

**THIS IS A LEGAL AGREEMENT (“AGREEMENT”) BETWEEN YOU AND PASSIO INC. (“PASSIO”, “COMPANY”, “WE” AND “US”) STATING THE TERMS THAT GOVERN YOUR USE OF PASSIO SERVICES (DEFINED BELOW). THESE TERMS INCLUDE A CLASS ACTION WAIVER AND RESOLUTION OF DISPUTES BY ARBITRATION INSTEAD OF BY A COURT PROCEEDING. BY USING THE SERVICES, YOU ARE AGREEING TO BE LEGALLY BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE FOLLOWING, YOU MAY NOT USE OR ACCESS THE SERVICES IN ANY MANNER.**

## **Terms of Service**

Last Revision: Dec 3, 2018

Welcome to Passio! This Agreement is Passio’s Terms of Service (“Terms of Service” or “Terms of Use”) and it covers your use of Passio’s websites, including [www.passiolife.com](http://www.passiolife.com) (“Site”), demonstration applications (“Applications”), SDKs (“SDK” or “SDKs”), APIs (“API” or “APIs”), user accounts created by you to access Passio’s Services, documentation, any other software owned or developed by Passio, updates, upgrades, technical support and anything else made available to you by Passio (collectively, “Service” or “Services”).

By accessing or using the Service, you signify that you have read, understood and agree to be bound by these Terms of Service and to the collection and use of your information as set forth in this Agreement and in Passio’s Privacy Policy, regardless of whether or not you are a registered user. If you have any questions, comments, or concerns regarding these terms or the Services, please contact us at [support@passiolife.com](mailto:support@passiolife.com).

These Terms of Use are a binding contract between you and Passio. You must agree to and accept all of the Terms, or you don’t have the right to use the Services. Your using the Services in any way means that you agree to all of these Terms of Use, and these Terms of Use will remain in effect while you use the Services. These Terms of Use include the provisions in this document, as well as those in the Privacy Policy.

### **Will these Terms ever change?**

We are constantly trying to improve our Services, so these Terms may need to change along with the Services. We reserve the right to change the Terms at any time, but if we do, we will bring it to your attention by placing a notice on the [www.passiolife.com](http://www.passiolife.com) website, or by sending you an email, and/or by some other means.

If you don’t agree with the new Terms, you are free to reject them; unfortunately, that means you will no longer be able to use the Services. If you use the Services in any way after a change to the Terms is effective, that means you agree to all of the changes.

Except for changes by us as described here, no other amendment or modification of these Terms will be effective unless in writing and signed by both you and us.

### **What about my privacy?**

The Company takes the privacy of its users very seriously. For the current Privacy Policy, please click here: <https://www.passiolife.com/privacy>.

The Children’s Online Privacy Protection Act (“COPPA”) requires that online service providers obtain parental consent before they knowingly collect personally identifiable information online from children who are under 13. Our Services are not directed to children younger than the age of 13, and access and use of our Services is offered only to users 13 years of age or older. If you are not 13 years old or older, you cannot use the Service. If we learn we have collected personal information from a child under 13, we will delete that

information as quickly as possible. If you believe that a child under 13 may have provided us personal information, please contact us at [support@passiolife.com](mailto:support@passiolife.com).

### **What are the basics of using our Services?**

To access certain parts of the Service you may be required to sign up for an account, and select a password and user name ("Company User ID"). You promise to provide us with accurate, complete, and updated registration information about yourself. You may not select as your Company User ID a name that you don't have the right to use, or another person's name with the intent to impersonate that person. You may not transfer your account to anyone else without our prior written permission.

You will not share your account or password with anyone, and you must protect the security of your account and your password. You're responsible for any activity associated with your account.

You represent and warrant that you are of legal age to form a binding contract (or if not, you've received your parent's or guardian's permission to use the Services and gotten your parent or guardian to agree to these Terms on your behalf). If you're agreeing to these Terms on behalf of an organization or entity, you represent and warrant that you are authorized to agree to these Terms on that organization or entity's behalf and bind them to these Terms (in which case, the references to "you" and "your" in these Terms, except for in this sentence, refer to that organization or entity).

