLAIMS COURT PROCEEDINGS. IN ARBITRATION, THERE IS NO JUDGE OR JURY AND THERE IS LESS DISCOVERY AND APPELLATE REVIEW THAN IN COURT.

1. Changes to our App

We reserve the right to change, update or terminate our App, or any features, content, or portions thereof, without prior notice. You agree that we can suspend or terminate your right to access our App at any time for any reason without notice, obligation or liability to you. If you are dissatisfied with any changes in the App, then you can choose to no longer use our App.

2. Privacy Statement

Please refer to our [Privacy Statement](#) for information about how we collect, use and share information about users of our App.

3. Metrological Materials

The App contains content including, without limitation, Metrological's logos, and all designs, text, graphic, pictures, information, data, software, sound files, other files and the selection and arrangement thereof (collectively, the "**Materials**") that are the proprietary property of Metrological or Metrological's licensors and are protected by applicable intellectual property and other laws, including but not limited to copyright and trademark laws.

4. Limited License

Metrological grants you a limited, non-sublicensable license to access and use the App for your personal use only. Such license is subject to these Terms and does not include: (i) any resale or commercial use of the App or the Materials therein; (ii) the distribution, public performance or public display of any Materials; (iii) modifying or otherwise making any derivative uses of the App or the Materials, or any portion thereof; (iv) downloading (other than for caching purposes) of any portion of the App, the Materials or any information contained therein, except as expressly permitted on the App; or (v) any use of the App or the Materials other than for their intended purposes. Any use of the App or the Materials other than as specifically authorized herein, without the prior written permission of Metrological, is strictly prohibited. Such unauthorized use may also violate applicable laws, including without limitation copyright and trademark laws and applicable regulations and statutes. Unless explicitly stated herein, nothing in these Terms shall be construed as conferring any license to intellectual property rights, whether by implication or otherwise. Metrological may revoke this license at any time.

5. Use of our App

You agree that your use of the App, will not violate any law, contract, intellectual property or other third-party right or constitute a criminal action or tort, and that you are solely responsible for your conduct while in the App. You further agree not to (the foregoing list, collectively, the “**Usage Rules**”):

- Use the App in any manner that could interfere with, disrupt, negatively affect or inhibit other users from fully enjoying the App, or that could damage, disable, overburden or impair the functioning of the App in any manner;
- Engage in any discriminatory, defamatory, libelous, hateful, harassing, abusive, obscene, threatening, physically dangerous, unlawful, or otherwise objectionable conduct;
- Attempt to indicate in any manner that you have a relationship with us or that we have endorsed you or any products or services for any purpose;
- Send any unsolicited or unauthorized advertising, solicitations, promotional materials, spam, junk mail, chain letters or pyramid schemes, or harvest or collect the email addresses or other contact information of other users from the App for the purpose of sending spam or other commercial messages;
- Attempt to reverse engineer any aspect of the App or do anything that might discover source code or bypass or circumvent measures employed to prevent or limit access to any area, content or code of the App (except as otherwise expressly permitted by law);
- Post, upload to, transmit, distribute, store, create or otherwise publish or send through the App viruses, corrupted data or other harmful, disruptive or destructive files;
- Develop any third-party applications that interact with the App without our prior written consent; or
- Use any robot, iframe, spider, crawler, scraper or other automated means or interface not provided by us to access the App, including, without limitation, for the purpose of copying, extracting, aggregating, displaying, publishing or distributing any content or data made available via App.

All interpretation and application of the Usage Rules shall be as determined by Metrological, in its sole discretion.

6. Disclaimer of Warranties and Limitation of Liability

USE OF THE APP IS AT YOUR SOLE RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY METROLOGICAL OR ITS REPRESENTATIVES CREATES A WARRANTY. THE APP IS PROVIDED “AS-IS” WITHOUT WARRANTY OF ANY KIND. METROLOGICAL DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE APP, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT PERMITTED BY LAW, METROLOGICAL AND ITS AFFILIATED COMPANIES, LICENSEES, LICENSORS AND CONTRACTORS (“**METROLOGICAL PARTIES**”) WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, LOST PROFITS, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO YOUR ACCESS, USE, MISUSE, OR INABILITY TO USE THE APP, EVEN IF METROLOGICAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, METROLOGICAL PARTIES’ AGGREGATE LIABILITY TO YOU IN CONNECTION WITH ANY CLAIMS ARISING OUT OF OR RELATING TO THE APP IS LIMITED TO THE AMOUNT (IF ANY) YOU ACTUALLY PAID FOR THE APP THAT IS SUBJECT OF SUCH CLAIM. THE LIMITATIONS LISTED ABOVE SHALL APPLY TO YOU EXCEPT TO THE EXTENT APPLICABLE LAW RESTRICTS OUR ABILITY TO LIMIT LIABILITY OR DISCLAIM WARRANTIES. IN THAT CASE, WE LIMIT OUR LIABILITY AND DISCLAIM WARRANTIES TO THE GREATEST EXTENT PERMITTED BY LAW.

