

Terms of Use Agreement

Last Updated Date: Nov 9, 2022

PLEASE READ THIS TERMS OF USE AGREEMENT (THE “**TERMS OF USE**”) CAREFULLY. THIS WEBSITE AND ANY OTHER WEBSITES OF TRUNK TECHNOLOGIES, INC. (“**COMPANY**”), ITS AFFILIATES OR AGENTS (COLLECTIVELY, THE “**WEBSITE**”) AND THE INFORMATION ON IT ARE CONTROLLED BY COMPANY. THESE TERMS OF USE GOVERN THE USE OF THE WEBSITE AND APPLY TO ALL INTERNET USERS VISITING THE WEBSITE. BY ACCESSING OR USING THE WEBSITE IN ANY WAY, INCLUDING USING THE SERVICES AND RESOURCES AVAILABLE OR ENABLED VIA THE WEBSITE (EACH A “**SERVICE**” AND COLLECTIVELY, THE “**SERVICES**”). BY CLICKING ON THE “I ACCEPT” BUTTON, COMPLETING THE REGISTRATION PROCESS, AND/OR BROWSING THE WEBSITE, YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE TERMS OF USE, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH COMPANY, AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THE TERMS OF USE PERSONALLY OR ON BEHALF OF THE ENTITY YOU HAVE NAMED AS THE USER, AND TO BIND THAT ENTITY TO THE TERMS OF USE. THE TERM “YOU” REFERS TO THE INDIVIDUAL OR LEGAL ENTITY, AS APPLICABLE, IDENTIFIED AS THE USER WHEN YOU REGISTERED ON THE WEBSITE. **IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF USE, YOU MAY NOT ACCESS OR USE THIS WEBSITE OR THE SERVICES.**

Your use of, and participation in, certain Services may be subject to additional terms (“**Supplemental Terms**”) and such Supplemental Terms will either be listed in the Terms of Use or will be presented to you for your acceptance when you sign up to use the supplemental Service. If the Terms of Use are inconsistent with the Supplemental Terms, the Supplemental Terms shall control with respect to such Service. The Terms of Use and any applicable Supplemental Terms are referred to herein as the “**Agreement**”.

PLEASE NOTE THAT The Agreement IS subject to change by Company in its sole discretion at any time. When changes are made, Company will make a new copy of the Terms of Use Agreement available at the Website and any new Supplemental Terms will be made available from within, or through, the affected Service on the Website. We will also update the “Last Updated” date at the top of the Terms of Use Agreement. Company may require you to provide consent to the updated Agreement in a specified manner before further use of the Website and/or the Services is permitted. If you do not agree to any change(s) after receiving a notice of such

change(s), you shall stop using the Website and/or the Services. Otherwise, your continued use of the Website and/or Services constitutes your acceptance of such change(s). PLEASE REGULARLY CHECK THE WEBSITE TO VIEW THE THEN-CURRENT TERMS.

1. USE OF THE SERVICES AND COMPANY PROPERTIES

The Company's Services enable developers to manage their APIs. The Website, the Services, and the information and content available on the Website and the Services (as these terms are defined herein) (each, a "**Company Property**" and collectively, the "**Company Properties**") are protected by copyright laws throughout the world.

1.1 Updates

You understand that Company Properties are evolving. As a result, Company may require you to accept updates to Company Properties that you have installed on your computer or mobile device. You acknowledge and agree that Company may update Company Properties with or without notifying you. You may need to update third-party software from time to time in order to use Company Properties.