You will only use the Services for your own internal, non-commercial use to gather information about Company and Company's present and future products as well as to evaluate Company's technology and products as permitted by the features of the Service. Company reserves all rights not expressly granted herein in the Service and the Content (as defined below). You will only use the Services in a manner that complies with all laws that apply to you. If your use of the Services is prohibited by applicable laws, then you aren't authorized to use the Services. We can't and won't be responsible for your using the Services in a way that breaks the law.

If the Service provides professional information, such information is for informational purposes only and should not be construed as a professional advice. No action should be taken based upon any information contained in the Site. You should seek independent professional advice from a person who is licensed and/or qualified in the applicable area. Furthermore, you acknowledge that the information provided through the Service may, and in many cases does represent opinions and forward-looking statements and that you should not take actions based upon any information contained in the Site without conducting due diligence and seeking independent professional advice from a person who is licensed and/or qualified in the applicable area.

All information provided by the Applications and SDKs is for information and demonstration purposes only and should not be construed as professional, medical or any other form of advice. No action should be taken based upon any information you collect via the Service, including Applications provided by Company. You acknowledge that the information provided by the Service may be derived from machine learning algorithms and therefore is not guaranteed to be accurate. You acknowledge that the information presented in the Applications is provided there for technology demonstration purposes only and that you should not take actions based upon any information contained in the Applications.

### **Your use of the Services is subject to the following additional restrictions:**

You represent, warrant, and agree that you will not contribute any Content or User Submission (each of those terms is defined below) or otherwise use the Services or interact with the Services in a manner that:

- (a) Infringes or violates the intellectual property rights or any other rights of anyone else (including the Company);
- (b) Violates any law or regulation, including any applicable export control laws;
- (c) Is harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable;
- (d) Jeopardizes the security of your account or anyone else's (such as allowing someone else to log in to the Services as you);
- (e) Attempts, in any manner, to obtain the password, account, or other security information from any other user;
- (f) Violates the security of any computer network, or cracks any passwords or security encryption codes;
- (g) Runs Maillist, Listserv, any form of auto-responder or "spam" on the Services, or any processes that run or are activated while you are not logged into the Services, or that otherwise interfere with the proper working of the Services (including by placing an unreasonable load on the Services' infrastructure);
- (h) "Crawls", "scrapes", or "spiders" any page, data, or portion of or relating to the Services or Content through use of manual or automated means (except that Company grants the operators of public search engines revocable permission to use spiders to copy publicly available materials from passiolife.com 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);
- (i) Copies or stores any significant portion of the Content;
- (j) Decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services.

A violation of any of the foregoing is grounds for termination of your right to use or access the Services.

### **Are your Services secure?**

The Company uses commercially reasonable physical, operational and technical safeguards to protect the security of the Site and your information, if you create an account or submit any information to the site. However, we cannot guarantee that unauthorized third parties will never be able to defeat our security measures or use your personal information for improper purposes. You acknowledge that you provide your personal information and share the Content at your own risk. You further acknowledge that the Site may be hosted on a third-party platform such as Wix.com and that the Company does not have control and is not responsible for the security measures and practices of the third-party hosting service. Furthermore, you acknowledge that user information, such as your login credential, account information and Content may be hosted on a third-party platform such as Google's Firebase and Google Cloud Platform and the Company does not have control and is not responsible for the security measures and practices of the third-party hosting service.

### **What are my rights in using [www.passiolife.com](http://www.passiolife.com) and Passio's Services?**

The materials displayed or available on or through the Services, including, but not limited to, text, graphics, data, articles, photos, images, illustrations, User Submissions, and so forth (all of the foregoing, the "Content") are protected by copyright and/or other intellectual property laws. You promise to abide by all copyright notices, trademark rules, information, and restrictions contained in any Content you access through the

Services, and you won't use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell or otherwise exploit for any purpose any Content not owned by you, (i) without the prior consent of the owner of that Content or (ii) in a way that violates someone else's (including Passio Inc.'s) rights.

You understand that Company owns the Services. You won't modify, publish, transmit, participate in the transfer or sale of, reproduce (except as expressly provided in this Section), create derivative works based on, or otherwise exploit any of the Services.

You acknowledge that this Agreement grants your rights to use Passio's APIs, SDKs, and other software developed and owned by Passio for evaluation, information and testing purposes only and does not allow you to use Passio's APIs, SDKs, and other software developed and owned by Passio in commercial applications. Any commercial use of the Service is prohibited under this agreement and requires a separate agreement between you and Company.

