

AffectLayer Inc. (DBA Chorus.ai) Referral Program Terms of Use

Please read these AffectLayer Referral Program terms and conditions (the “Terms of Use”) fully and carefully before using the Referral Program(the “Program”) and the services, features, content or rewards offered by AffectLayer, Inc. (DBA Chorus.ai) (“AffectLayer”, “we”, “us” or “our”). The terms “Participant”, “you”, “You” or “your” shall refer to any person or entity who views, uses, accesses, browses or submits any content or material to the Program. These Terms of Use set forth the legally binding terms and conditions for your use of the Program.

ACCEPTANCE OF TERMS OF USE.

- a. By registering for and/or using the Program in any manner, including but not limited to visiting or browsing the Program website at <https://www.chorus.ai/referral> (the “Site”), you agree to these Terms of Use and all other operating rules, policies and procedures that may be published from time to time on the Site by us, each of which is incorporated by reference and each of which may be updated from time to time without notice to you.
- b. The Program may be subject to additional terms and conditions specified by us from time to time; your use of the Program is subject to those additional terms and conditions, which are incorporated into these Terms of Use by this reference.
- c. These Terms of Use apply to all users of the Program, including, without limitation, users who are contributors of content, information, and other materials or services, registered or otherwise.
- d. **ARBITRATION NOTICE AND CLASS ACTION WAIVER: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION SECTION BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.**

1. ELIGIBILITY.

The Program is only open to Participants who are age 18 years or older at the time of entry. You represent and warrant that you are at least 18 years of age. If you are under age 18, you may not, under any circumstances or for any reason, use the Program. We may, in our sole discretion, refuse to offer the Program to any person or entity and change its eligibility criteria at any time. You are solely responsible for ensuring that these Terms of Use are in compliance with all laws, rules and regulations applicable to you and the right to access the Program is revoked where these Terms of Use or use of the Program is prohibited. Further, the Program is offered only for your use, and not for the use or benefit of any third party.

This Program is not open to: (1) employees or internally contracted vendors of AffectLayer or its parent/subsidiaries, agents or affiliates; (2) the immediate family members or members of the same household of any such employee or vendor; (3) anyone professionally involved in the development or administration of this Program; (4) employees or internally contracted vendors of governments and government-affiliated companies or organizations; or (5) any employee

whose employer's guidelines or regulations do not allow entry in the Program or acceptance of the prize(s).

This Program is only open to individuals residing in one (1) of the forty-eight (48) continental United States or the District of Columbia (excluding Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands and other United States territories).

2. REGISTRATION.

Use of the Program requires that you have an active Chorus account. By submitting a referral you shall not: (i) select or use as a username a name of another person with the intent to impersonate that person; (ii) use as an email and a name subject to any rights of a person other than you without appropriate authorization; or provide (iii), as a email , a name that is otherwise offensive, vulgar or obscene. If you provide any information that is untrue, inaccurate, not current or incomplete, or AffectLayer has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, AffectLayer has the right to refuse any and all current or future use of the Program. You are solely responsible for providing accurate information for the activity that occurs on your Account while using the Program You may never use another person's email or name for the Program without permission. You must notify us immediately of any change in your eligibility to use the Program, breach of security or unauthorized use of your Chorus Account.. AffectLayer will not be liable for any injury, loss or damage of any kind arising from or relating to your failure to comply with the foregoing or for any acts or omissions by you or someone else using your credentials.

3. REWARDS.

Earning Gift Card Value :

Rewards can be earned in the Program by performing or participating in certain activities. If you choose to participate and follow the instructions associated with an activity, upon satisfying all of the requirements of the activity, you will be awarded the points associated with completing that activity so long as AffectLayer and/or its third-party Program affiliates are able to properly track your valid and completed point-earning activities. For avoidance of doubt, AffectLayer shall not be responsible for, nor shall AffectLayer be obligated to award points or rewards to Program participants for, any activity that is not properly recorded, tracked and/or deemed approved under AffectLayer's or its third-party Program affiliates' policies, procedures and systems.

