

# Foveate - Terms of Service

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Welcome to the Terms of Service (these “**Terms**”) for the website, <https://foveate.com> (the “**Website**”), and the related web applications <https://app.foveate.com> (the “**App**”) operated on behalf of Third Axis, LLC dba Foveate. (“**Company**”, “**we**” or “**us**”). The Website and any content, tools, services, features and functionality offered on or through our Website and the App are collectively referred to as the “**Services**”.

These Terms govern your access to and use of the Services. Please read these Terms carefully, as they include important information about your legal rights. By accessing and/or using the Services, you are agreeing to these Terms. If you do not understand or agree to these Terms, please do not use the Services.

For purposes of these Terms, “**you**” and “**your**” means you as the user of the Services. If you use the Services on behalf of a company or other entity then “you” includes you and that entity, and you represent and warrant that (a) you are an authorized representative of the entity with the authority to bind the entity to these Terms, (b) such entity is responsible for any breach of these Terms by any of its representatives, and (c) you agree to these Terms on the entity’s behalf.

SECTION 9 CONTAINS AN ARBITRATION CLAUSE AND CLASS ACTION WAIVER. BY AGREEING TO THESE TERMS, YOU AGREE (A) TO RESOLVE ALL DISPUTES (WITH LIMITED EXCEPTION) RELATED TO THE COMPANY’S SERVICES AND/OR PRODUCTS THROUGH BINDING INDIVIDUAL ARBITRATION, WHICH MEANS THAT YOU WAIVE ANY RIGHT TO HAVE THOSE DISPUTES DECIDED BY A JUDGE OR JURY, AND (B) TO WAIVE YOUR RIGHT TO PARTICIPATE IN CLASS ACTIONS, CLASS ARBITRATIONS, OR REPRESENTATIVE ACTIONS, AS SET FORTH BELOW. YOU HAVE THE RIGHT TO OPT-OUT OF THE ARBITRATION CLAUSE AND THE CLASS ACTION WAIVER AS EXPLAINED IN SECTION 9.

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## 1. Overview

The Services enable users to create, access, and edit 3D Presentations ("**Presentations**") by uploading 3D, 2D, and Audio assets.

## 2. User Accounts, Subscriptions and Free Trials

- 2.1 [Creating and Safeguarding your Account](#). To use the Services, you may need to create an account or link an existing account you have with another service such as Apple or Google ("**Account**"). You agree to provide us with accurate, complete and updated information for your Account. You are solely responsible for any activity on your Account and for maintaining the confidentiality and security of your password. We are not liable for any acts or omissions by you in connection with your Account. You must immediately notify us if you know or have any reason to suspect that your Account or password have been stolen, misappropriated or otherwise compromised, or in case of any actual or suspected unauthorized use of your Account. You agree not to create any Account if we have previously removed your Account, or we previously banned you from any of our Services, unless we provide written consent otherwise.
- 2.2 **Authorized Users**. If you sign up to use the Services on behalf of your organization, we may authorize you to allow employees, contractors and other personnel associated with you or your company to access the Services on your or your company's behalf (an "**Authorized User**"). You are responsible for all use of the Services by any such Authorized Users.
- 2.3 [Subscription Payment](#). If you buy or subscribe to any of our paid Services, you agree to pay us the applicable fees and taxes in U.S. Dollars. Failure to pay these fees and taxes will result in the termination of your access to the paid Services. You agree that (a) if you purchase a recurring subscription to any of the Services, we may store and continue billing your payment method (e.g. credit card) to avoid interruption of such Services, and (b) we may calculate taxes payable by you based on the billing information that you provide us at the time of purchase. We reserve the right to change our subscription plans or adjust pricing for the Services in any manner and at any time as we may determine in our sole and absolute

discretion. Except as otherwise provided in these Terms, any price changes or changes to your subscription plan will take effect following reasonable notice to you. All subscriptions are payable in accordance with payment terms in effect at the time the subscription becomes payable. Payment can be made by credit card, debit card, or other means that we may make available. Subscriptions will not be processed until payment has been received in full, and any holds on your account by any other payment processor are solely your responsibility.

