

Immersitech Terms of Use

The Immersitech Inc. (hereafter "**Immersitech**") Terms of Use (the "**Terms of Use**") govern the use of the Immersitech Software Development Toolkits (SDKs), the Content, and related service application program interface(s) (APIs) described herein (collectively "**Services**"). To ensure reading the current and controlling Terms of Use please go to https://Immersitech.io/Legal/Terms_of_Use or such other internet address Immersitech may designate. These Terms of Use govern and incorporate all Related Documents (as defined herein and all collectively form the ("**Agreement**"), which is a binding agreement between Immersitech and "**Registrant**". Any rights not expressly granted herein are hereby reserved by Immersitech.

IMMERSITECH PROVIDES SERVICES SOLELY ON THE CONDITION THAT THE REGISTRANT ACCEPTS AND COMPLIES WITH THIS AGREEMENT. BY USING THE SERVICES, THE REGISTRANT (1) ACCEPTS THIS AGREEMENT AND AGREES THAT REGISTRANT IS LEGALLY BOUND BY ITS TERMS, AND REPRESENTS AND (2) WARRANTS THAT IT HAS THE LEGAL AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE REGISTRANT, REGARDLESS OF WHETHER THE REGISTRANT IS AN INDIVIDUAL OR CORPORATION, LIMITED LIABILITY COMPANY, LIMITED PARTNERSHIP, OR OTHER LEGAL ENTITY. IF REGISTRANT DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, IMMERSITECH WILL NOT PROVIDE THE SERVICES AND REGISTRANT MAY NOT USE OR ACCESS THE SERVICE.

- 1) **Definitions.** For purposes of this Agreement, the following terms have the following meanings: "**Account**" has the meaning set forth in Section 2(a). "**Account Share**" has the meaning set forth in Section 2(a). "**Agreement**" means collectively the Terms of Use and all Related Documents. "**API**" means one or more application program interfaces, each of which is a software interface that makes it possible for application programs to interact and share information and data. The API shall be considered part of the Services for the purposes of this Agreement. "**Applicable Law**" means all laws, statutes, ordinances, or regulations (including without limitation any relevant data protection or privacy laws and the Federal Trade Commission's advertising regulations) applicable to the performance of any acts pursuant to this Agreement, whether now existing or enacted in the future. "**Application**" means private or public-facing internet-based website(s) or mobile application(s) operated by Registrant through which Content is distributed to End Users via the Services. "**Confidential Information**" has the meaning set forth in Section 12(b). "**Content**" means all information and data provided to Registrant and End Users by Immersitech through the Services. The Content shall be considered part of the Services for the purposes of this Agreement. Content may be changed, updated, or deleted by Immersitech at any time for any reason whatsoever. Content may include application audio and/or supporting data. "**Credentials**" has the meaning set forth in Section 2(b)(i). "**Documentation**" means any technical or operational documentation relating to, or for use in connection with, the Services that Immersitech may provide to Registrant or make available to Registrant. Immersitech may revise and update the Documentation in its discretion from time to time. "**End User**" means an end user of an Application. "**Indemnified Person**" has the meaning set forth in Section 17, Obligation to Indemnify. "**Notices**" has the meaning set forth in Section 24, Notices. "**Order Form**" means a form request made by Registrant through or utilizing the Service which once accepted by Immersitech becomes binding and incorporates by reference the Agreement. "**Other Terms**" has the meaning set forth in Section 23(a). "**Registrant**" (also "**You**") is the individual or entity identified on the Registration. "**Registration**" is the setting up an account pursuant to Section 2 of these Terms of Use. "**Registration Data**" has the meaning set forth in Section 2(b)(i). "**Related Documents**" means each Registration, Supplement, Order Form, incorporated NDA and/or other attachments or exhibit which reference or incorporate these Terms of Use, each of which is incorporated herein by reference. "**Services**" has the meaning set forth in the opening paragraph to these Terms of Use. Immersitech may update the Services and any part thereof in its discretion from time to time. "**Immersitech**" means Immersitech Inc. a Delaware having a place of business at 1163 Pittsford Victor Rd., Suite 200, Pittsford, NY 14534. "**Supplement**" means one or more supplemental binding commercial agreement(s) prepared by Immersitech and agreed to by Registrant. "**Term**" has the meaning set forth in Section 6. "**Usage Requirements**" means any technical or operational specifications and requirements for use of the Services that Immersitech require. Immersitech may revise and update the Usage Requirements in its

discretion.

