



2700 Broderick Way
Mountain View, CA 94043
www.wisk.aero

TERMS OF USE

Effective Date: December 2, 2019

To download and/or print this Terms of Use ("Terms"), click [here](#).

Introduction

Please read these Terms carefully before using our websites and any online services, software or apps provided by Wisk Aero LLC (collectively, "**Wisk**", "**we**", or "**us**" or "**our**") that post a link to these Terms (the "**Service**"). By visiting or otherwise using the Service in any manner, you agree to the then posted Terms and any applicable Additional Terms (defined below), to be bound by them, and that you have read and understood them. You also acknowledge, agree and consent to our data practices as described in our **Privacy Policy**.

These Terms affect your legal rights, responsibilities and obligations and govern your use of the Service, are legally binding, limit our liability to you and require you to indemnify us and to settle certain disputes through individual arbitration. **If you do not wish to be bound by these Terms and any Additional Terms, do not use the Service and uninstall Service downloads and applications.**

Additional Terms

In some instances, additional or different terms, posted on the Service, apply to your use of certain parts of the Service (individually and collectively "**Additional Terms**"), including without limitation membership terms and terms of sale for our products. To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless the Additional Terms expressly state otherwise.

Updates to these Terms and Additional Terms

We may prospectively change these Terms and Additional Terms by posting new or changed terms on the Service.

Summary

We have summarized some (but not all) of the main topics of these Terms below. The complete provisions, and not the headings or summaries govern.

- **Grants and Limitations of Rights**
 - We only grant you a limited revocable license to use the Service subject to rules and limitations.
 - You grant us a broad license to the content you submit, including in communications to us. You retain ownership of and responsibility for your content.
 - Your use of our Service is subject to various restrictions designed to protect the Service and users.
- **Limitations on Your Remedies**
 - As permitted by applicable law
 - We also disclaim most warranties and provide the Service “As Is”.
 - Our liability is greatly limited.
 - Your equitable or injunctive relief rights are limited.
- **Dispute Resolution**
 - As permitted by law, you agree to arbitrate disputes and waive jury trial and class actions.
- **Availability of Service**
 - We may change or discontinue our Service, or your right to access it, in whole or in part.
 - Our Service is intended for access from and use in the U.S.A. and our products and services are only sold in the United States.

1. OWNERSHIP AND YOUR RIGHTS TO USE THE SERVICE AND CONTENT.

A. Ownership. The Service and all of its content (“**Content**”), including all copyrights, patents, trademarks, service marks, trade names and all other intellectual property rights therein (“**Intellectual Property**”), are owned or controlled by us, our licensors, and certain other third parties. All right, title, and interest in and to the Content and Intellectual Property available via the Service is the property of us, our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible. We own the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Service.

B. Your Rights to Use the Service and Content. Your right to use the Service and Content is subject to your strict compliance with these Terms and the Additional Terms. Your right to access and use the Service and the Intellectual Property shall automatically terminate upon any violations. These rights are non-exclusive, limited, and revocable by us at any time in our sole discretion without advance notice or liability. As your right to access and use the Service and the Content is personal to you, you may not assign nor transfer your right; any attempt to do so is void. You may, for your personal, non-commercial, lawful use only (collectively, the following are the “**Wisk Licensed Elements**”):

- i. Display, view, use, and play the Content on a computer, mobile or other internet enabled or permitted device (“**Device**”) and/or print one copy of the Content (excluding source and object code in raw form or otherwise) as it is displayed to you;
- ii. Stream the Content using any of the widgets and/or other digital streaming internet video players, if any, provided on the Service;
- iii. Subject to any applicable Additional Terms, if the Service includes a “Send to Friend,” social media sharing or similar tool that allows you to initiate and send to one of your friends a communication that includes Content, or to post our Content to third-party services or your own site or online service, and the tool is operational, use the tool to do so; provided, however, that you do not do so in any manner that violates applicable law or third-party rights or reflects negatively on us, and only send to recipients you have permission to contact;
- iv. If the Service includes a “Download” link next to a piece of Content (including, without limitation, an image, an icon, a wallpaper, a music track, a video, a trailer, an RSS feed), you may only download a single copy of such Content to a single Device;