**2.4 Subscription Renewals and Cancellations. You agree that if you purchase a subscription, your subscription will automatically renew at the subscription period frequency referenced on your subscription page and at the then-current rates, and your payment method will automatically be charged at the start of each new subscription period for the fees and taxes applicable to that period. To avoid future subscription charges, you must cancel your subscription no later than 5 days before the subscription period renewal date.**

**2.5 No Subscription Refunds. Except as expressly set forth in these Terms, payments for any subscriptions to the Services are nonrefundable and there are no credits for partially used periods. Following any cancellation by you, however, you will continue to have access to the paid Services through the end of the subscription period for which payment has already been made.**

**2.6 Free Trials. You can sign up for a trial Account for the paid portion of the Services and your trial period starts on the day you create the trial Account and lasts for the duration indicated on your free trial confirmation email. If you are on a trial, you may cancel at any time until the last day of your trial by following the cancellation procedures outlined in Section 2.4 above. **If you do not cancel your trial Account at the end of your free trial period, and we have notified you that your Account will be converted to a paid subscription at the end of the free trial period, you authorize us to charge your credit card or other designated billing method for continued use of the paid Services. You may, however, then cancel your subscription in accordance with Section 2.4 of these Terms. If you cancel your trial Account or decide not to purchase a paid version of the Services at the end of your trial period, your content or data associated with your trial Account will no longer be available to you, and the Company may delete or remove any such content or data.****

### **3. Orders for Products and Services**

**3.1 Order Form. If applicable, you and Company may agree to use the Services by entering into one or more order forms ("**Order Forms**"). The terms of the Order Form are incorporated by reference into these Terms, provided that in the event of a conflict, the terms of the Order Form will supersede and control.**

3.2 Payment. We may charge you a fee for use of certain portions of the Services such as specific products or services offered therein ("**Offerings**"), as agreed upon between you and Company from time to time. You acknowledge and agree that all information you provide with regards to a purchase of Offerings, including, without limitation, credit card, PayPal, or other payment information, is accurate, current and complete. You represent and warrant that you have the legal right to use the payment method you provide to us or our payment processor, including, without limitation, any credit card you provide when completing a transaction. We reserve the right, with or without prior notice and in our sole and complete discretion, to (a) discontinue, modify, or limit the available quantity of, any Offerings, and (b) refuse to allow any user to purchase any Offering or deliver such Offerings to a user or a user-designated address. When you purchase Offerings, you (i) agree to pay the price for such Offerings as set forth in the applicable Service, and all applicable taxes in connection with your purchase (the "**Full Purchase Amount**"), and (ii) authorize us to charge your credit card or other payment method for the Full Purchase Amount. Unless otherwise noted, all currency references are in U.S. Dollars. All fees and charges are payable in accordance with payment terms in effect at the time the fee or the charge becomes payable.

## 4. Location of Our Privacy Policy

4.1 Privacy Policy. Our Privacy Policy describes how we handle the information you provide to us when you use the Services. For an explanation of our privacy practices, please visit our Privacy Policy located at <https://foveate.com/privacy>.

## 5. Rights We Grant You

5.1 Right to Use Services. We hereby permit you to use the Services for your internal use only provided that you comply with these Terms in connection with all such use. If any software, content or other materials owned or controlled by us are distributed to you as part of your use of the Services, we hereby grant you, a personal, non-assignable, non-sublicensable, non-transferrable, and non-exclusive right and license to access and display such software, content and materials provided to you as part of the Services, in each case for the sole purpose of enabling you to use the Services as permitted by these Terms. Your access and use of the Services may be interrupted from time to time for any of several reasons, including, without limitation, the malfunction of equipment, periodic updating, maintenance or repair of the Service or other actions that Company, in its sole discretion, may elect to take.

5.2 Public Use of the Services or Presentations. You must obtain Company's prior written consent (which may be conditioned on your execution of a separate services agreement) in order to integrate the Services with any other app, product or service, such as to facilitate the collection of Presentations via your own app, product or service. You may not display or facilitate access to any of our Services in a manner that could reasonably be expected to mislead any other person that the Services are provided or developed by anyone else other than the Company. Notwithstanding the foregoing, you may copy, modify, publish, distribute, sublicense, commercialize, or otherwise use any Presentations you generate using the Services, provided that you provide attribution to the Company for any public display of any such Presentations.