The Services may allow you to copy or download certain Content; please remember that just because this functionality exists, doesn't mean that all the restrictions above don't apply – they do!

### **Do I have to grant any licenses to Company or to other users?**

Anything you post, upload, share, store, or otherwise provide through the Services is your User Submission ("User Submission" or "User Submissions"). Please note that in order to use the Service you grant Company certain licenses and that all of the following licenses are subject to our Privacy Policy (<https://www.passiolife.com/privacy>) to the extent they relate to User Submissions that may also contain your personally-identifiable information.

For all User Submissions, you hereby grant Company a license to translate, modify and reproduce and otherwise act with respect to such User Submissions, in each case to enable us to operate the Services, as described in more detail below. Furthermore you grant Company a license to use User Submission for the purposes of improving the Service, such as for training Company's machine learning systems. This is a license only – your ownership in User Submissions is not affected.

If you store a User Submission in your own personal Company account, in a manner that is not viewable by any other user except you (a "Personal User Submission"), you grant Company the license above, as well as a license to display, perform, and distribute your Personal User Submission for the sole purpose of making that Personal User Submission accessible to you and providing the Services necessary to do so.

If you share a User Submission only in a manner that only certain specified users can view (for example, a private message to one or more other users)(a "Limited Audience User Submission"), then you grant Company the licenses above, as well as a license to display, perform, and distribute your Limited Audience User Submission for the sole purpose of making that Limited Audience User Submission accessible to such other specified users, and providing the Services necessary to do so. Also, you grant such other specified users a license to access that Limited Audience User Submission, and to use and exercise all rights in it, as permitted by the functionality of the Services.

If you share a User Submission publicly on the Services and/or in a manner that more than just you or certain specified users can view, or if you provide us (in a direct email, survey form or otherwise) with any feedback, suggestions, improvements, enhancements, and/or feature requests relating to the Services ("Public User Submission"), then you grant Company the licenses above, as well as a license to display, perform, and distribute your Public User Submission for the purpose of making that Public User Submission accessible to all Company users and providing the Services necessary to do so, as well as all other rights necessary to use and exercise all rights in that Public User Submission in connection with the Services and/or otherwise in

connection with Company's business for any purpose. Also, you grant all other users of the Services a license to access that Public User Submission, and to use and exercise all rights in it, as permitted by the functionality of the Services.

You agree that the licenses you grant are royalty-free, perpetual, sub-licensable, irrevocable, transferable and worldwide, provided that when you delete your Company account, we will stop displaying your User Submissions to other users (if applicable), but you understand and agree that it may not be possible to completely delete that content from Company's records, and that your User Submissions may remain viewable elsewhere to the extent that they were copied or stored by other users.

You acknowledge that any images and voice samples you upload via Service (including Applications, SDKs and Site) are subject to the preceding paragraph and that Company is likely to use the images and videos collected from you in training and improving Company's computer vision and recognition technology. You further acknowledge that any content you upload and share through the Service may be used for improving Company's technology, including the use of your User Submissions for training neural networks.

If you delete User Submissions from the Service, Passio will use reasonable efforts to remove it from our Services and backend systems, however, in many cases such removal may not be possible. You acknowledge that cached information, references to the Content or backups automatically created by Company's cloud services provider (currently Google Cloud Platform) may not be made immediately unavailable.

Passio reserves the right (though not the obligation) to delete any User Submissions that, in Passio's opinion, violates any of the Company policies or is in any way harmful or objectionable. Furthermore, Passio reserves the right to terminate or deny access to and use of our Services to any individual or entity for any reason.

Finally, you understand and agree that Company, in performing the required technical steps to provide the Services to our users (including you), may need to make changes to your User Submissions to conform and adapt those User Submissions to the technical requirements of connection networks, devices, services, or media, and the foregoing licenses include the rights to do so.

### **What if I see something on the Services that infringes my copyright?**

You may have heard of the Digital Millennium Copyright Act (the "DMCA"), as it relates to online service providers, like Company, being asked to remove material that allegedly violates someone's copyright. We respect others' intellectual property rights, and we reserve the right to delete or disable Content alleged to be infringing, and to terminate the accounts of repeat alleged infringers; to learn how to report potentially infringing content, click here: <https://www.passiolife.com/copyright>. To learn more about the DMCA, click [here](#).