7. Changes to these Terms

We may change these Terms from time to time. We encourage you to check for updates regularly. Your continued use of the App after we have informed you of the changes of the Terms will confirm that you have agreed to the amended Terms. If you do not agree to the amended Terms, you must stop using the App.

8. Applicable law

These Terms shall be governed by the laws of the Netherlands. Any disagreements arising from or related to these Terms shall be exclusively placed before a qualified court in Rotterdam, The Netherlands.

9. Contact Information

If you have any questions or concerns regarding these Terms, you may contact us by sending:

(a) an e-mail to: legal@metrological.com;

(b) a letter at the following address:

Metrological Media Innovations B.V.

Mariniersweg 151

3011 NK Rotterdam, the Netherlands.

10. ADDITIONAL APP TERMS OF SERVICE (USA-SPECIFIC TERMS)

If you are a user of the App in the United States of America, the below Additional Terms: (a) are incorporated into these Terms; (b) apply to your use of the App; and (c) override the above terms of these Terms to the extent of any inconsistency.

If you are a user of the App in the United States of America, the following Additional Terms expressly replace the above "Applicable Law" section 8 of these Terms.

Binding Arbitration

a. **Purpose.** If you are a user of the App, any Dispute (as defined below in these Additional Terms) involving you and Metrological shall be resolved through individual arbitration. In arbitration, there is no judge or jury and there is less discovery and appellate review than in court. This section 10 (the "**Arbitration Provision**") shall be broadly interpreted.

b. **Definitions.** The term "**Dispute**" means any claim or controversy related to the App, including but not limited to any and all: (1) claims for relief and theories of liability, whether based in contract, tort, fraud, negligence, statute, regulation, ordinance, or otherwise; (2) claims that arose before these Terms or any prior agreement; (3) claims that arise after the expiration or termination of these Terms; and (4) claims that are the subject of purported class action litigation in which you are not a member of a certified class. As used in this Arbitration Provision, "**Metrological**" means Metrological Media Innovations B.V. and any of its predecessors, successors, assigns, parents, subsidiaries and affiliated companies and each of their respective officers, directors, employees and agents, and

“you” means you and any users or beneficiaries of your access to the App. Notwithstanding the foregoing, Disputes relating to the scope, validity, or enforceability of this arbitration provision will not be subject to arbitration.

c. **Right to Sue in Small Claims Court.** Notwithstanding anything in this Arbitration Provision, either you or Metrological may elect to bring an individual action in small claims court if the claim is not aggregated with the claim of any other person and if the amount in controversy is properly within the jurisdiction of the small claims court.

d. **Right to Opt Out.** IF YOU DO NOT WISH TO ARBITRATE DISPUTES YOU MAY DECLINE TO HAVE YOUR DISPUTES WITH METROLOGICAL ARBITRATED BY NOTIFYING METROLOGICAL IN WRITING WITHIN 30 DAYS OF THE LATER OF YOUR FIRST ACCESS TO OR USE OF THE APP, BY MAIL TO METROLOGICAL MARINIERSWEG 151, 3011 NK, ROTTERDAM, THE NETHERLANDS, ATTN: LEGAL DEPARTMENT/ARBITRATION, OR BY EMAIL TO LEGAL@METROLOGICAL.COM SUBJECT: LEGAL DEPARTMENT/ARBITRATION. YOUR WRITTEN NOTIFICATION TO METROLOGICAL MUST INCLUDE YOUR NAME, ADDRESS AND ACCOUNT NUMBER (IF YOU ARE A COMCAST SUBSCRIBER) OR TELEPHONE NUMBER (IF YOU ARE NOT A COMCAST SUBSCRIBER) AS WELL AS A CLEAR STATEMENT THAT YOU DO NOT WISH TO RESOLVE DISPUTES WITH METROLOGICAL THROUGH ARBITRATION. YOUR DECISION TO OPT OUT OF THIS ARBITRATION PROVISION WILL HAVE NO ADVERSE EFFECT ON YOUR RELATIONSHIP WITH EITHER METROLOGICAL OR COMCAST OR SERVICES PROVIDED BY COMCAST. IF YOU HAVE PREVIOUSLY OPTED OUT OF ARBITRATION WITH METROLOGICAL, YOU DO NOT NEED TO DO SO AGAIN.