2) Registration.

- a) **Accounts.** To use the Services, Registrant must complete and Immersitech approve a Registration. Immersitech reserves the right, in its discretion, to approve or reject any Registration. If Immersitech approves a Registration, Immersitech will provide Registrant with an account to access the Services ("**Account**"). Registrant shall not share with or disclose Account information (including Credentials defined below) to any third party ("**Account Share**"), including, but not limited to, affiliate entities. Any Account Share or disclosure of Account information shall be a material breach of this Agreement. In the event of actual or suspected Account Share, Immersitech may, in its discretion, terminate this Agreement.
- b) **Credentials and Services Limitations.**
 - i) Upon providing accurate and current information, including a working e-mail address, during Registration (the "**Registration Data**"), and subject to the terms and conditions herein, Immersitech will issue to Registrant one or more unique security keys, tokens, passwords, or other credentials (collectively, the "**Credentials**") to access the Services and manage Registrant's Account. Registrant may not sell, transfer, sublicense, Account Share or otherwise disclose its Credentials to any other party, including, but not limited to, affiliate entities. If Registrant becomes aware of any unauthorized use of its Credentials, Registrant shall notify Immersitech immediately. Notwithstanding the foregoing, or anything to the contrary herein, Registrant shall be responsible for all activities that occur using its Credentials. Registrant is responsible for ensuring that Registration Data is accurate, current, and complete at all times. Registrant's failure to provide and maintain accurate, current, and complete Registration Data may result in Immersitech terminating Registrant's ability to use the Services.
 - ii) Immersitech may, in its discretion, set and enforce limits on Registrant's use of the Services (including, but not limited to, limiting the number of requests Registrant may make, limiting the number of End Users Registrant may serve, or limiting Registrant's number of access keys). Registrant will not, nor permit others to, circumvent limitations on the Services. If Registrant desires to use the Services beyond set limitations, Registrant must obtain Immersitech's express prior written consent, which Immersitech may (a) withhold at its sole discretion or (b) condition upon Registrant's agreement to additional terms and/or charges for such use.

3) Services.

- a) Immersitech may distribute updates through the Services to Registrant's Application pursuant to the terms of this Agreement and, as applicable, one or more Supplements, and one or more Order Forms.
- b) Immersitech reserves, in its sole discretion, the right to change which portions of the Services are available for any reason and at any time.
- c) Immersitech reserves the right to release subsequent versions of the Services, or subsequent versions of any portion of the Services, and to require Registrant to use the most recent version.
- d) Immersitech reserves the right to access, use, and analyze all Registrant and End User interactions with the Services for billing, reporting, technical, or other purposes.
- e) Registrant must comply with Usage Requirements and Documentation. All Applications must be designed to access and use Services only as permitted by the Agreement, Usage Requirements, and Documentation.

4) Registrant Responsibilities. Registrant will cooperate with Immersitech as necessary to enable Immersitech to provide the Services pursuant to the terms of this Agreement.

5) Licenses and Use.

- a) Registrant: Subject to the terms of this Agreement, Immersitech hereby grants to Registrant a revocable, non-exclusive, non-transferable, non-sublicensable, non-assignable, limited license during the Term to: (i) use the Services and implement the SDKs in Registrant's Application so the Application can access the SDKs and (ii) process output for End Users. Registrant shall use reasonable efforts to keep the Services secure at all times.
- b) Nothing in this Agreement shall be construed as conferring upon Registrant or any End User any right, title, or interest in or to any intellectual property or other proprietary rights associated with the Services. Immersitech retains all right, title, and interest in and to all intellectual property and other proprietary rights associated with the Services, including, but not limited to, the Documentation, the Usage Requirements, all underlying technology and intellectual property, source code, software, and any other technical

documentation.

- 6) **Term.** This Agreement, as modified, supplemented or amended in accordance with Section 21, Waiver and Modification, will continue until Registrant ceases using the Services or until Immersitech terminates this Agreement (the "**Term**").