1.2 Certain Restrictions

The rights granted to you in the Agreement are subject to the following restrictions:

- a. you shall not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit Company Properties or any portion of Company Properties, including the Website;
- b. you shall not frame or utilize framing techniques to enclose any trademark, logo, or other Company Properties (including images, text, page layout or form) of Company;
- c. you shall not use any metatags or other "hidden text" using Company's name or trademarks;
- d. you shall not modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of Company Properties except to the extent the foregoing restrictions are expressly prohibited by applicable law;
- e. you shall not use any manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to "scrape" or download data from any web pages contained in the

Website (except that we grant the operators of public search engines revocable permission to use spiders to copy materials from the Website 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);

- f. except as expressly stated herein, no part of Company Properties may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; and
- g. you shall not remove or destroy any copyright notices or other proprietary markings contained on or in Company Properties. Any future release, update or other addition to Company Properties shall be subject to the Agreement. Company, its suppliers and service providers reserve all rights not granted in the Agreement. Any unauthorized use of any Company Property terminates the licenses granted by Company pursuant to the Agreement.

1.3 Usernames

You agree that you will not adopt a username, repository name, or organization name that is misleading, confusing, deceptive, obscene, profane or otherwise unlawful.

2. REGISTRATION

2.1 Registering Your Account

In order to access certain features of Company Properties you may be required to become a Registered User. For purposes of the Agreement, a **“Registered User”** is a user who has registered an account on the Website (**“Account”**).

2.2 Registration Data

In registering an account on the Website, you agree to

- a. provide true, accurate, current and complete information about yourself as prompted by the registration form (the **“Registration Data”**); and
- b. maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You may not share your Account or password with anyone, and you agree to
- c. notify Company immediately of any unauthorized use of your password or any other breach of security; and

- d. exit from your Account at the end of each session. If you provide any information that is untrue, inaccurate, not current or incomplete, or Company has reasonable grounds to suspect that any information you provide is untrue, inaccurate, not current or incomplete, Company has the right to suspend or terminate your Account and refuse any and all current or future use of Company Properties (or any portion thereof). You agree not to create an Account using a false identity or information, or on behalf of someone other than yourself. You agree not to create an Account or use Company Properties if you have been previously removed by Company, or if you have been previously banned from any of Company Properties.

3. RESPONSIBILITY FOR CONTENT.

3.1 Your Content

You acknowledge that you are solely responsible for all content, information, text, APIs, documentation and other materials ("**Content**") that you upload, post, e-mail, transmit or otherwise make available ("**Make Available**") through Company Properties ("**Your Content**").

3.2 Storage

Company has no obligation to store any of Your Content that you Make Available on Company Properties, unless the subscription level you have purchased includes storage services. Company has no responsibility or liability for the deletion or accuracy of any Content, including Your Content; the failure to store, transmit or receive transmission of Content; or the security, privacy, storage, or transmission of other communications originating with or involving use of Company Properties. You agree that Company retains the right to create reasonable limits on Company's use and storage of the Content, including Your Content, such as limits on file size, storage space, processing capacity, and similar limits described on the Website and as otherwise determined by Company in its sole discretion.

4. OWNERSHIP

4.1 Company Properties

Except with respect to Your Content, you agree that Company and its suppliers own all rights, title and interest in Company Properties. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying any Company Properties.

4.2 Your Content

Company does not claim ownership of Your Content. Subject to any applicable account settings that you select, you grant Company a fully paid, royalty-free, perpetual, irrevocable, worldwide, royalty-free, non-exclusive and fully sublicensable right (including any moral rights) and license to use, license, distribute, reproduce, modify, adapt, publicly perform, and publicly display Your Content (in whole or in part) for the purposes of operating and providing Company Properties to you and to our other Registered Users. You warrant that the holder of any worldwide intellectual property right in Your Content, has completely and effectively waived all such rights and validly and irrevocably granted to you the right to grant the license stated above. You agree that you, not Company, are responsible for all of Your Content that you Make Available on or in Company Properties.

4.3 Feedback

You agree that submission of any ideas, suggestions, documents, and/or proposals to Company through its suggestion, feedback, wiki, forum, or similar pages ("Feedback") is at your own risk and that Company has no obligations (including without limitation obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to Company a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights, in connection with the operation and maintenance of Company Properties and/or Company's business.