5.3 Restrictions On Your Use of the Services. You may not do any of the following in connection with your use of the Services, unless applicable laws or regulations prohibit these restrictions or you have our written permission to do so:

- (a) download, modify, copy, distribute, transmit, display, perform, reproduce, duplicate, publish, license, create derivative works from, or offer for sale any information contained on, or obtained from or through, the Services, except for temporary files that are automatically cached by your web browser for display purposes, or as otherwise expressly permitted in these Terms;
- (b) create Presentations of persons or objects in a manner that violates or infringes the intellectual property, privacy or other rights of any other person or entity;
- (c) duplicate, decompile, reverse engineer, disassemble or decode the Services (including any underlying idea or algorithm), or attempt to do any of the same;
- (d) use, reproduce or remove any copyright, trademark, service mark, trade name, slogan, logo, image, or other proprietary notation displayed on or through the Services;
- (e) access or use the Services in any manner that could disable, overburden, damage, disrupt or impair the Services or interfere with any other party's access to or use of the Services or use any device, software or routine that causes the same;
- (f) attempt to gain unauthorized access to, interfere with, damage or disrupt the Services, accounts registered to other users, or the computer systems or networks connected to the Services;
- (g) circumvent, remove, alter, deactivate, degrade or thwart any technological measure or content protections of the Services;

- (h) use any robot, spider, crawlers, scraper, or other automatic device, process, software or queries that intercepts, "mines," scrapes, extracts, or otherwise accesses the Services to monitor, extract, copy or collect information or data from or through the Services, or engage in any manual process to do the same;
- (i) introduce any viruses, trojan horses, worms, logic bombs or other materials that are malicious or technologically harmful into our systems;
- (j) submit, transmit, display, perform, post or store any content or otherwise use the Services for illegal, harassing, bullying, unethical or disruptive purposes, or in a manner that is inaccurate, unlawful, defamatory, obscene, vulgar, lewd, lascivious, filthy, excessively violent, harassing, harmful, hateful, cruel or insensitive, deceptive, threatening, abusive, inflammatory, pornographic, invasive of privacy or publicity rights, inciting, organizing, promoting or facilitating violence or criminal or harmful activities, or otherwise objectionable;
- (k) violate any applicable law or regulation in connection with your access to or use of the Services; or
- (l) access or use the Services in any way not expressly permitted by these Terms.

**5.4 Use of the App.** You are responsible for providing the mobile device, wireless service plan, software, Internet connections and/or other equipment or services that you need to use the App. We do not guarantee that the App can be accessed and used on any particular device or with any particular service plan. We do not guarantee that the App or Services will be available in any particular geographic location. As part of the Services and to update you regarding the status of deliveries, you may receive push notifications, local client notifications, text messages, picture messages, alerts, emails or other types of messages directly sent to you in connection with the App ("**Push Messages**"). You acknowledge that, when you use the App, your wireless service provider may charge you fees for data, text messaging and/or other wireless access, including in connection with Push Messages. You have control over the Push Messages settings, and can opt in or out of these Push Messages through the Services or through your mobile device's operating system (with the possible exception of infrequent, important service announcements and administrative messages). Please check with your wireless service provider to determine what fees apply to your access to and use of the App, including your receipt of Push Messages from the Company. You are solely responsible for any fee, cost or expense that you incur to download, install and/or use the App on your mobile device, including for your receipt of push messages from the Company.

## 6. Ownership and Content

- 6.1 Ownership of the Services. The Services, including their “look and feel” (e.g., text, graphics, images, logos), proprietary content, information and other materials, are protected under copyright, trademark and other intellectual property laws. You agree that the Company and/or its licensors own all right, title and interest in and to the Services (including any and all intellectual property rights therein) and you agree not to take any action(s) inconsistent with such ownership interests. We and our licensors reserve all rights in connection with the Services and its content (other than Your Content), including, without limitation, the exclusive right to create derivative works, except as set forth in Section 5.2.
- 6.2 Ownership of Trademarks. The Company’s name, the Company’s logo and all related names, logos, product and service names, designs and slogans are trademarks of the Company or its affiliates or licensors. Other names, logos, product and service names, designs and slogans that appear on the Services are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by us.
- 6.3 Ownership of Feedback. We welcome feedback, comments and suggestions for improvements to the Services (“**Feedback**”). You acknowledge and expressly agree that any contribution of Feedback does not and will not give or grant you any right, title or interest in the Services or in any such Feedback. All Feedback becomes the sole and exclusive property of the Company, and the Company may use and disclose Feedback in any manner and for any purpose whatsoever without further notice or compensation to you and without retention by you of any proprietary or other right or claim. You hereby assign to the Company any and all right, title and interest (including, but not limited to, any patent, copyright, trade secret, trademark, show-how, know-how, moral rights and any and all other intellectual property right) that you may have in and to any and all Feedback.
- 6.4 Your Content. In connection with your use of the Services, you may be able to create Presentations or post, upload, or submit your own content through the Services (collectively, “**Your Content**”). We and/or our licensors own all right, title and interest in and to any pre-existing intellectual property rights under any software or other technology used to develop any Presentations (“**Underlying Technology**”). You own any Presentations or other elements of Your Content that you create or submit in connection with your use of the Services, subject to our rights in any Underlying Technology therein. We grant you a limited, nonexclusive license, to use such Underlying Technology in connection with your use of the Presentations as permitted herein.
- 6.5 Your Content License Grant. In order to operate the Service, we must obtain from you certain license rights in Your Content so that actions we take in operating the Service are not considered legal violations. Accordingly, by using the Service and generating or uploading Your Content, you grant us a license to access, use, host, cache, store, reproduce, transmit, display, publish, distribute, and modify (for technical purposes, e.g., making sure content is viewable on smartphones as well as computers and other devices) Your Content but solely as required to be able to improve, develop, operate and provide