e. **Initiation of Arbitration Proceeding/Selection of Arbitrator.** The party initiating the arbitration proceeding may open a case with the American Arbitration Association (“AAA”) by visiting its website (www.adr.org) or calling its toll free number (1-800-778-7879). You may deliver any required or desired notice to Metrological by mail to Metrological, Mariniersweg 151, 3011 NK, Rotterdam, the Netherlands – ATTN: LEGAL DEPARTMENT.

f. **Arbitration Procedures.** This Arbitration Provision shall be governed by the Federal Arbitration Act. Arbitrations shall be administered by AAA pursuant to its Consumer Arbitration Rules (the “AAA Rules”) as modified by the version of this Arbitration Provision that is in effect when you notify Metrological about your Dispute. You can obtain the AAA Rules from the AAA by visiting its website (www.adr.org) or calling its toll-free number (1-800-778-7879). If there is a conflict between this Arbitration Provision and the rest of this Agreement, this Arbitration Provision shall govern. If there is

a conflict between this Arbitration Provision and the AAA rules, this Arbitration Provision shall govern. If the AAA will not administer a proceeding under this Arbitration Provision as written, the parties shall agree on a substitute arbitration organization. If the parties cannot agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this Arbitration Provision as written applying the AAA Consumer Arbitration Rules. A single arbitrator will resolve the Dispute. Unless you and Metrological agree otherwise, any arbitration hearing will take place at a location convenient to you in the area where you receive or received any of the Web Services from Metrological; or, if you reside in a location outside of the area where you receive or received any of the Web Services, then the arbitration hearing will take place at a location convenient to you in the county where you reside. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect customer account information and other confidential or proprietary information. The arbitrator shall issue a reasoned written decision that explains the arbitrator's essential findings and conclusions. The arbitrator's award may be entered in any court having jurisdiction over the parties only if necessary for purposes of enforcing the arbitrator's award. An arbitrator's award that has been fully satisfied shall not be entered in any court.

g. Waiver of Class Actions and Collective Relief. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION, JOINT OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS OR USERS, OR OTHER PERSONS. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT INDIVIDUAL PARTY'S CLAIM. THE ARBITRATOR MAY NOT AWARD RELIEF FOR OR AGAINST ANYONE WHO IS NOT A PARTY. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. THIS WAIVER OF CLASS ACTIONS AND COLLECTIVE RELIEF IS AN ESSENTIAL PART OF THIS ARBITRATION PROVISION AND CANNOT BE SEVERED FROM IT. THE REMAINING PORTIONS OF THIS ARBITRATION PROVISION ARE NOT ESSENTIAL PARTS OF THIS ARBITRATION PROVISION AND CAN BE SEVERED FROM IT BY A COURT OF COMPETENT JURISDICTION.

h. Arbitration Fees and Costs. If your claim seeks more than \$75,000 in the aggregate, the payment of the AAA's fees and costs will be governed

by the AAA rules. If your claims seek less than \$75,000 in the aggregate, the payment of the AAA's fees and costs will be Metrological's responsibility. However, if the arbitrator finds that your Dispute was frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), the payment of the AAA's fees and costs shall be governed by the AAA Rules and you shall reimburse Metrological for all fees and costs that were your obligation to pay under the AAA Rules. You may hire an attorney to represent you in arbitration. You are responsible for your attorneys' fees and additional costs and may only recover your attorneys' fees and costs in the arbitration to the extent that you could in court if the arbitration is decided in your favor. Notwithstanding anything in this Arbitration Provision to the contrary, Metrological will pay all fees and costs that it is required by law to pay.

i. **Survival.** This Arbitration Provision will survive the termination or expiration of these Terms.

j. The Additional Terms, and your relationship with Metrological under the Additional Terms, shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws provisions. By using the App, you consent to the exclusive jurisdiction of the state and federal courts in Philadelphia, Pennsylvania, in all disputes arising out of or relating to the Additional Terms or App that are not subject to the Arbitration Provision above.

k. WHETHER IN COURT OR IN ARBITRATION, YOU AND WE AGREE TO WAIVE THE RIGHT TO A TRIAL BY JURY.

Last Updated: February 1, 2022