7) **Termination and Suspension.**

- a) Immersitech may terminate this Agreement upon written notice to Registrant for any reason or no reason whatsoever without liability. For the purposes of this Agreement, "written notice" shall include e-mail communication.
- b) Immersitech may immediately terminate this Agreement for cause:
 - i) upon any breach of any confidentiality obligations owed to Immersitech;
 - ii) if Registrant has committed any other material breach of its obligations under this Agreement;
 - iii) upon the institution of bankruptcy or state law insolvency proceedings against Registrant; or
 - iv) if Registrant fails, within the timeframe described in this Agreement or any Supplement, to pay Immersitech any or all amounts due and owed to Immersitech regardless of the reason for such nonpayment.
- c) During the Term, Immersitech may suspend all or part of the Services or suspend Registrant's access to the Services for any reason or no reason whatsoever without liability.
- d) The termination and suspension rights provided under this Section do not affect any other right of Immersitech to exercise remedial action otherwise provided under this Agreement
- e) Immersitech may suspend or terminate Registrant's Services if Immersitech believes it advisable to do so to protect Immersitech systems, the Services, comply with Applicable Law, or the rights, property, or safety of Immersitech or any third party. Immersitech will monitor Services and reserves the right to investigate any activity that it believes may violate this Agreement.
- f) All licenses granted to Registrant and End User terminate upon termination or expiration of this Agreement, Registrant shall cease using Services, and Registrant shall make reasonable efforts to remove the Services from their Applications.

- 8) **Fees; Billing and Reporting.** Registrant and Immersitech shall agree upon fees and payment terms for Services in one or more Supplements and/or one or more Order Forms. Registrant will comply with all requirements provided by Immersitech in this Agreement, the Usage Requirements, and/or the Documentation to enable accurate delivery, display, tracking, and reporting of the Service usage and End User engagement in connection with the use of the Services and any applicable Application for billing, reporting, and other purposes.

- 9) **Taxes.** Generally, the Services are classified as an information services for sales tax purposes, which has varying sales tax implications nationwide. To the extent a jurisdiction subjects information services to sales tax, Immersitech's fees will include separately stated sales tax. In jurisdictions where information services are not taxable, Immersitech's fees will not include sales tax. To the extent any deficiency is found, Registrant shall be responsible for and indemnify Immersitech against any applicable federal, state, or local use, excise, sales or other taxes, fees, assessments, or similar amounts ("**Taxes**") in connection with any service furnished to Registrant. Registrant shall pay all Taxes directly to the taxing authority unless the taxing authority requires that Immersitech collect and remit payment, in which event Registrant shall pay these amounts to Immersitech and Immersitech shall remit these amounts to the authority. If applicable, Immersitech will exempt Registrant in accordance with Applicable Law, effective on the date Immersitech receives a valid exemption certificate from Registrant. In addition, to the extent any third party attempts to collect Taxes from Immersitech or Registrant as a result of an audit investigation, Registrant will indemnify and hold harmless Immersitech for any and all costs and charges resulting from such third party action, although Registrant may challenge any such charges assessed by a third party or any claim that its purchases are taxable.

- 10) **Non-Exclusivity.** The parties agree that this is a non-exclusive relationship. Nothing in this Agreement shall prevent Immersitech from providing the Services to other parties, including, without limitation, competitors of Registrant.

11) **Prohibited Uses.**

Except as expressly authorized by Immersitech in this Agreement, Registrant shall not reproduce, modify, sell, distribute, download, transmit, cache, record, create, or otherwise store the SDKs, or derivative works of the Services, in whole or in part, by any means, or authorize or encourage any third party to do so.

- a) Registrant may not use the Services or any portion thereof to offer any product or service that competes,

directly or indirectly, with the Services or display information on any site that disparages Immersitech or its products or services.