the Services; provided that we will only use Your Content that you designate privately for non-public display on the Services ("Private Content") to operate and provide the Services. You agree that these rights and licenses are royalty free, transferable, sub-licensable, worldwide and irrevocable (for so long as Your Content is stored with us), and include a right for us to make Your Content available to, and pass these rights along to, others with whom we have contractual relationships related to the provision of the Services, solely for the purpose of providing such Services, and to otherwise permit access to or disclose Your Content to third parties if we determine such access is necessary to comply with our legal obligations. As part of the foregoing license grant you agree that other users of the Services may be able to comment on and/or tag Your Content (but not Private Content unless you permit) and/or to use, publish, display, modify or include a copy of Your Content (but not Private Content unless you permit) as part of their own use of the Services; and for clarity, the foregoing rights shall not apply to any Private Content unless you permit such use of such Private Content by other users of the Service. To the fullest extent permitted by applicable law, the Company reserves the right, and has absolute discretion, to remove, screen, edit, or delete any of Your Content that is uploaded to the Services at any time, for any reason, and without notice. By posting or submitting Your Content through the Services, you represent and warrant that you own or have obtained all rights, licenses, consents, permissions, power and/or authority necessary to grant the rights granted herein for Your Content. You agree that Your Content will not contain material subject to copyright or other proprietary rights, unless you have the necessary permission or are otherwise legally entitled to post the material and to grant us the license described above.

## 6.6 Notice of Infringement – DMCA (Copyright) Policy

If you believe that any text, graphics, photos, audio, videos or other materials or works uploaded, downloaded or appearing on the Services have been copied in a way that constitutes copyright infringement, you may submit a notification to our copyright agent in accordance with 17 USC 512(c) of the Digital Millennium Copyright Act (the "**DMCA**"), by providing the following information in writing:

- (a) identification of the copyrighted work that is claimed to be infringed;
- (b) identification of the allegedly infringing material that is requested to be removed, including a description of where it is located on the Service;
- (c) information for our copyright agent to contact you, such as an address, telephone number and e-mail address;
- (d) a statement that you have a good faith belief that the identified, allegedly infringing use is not authorized by the copyright owners, its agent or the law;
- (e) a statement that the information above is accurate, and under penalty of perjury, that you are the copyright owner or the authorized person to act on behalf of the copyright owner; and



- (f) the physical or electronic signature of a person authorized to act on behalf of the owner of the copyright or of an exclusive right that is allegedly infringed.

Notices of copyright infringement claims should be sent by mail to: Foveate, 32 Mulberry St, 8, New York, New York; or by e-mail to [team@foveate.com](mailto:team@foveate.com). It is our policy, in appropriate circumstances and at our discretion, to disable or terminate the accounts of users who repeatedly infringe copyrights or intellectual property rights of others.

## 7. Third Party Services and Materials

- 7.1 Use of Third Party Materials in the Services. Certain Services may display, include or make available content, data, information, applications or materials from third parties (“**Third Party Materials**”) or provide links to certain third party websites. By using the Services, you acknowledge and agree that the Company is not responsible for examining or evaluating the content, accuracy, completeness, availability, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Materials or websites. We do not warrant or endorse and do not assume and will not have any liability or responsibility to you or any other person for any third-party services, Third Party Materials or third-party websites, or for any other materials, products, or services of third parties. Third Party Materials and links to other websites are provided solely as a convenience to you.