- v. Download, install and use one copy of any software, including apps, that we make available on or through the Service ("Software") on your Device in machine-executable object code form only and make one additional copy for back-up purposes; provided, however, that you understand and agree that (i) by allowing you to download the Software, we do not transfer title to the Software to you (i.e., you own the medium on which the Software is recorded, but the Software's owner (which may be us and/or our third-party Software licensor) will retain full and complete title to such Software); (ii) you may not copy, modify, adapt, translate into any language, distribute, or create derivative works based on the Software, except as expressly authorized in these Terms or applicable Additional Terms, without our prior written consent Wisk; (iii) you may not assign, rent, lease, or lend the Software to any person or entity and any attempt by you to sublicense, transfer, or assign the Software will be void and of no effect; and (iv) you may not decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Software by any means whatsoever, except to the extent the foregoing restriction is prohibited by applicable law;
- vi. If made available to you, obtain a registered personal account (and/or related username and password) on the Service and interact with the Service in connection therewith;
- vii. Link to the Service from a website or other online service, so long as: (a) the links only incorporate text, and do not use any of our names, logos, or images, (b) the links and the content on your website do not suggest any affiliation with us or cause any other confusion, and (c) the links and the content on your website do not portray or use our products or services in a false, misleading, derogatory, or otherwise offensive manner, and do not contain content that is unlawful, offensive, obscene, lewd, lascivious, filthy,
- viii. violent, threatening, harassing, or abusive, or that violate any right of any third-party or are otherwise objectionable to us . We reserve the right to suspend or prohibit linking to the Service for any reason, in its sole discretion, without advance notice or any liability of any kind to you or any third-party; and

- ix. Use any other functionality expressly provided by us on or through the Service for use by users, subject to these Terms (including, without limitation, functionality to create and/or post Submissions (as defined below)) and any applicable Additional Terms.

- C. Your Rights to Use the Service and Content.** Purchases of memberships and products and certain of our services may be subject to Additional Terms. Memberships are subject to restrictions in the applicable Additional Terms. Sales of products and services may be subject to regulatory requirements and export restrictions, in addition to the terms and conditions of any applicable Additional Terms.
- D. Rights of Others.** In using the Service, you must respect the intellectual property and rights of us and others. Your unauthorized use of Content may violate the rights of others and applicable laws, and may result in your civil and criminal liability.
- E. Reservation of all Rights Not Granted as to Content and Service.** These Terms and any applicable Additional Terms include only narrow, limited grants of rights to use and access the Service and Content. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. ALL RIGHTS NOT EXPRESSLY GRANTED TO YOU ARE RESERVED BY US AND OUR LICENSORS AND OTHER THIRD PARTIES. Any unauthorized use of any Content or the Service for any purpose is prohibited.
- F. Third-Party Services.** We are not responsible for third parties or their content, apps or sites. For instance, portions of the Service may be integrated into or linked to third-party sites, platforms and apps that we do not control (e.g., Facebook). Similarly, we may make third-party content or services, which we also may not control, available to you on or via our Service. This may include the ability to register or sign in to our Services using Facebook Connect or other third-party tools, and to post content on third-party sites and services using their plug-ins made available on our Services. Use caution when dealing with third parties and consult their terms of use and privacy policies. We take no responsibility for third-party services.

2. CONTENT YOU SUBMIT.

You grant us a non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable perpetual, transferable and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise use and exploit in any manner whatsoever, all or any portion of any material or information you post or submit to us (on or via the Service, or by means other than the Service, including without limitation via our social media pages and accounts such as Facebook, Twitter and LinkedIn) ("Submissions"), and derivative works thereof, for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same, all without any obligation to you not required by applicable law, or explicit terms of our Privacy Policy or applicable Additional Terms. As permitted by applicable law, and subject to any explicit terms of our Privacy Policy and applicable Additional Terms, you also irrevocably consent to our use and association of your name (and, if part of a Submission, your likeness) in connection with your Submissions and derivatives thereof. As permitted by applicable law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any Submissions, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section. In addition, we and our successors, assigns and licensees retain all of the rights held by members of the general public with regard to your Submissions. Our receipt of your Submissions is not an admission of their novelty, priority, or originality, and it does not impair our right to contest existing or future intellectual property rights relating to your Submissions.