- b) Registrant shall not, and shall not authorize or encourage or permit Users or any third party:
 - i) to remove or modify any copyright or proprietary notices;
 - ii) to remove applicable tracking parameters from any API calls;
 - iii) to provide data or content that is illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights or input any request or otherwise seek to distribute any content on any media platform that contains or promotes any pornographic, hate-related, violent, or illegal content, products, or services;
 - iv) to use the Services in any way that violates any Applicable Law or may expose Immersitech to any liability under any Applicable Law;
 - v) to use the Services in a manner which exploits or harms, or attempts to exploit or harm minors in any way;
 - vi) to impersonate or attempt to impersonate Immersitech, an Immersitech employee, another user or any other person or entity;
 - vii) to engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Services, or any of the user forums, or which, as determined by Immersitech in its sole and absolute discretion, may harm or negatively impact Immersitech, or users of the Services or the user forums, or expose any of the foregoing to liability;
 - viii) to use the Services in any manner that could disable, overburden, damage, or impair the Services or interfere with Immersitech's ability to offer the Services or any third party's use of the Services in any way whatsoever;
 - ix) to use any device, software, or routine or take any action that interferes with or attempts to interfere with the proper functioning of the Services (including, but not limited to, the server on which the Services is stored, or any server, platform, computer, or database connected to the Services);
 - x) to circumvent security features, including those used to prevent or restrict access to or use of the Services;
 - xi) to introduce to the Services (including, but not limited to, the server on which the Services is stored, or any server, platform, computer, or database connected to the Services) any viruses, Trojan horses, worms, logic bombs, or other similar or related material which is malicious or technologically harmful;
 - xii) to create accounts or Registrations by automated means or falsify or alter Credentials;
 - xiii) to obscure or alter the source of requests to the Services sent from the Application; or
 - xiv) to make any representations or warranties about the Services to any third party.
- c) Registrant may not do, or permit or encourage anyone else to do, anything with or to the Services which is not expressly permitted under this Agreement.
- d) Registrant acknowledges that any attempted participation in or violation of any of the prohibited uses identified in this Section is a material breach of this Agreement and Immersitech may pursue any and all civil or criminal remedies available under Applicable Law, including, without limitation, immediate suspension of Registrant's Account or termination of this Agreement

12) **Confidentiality.**

- a) Any separate written Mutual Confidentiality Agreement, also known as a Non-disclosure Agreement, ("**NDA**") between Immersitech and Registrant is incorporated into and made a part of this Agreement. A breach of any such NDA shall be a breach of this Agreement. Where there are conflicts between the terms of any such NDA and this Agreement, the terms of the agreement that is more protective of Immersitech's information shall govern.
- b) Except as otherwise set forth in this Agreement, any information disclosed to Registrant about Immersitech's products, services, pricing, business policies and practices, confidential intellectual property, trade secrets, third-party confidential information, or other sensitive or proprietary information, whether orally or in written, electronic, or other form or media whether or not otherwise identified as "confidential" (collectively, "**Confidential Information**"). The Content and Registrant's Account Credentials are Confidential Information hereunder.
- c) Subject to subsection b), above, Confidential Information shall not include information that, at the time of disclosure: (i) is or becomes generally available to and known by the public other than as a result of, directly

or indirectly, any breach of this Section by Registrant or any of its officers, employees, and other representatives; (ii) is or becomes available to Registrant on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of Registrant or its officers, employees, and other representatives prior to being disclosed by or on behalf of Immersitech; (iv) was or is independently developed by Registrant without reference to or use of, in whole or in part, any of Immersitech's Confidential Information; or (v) is required to be disclosed pursuant to applicable federal, state, or local law, regulation, or a valid order issued by a court or governmental agency of competent jurisdiction.

- d) Registrant shall: (i) safeguard the confidentiality of Immersitech's Confidential Information with at least the same care as Registrant protects its own Confidential Information, but in no event less than reasonable care; (ii) not use Immersitech's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (iii) not disclose any Confidential Information to any person or entity, except to Registrant's officers, employees, and other representatives who need to know the Confidential Information to assist Registrant to exercise its rights or perform its obligations under this Agreement. Registrant shall be responsible for any breach of this Section caused by any of its officers, employees, or other representatives.
- e) Immersitech may seek equitable relief (including injunctive relief) against Registrant and its officers, employees, and other representatives to prevent the breach or threatened breach of this Section and to secure its enforcement, in addition to all other remedies available at law.