Rewards :

Delivery of Rewards: Rewards may be emailed to your email address or mailed to the U.S. postal address that you provided when you registered and created an Account, or to the email or U.S. postal address that our records show your Account was last updated to reflect. Processing times may vary. Rewards that are undeliverable or unclaimed for whatever reason

(including, without limitation, because your Account information is incorrect or outdated) may be forfeited, and the gift card will not be refunded.

AffectLayer reserves the right to substitute a reward with another reward of equal or greater value should the advertised reward become unavailable for any reason. If applicable, rewards may be fulfilled in the form of voucher(s), coupon(s) and/or gift card(s) in AffectLayer's sole discretion. If a Participant is unable to participate in or accept a reward or any portion of a reward for any reason, AffectLayer shall have no further obligation to such Participant. AffectLayer will not replace any lost or stolen rewards after redemption by Participants. In no event will AffectLayer be responsible for fulfilling more than the stated number of rewards. Participants acknowledge and agree that rewards are available in limited quantities and reward type and availability are subject to change at AffectLayer's sole discretion. AffectLayer shall have no obligation or liability to Participants for any changes made to reward type or availability.

4. CONDITIONS; TAXES; RELEASE. This Program is subject to applicable federal, state and local laws. By participating in the Program, Participants agree: (a) to be bound by these terms and conditions and the decisions of AffectLayer, which shall be final and binding; and (b) to waive any right to claim ambiguity in the Program or these terms and conditions, except where prohibited by law.

You acknowledge and agree that we do not have the ability, in every instance, to determine whether or not the points, rewards, prizes, or credits you earned or redeemed in the Program are considered reportable taxable earnings in your jurisdiction. You are therefore responsible for any and all tax liability arising from or associated with your use of the Program, including liability arising from your accrual of points or your redemption of such points. As a condition of your continued use of the Program, we reserve the right to require you to provide necessary tax reporting information if our records show that you are or may be required to report the value of your points, rewards, prizes, or credits to an appropriate tax authority. We encourage you, and it is your responsibility, to seek advice of a tax expert in order to determine the tax consequences of your use of the Program, and any associated points, rewards, prizes, or credits earned or redeemed.

By participating in the Program, all Participants agree to release and hold harmless AffectLayer and its directors, employees, officers, licensees, licensors and agents, and respective advertising and Program entities and any person or entity associated with the administration of the Program (collectively, the "Released Parties"), from and against any and all rights, claims and causes of action whatsoever that they may have, or which may arise, against any of them for any liability for any matter, cause or thing whatsoever, including but not limited to any injury, loss, damage, whether direct, compensatory, incidental or consequential, to person, including death and damage to property, arising in whole or in part, directly or indirectly, from their acceptance, possession, use or misuse of a reward, or their participation in the Program, or their participation in any Program or reward related activity. Each Participant acknowledges that

the Released Parties have neither made, nor are in any manner responsible or liable for, any warranty, representation or guarantee, expressed or implied, in fact or in law, relative to any reward or the Program. All costs and expenses, including support services, not specifically listed above as part of the reward, are solely the Participant's responsibility.

None of the Released Parties are responsible for: (a) lost, late, misdirected, undeliverable, incomplete or indecipherable entries due to system errors or failures, or faulty transmissions or other telecommunications malfunctions and/or entries; (b) technical failures of any kinds; (c) failures of any of the equipment or programming associated with or utilized in the Program; (d) unauthorized human and/or mechanical intervention in any part of the submission process or the Program; or (e) technical or human error which may occur in the administration of the Program or the processing of entries.

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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY".

Use of any automated entry device or software is prohibited. Creation or use of multiple accounts for registration or participation in the Program is prohibited. AffectLayer reserves the right to disqualify any Participant it finds to be tampering with the reward process or the operation of the Program or violating these terms and conditions, and reserves the right to cancel the Program should it suspect fraud or for reasons out of the control of AffectLayer
CAUTION: ANY ATTEMPT TO DELIBERATELY DAMAGE OR UNDERMINE THE LEGITIMATE OPERATION OF THE PROGRAM MAY BE IN VIOLATION OF CRIMINAL AND CIVIL LAWS AND WILL RESULT IN DISQUALIFICATION OF SUCH PERSON FROM PARTICIPATION IN THE PROGRAM. SHOULD SUCH AN ATTEMPT BE MADE, AFFECTLAYER RESERVES THE RIGHT TO SEEK REMEDIES AND DAMAGES (INCLUDING ATTORNEY FEES) TO THE FULLEST EXTENT OF THE LAW, INCLUDING CRIMINAL PROSECUTION.