3. SERVICE AND CONTENT USE RESTRICTIONS.

A. Service Use Restrictions. You agree that you will not: (i) use the Service for any political or commercial purpose (including, without limitation, for purposes of advertising, soliciting funds, collecting product prices, and selling products);(ii) use any meta tags or any other “hidden text” utilizing any Intellectual Property Service Use Restrictions. You agree that you will not: (i) use the Service for any political or commercial purpose (including, without limitation, for purposes of advertising, soliciting funds, collecting product prices, and selling products); (ii) use any meta tags or any other “hidden text” utilizing any Intellectual Property Service Use Restrictions. You agree that you will not: (i) use the Service for any political or commercial purpose (including, without limitation, for purposes of advertising, soliciting funds, collecting product prices, and selling products); (ii) use any meta tags or any other “hidden text” utilizing any Intellectual Property; (iii) engage in any activities through or in connection with the Service that seek to attempt to or do harm any individuals or entities or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third-party, or are otherwise objectionable to us; (iv) decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code,

underlying ideas, underlying user interface techniques, or algorithms of the Service by any means whatsoever or modify any Service source or object code or any Software or other products, services, or processes accessible through any portion of the Service; (v) engage in any activity that interferes with a user’s access to the Service or the proper operation of the Service, or otherwise causes harm to us, the Service, or other users of the Service; (vi) interfere with or circumvent any security feature (including any digital rights management mechanism, device or other Content protection or access control measure) of the Service or any feature that restricts or enforces limitations on use of or access to the Service, the Content, or the Submissions; (vii) harvest or otherwise collect or store any information (including personally identifiable information about other users of the Service, including email addresses, without the express consent of such users); (viii) attempt to gain unauthorized access to the Service, other computer systems or networks connected to the Service, through password mining or any other means; or (ix) otherwise violate these Terms or any applicable Additional Terms.

B. Content Use Restrictions. You also agree that, in using the Service, you: (i) will not monitor, gather, copy, or distribute the

Content (except as may be a result of standard search engine activity or use of a standard browser) on the Service by using any robot, rover, "bot", spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) will not frame or utilize framing techniques to enclose any such Content (including any images, text, or page layout); (iii) will keep intact all Trademark, copyright, and other Intellectual Property and other notices contained in such Content; (iv) will not use such Content in a manner that suggests an unauthorized association with any of our or our licensors' products, services, or brands; (v) will not make any modifications to such Content (other than to the extent of your specifically permitted use of the Wisk Licensed Elements, if applicable); (vi) will not copy, modify, reproduce, archive, sell, lease, rent, exchange, create derivative works from, publish by hard copy or electronic means, publicly perform, display, disseminate, distribute, broadcast, retransmit, circulate or transfer to any third-party or on any third-party application or website, or otherwise use or exploit such Content in any way for any purpose except as specifically permitted by these Terms or any applicable Additional Terms or with our prior written consent or, in the case of content from a licensor, the owner of the content; and (vii) will not insert any code or product to manipulate such Content in any way that adversely affects any user experience or the service.

C. Availability of Service and Content. We, in our sole discretion without advance notice or liability, may immediately suspend or terminate the availability of the Service and/or Content (and any elements and features of them), in whole or in part, for any reason, in our sole discretion, and without advance notice or liability.

4. CREATING AN ACCOUNT

- A.** If you register with us or create an account, you are solely responsible and liable for the security and confidentiality of your access credentials and for restricting access to your Device and for all activity under your account. Usernames and passwords must be personal and unique that do not violate the rights of any person or entity, and are not offensive. We may reject the use of any password, username, or email address for any reason in our sole discretion. You are solely responsible for your registration information and for updating and maintaining it. You will immediately notify us as set forth on our "About Us" page of any unauthorized use of your account, password, or username, or any other breach of security, but will remain responsible for any unauthorized use thereafter. You will not sell, transfer, or assign your account or any account rights.
- B.** Accounts may only be set up by an authorized representative of the individual that is the subject of the account and who is of the age of majority. We do not review accounts for authenticity, and are not responsible for any unauthorized accounts that may appear on the Service. For any dispute as to account creation or authenticity, we shall have the sole right, but are not obligated, to resolve such dispute as we determine appropriate, without notice.