13) **Limitations of Liability; Force Majeure.** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL IMMERSITECH BE LIABLE FOR THE PAYMENT OF ANY CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER IN CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, EVEN IF IMMERSITECH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IMMERSITECH'S SOLE LIABILITY UNDER THIS AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY OR OTHERWISE SHALL BE LIMITED TO THE ACTUAL DIRECT OUT-OF-POCKET DAMAGES OF REGISTRANT, NOT TO EXCEED THE FEES ACTUALLY RECEIVED BY IMMERSITECH FOR THE SERVICES THAT ARE THE SUBJECT OF THE CLAIM UNDER THIS AGREEMENT. REGISTRANT SPECIFICALLY ACKNOWLEDGES THAT THE EXCLUSIONS AND LIMITATION OF LIABILITY EXPRESSED IN THIS SECTION HAVE BEEN CONSIDERED AND NEGOTIATED IN THE CONTEXT OF THE SERVICES TO BE PROVIDED BY IMMERSITECH UNDER THIS AGREEMENT, AND THAT THEY ARE REASONABLE UNDER THE CIRCUMSTANCES, AND THAT THE FEE AND OTHER CHARGES SPECIFIED IN THIS AGREEMENT WOULD BE SUBSTANTIALLY HIGHER IF THIS PROVISION WAS UNENFORCEABLE. Without limiting the foregoing and except for payment obligations, neither party shall have any liability for any delay, failure in performance, or interruption of the Services resulting from any condition beyond the reasonable control of such party, including, but not limited to, governmental action or acts of terrorism, earthquake, or other acts of God, labor conditions, and power failures.

14) **Disclaimer.**

- a) TO THE FULLEST EXTENT PERMITTED BY LAW, IMMERSITECH HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, SUITABILITY, INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR FITNESS FOR A PARTICULAR PURPOSE INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE SERVICE. IMMERSITECH DOES NOT WARRANT THAT THE SERVICE WILL BE AVAILABLE WITHOUT INTERRUPTION, IN A TIMELY AND SECURE MANNER, OR WITHOUT ERRORS OR DEFECTS. TO THE FULLEST EXTENT UNDER APPLICABLE LAW, IMMERSITECH IS PROVIDING THE SERVICE "AS IS", "WHERE IS", AND "WITH ALL FAULTS".
- b) Any links to third party websites are provided for your convenience only. Immersitech does not warrant or make any representation about the substance, quality, functionality, accuracy, fitness for a particular purpose, merchantability, suitability, or any other representation about ANY third-party website or its content. A link to a third-party website does not constitute sponsorship, endorsement, approval or responsibility for the third-party website. The conditions of use and privacy policy of any third-party website may differ substantially from Immersitech's. Please review the conditions of use and privacy policy of the third-party website carefully.
- c) Any open source software made available by Immersitech, whether through an Immersitech website, an Immersitech SDK, a third party website, or any other method, is made available for your convenience only.

IMMERSITECH DOES NOT WARRANT OR MAKE ANY REPRESENTATION ABOUT THE SUBSTANCE, QUALITY, FUNCTIONALITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, SUITABILITY, OR ANY OTHER REPRESENTATION ABOUT ANY OPEN SOURCE SOFTWARE. The Terms of Use, Supplement, and/or any applicable Order Form shall in no case govern or apply to any open source software.

15) **Publicity.** The parties agree that Immersitech may use Registrant's name and logo in presentations, marketing materials, customer lists, and other materials during the Term.

16) **Representations and Warranties.**

- a) Each party represents and warrants to the other that:
 - i) it has all necessary right, power, and authority to enter into this Agreement and to perform the acts required of it hereunder; and
 - ii) it has complied and will continue to comply with Applicable Law.
- b) Immersitech further represents and warrants that:
 - i) Immersitech is the owner of the Services and the Immersitech platform or that Immersitech is legally authorized to act on behalf of the owner of the Services or such platform(s) for the purposes of this Agreement and the Services; and
 - ii) The Services and Immersitech's platform and all material displayed therein: (A) complies with all Applicable Law; (B) does not breach any duty toward or rights of any person or entity including, without limitation, rights of intellectual property, publicity, or privacy, or rights or duties under consumer protection, product liability, tort, or contract theories; and (C) is not pornographic, hate-related, or otherwise violent in content.
- c) Registrant further represents and warrants that each Application and all material displayed therein: (i) complies with all Applicable Law; (ii) does not breach any duty toward or rights of any person or entity including, without limitation, rights of intellectual property, publicity, or privacy, or rights or duties under consumer protection, product liability, tort or contract theories; and (iii) is not pornographic, hate-related, or otherwise violent in content.
- d) Immersitech does not (i) make any guarantee(s) or representation(s) or (ii) suggest, imply, or create any relationship with or endorsement of any third-party website accessed or accessible through the Services.