## 8. Disclaimers, Limitations of Liability and Indemnification

- 8.1 Disclaimers.

- (a) Your access to and use of the Services are at your own risk. You understand and agree that the Services are provided to you on an “AS IS” and “AS AVAILABLE” basis. Without limiting the foregoing, to the maximum extent permitted under applicable law, the Company, its parents, affiliates, related companies, officers, directors, employees, agents, representatives, partners and licensors (the “**the Company Entities**”) DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. The Company Entities make no warranty or representation and disclaim all responsibility and liability for: (a) the completeness, accuracy, availability, timeliness, security or reliability of the Services (including any Presentations generated by your use of the Services); (b) any harm to your computer system, loss of data, or other harm that results from your access to or use of the Services; (c) the operation or compatibility with any other application or any particular system or device; (d) whether the Services will meet your requirements or be available on an uninterrupted, secure or error-free basis; and (e) the deletion of, or the failure to store or transmit, Your Content and other communications maintained by the Services. No advice or information, whether oral or written, obtained from the Company Entities or through the Services, will create any warranty or representation not expressly made herein.

- (b) THE LAWS OF CERTAIN JURISDICTIONS, INCLUDING THE STATE OF NEW JERSEY, DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES AS SET FORTH IN SECTION 8.2 BELOW. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.
- (c) THE COMPANY ENTITIES TAKE NO RESPONSIBILITY AND ASSUME NO LIABILITY FOR ANY CONTENT THAT YOU, ANOTHER USER, OR A THIRD PARTY CREATES, UPLOADS, POSTS, SENDS, RECEIVES, OR STORES ON OR THROUGH OUR SERVICES.
- (d) YOU UNDERSTAND AND AGREE THAT YOU MAY BE EXPOSED TO CONTENT THAT MIGHT BE OFFENSIVE, ILLEGAL, MISLEADING, OR OTHERWISE INAPPROPRIATE, NONE OF WHICH THE COMPANY ENTITIES WILL BE RESPONSIBLE FOR.

8.2 Limitations of Liability. TO THE EXTENT NOT PROHIBITED BY LAW, YOU AGREE THAT IN NO EVENT WILL THE COMPANY ENTITIES BE LIABLE (A) FOR DAMAGES OF ANY KIND, INCLUDING INDIRECT SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, DATA OR PROFITS, BUSINESS INTERRUPTION OR ANY OTHER DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE SERVICES, INCLUDING ANY Presentations GENERATED BY YOUR USE OF THE SERVICES), HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER UNDER THESE TERMS OR OTHERWISE ARISING IN ANY WAY IN CONNECTION WITH THE SERVICES OR THESE TERMS AND WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) EVEN IF THE COMPANY ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, OR (B) FOR ANY OTHER CLAIM, DEMAND OR DAMAGES WHATSOEVER RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR THE DELIVERY, USE OR PERFORMANCE OF THE SERVICES. THE COMPANY ENTITIES' TOTAL LIABILITY TO YOU FOR ANY DAMAGES FINALLY AWARDED SHALL NOT EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100.00), OR THE AMOUNT YOU PAID THE COMPANY ENTITIES, IF ANY, IN THE PAST SIX (6) MONTHS FOR THE SERVICES (OR OFFERINGS PURCHASED ON THE SERVICES) GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

8.3 Indemnification. By entering into these Terms and accessing or using the Services, you agree that you shall defend, indemnify and hold the Company Entities harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) incurred by the Company Entities arising out of or in connection with: (a) your violation or breach of any term of these Terms or any applicable law or

regulation; (b) your violation of any rights of any third party; (c) your misuse of the Services; (d) Your Content, or (e) your negligence or wilful misconduct. If you are obligated to indemnify any Company Entity hereunder, then you agree that Company (or, at its discretion, the applicable Company Entity) will have the right, in its sole discretion, to control any action or proceeding and to determine whether Company wishes to settle, and if so, on what terms, and you agree to fully cooperate with Company in the defense or settlement of such claim.

## 9. Arbitration and Class Action Waiver

9.1 **PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT AND TO HAVE A JURY HEAR YOUR CLAIMS. IT CONTAINS PROCEDURES FOR MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.**

9.2 Informal Process First. You and the Company agree that in the event of any dispute, either party will first contact the other party and make a good faith sustained effort to resolve the dispute before resorting to more formal means of resolution, including without limitation, any court action, after first allowing the receiving party 30 days in which to respond. Both you and the Company agree that this dispute resolution procedure is a condition precedent which must be satisfied before initiating any arbitration against the other party.