All Participants are solely responsible for compliance with any applicable laws, rules and regulations, contractual limitations and/or office or company policies, if any, regarding Participant's participation in the Program or redemption and acceptance of Program rewards; and by entering this Program, Participant confirms that he or she is not in violation of any of the foregoing and has obtained the consent of his or her employer to participate, if applicable. If a Participant is not permitted to accept any redeemed reward, then the Participant may return such prize to AffectLayer, and AffectLayer will refund the cost of shipment, as appropriate.

We reserve the right, in our sole discretion, to modify or replace any of these Terms of Use, or change, suspend, or discontinue the Program (including without limitation, the availability of any

feature, database, or content) at any time by posting a notice on the Site or by sending you notice through the Program, via e-mail or by another appropriate means of electronic communication. We may also impose limits on certain features and services or restrict your access to parts or all of the Program without notice or liability. While we will timely provide notice of modifications, it is also your responsibility to check these Terms of Use periodically for changes. Your continued use of the Program following notification of any changes to these Terms of Use constitutes acceptance of those changes, which will apply to your continued use of the Program going forward. Your use of the Program is subject to the Terms of Use in effect at the time of such use.

5. CONTENT.

- a. **Definition.** For purposes of these Terms of Use, the term “Content” includes, without limitation, information, data, text, photographs, videos, audio clips, written posts and comments, software, scripts, graphics, and interactive features generated, provided, or otherwise made accessible on or through the Program. For the purposes of these Terms of Use, “Content” also includes all User Content (as defined below).
- b. **User Content.** All Content added, created, uploaded, submitted, distributed, or posted to the Program by users (collectively “User Content”), whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such User Content. You represent that all User Content provided by you is accurate, complete, up-to-date, and in compliance with all applicable laws, rules and regulations. You acknowledge that all Content, including User Content, accessed by you using the Program is at your own risk and you will be solely responsible for any damage or loss to you or any other party resulting therefrom. We do not guarantee that any Content you access on or through the Program is or will continue to be accurate.
- c. **Notices and Restrictions.** The Site, in its entirety, is the sole property of AffectLayer or its content suppliers and the Program may contain Content provided by us, our partners or our users that is protected by copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws. You shall abide by and maintain all copyright notices, information, and restrictions contained in any Content accessed through the Program.
- d. **Use License.** Subject to these Terms of Use, we grant each user of the Program a worldwide, non-exclusive, non-sublicensable and non-transferable license to use Content solely for purposes of using the Program. Use, reproduction, modification, distribution or storage of any Content for other than purposes of using the Program is expressly prohibited without prior written permission from us. You shall not sell, license, rent, or otherwise use or exploit any Content for commercial use or in any way that violates any third party right.

- e. **License Grant.** By submitting User Content through the Program, you hereby do and shall grant us a worldwide, non-exclusive, perpetual, royalty-free, fully paid, sublicensable and transferable license to use, edit, modify, truncate, aggregate, reproduce, distribute, prepare derivative works of, display, perform, and otherwise fully exploit the User Content in connection with the Site, the Program and our (and our successors' and assigns') businesses, including without limitation for promoting and redistributing part or all of the Site or the Program (and derivative works thereof) in any media formats and through any media channels (including, without limitation, third party websites and feeds), and including after your termination of your Account or the Program. You also hereby do and shall grant each user of the Site and/or the Program a non-exclusive, perpetual license to access your User Content through the Site and/or the Program, and to use, edit, modify, reproduce, distribute, prepare derivative works of, display and perform such User Content, including after your termination of your Account or the Program. For clarity, the foregoing license grants to us and our users does not affect your other ownership or license rights in your User Content, including the right to grant additional licenses to your User Content, unless otherwise agreed in writing. You represent and warrant that you have all rights to grant such licenses to us without infringement or violation of any third party rights, including without limitation, any privacy rights, publicity rights, copyrights, trademarks, contract rights, or any other intellectual property or proprietary rights.