5. NOTICES, QUESTIONS AND CUSTOMER SERVICE.

You agree that we may give you notices or otherwise respond to you by mail or to your email (if we have it on file) or in any other manner reasonably elected by us. All legal notices to us must be sent to: Wisk, 2700 Broderick Way, Mountain View, CA 94043 (Attn: Legal Department). If you have a question regarding the Service, you may contact us as set forth on our "About Us" page. You acknowledge that we have no obligation to provide you with customer support of any kind and that customer service personnel cannot change or waive Terms or applicable Additional Terms.

6. PRODUCT SPECIFICATIONS; PRICING; TYPOGRAPHICAL ERRORS.

We strive to accurately describe our products or services offered on the Service; however, we do not warrant that such specifications, pricing, or other Content on the Service is complete, accurate, reliable, current, or error-free. We do not guarantee that our development-stage products will ever become commercially available to the public, or that versions that are made available for sale to the public will have the same specifications or performance of our development-stage products. All sales or products and services are made in the United States and may be subject to export restrictions or requirements. Our products and services may be subject to other restrictions and requirements under applicable law. You are solely responsible for researching what legal restrictions and requirements may apply to your purchases from us. As permitted by applicable law, we shall have the right to refuse or cancel any orders in our sole discretion. Your orders are offers to purchase subject to our acceptance, which we may reject or cancel subject to refund.

If we charged your credit or other account prior to rejection or cancellation, we will reissue credit to your account. Additional Terms may apply. If a product you purchased or accepted from us is not as described, as permitted by applicable law, your sole remedy is to return it, to cancel the purchase and receive a credit for the purchase price.

7. ARBITRATION AND DISPUTE TERMS.

A. Forum Selection/Jurisdiction. Jurisdiction and venue for any controversy, allegation, or claim arising out of or relating to the Service, the Content, your Submissions, these Terms, or any applicable Additional Terms, whether before the Effective Date of these Terms or after arising (collectively, "Dispute") shall be in San Jose, California. Each party submits to personal jurisdiction and venue in San Jose, California for any and all purposes.

B. Pre-Arbitration Notification. We and you agree that it would be advantageous to discuss and hopefully resolve any Disputes before formal proceedings are initiated; provided, however, that we need not do so in circumstances where our claims of intellectual property rights are concerned ("**IP Disputes**," with all other disputes referred to as "**General Disputes**"). The party making a claim – whether you or us – shall send a letter to the other side briefly summarizing the claim and the request for relief. If we are making a claim, the letter shall be sent, via email, to the email address listed in your Wisk account, if applicable. If no such information exists or if such information is not current, then we have no notification or delay obligations under this Section 7.B. If you are

making a claim, the letter shall be sent to Wisk Aero, 2700 Broderick Way, Mountain View, CA 94043 (Attn: General Counsel). If the Dispute is not resolved within sixty (60) days after notification, the claimant may proceed to initiate proceedings as set forth in this Section 7. Either you or we, however, may seek provisional remedies (such as preliminary injunctive relief, subject to Section 7.D) before the expiration of this sixty (60)-day period.

C. Arbitration of Claims. All actions or proceedings arising in connection with, touching upon or relating to the service or this Agreement, the breach thereof and/or the scope of the provisions of this Section shall be submitted to JAMS for final and binding arbitration under its Comprehensive Arbitration Rules and Procedures if the matter in dispute is over \$250,000 or under its Streamlined Arbitration Rules and Procedures if the matter in dispute is \$250,000 or less, to be held in San Jose, California, before a single arbitrator in accordance with California Code of Civil Procedure §§ 1280 et seq. The arbitrator shall be selected by mutual agreement of the parties or, if the parties cannot agree, then by striking from a list of arbitrators supplied by JAMS. The arbitration shall be a confidential proceeding, closed to the general public; provided, however, that a party may disclose information relating to the arbitration proceedings to its and its affiliates' lawyers, insurance providers, auditors and other professional advisers. The fact that there is a dispute between the parties that is the subject of arbitration shall be confidential to the same extent. The arbitrator shall issue a written opinion stating the essential findings and conclusions upon which the arbitrator's award is based. Neither party shall be entitled or permitted to commence or maintain any action in a court of law with respect to any matter in dispute until such matter shall have been submitted to arbitration as herein provided and then only for the enforcement of the arbitrator's award; provided, however, that prior to the appointment of the arbitrator or for remedies beyond the jurisdiction of an arbitrator, at any time, either party may seek pendente lite relief (subject to the provisions of the Agreement waiving or limiting that relief) in a court of competent jurisdiction in San Jose, California or, if sought by us, such other court that may have jurisdiction over you, without thereby waiving its right to arbitration of the dispute or controversy under this Section; provided further, however, that the losing party shall have fifteen (15) business days after the issuance of the arbitrator's decision to fully comply with such decision, after which the prevailing party may enforce such decision by a petition to the Santa Clara County Superior Court or, in the case of you, such other court having

jurisdiction over you, which may be made ex parte, for confirmation and enforcement of the award.