5. FEES AND PURCHASE TERMS

5.1 Payment

You agree to pay all fees or charges to your Account in accordance with the fees, charges and billing terms in effect at the time a fee or charge is due and payable. You must provide Company with a valid credit card (Visa, MasterCard, or any other issuer accepted by us) ("**Payment Provider**"), or purchase order information, as a condition to signing up for the Services. Your Payment Provider agreement governs your use of the designated credit card, and you must refer to that agreement, not this Agreement, to determine your rights and liabilities. By providing Company with your credit card number and associated payment information, you agree that

Company is authorized to immediately invoice your Account for all fees and charges due and payable to Company hereunder and that no additional notice or consent is required. You agree to immediately notify Company of any change in your billing address or the credit card used for payment hereunder. Company reserves the right at any time to change its prices and billing methods, either immediately upon posting on Company Properties or by e-mail delivery to you.

5.2 Service Subscription Fees

You will be responsible for payment of the applicable fee for any Services (each, a "Service Subscription Fee") at the time you create your Account and select your subscription package (each, a "Service Commencement Date"). Unless otherwise agreed by Company in writing, your subscription will automatically renew for successive subscriptions of equal length, unless you provide notice of your intent to opt-out/cancel your subscription at least thirty (30) days prior to the end of the then-current term. Except as set forth in the Agreement, all fees for the Services are non-refundable. No contract will exist between you and Company for the Services until Company accepts your order by a confirmatory e-mail, SMS/MMS message, or other appropriate means of communication.

5.3 Taxes

The payments required under Section 5.2 (Service Subscription Fees) of this Agreement do not include any Sales Tax that may be due in connection with the services provided under this Agreement. If Company determines it has a legal obligation to collect a Sales Tax from you in connection with this Agreement, Company shall collect such Sales Tax in addition to the payments required under Section 5.2 (Service Subscription Fees) of this Agreement. If any services, or payments for any services, under the Agreement are subject to any Sales Tax in any jurisdiction and you have not remitted the applicable Sales Tax to Company, you will be responsible for the payment of such Sales Tax and any related penalties or interest to the relevant tax authority, and you will indemnify Company for any liability or expense Company may incur in connection with such Sales Taxes. Upon Company's request, you will provide it with official receipts issued by the appropriate taxing authority, or other such evidence that you have paid all applicable taxes. For purposes of this section, "**Sales Tax**" shall mean any sales or use tax and any other tax measured by sales proceeds that is the functional equivalent of a sales tax where the applicable taxing jurisdiction does not otherwise impose a sales or use tax.

5.4 Withholding Taxes

You agree to make all payments of fees to Company free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments of fees to Company will be your sole responsibility, and you will provide Company with official receipts issued by the appropriate taxing authority, or such other evidence as we may reasonably request, to establish that such taxes have been paid.

5.4 Free Trials and Other Promotions

Any free trial or other promotion that provides Registered User level access to the Services must be used within the specified time of the trial. At the end of the trial period, your use of that Service will expire and any further use of the Service is prohibited unless you pay the applicable subscription fee. If you are inadvertently charged for a subscription, please contact Company to have the charges reversed.

6. INDEMNIFICATION

You agree to indemnify and hold Company, its parents, subsidiaries, affiliates, officers, employees, agents, partners, suppliers, and licensors (each, a **"Company Party"** and collectively, the **"Company Parties"**) harmless from any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of any and all of the following:

- a. Your Content;
- b. your use of, or inability to use, any Company Property;
- c. your violation of the Agreement;
- d. your violation of any rights of another party, including any Registered Users; or
- e. your violation of any applicable laws, rules or regulations.

Company reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Company in asserting any available defenses. This provision does not require you to indemnify any of the Company Parties for any unconscionable commercial practice by such party or for such party's fraud, deception, false promise, misrepresentation or concealment, or suppression or omission of any material fact in connection with the Website or any Services provided hereunder. You agree that the provisions in this section will survive any termination of your Account, the Agreement and/or your access to Company Properties.

