

## TERMS OF USE

### Immersitech, Inc.

*Last modified: March 7, 2023*

Welcome to Immersitech and our Terms of Use for <https://www.immersitech.io> (the “Site”) and related links with information and access to certain Software Demonstration Applications (“Apps”) and Software Development Kits (“SDKs”) (collectively the Site, Apps, and SDKs are referred to herein as the “Services”). The Services and its content are proprietary works belonging to Immersitech, Inc. (“Company”, “us”, “our”, and “we”). Throughout these Terms, “you” or “your” shall refer to the individual or entity agreeing to these Terms. Certain features of the Services may be subject to additional guidelines, terms, or rules, which will be posted on the Site or directly communicated to you in connection with such features. All such additional terms, guidelines, and rules are incorporated by reference into these Terms.

THESE TERMS OF USE (THESE “TERMS”) AND THE COMPANY’S PRIVACY POLICY ([HTTPS://IMMERSITECH.IO/LEGAL/PRIVACY\\_POLICY](https://immersitech.io/legal/privacy_policy)) SET FORTH THE LEGALLY BINDING TERMS AND CONDITIONS THAT GOVERN YOUR USE OF THE SERVICES. BY ACKNOWLEDGING THESE TERMS OR OTHERWISE ACCESSING OR USING THE SERVICES, YOU ARE ACCEPTING THESE TERMS (ON BEHALF OF YOURSELF OR THE ENTITY THAT YOU REPRESENT), AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ENTER INTO THESE TERMS (ON BEHALF OF YOURSELF OR THE ENTITY THAT YOU REPRESENT). YOU MAY NOT ACCESS OR USE THE SERVICES OR ACCEPT THE TERMS IF YOU ARE NOT AT LEAST 18 YEARS OLD. IF YOU DO NOT AGREE WITH ALL OF THE PROVISIONS OF THESE TERMS, DO NOT ACCESS AND/OR USE THE SITE.

THESE TERMS REQUIRE THE USE OF ARBITRATION (SECTION 10.2) ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

The Site and the Services are not directed to or otherwise intended for use by children under the age of 18, and Immersitech does not knowingly collect or use any personal information from such children. If you are under the age of 18, please immediately cease use of the Services.

#### 1. ACCOUNTS.

**1.1 Customer Account Creation.** In order to use certain features of the Services, you must register for an account (“Account”) and provide certain information about yourself as prompted by the account registration form. In order to create an Account, you must either provide the Company with a valid email address. You represent and warrant that: (a) all required registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information. You may request via e-mail to [support@immersitech.io](mailto:support@immersitech.io) to delete your Account at any time, for any reason, by following the instructions on the Site. The Company may suspend or terminate your Account in accordance with Section 9.

**1.2 Account Responsibilities.** You are responsible for maintaining the confidentiality of your Account information and are fully responsible for all activities that occur under your Account. You agree to immediately notify the Company of any unauthorized use, or suspected unauthorized use of your Account or any other breach of security. The Company cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

**1.3 Electronic Communications over the Internet.** The transmission of data or information (including communications by e-mail) over the Internet or other publicly accessible networks may not always be secure, and is subject to possible loss, interception, or alteration while in transit. Accordingly, the Company does not assume any liability, without limitation, for any loss or damage you may experience or costs you may incur as a result of any transmissions over the Internet or other publicly accessible networks, including but not limited to transmissions involving the Platform or e-mail with the Company containing your personal information. While the Company will

take commercially reasonable efforts to safeguard the privacy of the information you provide to the Company and will treat such information in accordance with the Company's Privacy Policy, in no event will the information you provide to the Company be deemed to be confidential, create any fiduciary obligations for the Company, or result in any liability for the Company in the event that such information is negligently released by the Company or accessed by third parties without the Company's consent.

## 2. ACCESS TO THE SERVICES.

**2.1 License.** Subject to these Terms, the Company grants you a revocable, non-exclusive, non-transferable, non-sublicensable, non-assignable, limited license during the Term (defined below) to: (i) use the Services and implement the SDKs in your software or application (the "**Application**") so the Application can access the SDKs and (ii) process output for end users who are under an agreement with you for the use of the Application. You agree not to distribute or provide access to the Services on a standalone basis. You also agree to use reasonable efforts to keep the Services secure at all times.

**2.2 Certain Restrictions.** The rights granted to you in these Terms are subject to the following restrictions: (a) except for the limited right to share the Services as integrated into your Application with your users, you shall not license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Services, whether in whole or in part, or any content displayed on the Site; (b) you shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Services; (c) you shall not access the Services in order to build a similar or competitive website, software, product, or service; and (d) except for the limited right to share the Services as integrated into your Application with your users, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means. Unless otherwise indicated, any future release, update, or other addition to functionality of the Services shall be subject to these Terms. All copyright and other proprietary notices on the Services (or on any content displayed on the Site) must be retained on all copies thereof.