- f. **Availability of Content.** We do not guarantee that any Content will be made available on the Site or through the Program. We reserve the right to, but do not have any obligation to, (i) remove, edit or modify any Content in our sole discretion, at any time, without notice to you and for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if we are concerned that you may have violated these Terms of Use), or for no reason at all and (ii) to remove or block any Content from the Program.

6. RULES OF CONDUCT.

- i. As a condition of use, you promise not to use the Program for any purpose that is prohibited by these Terms of Use. You are responsible for all of your activity in connection with the Program.

- ii. You shall not (and shall not permit any third party to) either (a) take any action or (b) upload, download, post, submit or otherwise distribute or facilitate distribution of any Content on or through the Service, including without limitation any User Content, that:
 - i. infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity or violates any law or contractual duty (see our DMCA Copyright Policy below);

- ii. you know is false, misleading, untruthful or inaccurate;
 - iii. is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, vulgar, pornographic, offensive, profane, contains or depicts nudity, contains or depicts sexual activity, or is otherwise inappropriate as determined by us in our sole discretion;
 - iv. constitutes unauthorized or unsolicited advertising, junk or bulk e-mail ("spamming");
 - v. contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password or other information of ours or of any third party;
 - vi. impersonates any person or entity, including any of our employees or representatives; or
 - vii. includes anyone's identification documents or sensitive financial information.
- iii. You shall not: (i) take any action that imposes or may impose (as determined by us in our sole discretion) an unreasonable or disproportionately large load on our (or our third party providers') infrastructure; (ii) interfere or attempt to interfere with the proper working of the Program or any activities conducted on the Program; (iii) bypass, circumvent or attempt to bypass or circumvent any measures we may use to prevent or restrict access to the Program (or other accounts, computer systems or networks connected to the Program); (iv) run any form of auto-responder or "spam" on the Program; (v) use manual or automated software, devices, or other processes to "crawl" or "spider" any page of the Site; (vi) harvest or scrape any Content from the Program; or (vii) otherwise take any action in violation of our guidelines and policies.
- iv. You shall not (directly or indirectly): (i) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Program (including without limitation any application), except to the limited extent applicable laws specifically prohibit such restriction, (ii) modify, translate, or otherwise create derivative works of any part of the Program, or (iii) copy, rent, lease, distribute, or otherwise transfer any of the rights that you receive hereunder. You shall abide by all applicable local, state, national and international laws and regulations.
- v. We also reserve the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce these Terms of Use, including investigation

of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of us, our users and the public.

8. PUBLICITY. Participants acknowledge and agree that AffectLayer may use the Program for publicity, advertising or other marketing purposes in any media, and may use the name, likeness, and state of residence and/or reward information of potential Participants as part of that publicity, without additional compensation to the potential Participants.

9. COMPUTER, INTERNET, AND PROGRAM ADMINISTRATION. AffectLayer is not responsible for electronic transmission errors resulting in omission, interruption, deletion, defect, delay in operations or transmission, theft or destruction or unauthorized access to or alterations of entry materials, or for technical, network, telephone equipment, electronic, computer, hardware or software malfunctions or limitations of any kind, or inaccurate transmissions or failure to receive entry information by AffectLayer on account of technical problems or traffic congestion on the Internet or at any website or any combination thereof. If for any reason the Program is not capable of running as planned, including infection by computer virus, bugs, tampering, unauthorized intervention, fraud, technical failures, or any other causes which, in AffectLayer's sole determination, corrupts or affects the administration, security, fairness, integrity, or proper conduct of this Program, AffectLayer reserves the right, in its sole discretion, to cancel, terminate, modify or suspend the Program. If the Program is cancelled for any reason, notice will be posted on the Program website and the rewards may, in AffectLayer's discretion, be awarded to eligible Participants.