17) **Obligation to Indemnify.**

17.1 Subject to the terms of Section 13, Limitation of Liability; Force Majeure, each party agrees to indemnify, defend and hold the other, its agents, affiliates, subsidiaries, directors, officers, employees, and applicable third parties (e.g., relevant advertisers, syndication partners, licensors, licensees, consultants, and contractors) (each an "Indemnified Person" and, collectively, "Indemnified Persons") harmless from and against any and all third party claims, liability, loss, and expense (including damage awards, settlement amounts, and reasonable legal fees), brought against any Indemnified Person(s), directly arising out of, related to, or which may arise from the breach of any term of this Agreement by the other party.

17.2 Each party's obligation to indemnify the other party is subject to: (i) the Indemnified Person(s) giving prompt written notice to the indemnifying party in the event that it becomes aware of a claim or the possibility of a claim, provided however that failure of the Indemnified Person(s) to give notice of any claim or claims shall not release, waive or otherwise affect the obligations under this section, except to the extent that such indemnifying party can demonstrate material prejudice as a result of such failure; (ii) the Indemnified Person(s) giving reasonable cooperation with the indemnifying party, at the indemnifying party's expense, in responding to, defending or settling any such claim; (iii) the Indemnified Person(s) keeping the indemnifying party fully informed of the actions and positions taken by the claimant; (iv) the Indemnified Person(s) giving the indemnifying party sole control (subject to the provisions of this section) of the defense of the claim and that all costs and expenses incurred by the Indemnified Person(s) and indemnifying party in investigating, resisting, litigating and settling the claim, including the payment of any award of damages and/or costs to any third party, will be paid by indemnifying party, provided that no settlement shall be entered into by the indemnifying party that admits fault or liability or imposes any legal or financial obligation on the Indemnified Person(s) without the Indemnified Person's prior written consent; and (v) the Indemnified Person(s) not admitting any liability or entering into any settlement regarding the claim on behalf of the indemnifying party. Notwithstanding the foregoing, the parties further agree that the Indemnified Person(s) may elect to participate as a party in any litigation involving the claim to the extent that the court may permit.

18) **Trademark and Intellectual Property Rights.**

- a) All Immersitech trademarks, service marks, logos, names, and trade names are owned solely by Immersitech. Registrant agrees to use Immersitech trademarks, service marks, logos, names, and trade names only as permitted by these Terms of Use.
 - b) Any third-party trademark, service mark, logo, name, or trade name returned by the Services, or otherwise accessible or viewable via the Services, is the property of their respective owners. Use within the Services does not suggest, imply, or create any relationship with or endorsement of such third parties. Registrant agrees to not use or display any third-party trademark, service mark, logo, name, or trade name without the owner's consent or authorization.
 - c) Immersitech shall retain all ownership rights and interest in all search requests and queries submitted to the Services.
 - d) Copyright and other intellectual property laws protect the Services and Content provided to Registrant, and Registrant agrees to abide by and maintain all notices, license information, and restrictions contained therein.
- 19) **Assignment.** Neither party may assign this Agreement, in whole or in part, or delegate or transfer its rights or obligations under this Agreement to any third party. This Agreement will inure to the benefit of, and be binding upon the parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein. Notwithstanding the provisions above, Immersitech may assign this Agreement to an affiliate and/or successor in interest in the event of a corporate reorganization, merger, acquisition, or sale of all or substantially all of its assets.
- 20) **Severability.** If any term of this Agreement is found to be unenforceable, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.
- 21) **Waiver and Modification.**
- a) The waiver by any party of any breach or covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the party waiving its rights.
 - b) **REGISTRANT SHALL REVIEW THIS AGREEMENT ON A REGULAR BASIS. IMMERSITECH MAY REVISE AND UPDATE THIS AGREEMENT FROM TIME TO TIME IN IMMERSITECH'S SOLE AND ABSOLUTE DISCRETION. ALL CHANGES SHALL BE EFFECTIVE IMMEDIATELY, BECOME A PART OF THIS AGREEMENT WHEN POSTED, AND APPLY TO ALL ACCESS TO AND CONTINUED USE OF THE SERVICE THEREAFTER. REGISTRANT'S CONTINUED USE OF THE SERVICE AFTER A POSTED UPDATE CONSTITUTES ACCEPTANCE OF THE UPDATED TERMS OF THE AGREEMENT. NOTWITHSTANDING THE FOREGOING, IF REGISTRANT PROMPTLY OBJECTS TO AN UPDATE IN WRITING, THIS AGREEMENT SHALL TERMINATE IN THIRTY (30) DAYS FOLLOWING SUCH NOTICE AND THE TERMS OF THE PRIOR AGREEMENT SHALL APPLY UNTIL SUCH TERMINATION.**
- 22) **Governing Law, Venue, and Claims.** This Agreement will be construed and enforced in accordance with the laws of the State of New York without giving effect to its choice of law provisions. Any action related to this Agreement, must be brought in a court of competent jurisdiction in Monroe County, New York, and the prevailing party will be entitled to recover its reasonable attorney fees and costs. Any claims arising under or related to this Agreement must be brought in the initiating party's individual capacity and not as a plaintiff or class member in any class action or similar proceeding. Immersitech operates out of the United States. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Terms of Use or any Related Documents. If Registrant uses the Services outside of the United States, Registrant is responsible for complying with applicable local law(s).
- 23) **Entire Agreement; Order of Precedence; Changes.**
- a) This Agreement, including any Related Document referred to herein, constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations, or communications relating to the subject matter. Subject to Section 14, Disclaimer, and Section 22, Governing Law and Venue, in the event of a conflict or ambiguity between the terms of this Agreement and any Related Document (including, but not limited to, terms of use or terms and conditions of websites of Immersitech, campaign offers, statements of work, purchase orders, invoices and the like, each an "**Other Terms**"), the terms of this Agreement will prevail over such Other Terms except to the extent that such Other Terms both specifically references the conflicting section of this Agreement and is signed by an authorized signatory of each party.
 - b) Both parties acknowledge that they have not been induced to enter into this Agreement by any