9.3 Arbitration Agreement and Class Action Waiver. After the informal dispute resolution process, any remaining dispute, controversy, or claim (collectively, “**Claim**”) relating in any way to the Company’s services and/or products, including the Services, and any use or access or lack of access thereto, will be resolved by arbitration, including threshold questions of arbitrability of the Claim. You and the Company agree that any Claim will be settled by final and binding arbitration, using the English language, administered by JAMS under its Comprehensive Arbitration Rules and Procedures (the “**JAMS Rules**”) then in effect (those rules are deemed to be incorporated by reference into this section, and as of the date of these Terms). Because your contract with the Company, these Terms, and this Arbitration Agreement concern interstate commerce, the Federal Arbitration Act (“FAA”) governs the arbitrability of all disputes. However, the arbitrator will apply applicable substantive law consistent with the FAA and the applicable statute of limitations or condition precedent to suit. **Arbitration will be handled by a sole arbitrator in accordance with the JAMS Rules. Judgment on the arbitration award may be entered in any court that has jurisdiction. Any arbitration under these Terms will take place on an individual basis – class arbitrations and class actions are not permitted. You understand that by agreeing to these Terms, you and the Company are each waiving the right to trial by jury or to participate in a class action or class arbitration.**

9.4 Exceptions. Notwithstanding the foregoing, you and the Company agree that the following types of disputes will be resolved in a court of proper jurisdiction:

- (a) disputes or claims within the jurisdiction of a small claims court consistent with the jurisdictional and dollar limits that may apply, as long as it is brought and maintained as an individual dispute and not as a class, representative, or consolidated action or proceeding;
- (b) disputes or claims where the sole form of relief sought is injunctive relief (including public injunctive relief); or
- (c) intellectual property disputes.

9.5 Costs of Arbitration. Payment of all filing, administration, and arbitrator costs and expenses will be governed by the JAMS Rules, except that if you demonstrate that any such costs and expenses owed by you under those rules would be prohibitively more expensive than a court proceeding, the Company will pay the amount of any such costs and expenses that the arbitrator determines are necessary to prevent the arbitration from being prohibitively more expensive than a court proceeding (subject to possible reimbursement as set forth below).

Fees and costs may be awarded as provided pursuant to applicable law. If the arbitrator finds that either the substance of your claim or the relief sought in the demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the JAMS rules. In that case, you agree to reimburse the Company for all monies previously disbursed by it that are otherwise your obligation to pay under the applicable rules. If you prevail in the arbitration and are awarded an amount that is less than the last written settlement amount offered by the Company before the arbitrator was appointed, the Company will pay you the amount it offered in settlement. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

9.6 Opt-Out. **You have the right to opt-out and not be bound by the arbitration provisions set forth in these Terms by sending written notice of your decision to opt-out by email to [team@foveate.com](mailto:team@foveate.com) or to the U.S. mailing address listed in the "How to Contact Us" section of these Terms. The notice must be sent to the Company within thirty (30) days of your first registering to use the Services or agreeing to these Terms; otherwise you shall be bound to arbitrate disputes on a non-class basis in accordance with these Terms. If you opt out of only the arbitration provisions, and not also the class action waiver, the class action waiver still applies. You may not opt out of only the class action waiver and not also the arbitration provisions. If you opt-out of these arbitration provisions, the Company also will not be bound by them.**

**9.7 WAIVER OF RIGHT TO BRING CLASS ACTION AND REPRESENTATIVE CLAIMS.** To the fullest extent permitted by applicable law, you and the Company each agree that any proceeding to resolve any dispute, claim, or controversy will be brought and conducted ONLY IN THE RESPECTIVE PARTY'S INDIVIDUAL CAPACITY AND NOT AS PART OF ANY CLASS (OR PURPORTED CLASS), CONSOLIDATED, MULTIPLE-PLAINTIFF, OR REPRESENTATIVE ACTION OR PROCEEDING ("CLASS ACTION"). You and the Company AGREE TO WAIVE THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS ACTION. You and the Company EXPRESSLY WAIVE ANY ABILITY TO MAINTAIN A CLASS ACTION IN ANY FORUM. If the dispute is subject to arbitration, THE ARBITRATOR WILL NOT HAVE THE AUTHORITY TO COMBINE OR AGGREGATE CLAIMS, CONDUCT A CLASS ACTION, OR MAKE AN AWARD TO ANY PERSON OR ENTITY NOT A PARTY TO THE ARBITRATION. Further, you and the Company agree that the ARBITRATOR MAY NOT CONSOLIDATE PROCEEDINGS FOR MORE THAN ONE PERSON'S CLAIMS, AND IT MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CLASS ACTION. For the avoidance of doubt, however, you can seek public injunctive relief to the extent authorized by law and consistent with the Exceptions clause above.