10. THIRD PARTY SERVICES.

The Program may permit you to link to other websites, services or resources (collectively, "Third Party Services") on or over the Internet, and Third Party Services may contain links to the Program. When you access Third Party Services, you do so at your own risk. Third Party Services are not under our control, and you acknowledge that we are not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any such link does not imply our endorsement or any association between us and the Third Party Services or their operators. You further acknowledge and agree that we shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such Third Party Service. The Site may not be linked to any other site without prior consent of AffectLayer. In particular, if you select to redeem rewards points for gift cards, such gift cards are subject to the terms and conditions of the gift card issuer.

11. PRIVACY. Any personal information collected by AffectLayer will be used for the administration of the Program and in accordance with AffectLayer's privacy policy. Any

questions regarding privacy matters should be directed to the address set out below. Please refer to AffectLayer's privacy policy located at <https://www.chorus.ai/privacy-policy/> for important information regarding the collection, use and disclosure of personal information by AffectLayer.

12. REFERRAL TERMS

Referral: If you have an Account and are in compliance with these Terms of Use, you may be eligible to receive rewards points for referring customers to AffectLayer (each, a "Referral") as set forth in more detail on [\[https://www.chorus.ai/referral\]](https://www.chorus.ai/referral). All rewards for Referrals are subject to any additional terms set forth in this section, and all rewards points are subject to these Terms of Use.

How to make a Referral:

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Rules: You may be eligible to receive a gift card for a Qualified Referral and a Qualified Sale (each as defined below). A "Qualified Referral" means a customer or prospect: (i) that is not of the date the Referral submission a customer or prospect of AffectLayer or its resellers or sales agents; (ii) that is not identified as a prospective client in AffectLayer's customer pipeline at the time of the Referral submission; (iii) that is not a prospect identified by another referral partner; (iv) for whom Participant has made a Referral submission that has been accepted in writing by AffectLayer; and (v) that has been referred to AffectLayer in compliance with these Terms of Use. Approval and acceptance of any Qualified Referral or any sale of AffectLayer's products and services shall be at AffectLayer's sole discretion. A "Qualified Sale" means a Qualified Referral who purchases a subscription to AffectLayer's products and services within [12] months of the submission of the Qualified Referral.

Any warranties for the products and services of AffectLayer shall run directly from AffectLayer to the Qualified Referral or Qualified Sale. In no event shall Participant make any representation, guarantee or warranty concerning such products and services. In addition, Participant shall: (i) refrain from any deceptive, misleading and unethical practice that is or might be detrimental to AffectLayer; (ii) make no false or misleading representations, warranties, or guarantees with regard to AffectLayer or its products and services; (iii) not use malware, spyware or any other aggressive advertising or marketing methods in any of its dealings relating to AffectLayer or its products or services; and (iv) not copy, resemble or mirror the look and feel of AffectLayer's websites, AffectLayer trademarks or otherwise misrepresent Participant's affiliation with AffectLayer. Participant and AffectLayer are independent contractors and not partners, joint venturers or otherwise affiliated and neither has any right or authority to bind the other.

AffectLayer reserves the right to change any aspect of the referral program at any time, including, without limitation, the reward points awarded for a Qualified Referral and a Qualified Sale. We reserve the right to suspend your right to receive reward points for a Qualified Referral or Qualified Sale if you have violated these Terms of Use.

13. CONFIDENTIAL INFORMATION. In connection with the Program, Participants may receive a proprietary AffectLayer. information. Participants shall hold confidential and shall not use or permit others to use any proprietary information identified as such in writing or orally by AffectLayer. or information which Participant knows or has reason to know is confidential, proprietary or trade secret information of AffectLayer.