representations or promises not specifically stated herein.

- 24) **Notices.** All notices required or permitted to be given under this Agreement ("**Notices**") shall be in writing, reference this Agreement, and be addressed, if to Immersitech, to: Immersitech, Inc., 1163 Pittsford Victor Rd., Suite 200 Pittsford, NY 14534 Attention: Legal. E-mail: legal@immersitech.io or to such other address that Immersitech provides by notice as required by this Section or through a modification made in accordance with Section 21, Waiver and Modification. If a Notice is to be addressed to Registrant, it shall be in writing and addressed to the address or e-mail address specified as part of the Registration, or to such other address that Registrant provides by notice as required by this Section. All Notices shall be delivered by (i) U.S. Mail, return receipt requested, (ii) a nationally recognized overnight delivery service, or (iii) e-mail, return receipt requested. Notices shall be deemed delivered when received, as evidenced by a proof of delivery receipt. Notwithstanding the foregoing, Registrant agrees to accept Notices delivered by e-mail, whether or not a return receipt is requested, as long as the Notices are sent to the e-mail address provided by Registrant during Registration. Registrant agrees to notify Immersitech of any changes to its e-mail address.
- 25) **Independent Contractors.** Each party is an independent contractor under this Agreement, and it is not the intention of either party to undertake a joint venture or to make either party in any sense an agent, employee, or partner of the other. Neither party has the authority to enter into an agreement of any kind on behalf of the other.
- 26) **Survival.** The provisions concerning confidentiality, fees, indemnification, representations and warranties, limitation of liability, taxes, governing law, and any other provision which by its nature is intended to survive expiration or termination, shall survive the expiration or termination of this Agreement.
- 27) **Services Availability; Customer Services.**
- a) Subject to the terms of this Agreement, Immersitech will use reasonable efforts to provide the Services subject to maintenance downtimes but Immersitech shall not be responsible for any disruption to the Services. Immersitech may schedule system downtime from time to time and unplanned system outages may occur. Immersitech shall have no liability for the resulting unavailability of or disruption to the Services, for any delay, misdelivery, or non-delivery of Services caused by downtimes or system outages, or for any third party acts or outages of third-party providers.
 - b) For all customer service inquiries, Registrant may contact Immersitech at the following email address: support@immersitech.io
 - c) **Privacy Policy.** Immersitech's privacy policy can be found at https://immersitech.io/legal/privacy_policy, or at another link if so identified by the Services. Immersitech provides Services subject to its privacy policy.
- 28) **Attribution.** For Services under this Agreement, attribution will be defined in subsequent Supplements and/or Order Forms. Attribution means that, whenever Services are deployed within a Registrants Application, attribution to Immersitech may be displayed or published in the associated Application documentation. Each instance of attribution may include the name "Immersitech" and, if the design of the documentation reasonably permits, such attribution may be expanded to say "Powered by Immersitech Engage™".