### **Who is responsible for what I see and do on the Services?**

Any information or content publicly posted or privately transmitted through the Services is the sole responsibility of the person from whom such content originated, and you access all such information and content at your own risk, and we aren't liable for any errors or omissions in that information or content or for any damages or loss you might suffer in connection with it. We cannot control and have no duty to take any action regarding how you may interpret and use the Content or what actions you may take as a result of having been exposed to the Content, and you hereby release us from all liability for you having acquired or not acquired Content through the Services. We can't guarantee the identity of any users with whom you interact in using the Services and are not responsible for which users gain access to the Services.

You are responsible for all Content you contribute, in any manner, to the Services, and you represent and warrant you have all rights necessary to do so, in the manner in which you contribute it. You will keep all your registration information accurate and current. You are responsible for all your activity in connection with the Services.

The Services may contain links or connections to third party websites or services that are not owned or controlled by Company. When you access third party websites or use third party services, you accept that there are risks in doing so, and that Company is not responsible for such risks. We encourage you to be aware when you leave the Services and to read the terms and conditions and privacy policy of each third party website or service that you visit or utilize.

Company has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any third party websites or by any third party that you interact with through the Services. In addition, Company will not and cannot monitor, verify, censor or edit the content of any third party site or service. By using the Services, you release and hold us harmless from any and all liability arising from your use of any third party website or service.

If there is a dispute between participants on this site, or between users and any third party, you agree that Company is under no obligation to become involved. In the event that you have a dispute with one or more other users, you release Company, its officers, employees, agents, and successors from claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and/or our Services. If you are a California resident, you shall and hereby do waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her must have materially affected his or her settlement with the debtor."

### **Will Company ever change the Services?**

We're always trying to improve the Services, so they may change over time. We may suspend or discontinue any part of the Services, or we may introduce new features or impose limits on certain features or restrict access to parts or all of the Services. We'll try to give you notice when we make a material change to the Services that would adversely affect you, but this isn't always practical. Similarly, we reserve the right to remove any Content from the Services at any time, for any reason (including, but not limited to, if someone alleges you contributed that Content in violation of these Terms), in our sole discretion, and without notice.

### **Do the Services cost anything?**

The Company Services covered under this Agreement are currently free, but we reserve the right to charge for certain or all Services in the future. We will notify you before any Services you are then using begin carrying a fee, and if you wish to continue using such Services, you must pay all applicable fees for such Services. All commercial uses of the Services require a separate Agreement between you and Company.

### **What if I want to stop using the Service?**

You're free to do that at any time, by contacting us at [support@passiolife.com](mailto:support@passiolife.com). Please refer to our Privacy Policy, as well as the licenses above, to understand how we treat information you provide to us after you have stopped using our Services.

Company is also free to terminate (or suspend access to) your use of the Services or your account, for any reason in our discretion, including your breach of these Terms. Company has the sole right to decide whether you are in violation of any of the restrictions set forth in these Terms.

Provisions that, by their nature, should survive termination of these Terms shall survive termination. By way of example, all of the following will survive termination: any obligation you have to pay us or indemnify us, any limitations on our liability, any terms regarding ownership or intellectual property rights, and terms regarding disputes between us.



### **I use the Applications available via the Apple's TestFlight – should I know anything about that?**

These Terms apply to your use of all the Services, including any Applications made available to you by Passio via the Apple, Inc. ("Apple") App Store or TestFlight (the "Applications"), but the following additional terms also apply to the Application:

- (a) Both you and Company acknowledge that the Terms are concluded between you and Company only, and not with Apple, and that Apple is not responsible for the Application or the Content;
- (b) The Application is licensed to you on a limited, non-exclusive, non-transferrable, non-sublicensable basis, solely to be used in connection with the Services for your private, personal, non-commercial use, subject to all the terms and conditions of these Terms as they are applicable to the Services;
- (c) You will only use the Application in connection with an Apple device that you own or control;
- (d) You acknowledge and agree that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Application;
- (e) In the event of any failure of the Application to conform to any applicable warranty, including those implied by law, you may notify Apple of such failure; upon notification, Apple's sole warranty obligation to you will be to refund to you the purchase price, if any, of the Application;
- (f) You acknowledge and agree that Company, and not Apple, is responsible for addressing any claims you or any third party may have in relation to the Application;
- (g) You acknowledge and agree that, in the event of any third party claim that the Application or your possession and use of the Application infringes that third party's intellectual property rights, Company, and not Apple, will be responsible for the investigation, defense, settlement and discharge of any such infringement claim;
- (h) You represent and warrant that you are not located in a country subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and that you are not listed on any U.S. Government list of prohibited or restricted parties;
- (i) Both you and Company acknowledge and agree that, in your use of the Application, you will comply with any applicable third party terms of agreement which may affect or be affected by such use; and
- (j) Both you and Company acknowledge and agree that Apple and Apple's subsidiaries are third party beneficiaries of these Terms, and that upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as the third party beneficiary hereof.