7. DISCLAIMER OF WARRANTIES AND CONDITIONS

YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF COMPANY PROPERTIES IS AT YOUR SOLE RISK, AND COMPANY PROPERTIES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. COMPANY PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARISING FROM USE OF THE WEBSITE.

7.1

COMPANY PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) COMPANY PROPERTIES WILL MEET YOUR REQUIREMENTS; (2) YOUR USE OF COMPANY PROPERTIES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; OR (3) THE RESULTS THAT MAY BE OBTAINED FROM USE OF COMPANY PROPERTIES WILL BE ACCURATE OR RELIABLE.

7.2

ANY CONTENT DOWNLOADED FROM OR OTHERWISE ACCESSED THROUGH COMPANY PROPERTIES IS ACCESSED AT YOUR OWN RISK, AND YOU SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY, INCLUDING, BUT NOT LIMITED TO, YOUR COMPUTER SYSTEM AND ANY DEVICE YOU USE TO ACCESS COMPANY PROPERTIES, OR ANY OTHER LOSS THAT RESULTS FROM ACCESSING SUCH CONTENT.

7.3

THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. COMPANY MAKES NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF SERVICES.

7.4

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM COMPANY OR THROUGH COMPANY PROPERTIES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

8. LIMITATION OF LIABILITY

8.1 Disclaimer of Certain Damages

YOU UNDERSTAND AND AGREE THAT, TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT SHALL COMPANY PARTIES BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, IN EACH CASE WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF COMPANY PROPERTIES, ON ANY THEORY OF LIABILITY, RESULTING FROM:

- a. THE USE OR INABILITY TO USE COMPANY PROPERTIES;
- b. THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED; OR MESSAGES RECEIVED FOR TRANSACTIONS ENTERED INTO THROUGH COMPANY PROPERTIES;
- c. UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA;
- d. STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON COMPANY PROPERTIES; OR
- e. ANY OTHER MATTER RELATED TO COMPANY PROPERTIES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY OF A COMPANY PARTY FOR
- f. DEATH OR PERSONAL INJURY CAUSED BY A COMPANY PARTY'S NEGLIGENCE; OR FOR
- g. ANY INJURY CAUSED BY A COMPANY PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

8.2 Cap on Liability

TO THE FULLEST EXTENT PROVIDED BY LAW, COMPANY PARTIES WILL NOT BE LIABLE TO YOU FOR MORE THAN THE GREATER OF

- a. THE TOTAL AMOUNT PAID TO COMPANY BY YOU DURING THE THREE-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY;
- b. \$100; OR
- c. THE REMEDY OR PENALTY IMPOSED BY THE STATUTE UNDER WHICH SUCH CLAIM ARISES.

8.3 Exclusion of Damages

CERTAIN JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

8.4 Basis of the Bargain

THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN COMPANY AND YOU.

9. MONITORING AND ENFORCEMENT

Company reserves the right to:

- a. take any action with respect to any of your Content that we deem necessary or appropriate in our sole discretion, including if we believe that such Content violates this Agreement, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the Company Properties or the public, or could create liability for the Company;
- b. disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy;
- c. take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the Company Properties; and/or
- d. terminate or suspend your access to all or part of the Company Properties for any or no reason, including without limitation, any violation of this Agreement.

If Company becomes aware of any possible violations by you of the Agreement, Company reserves the right to investigate such violations. If, as a result of the investigation, Company believes that criminal activity has occurred, Company reserves the right to refer the matter to,

and to cooperate with, any and all applicable legal authorities. Company is entitled, except to the extent prohibited by applicable law, to disclose any information or materials on or in Company Properties, including Your Content, in Company's possession in connection with your use of Company Properties, to

- a. comply with applicable laws, legal process or governmental request;
- b. enforce the Agreement,
- c. respond to any claims that Your Content violates the rights of third parties,
- d. respond to your requests for customer service, or
- e. protect the rights, property or personal safety of Company, its Registered Users or the public, and all enforcement or other government officials, as Company in its sole discretion believes to be necessary or appropriate.