D. Limitation on Injunctive Relief. AS PERMITTED BY APPLICABLE LAW, IF YOU CLAIM THAT YOU HAVE INCURRED ANY LOSS, DAMAGES, OR INJURIES IN CONNECTION WITH YOUR USE OF THE SERVICE, THEN THE LOSSES, DAMAGES, AND INJURIES WILL NOT BE DEEMED IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR TO OTHER EQUITABLE RELIEF OF ANY KIND. THIS MEANS (WITHOUT LIMITATION) THAT, IN CONNECTION WITH YOUR CLAIM, YOU AGREE THAT YOU WILL NOT SEEK, AND THAT YOU WILL NOT BE PERMITTED TO OBTAIN, ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, SUBMISSIONS, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED, OR CONTROLLED BY ANY WISK PARTY (DEFINED BELOW) (INCLUDING YOUR LICENSED SUBMISSIONS) OR A LICENSOR OF ANY WISK PARTY.

E. Governing Law. These Terms and any applicable Additional Terms, General Disputes and IP Disputes, and any other claim brought by you against us or by us against you pursuant to this Section 7, or otherwise related to the Service, Content, Wisk Licensed Elements, Submissions or other Wisk products or services, will be governed by, construed, and resolved in accordance with, the laws of the State of California, U.S.A., without regard to its conflicts of law provisions that might apply the laws of another jurisdiction. This Section 7 shall be governed solely by the Federal Arbitration Act, 9 U.S.C. §1, et seq., and not by the law of any state, and is enforceable pursuant to its terms on a self-executing basis. Both parties agree that we intend that this Section 7 satisfies the “writing” requirement of the Federal Arbitration Act. This Section 7 can only be amended by mutual agreement. Either party may seek enforcement of this Section 7 in any court of competent jurisdiction. The arbitrator shall determine any and all challenges to the arbitrability of a claim.

F. Class Action Waiver. As permitted by applicable law, both of us waive the right to bring any Dispute as a class, consolidated, representative, collective, or private attorney general action, or to participate in a class, consolidated, representative, collective, or private attorney general action regarding any Dispute brought by anyone else. Notwithstanding any provision in the JAMS Comprehensive Arbitration Rules and Procedures to the contrary, the arbitrator shall not have the authority or any jurisdiction to hear the arbitration as a class, consolidated, representative, or private attorney general action or to consolidate, join, or otherwise

combine the Disputes of different persons into one proceeding. Notwithstanding the arbitration provision set forth above, if the provision regarding waiver of class, collective, representative, and private attorney general claims of this Section 7 is found to be void or otherwise unenforceable, any such class, collective, representative, or private attorney general claims must be heard and determined through an appropriate court proceeding, and not in arbitration.

G. Jury Waiver. AS PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY WAIVE THEIR RIGHT TO JURY TRIAL WITH RESPECT TO ALL CLAIMS AND ISSUES ARISING UNDER, IN CONNECTION WITH, TOUCHING UPON OR RELATING TO THESE TERMS, THE BREACH THEREOF AND/OR THE SCOPE OF THE PROVISIONS OF THIS SECTION, WHETHER SOUNDING IN CONTRACT OR TORT, AND INCLUDING ANY CLAIM FOR FRAUDULENT INDUCEMENT THEREOF.

H. Small Claims Matters. Notwithstanding the foregoing, either of us may bring qualifying claim of General Dispute (but not IP Disputes) in small claims court, subject to Section 7.F.

I. The provisions of this Section shall supersede any inconsistent provisions of any prior agreement between the parties. This Section 7 shall remain in full force and effect notwithstanding any termination of your use of the Service or these Terms.

7. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.