**2.3 Modification.** The Company reserves the right, at any time, to modify, suspend, or discontinue the Services (in whole or in part) with or without notice to you. You agree that the Company will not be liable to you or to any third party for any modification, suspension, or discontinuation of the Services or any part thereof, including without limitation the discontinuation of any Services.

**2.4 No Support or Maintenance.** You acknowledge and agree that the Company will have no obligation to provide you with any support or maintenance in connection with the Services, including without limitation with regard to any Services.

**2.5 Ownership.** You acknowledge that all the intellectual property rights, including copyrights, patents, trademarks, and trade secrets, in the Services and its content are owned by the Company or the Company's licensors. Neither these Terms (nor your access to the Services) transfers to you or any third party any rights, title or interest in or to such intellectual property rights, except for the limited access rights expressly set forth in Section 2.1. the Company and its licensors reserve all rights not granted in these Terms. There are no implied licenses granted under these Terms.

**2.6 Fees.** For use of the Services during the Initial Term or subsequent Renewal Terms, you agree to pay all fees set forth in the applicable order form provided by Company in connection with requesting access to use the Services. All fees paid under this Agreement are non-cancelable and the sums are non-refundable. You agree to pay any sales, value-added or other similar taxes imposed by applicable law for the right to use the Services or the incorporation into an Application.

## 3. LICENSE OF USER CONTENT; USE POLICY

**3.1 License.** You hereby grant (and you represent and warrant that you have the right to grant) to the Company an irrevocable, nonexclusive, royalty-free and fully paid, worldwide license to reproduce, distribute,

publicly display and perform, prepare derivative works of, incorporate into other works, and otherwise use and exploit your User Content, and to grant sublicenses of the foregoing rights, solely for the purposes of providing the Services. You hereby irrevocably waive (and agree to cause to be waived) any claims and assertions of moral rights or attribution with respect to your User Content. “**User Content**” means any and all information and content that a user submits to, or uses with, the Services.

**3.2 Acceptable Use Policy.** The following terms constitute our “**Acceptable Use Policy**”:

(a) You agree not to use the Services to collect, upload, transmit, display, or distribute any User Content (i) that violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) that is unlawful, harassing, abusive, tortious, threatening, harmful, invasive of another’s privacy, vulgar, defamatory, false, intentionally misleading, trade libelous, pornographic, obscene, patently offensive, promotes racism, bigotry, hatred, or physical harm of any kind against any group or individual or is otherwise objectionable; (iii) that is harmful to minors in any way; (iv) that contains video, photographs, audio, or images of another person without his or her permission (or in the case of a minor, the parent or guardian of that individual); (v) that impersonates, “spoofs” or otherwise misrepresents affiliation, connection or association with, any person, entity or another person or entity’s contact information, or (vi) that is in violation of any law, regulation, or obligations or restrictions imposed by any third party.

(b) In addition, you agree not to: (i) upload, transmit, or distribute to or through the Services any computer viruses, worms, or any software intended to damage or alter a computer system or data; (ii) send through the Services unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (iii) use the Services to harvest, collect, gather or assemble information or data regarding other users, including e-mail addresses, without their consent; (iv) interfere with, disrupt, or create an undue burden on servers or networks connected to the Services, or violate the regulations, policies or procedures of such networks; (v) attempt to gain unauthorized access to the Services (or to other computer systems or networks connected to or used together with the Site), whether through password mining or any other means; (vi) harass or interfere with any other user’s use and enjoyment of the Services; or (vii) use software or automated agents or scripts to produce multiple accounts with the Services, or to generate automated searches, requests, or queries to (or to strip, scrape, or mine data from) the Site (provided, however, that we conditionally grant to the operators of public search engines revocable permission to use spiders to copy materials from the Site for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials).

**3.3 Feedback.** If you provide the Company with any feedback or suggestions regarding the Services (“**Feedback**”), you hereby assign to the Company all rights in such Feedback and agree that the Company shall have the right to use and fully exploit such Feedback and related information in any manner it deems appropriate. The Company will treat any Feedback you provide to the Company as non-confidential and non-proprietary. You agree that you will not submit to the Company any information or ideas that you consider to be confidential or proprietary.