10. TERM AND TERMINATION

10.1 Term

The Agreement commences on the date when you accept them (as described in the preamble above) and remain in full force and effect while you use Company Properties, unless terminated earlier in accordance with the Agreement.

10.2 Termination of Services by Company

You will have thirty (30) days from the Service Commencement Date, or any Renewal Commencement Date, for any Services hereunder, to cancel such Service, in which case Company will refund your Service Subscription Fee, if already paid pursuant to Section 5.1 (Payment) or 5.2 (Service Subscription Fees), for the applicable Service. Except as set forth above, the Service Subscription Fee for any Service shall be non-refundable. If timely payment cannot be charged to your Payment Provider for any reason, if you have materially breached any provision of the Agreement, or if Company is required to do so by law (e.g., where the provision of the Website or the Services is, or becomes, unlawful), Company has the right to, immediately and without notice, suspend or terminate any Services provided to you. You agree that all terminations for cause shall be made in Company's sole discretion and that Company shall not be liable to you or any third party for any termination of your Account.

10.3 Termination of Services by You

If you want to terminate the Services provided by Company, you may do so by

- a. notifying Company at any time and
- b. closing your Account for all of the Services that you use. Your notice should be sent, in writing, to Company's address set forth below. THE SERVICES WILL CONTINUE AT THE END OF EACH SUBSCRIPTION PERIOD UNLESS YOU CANCEL YOUR SUBSCRIPTION IN ACCORDANCE WITH THE PROCEDURE SET FORTH IN SECTION 5.2 (SERVICE SUBSCRIPTION FEES).

10.4 Effect of Termination

Termination of any Service includes removal of access to such Service and barring of further use of the Service. Termination of all Services also includes deletion of your password and all related information, files and Content associated with or inside your Account (or any part thereof), including Your Content. Upon termination of any Service, your right to use such Service will automatically terminate immediately. You understand that any termination of Services may involve deletion of Your Content associated therewith from our live databases. Company will not have any liability whatsoever to you for any suspension or termination, including for deletion of Your Content. All provisions of the Agreement which by their nature should survive, shall survive termination of Services, including without limitation, ownership provisions, warranty disclaimers, and limitation of liability.

11. INTERNATIONAL USERS

Company Properties can be accessed from countries around the world and may contain references to Services and Content that are not available in your country. These references do not imply that Company intends to announce such Services or Content in your country.

Company Properties are controlled and offered by Company from its facilities in the United States of America. Company makes no representations that Company Properties are appropriate or available for use in other locations. Those who access or use Company Properties from other countries do so at their own volition and are responsible for compliance with local law.

12. DISPUTE RESOLUTION

Please read the following arbitration agreement in this section (“Arbitration Agreement”) carefully. It requires users to arbitrate disputes with Company and limits the manner in which you can seek relief from us.

12.1 Applicability of Arbitration Agreement

You agree that any dispute, claim, or request for relief relating in any way to your access or use of the Website, or to any aspect of your relationship with Company, will be resolved by binding arbitration, rather than in court, except that (a) you may assert claims or seek relief in small claims court if your claims qualify; and (b) you or Company may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). **This Arbitration Agreement shall apply, without limitation, to all disputes or claims and requests for relief that arose or were asserted before the effective date of this Agreement or any prior version of this Agreement.**

12.2 Arbitration Rules and Forum

The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your dispute or claim or request for relief to 14 Mint Plaza, Suite 400, San Francisco, CA, 94103. The arbitration will be conducted by JAMS, an established alternative dispute resolution provider. Disputes involving claims, counterclaims, or request for relief under \$250,000, not inclusive of attorneys’ fees and interest, shall be subject to JAMS’s most current version of the Streamlined Arbitration Rules and procedures available at <http://www.jamsadr.com/rules-streamlined-arbitration>; all other disputes shall be subject to JAMS’s most current version of the Comprehensive Arbitration Rules and Procedures, available at <http://www.jamsadr.com/rules-comprehensive-arbitration>. JAMS’s rules are also available at www.jamsadr.com or by calling JAMS at 800-352-5267. If JAMS is not available to arbitrate, the parties will select an alternative arbitral forum.