IF THIS CLASS ACTION WAIVER IS LIMITED, VOIDED, OR FOUND UNENFORCEABLE, THEN, UNLESS THE PARTIES MUTUALLY AGREE OTHERWISE, THE PARTIES' AGREEMENT TO ARBITRATE SHALL BE NULL AND VOID WITH RESPECT TO SUCH PROCEEDING SO LONG AS THE PROCEEDING IS PERMITTED TO PROCEED AS A CLASS ACTION. If a court decides that the limitations of this paragraph are deemed invalid or unenforceable, any putative class, private attorney general, or consolidated or representative action must be brought in a court of proper jurisdiction and not in arbitration.

## 10. Additional Provisions

**10.1 Updating These Terms.** We may modify these Terms from time to time in which case we will update the "Last Revised" date at the top of these Terms. If we make changes that are material, we will use reasonable efforts to attempt to notify you, such as by e-mail and/or by placing a prominent notice on the first page of the Website. However, it is your sole responsibility to review these Terms from time to time to view any such changes. The updated Terms will be effective as of the time of posting, or such later date as may be specified in the updated Terms. Your continued access or use of the Services after the modifications have become effective will be deemed your acceptance of the modified Terms. No amendment shall apply to a dispute for which an arbitration has been initiated prior to the change in Terms.

**10.2 Termination of License and Your Account.** If you breach any of the provisions of these Terms, all licenses granted by the Company will terminate automatically. Additionally, the

Company may suspend, disable, or delete your Account and/or the Services (or any part of the foregoing) with or without notice, for any or no reason. If the Company deletes your Account for any suspected breach of these Terms by you, you are prohibited from re-registering for the Services under a different name. In the event of Account deletion for any reason, the Company may, but is not obligated to, delete any of Your Content. The Company shall not be responsible for the failure to delete or deletion of Your Content. All sections which by their nature should survive the termination of these Terms shall continue in full force and effect subsequent to and notwithstanding any termination of these Terms by the Company or you. Termination will not limit any of the Company's other rights or remedies at law or in equity.

10.3 Injunctive Relief. You agree that a breach of these Terms will cause irreparable injury to the Company for which monetary damages would not be an adequate remedy and the Company shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law without a bond, other security or proof of damages.

10.4 California Residents. If you are a California resident, in accordance with Cal. Civ. Code § 1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210.

10.5 Miscellaneous. If any provision of these Terms shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions. These Terms and the licenses granted hereunder may be assigned by the Company but may not be assigned by you without the prior express written consent of the Company. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for reference only and shall not be read to have any legal effect. The Services are operated by us in the United States. Those who choose to access the Services from locations outside the United States do so at their own initiative and are responsible for compliance with applicable local laws. These Terms are governed by the laws of the State of California, without regard to conflict of laws rules, and the proper venue for any disputes arising out of or relating to any of the same will be the arbitration venue set forth in Section 9, or if arbitration does not apply, then the state and federal courts located in San Francisco County, California.

10.6 Force Majeure. We will not be liable or responsible to you, nor be deemed to have defaulted under or breached these Terms, for any failure or delay in fulfilling or performing any of our obligations under these Terms or in providing the Services, when and to the extent such failure or delay is caused by or results from any events beyond our control, including acts of God, flood, fire, earthquake, epidemics, pandemics, tsunami, explosion, war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, government order, law, or action, embargoes or blockades,

strikes, labor stoppages or slowdowns or other industrial disturbances, shortage of adequate or suitable Internet connectivity, telecommunication breakdown or shortage of adequate power or electricity, and other similar events beyond our control.

10.7 How to Contact Us. You may contact us regarding the Services or these Terms at: If you want to request any further information you can email us at: [team@foveate.com](mailto:team@foveate.com) or write to us at: Third Axis, LLC, 32 Mulberry St, 8, New York, NY, USA.