**4. PROPRIETARY INFORMATION.**

**4.1 Our Intellectual Property.** You understand and acknowledge that except as expressly authorized by the Terms, the trademarks, creative works, software, code, proprietary methods and systems used to provide the Services, including the SDKs and any intellectual property rights therein (collectively, “**Our Intellectual Property**”) may not be copied, modified, reproduced, republished, posted, transmitted, sold, offered for sale, or redistributed in any way without our prior written permission and the prior written permission of our applicable licensors (if applicable). You acknowledge and agree that Our Intellectual Property is the sole property of the Company or its licensors. You must abide by all copyright notices, information, or restrictions contained in or attached to any of Our Intellectual Property. Nothing in these Terms grants you any right to receive delivery of a copy of Our Intellectual Property or to obtain access to Our Intellectual Property except as generally and ordinarily permitted through the Services according to these Terms. Furthermore, nothing in this Agreement will be deemed to grant, by implication, estoppel or otherwise, a license to Our Intellectual Property beyond the express licenses provided herein. Any use of third-party software provided in connection with the Services will be governed by such third parties’ licenses and not by these Terms.

**4.2** You acknowledge that the Software incorporates certain sound technology licensed from Princeton University (“**Princeton**”). Company has the right to sublicense the use of the Princeton technology as part of the Services as set forth in this Agreement. In exchange for the right to use the Princeton technology, you agree (as required by the license from Princeton) that:

(a) you will not use the name, insignia, or symbols of Princeton, its faculties or departments, or any variation or combination thereof, or the name of any trustee, faculty member, other employee, or student of Princeton for any purpose whatsoever without Princeton’s prior written consent;

(b) the license to use the Princeton technology shall automatically terminate if you (or any entity acting on Client’s behalf) initiates any proceeding or otherwise asserts any claim challenging the validity or enforceability of any patent or patent application owned by Princeton and included in the Princeton license (each, a “Princeton Patent”) in any court, administrative agency, or other forum.

(c) in no event shall Princeton, or its trustees, officers, faculty members, students, employees and agents, have any liability to Client or its affiliates arising out of the use, operation or application of anything discovered, developed, manufactured, used, sold, offered for sale, imported, exported, distributed, rented, leased or otherwise disposed of under any license granted hereunder by Immersitech, for any reason.

(d) in no event will Princeton, or its trustees, officers, faculty members, students, employees and agents, be liable to you or your Affiliates, for any consequential, incidental, special or indirect damages (including, but not limited to, from any destruction of property or from any loss of use, revenue, profit, time or good will) based on activity arising out of or related to these Terms, whether pursuant to a claim of breach of contract or any other claim of any type.

(e) You and your affiliates shall comply upon reasonable notice from Princeton with all governmental requests directed to either Princeton or you or your affiliates and provide all information and assistance necessary to comply with the governmental requests. You and your affiliates shall ensure that all research, development, manufacturing, and marketing under this Agreement complies with all governmental regulations in force and effect including, but not limited to, Federal, state, and municipal legislation.

(f) You shall comply with Company’s instructions relating to proper patent marking of any Application that includes patented Princeton technology.

**5. INDEMNIFICATION.** You agree to indemnify and hold the Company (and its officers, employees, and agents) harmless, including costs and attorneys’ fees, from any claim or demand made by any third party due to or arising out of (a) your use of the Services, (b) your violation of these Terms, (c) your violation of applicable laws or regulations or (d) your User Content. The Company reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. You agree not to settle any matter without the prior written consent of the Company. The Company will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

## **6. THIRD-PARTY CONTENT; OTHER USERS**

**6.1 Third Party Content.** Certain portions of the content contained on the Site may be supplied by third parties (“**Third Party Content**”), including, without limitation, information providers and advertisers. The Company is a distributor (and not a publisher) of such Third-Party Content. Except to the extent that the Company seeks to enforce its rights under these Terms, the Company does not have control over any Third-Party Content. Any reliance you place on Third Party Content is therefore at your own risk. Any Third-Party Content, including, without limitation, opinions, advice, statements, services, offers, or other information, expressed or made available on the Site are those of the respective authors or owners thereof, and not the Company. Neither the Company nor any third-party provider guarantees, endorses, or is otherwise responsible or liable for the accuracy, completeness, timeliness, reliability, availability, or usefulness of any content accessible through the Site.

## **7. DISCLAIMERS**

THE SERVICES ARE PROVIDED ON AN “AS-IS” AND “AS AVAILABLE” BASIS, AND COMPANY (AND OUR SUPPLIERS) EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS OF

ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. WE (AND OUR SUPPLIERS) MAKE NO WARRANTY THAT THE SERVICES WILL MEET YOUR USER'S REQUIREMENTS, WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS, OR WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE, COMPLETE, LEGAL, OR SAFE. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SITE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF FIRST USE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

## **8. LIMITATION ON LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE COMPANY BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THESE TERMS OR YOUR USE OF, OR INABILITY TO USE, THE SERVICES, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF, THE SITE IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR COMPUTER SYSTEM, OR LOSS OF DATA RESULTING THEREFROM.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO A MAXIMUM OF FIFTY US DOLLARS (U.S. \$50). THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