You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the country where you live or at another mutually agreed location. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

12.3 Authority of Arbitrator

The arbitrator shall have exclusive authority to

- a. determine the scope and enforceability of this Arbitration Agreement and
- b. resolve any dispute related to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to, any assertion that all or any part of this Arbitration Agreement is void or voidable.

The arbitration will decide the rights and liabilities, if any, of you and Company. The arbitration proceeding 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, the arbitral forum's rules, and the Agreement (including the Arbitration Agreement). 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 us.

12.4 Waiver of Jury Trial

YOU AND COMPANY HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and Company are instead electing that all disputes, claims, or requests for relief shall be resolved by arbitration under this Arbitration Agreement, except as specified in Section 12.1 (Application of Arbitration Agreement) above. An arbitrator can award on an individual basis the same damages and relief as a court and must follow this Agreement as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.

12.5 Waiver of Class or Other Non-Individualized Relief

ALL DISPUTES, CLAIMS, AND REQUESTS FOR RELIEF WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS OR COLLECTIVE BASIS, ONLY INDIVIDUAL RELIEF IS AVAILABLE, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. If a decision is issued stating that applicable law precludes enforcement of any of this section's limitations as to a given dispute, claim, or request for relief, then such aspect must be severed from the arbitration and brought into the State or Federal Courts located in the State of California. All other disputes, claims, or requests for relief shall be arbitrated.

12.6 Severability

Except as provided in Section 12.5 (Waiver of Class or Other Non-Individualized Relief), if any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Arbitration Agreement shall continue in full force and effect.

12.7 Survival of Agreement

This Arbitration Agreement will survive the termination of your relationship with Company.

13. GENERAL PROVISIONS

13.1 Electronic Communications

The communications between you and Company may take place via electronic means, whether you visit Company Properties or send Company e-mails, or whether Company posts notices on Company Properties or communicates with you via e-mail. For contractual purposes, you

- a. consent to receive communications from Company in an electronic form; and
- b. agree that all terms and conditions, agreements, notices, disclosures, and other communications that Company provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing.

The foregoing does not affect your statutory rights, including but not limited to the Electronic Signatures in Global and National Commerce Act at 15 U.S.C. §7001 et seq. ("E-Sign").

13.2 Assignment

The Agreement, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without Company's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

13.3 Force Majeure

Company shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

13.4 Exclusive Venue

To the extent the parties are permitted under this Agreement to initiate litigation in a court, both you and Company agree that all claims and disputes arising out of or relating to the Agreement will be litigated exclusively in the state or federal courts located in San Mateo County, California.

13.5 Governing Law

THE TERMS AND ANY ACTION RELATED THERETO WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE STATE OF CALIFORNIA, CONSISTENT WITH THE FEDERAL ARBITRATION ACT, WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THE AGREEMENT.

13.6 Notice

Where Company requires that you provide an e-mail address, you are responsible for providing Company with your most current e-mail address. In the event that the last e-mail address you provided to Company is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by the Agreement, Company's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to Company at the following address: 14 Mint Plaza, Suite 400, San Francisco, CA, 94103. Such notice shall be deemed given when received by Company by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

13.7 Waiver

Any waiver or failure to enforce any provision of the Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

13.8 Severability

If any portion of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions shall remain in full force and effect.

13.9 Entire Agreement

The Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.