A. AS PERMITTED BY APPLICABLE LAW, YOUR ACCESS TO AND USE OF THE SERVICE IS AT YOUR SOLE RISK AND THE SERVICE IS PROVIDED ON AN "AS IS", "AS AVAILABLE", AND "WITH ALL FAULTS" BASIS. To the fullest extent permissible by applicable law, we and our direct and indirect parents, subsidiaries, affiliates, and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns (collectively, "**Wisk Parties**") hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, in connection with, or otherwise directly or indirectly related to, without limitation, the Service, Content, Wisk Licensed Elements, Submissions or other Wisk products or services, except as set forth in subsection C, below.

B. EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED HEREIN, OR IN APPLICABLE ADDITIONAL TERMS, OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, WISK PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND FREEDOM FROM COMPUTER VIRUS.

C. NOTWITHSTANDING THE FOREGOING, THIS SECTION DOES NOT EXPAND OR LIMIT (I) ANY EXPRESS, WRITTEN PRODUCT WARRANTY OR RELATED DISCLAIMERS THAT ARE PROVIDED BY WISK PARTIES OR THEIR SUPPLIERS WITH REGARD TO A PHYSICAL PRODUCT SOLD BY WISK PARTIES TO YOU, OR ANY WARRANTY ON A PHYSICAL PRODUCT TO THE EXTENT REQUIRED BY APPLICABLE LAW; (II) WISK PARTIES' LIABILITY FOR PERSONAL INJURY TO YOU CAUSED BY WISK PARTIES TO THE EXTENT NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW; OR (III) ANY CAUSE OF ACTION YOU MAY HAVE AGAINST WISK PARTIES THAT IS NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW.

8. LIMITATIONS OF OUR LIABILITY

- A.** AS PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL ANY WISK PARTIES BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND, including personal injury or death or for any direct, indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages of any kind, or otherwise directly, or otherwise directly or indirectly related to, without limitation, the Service, Content, Wisk Licensed Elements, Submissions or other Wisk products or services, except, to the extent not waivable under applicable law, for direct damages for personal injury caused by a physical product manufactured, sold or provided by Wisk.
- B.** The foregoing limitations of liability will apply even if any of the events or circumstances were foreseeable and even if Wisk Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of the Service).
- C. AS PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WISK PARTIES' TOTAL LIABILITY TO YOU, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH YOUR ACCESS TO AND USE OF THE SERVICE AND YOUR RIGHTS UNDER THESE TERMS, EXCEED AN AMOUNT EQUAL TO THE AMOUNT YOU HAVE PAID WISK IN CONNECTION WITH THE TRANSACTION(S) THAT UNDERLIE THE CLAIM(S).**
- D. NOTWITHSTANDING THE FOREGOING, THIS SECTION DOES NOT EXPAND OR LIMIT (I) ANY EXPRESS, WRITTEN PRODUCT WARRANTY OR RELATED DISCLAIMERS THAT ARE PROVIDED BY WISK PARTIES OR THEIR SUPPLIERS WITH REGARD TO A PHYSICAL PRODUCT SOLD BY WISK PARTIES TO YOU, OR ANY WARRANTY ON A PHYSICAL PRODUCT TO THE EXTENT REQUIRED BY APPLICABLE LAW; (II) WISK PARTIES' LIABILITY FOR PERSONAL INJURY TO YOU CAUSED BY WISK PARTIES TO THE EXTENT NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW; OR (III) ANY CAUSE OF ACTION YOU MAY HAVE AGAINST WISK PARTIES THAT IS NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW.**

9. UPDATES TO TERMS.

It is your responsibility to review the posted Terms and any applicable Additional Terms each time you use the Service (at least prior to each transaction or submission). EACH TIME YOU SIGN IN TO OR OTHERWISE USE THE SERVICE YOU ARE ENTERING INTO A NEW AGREEMENT

WITH US ON THE THEN APPLICABLE TERMS AND CONDITIONS AND YOU AGREE THAT WE MAY NOTIFY YOU OF NEW TERMS BY POSTING THEM ON THE SERVICE (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH WE ELECT), AND THAT YOUR USE OF THE SERVICE AFTER SUCH NOTICE CONSTITUTES YOUR GOING FORWARD AGREEMENT TO THE NEW TERMS FOR YOUR NEW USE AND TRANSACTIONS. Any new Terms or Additional Terms will be effective as to new use and transactions as of the time that we post them, or such later date as may be specified in them or in other notice to you. In the event any notice to you of new, revised, or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. You can reject any new, revised or additional terms by discontinuing use of the Service.