**9. TERM AND TERMINATION.** Subject to this Section, these Terms will remain in full force and effect while you use the Services. Your right and license to use the Services will begin with your download of the Services and shall continue for the period specified on the Site, or communicated to you directly by Company, contemporaneously with the download (the "**Term**"). Notwithstanding the foregoing, we may suspend or terminate your rights to use the Services or the Site (including your Account) at any time for any reason at our sole discretion, including for any use of the Services in violation of these Terms. Upon expiration of the Term or termination of your rights under these Terms, your Account and right to access and use the Services will terminate immediately. You understand that any termination of your Account may involve deletion of your User Content associated with your Account from our live databases. The Company will not have any liability whatsoever to you for any termination of your rights under these Terms. The following provisions of these Terms will survive termination or expiration: Sections 2.2 through 2.5, and Sections 4 through 10.

## **10. GENERAL.**

**10.1 Changes.** These Terms are subject to occasional revision, and if we make any substantial changes, we may notify you by sending you an e-mail to the last e-mail address you provided to us (if any), and/or by prominently posting notice of the changes on our Site. You are responsible for providing us with your most current e-mail address. In the event that the last e-mail address that you have provided us is not valid, or for any reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice. Any changes to these Terms will be effective upon the earlier of thirty (30) calendar days following our dispatch of an e-mail notice to you (if applicable)

or thirty (30) calendar days following our posting of notice of the changes on our Site. These changes will be effective immediately for new users of our Site. Continued use of our Site following notice of such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes.

**10.2 Dispute Resolution. Please read this Section 10.2 (the “Arbitration Agreement”) carefully. It is part of your contract with the Company and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.**

(a) *Applicability of Arbitration Agreement.* All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with the Terms or the use of any product or service provided by the Company that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement. Unless otherwise agreed to, all arbitration proceedings shall be held in English. This Arbitration Agreement applies to you and the Company, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or goods provided under the Terms.

(b) *Notice Requirement and Informal Dispute Resolution.* Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute (“**Notice**”) describing the nature and basis of the claim or dispute, and the requested relief. A Notice to the Company should be sent to: Immersitech, Inc., Attn: Notices, 2604 Elmwood Ave, #259, Rochester, NY 14618. After the Notice is received, you and the Company may attempt to resolve the claim or dispute informally. If you and the Company do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

(c) *Arbitration Rules.* The parties shall agree on an established alternative dispute resolution provider (“**ADR Provider**”) that offers arbitration as set forth in this section. The rules of the ADR Provider shall govern all aspects of the arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with the Terms. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the arbitration rules. Any hearing will be held in Monroe County, New York. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party shall bear its own costs (including attorney’s fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the ADR Provider.

(d) *Time Limit.* If you or the Company pursue arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim).

(e) *Authority of Arbitrator.* If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of you and the Company, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and the Company.

(f) *Waiver of Jury Trial.* THE PARTIES HEREBY WAIVE THEIR RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and the Company in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND THE COMPANY WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

**(g)** *Waiver of Class or Consolidated Actions.* ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER.

**(h)** *Confidentiality.* All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent a party from submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

**(i)** *Severability.* If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.

**(j)** *Right to Waive.* Any or all of the rights and limitations set forth in this Arbitration Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of this Arbitration Agreement.

**(k)** *Survival of Agreement.* This Arbitration Agreement will survive the termination of your relationship with the Company.

**(l)** *Emergency Equitable Relief.* Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

**(m)** *Claims Not Subject to Arbitration.* Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark or trade secrets shall not be subject to this Arbitration Agreement.

**(n)** *Courts.* In any circumstances where the foregoing Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within Wake County, North Carolina, for such purpose.

**10.3 Export.** The Services may be subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from the Company, or any products utilizing such data, in violation of the United States export laws or regulations.

**10.4 Electronic Communications.** The communications between you and the Company use electronic means, whether you use the Site or send us emails, or whether the Company posts notices on the Site or communicates with you via email. For contractual purposes, you (a) consent to receive communications from the Company in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that the Company provides to you electronically satisfy any legal requirement that such communications would satisfy if it were be in a hardcopy writing. The foregoing does not affect your non-waivable rights.

**10.5 Entire Terms.** These Terms and the documents incorporated herein constitute the entire agreement between you and us regarding the use of the Site. Our failure to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. The word "including" means "including without limitation". If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will be unimpaired, and the invalid or unenforceable provision will be deemed modified so that it is valid and

enforceable to the maximum extent permitted by law. Neither party is an agent or partner of the other. These Terms, and your rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by you without the Company's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. The Company may freely assign these Terms. The terms and conditions set forth in these Terms shall be binding upon assignees.