14. DISCLAIMER. THE PROGRAM AND CONTENT ARE PROVIDED “AS IS”, “AS AVAILABLE” AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. WE, AND OUR DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, PARTNERS AND CONTENT PROVIDERS DO NOT WARRANT THAT: (I) THE PROGRAM WILL BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; (II) ANY DEFECTS OR ERRORS WILL BE CORRECTED; (III) ANY CONTENT OR SOFTWARE AVAILABLE AT OR THROUGH THE PROGRAM IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (IV) THE RESULTS OF USING THE PROGRAM WILL MEET YOUR REQUIREMENTS. YOUR USE OF THE PROGRAM IS SOLELY AT YOUR OWN RISK.

AffectLayer further disclaims any and all liability for the acts, omissions, conduct of any third-party users, AffectLayer users, advertisers, and/or sponsors related to the Program. AffectLayer is not responsible for the products, services, actions, or failure to act of any third party in the connection with the Program. Without limiting the foregoing, you may contact us regarding the misconduct of users and/or third-party advertisers, service, and/or product providers referenced on, or included in the Program. AffectLayer may investigate the claim and take appropriate action, at its sole discretion.

15. INDEMNIFICATION.

You shall defend, indemnify, and hold harmless us, our affiliates and each of our and their respective employees, contractors, directors, suppliers and representatives from all liabilities, claims, and expenses, including reasonable attorneys’ fees, that arise from or relate to your use or misuse of, or access to, the Program, Content, or otherwise from your User Content, violation of these Terms of Use, or infringement by you, or any third party using your Account or identity in the Program, of any intellectual property or other right of any person or entity, including your use of the Program to provide a link to another website or to upload content or other information to the Program. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with us in asserting any available defenses.

16. LIMITATION OF LIABILITY.

IN NO EVENT SHALL WE, NOR OUR DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE PROGRAM (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, COMPENSATORY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (HOWEVER ARISING), (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) OF THE GREATER OF (A) FEES PAID TO US FOR THE PARTICULAR SERVICES DURING THE IMMEDIATELY PREVIOUS THREE (3) MONTH PERIOD OR (B) \$500.00.

17. ARBITRATION CLAUSE & CLASS ACTION WAIVER – IMPORTANT – PLEASE REVIEW AS THIS AFFECTS YOUR LEGAL RIGHTS

- a. Governing Law. These Terms of Use shall be governed by and construed in accordance with the laws of the State of California, including its conflicts of law rules, and the United States of America. You agree that any dispute arising from or relating to the subject matter of these Terms of Service shall be resolved in San Francisco County, California.
- b. Arbitration. YOU AGREE THAT ALL DISPUTES BETWEEN YOU AND US OR OUR OFFICERS, DIRECTORS OR EMPLOYEES IN THEIR CAPACITY AS SUCH (WHETHER OR NOT SUCH DISPUTE INVOLVES A THIRD PARTY) WITH REGARD TO YOUR RELATIONSHIP WITH US, INCLUDING WITHOUT LIMITATION DISPUTES RELATED TO THESE TERMS OF USE, YOUR USE OF THE PROGRAM, AND/OR RIGHTS OF PRIVACY AND/OR PUBLICITY, WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION IN ACCORDANCE WITH THE STREAMLINED ARBITRATION RULES AND PROCEDURES OF JAMS, INC. THEN IN EFFECT, AND YOU AND WE HEREBY EXPRESSLY WAIVE TRIAL BY JURY; PROVIDED, HOWEVER, THAT TO THE EXTENT THAT YOU HAVE IN ANY MANNER VIOLATED OR THREATENED TO VIOLATE OUR INTELLECTUAL PROPERTY RIGHTS, WE MAY SEEK INJUNCTIVE OR OTHER APPROPRIATE RELIEF IN ANY STATE OR FEDERAL COURT IN THE STATE OF CALIFORNIA. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION. AS AN ALTERNATIVE, YOU MAY BRING YOUR CLAIM IN YOUR LOCAL “SMALL CLAIMS” COURT, IF PERMITTED BY THAT SMALL CLAIMS COURT’S RULES AND IF WITHIN SUCH COURT’S JURISDICTION, UNLESS SUCH ACTION IS TRANSFERRED, REMOVED OR APPEALED TO A DIFFERENT COURT. YOU MAY BRING CLAIMS ONLY ON YOUR OWN BEHALF. NEITHER YOU NOR WE WILL PARTICIPATE IN A CLASS ACTION OR CLASS-WIDE ARBITRATION FOR ANY CLAIMS COVERED BY THESE TERMS OF USE TO ARBITRATE. YOU ARE GIVING UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL

ARBITRATIONS. You also agree not to participate in claims brought in a private attorney general or representative capacity, or consolidated claims involving another person's account, if we are a party to the proceeding. This dispute resolution provision will be governed by the Federal Arbitration Act and not by any state law concerning arbitration. In the event JAMS, Inc. is unwilling or unable to set a hearing date within one hundred and sixty (160) days of filing the case, then either we or you can elect to have the arbitration administered instead by the American Arbitration Association. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. The arbitration shall be conducted in the English language. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with these Terms of Use. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of, related to or connected with the use of the Program or these Terms of Uses must be filed within one (1) year after such claim of action arose or be forever banned.

- c. 30-Day Opt-Out Period. If you do not wish to be bound by the arbitration and class-action waiver provisions in this Section 17, you must notify us in writing within 30 days of the date that you first accept these Terms (unless a longer period is required by applicable law). Your written notification must be mailed to us at the following address: 465 California Street, Suite 600, San Francisco, 94104. If you do not notify us in accordance with this Section 17(c), you agree to be bound by the arbitration and class-action waiver provisions of these Terms, including such provisions in any Terms revised after the date of your first acceptance. Such notification must include: (i) your name; (ii) your mailing address and (iv) a statement that you do not wish to resolve disputes with us through arbitration. If we make any changes to the Arbitration and Class Action Waiver section of these Terms (other than a change to the address at which we will receive notices of dispute, opt-out notices, or rejections of future changes to the Arbitration and Clause Action Waiver section), you may reject any such change by sending us written notice within 30 days of the change to the address set forth in this Section 17(c). It is not necessary to send us a rejection of a future change to the Arbitration and Class Action Waiver section of these Terms if you had properly opted out of the arbitration and class-action waiver provisions in this Section 17 within the first 30 days after you first accepted these Terms. If you have not properly opted out of the arbitration and class-action waiver provisions in this Section 17, by rejecting a future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this arbitration provision, as modified by any changes you did not reject. This notification affects these Terms only; if you previously entered into other arbitration agreements with us or enter into other such agreements in the future, your notification that you are opting out of the arbitration provision in these Terms shall not affect the other arbitration agreements between you and us.
- d. Severability. If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then all of the preceding language in this Arbitration section will be null and void. This arbitration agreement will survive the termination of your relationship with us.

18. FORCE MAJEURE. AffectLayer. shall not be liable for any delay or failure in performance whatsoever due to Acts of God, earthquakes, shortages of supplies, transportation difficulties, labor disputes, riots, war, fire, epidemics and similar occurrences. The obligations and rights of AffectLayer. shall be extended on a day-to-day basis for a period of time equivalent to the period of the delay.

19. NO WAIVER. No waiver of rights under these Terms of Use by either party shall constitute a waiver of this or any other right under these Terms of Use.

20. SEVERABILITY. In the event that any term of these Terms of Use becomes or is declared illegal by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from these Terms of Use. All remaining terms of these Terms of Use shall remain in full force and effect.

21. TERMINATION; SURVIVAL. We may terminate your access to all or any part of the Program at any time, with or without cause, with or without notice, effective immediately, which may result in the forfeiture and destruction of all information associated with your Account. If you wish to terminate your Account, you may do so by following the instructions on the Site or through the Program or by contacting us at [INSERT EMAIL]. All provisions of these Terms of Use which by their nature should survive termination shall survive termination, including, without limitation, licenses of User Content, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

22. NO AGENCY. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

23. ENTIRE AGREEMENT. These Terms of Use is the entire agreement between the parties hereto concerning the subject matter hereof and replaces any prior oral or written communications between the parties.

24. ASSIGNMENT. These Terms of Use are personal to you, and are not assignable, transferable or sublicensable by you except with our prior written consent. We may assign, transfer or delegate any of our rights and obligations hereunder without consent.