### **What else do I need to know?**

**Warranty Disclaimer.** Neither Company nor its licensors or suppliers makes any representations or warranties concerning any content contained in or accessed through the Services, and we will not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in or accessed through the Services. Furthermore, by using the Service you acknowledge that the Content may, and in many cases does, represent opinions and forward-looking statements and that the Company is not responsible for your actions based on the Content you obtain through the Service. We (and our licensors and

suppliers) make no representations or warranties regarding suggestions or recommendations of services or products offered or purchased through the Services. Products and services purchased or offered (whether or not following such recommendations and suggestions) through the Services are provided "AS IS" and without any warranty of any kind from Company or others (unless, with respect to such others only, provided expressly and unambiguously in writing by a designated third party for a specific product).

THE SERVICES AND CONTENT ARE PROVIDED BY COMPANY (AND ITS LICENSORS AND SUPPLIERS) ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. YOU FURTHER ACKNOWLEDGE THAT SOME OF THE SERVICES AND TECHNOLOGY DEMONSTRATIONS PROVIDED TO YOU BY COMPANY MAY BE PRELIMINARY AND EXPERIMENTAL. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

**Limitation of Liability.** TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL COMPANY (OR ITS LICENSORS OR SUPPLIERS) BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, OR (B) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF THE GREATER OF (I) \$100 OR (II) THE AMOUNTS PAID BY YOU TO COMPANY IN CONNECTION WITH THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THIS APPLICABLE CLAIM, OR (C) ANY MATTER BEYOND OUR REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

**Indemnity.** To the fullest extent allowed by applicable law, you agree to indemnify and hold Company, its affiliates, officers, agents, employees, and partners harmless from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys' fees) arising from or in any way related to any third party claims relating to (a) your use of the Services (including any actions taken by a third party using your account), and (b) your violation of these Terms.

**Assignment.** You may not assign, delegate or transfer these Terms or your rights or obligations hereunder, or your Services account, in any way (by operation of law or otherwise) without Company's prior written consent. We may transfer, assign, or delegate these Terms and our rights and obligations without consent.

**Choice of Law and Arbitration.** These Terms are governed by and will be construed under the laws of the State of California, without regard to the conflicts of laws provisions thereof. Any dispute arising from or relating to the subject matter of these Terms shall be finally settled in San Francisco County, California, in English, in accordance with the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction. For all purposes of these Terms, the parties consent to exclusive jurisdiction and venue in the state or federal courts located in, respectively, San Francisco County, California, or the Northern District of California. Any arbitration under these Terms will take place on an individual basis: class arbitrations and class actions are not permitted.



YOU UNDERSTAND AND AGREE THAT BY ENTERING INTO THESE TERMS, YOU AND COMPANY ARE EACH WAIVING THE RIGHT TO TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

***Miscellaneous.*** You will be responsible for paying, withholding, filing, and reporting all taxes, duties, and other governmental assessments associated with your activity in connection with the Services, provided that the Company may, in its sole discretion, do any of the foregoing on your behalf or for itself as it sees fit. The failure of either you or us to exercise, in any way, any right herein shall not be deemed a waiver of any further rights hereunder. If any provision of these Terms is found to be unenforceable or invalid, that provision will be limited or eliminated, to the minimum extent necessary, so that these Terms shall otherwise remain in full force and effect and enforceable. You and Company agree that these Terms are the complete and exclusive statement of the mutual understanding between you and Company, and that it supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of these Terms. You hereby acknowledge and agree that you are not an employee, agent, partner, or joint venture of Company, and you do not have any authority of any kind to bind Company in any respect whatsoever.