10. GENERAL PROVISIONS.

A. Our Consent or Approval. As to any provision in these Terms or any applicable Additional Terms that grants us a right of consent or approval, or permits us to exercise a right in our "sole discretion," we may exercise that right in our sole and absolute discretion. No consent or approval may be deemed to have been granted by us without being in writing.

B. Indemnity. As permitted by applicable law, you agree to, and you hereby, defend (if requested by Wisk), indemnify, and hold Wisk Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any Wisk Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with: (i) your Submissions; (ii) your use of the Service and your activities in connection with the Service; (iii) your breach or alleged breach of these Terms or any applicable Additional Terms; (iv) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of the Service or your

activities in connection with the Service; (v) information or material transmitted through your Device, even if not submitted by you, that infringes, violates, or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (vi) any misrepresentation made by you; and (vii) Wisk Parties' use of the information that you submit to us (including your Submissions) subject to our Privacy Policy (all of the foregoing, "**Claims and Losses**"). You will cooperate as fully required by Wisk Parties, in the defense of any Claim and Losses. Notwithstanding the foregoing, Wisk Parties retain the exclusive right to settle, compromise, and pay any and all Claims and Losses. Wisk Parties reserve the right to assume the exclusive defense and control of any Claims and Losses. You will not settle any Claims and Losses without, in each instance, our prior written consent. This section is not intended to limit any causes of action against us that you may have but are not waivable under applicable law.

C. Operation of Service; Availability of Products and Services;

International Issues. We control and operate the Service from the U.S.A., and makes no representation that the Service is appropriate or available for use beyond the U.S.A. If you use the Service from other locations, you are doing so on your own initiative and responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply.

D. Export Controls. You are responsible for complying with all applicable trade regulations and laws both foreign and domestic. Except as authorized by U.S. law, you agree and warrant not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls or sanctions.

E. Severability; Interpretation. If any provision of these Terms, or any applicable Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms or the applicable Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the applicable Additional Terms. To the extent permitted by applicable law, you agree to waive and will waive, any applicable statutory and common law that may permit a contract to be construed against its drafter.

F. Investigations; Cooperation with Law Enforcement;

Termination; Survival. As permitted by applicable law, we reserve the right, without limitation, to: (i) investigate any

suspected breaches of our Service security or our information technology or other systems or networks, (ii) investigate any suspected breaches of these Terms and any applicable Additional Terms, (iii) use any information obtained by us in accordance with our Privacy Policy in connection with reviewing law enforcement databases or complying with applicable laws and use and/or disclose any information obtained by us to comply with law enforcement requests or legal requirements in accordance our Privacy Policy, (iv) involve and cooperate with law enforcement authorities in investigating any of the foregoing matters, (v) prosecute violators of these Terms and any applicable Additional Terms, and (vi) discontinue the Service, in whole or in part, or, suspend or terminate your access to it, in whole or in part, including any user accounts or registrations, at any time, without notice, for any reason and without any obligation to you or any third-party. Any suspension or termination will not affect your obligations to us under these Terms or any applicable Additional Terms. Upon suspension or termination of your access to the Service, or upon notice from us, all rights granted to you under these Terms or any applicable Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms and any applicable Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to us in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.

G. Assignment. We may assign our rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable Additional Terms may not be assigned by you, and you may not delegate your duties under them, without our prior written consent.

H. Complete Agreement; No Waiver. These Terms, and any applicable Additional Terms, reflect our complete agreement regarding the Service and supersede any prior agreements, representations, warranties, assurances or discussion related to the Service. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by either part in exercising any of its rights, powers, or remedies hereunder will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any applicable Additional Terms will be effective unless in writing and

signed by the party against whom the waiver or modification is sought to be enforced.

I. California Consumer Rights and Notices. California residents can obtain information on our privacy practices, including how we comply with the California Online Privacy Protection Act and the California Shine the Light Act in our Privacy Policy. Residents of California are entitled to the following specific consumer rights information: you may contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs by mail at: 1625 North Market Blvd., Suite N 112, Sacramento, California, 95834, or by telephone at (916) 445-1254. Hearing-impaired users can reach the Complaint Assistance Unit at TDD (800) 326-2297 or TDD (916) 322-1700. Their website is located at: <http://www.dca.ca.gov>.

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