

Nclusion.com Terms of Use

Last Updated: 11/01/2023

Effective Date: 01/01/2023

These Terms of Use (these “Terms” or the “Agreement”) are a legally binding agreement between you as the user (“you”) and Nclusion, Inc. (“Nclusion”). These Terms govern your access to and use of this website, as well as any website or mobile website which links to this Agreement (each a “Site” and collectively, the “Sites”), including any content, functionality, and services offered on or through the Sites (collectively, the “Services”). By continuing to use our Sites, you agree that such use is legally sufficient consideration under this Agreement.

PLEASE READ THESE TERMS CAREFULLY BEFORE USING THIS SITE AS THEY AFFECT YOUR LEGAL RIGHTS. THESE TERMS CONTAIN A BINDING ARBITRATION AGREEMENT WHICH LIMITS YOUR RIGHTS TO BRING AN ACTION IN COURT, BRING A CLASS ACTION, AND HAVE DISPUTES DECIDED BY A JUDGE OR JURY, AS WELL AS PROVISIONS THAT LIMIT OUR LIABILITY TO YOU.

BY ACCESSING THIS SITE OR USING THE SERVICES, YOU REPRESENT THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO ANY OF THESE TERMS, YOU MAY NOT USE THIS SITE.

1. Use of the Services.

- a. License. On the condition that you comply with all of your obligations under these Terms, Nclusion grants you a limited, revocable, non-exclusive, non-assignable, non-sublicenseable license and right to access the Sites and use the Services. Any other use of the Services is strictly prohibited, and a violation of these Terms. Nclusion reserves all rights not expressly granted in these Terms, including, without limitation, rights of title, ownership, intellectual property, and all other rights and interests in the Sites and Services, and all related items, including without limitation, all rights in the Sites as a collective work.
- b. Revision of these Terms. Nclusion may revise these Terms from time to time. Nclusion will use reasonable efforts to notify you of such changes. Such efforts might include posting notice on the Sites, an email to the address we have on file for you, or another method. However, please check the “Last Updated” legend at the top of this page to see when these Terms were last revised. Such revised Terms will be effective upon the “Effective Date” stated above—typically the date of posting. You should revisit these Terms on a regular basis, as revised versions will be binding upon you. You understand and agree that your continued access to or use of the Services after the effective date of changes to these Terms indicates your acceptance of such revisions.
- c. Stoppage of Service. Nclusion reserves the right to modify, terminate, and suspend the operation of the Sites, as well as the provision of any or all Services via the Sites, without notice or liability, at any time and for any or no reason in its sole and absolute discretion.

2. Prohibited Uses. You agree that:

- a. you will not violate these Terms or use the Services to violate the rights of any third party such as copyright or trademark rights;
- b. you will use your true legal name and true electronic mail address, and only provide accurate and complete information through the Services;
- c. you will copy information from the Services only as necessary for your personal, non-commercial use to view, save, print, fax or e-mail such information;
- d. you will not otherwise reproduce, modify, distribute, display, or provide access to the Services or its content;
- e. you will not create derivative works from, decompile, disassemble, or reverse engineer any portion of the Services;

ACTIVE 64020843v1

ACTIVE 690584196v3

- f. you will not upload to or distribute through the Services any binary code, macros, or other executable code, or any file that contains any viruses, trojan horses, or other components designed to commandeer, limit, or harm the functionality of a computer;
- g. you will not record, process, or mine information about other users, or access, retrieve, or index any portion of the Services;
- h. you will not remove or modify any copyright or other intellectual property notices that appear on the Services;
- i. you will not access or use the Services in any manner that could damage, disable, overburden, place an unreasonable load on, interfere, or attempt to interfere with the proper working of, or impair, the Services, its computer systems, or networks;
- j. you will not attempt to gain unauthorized access to any parts of the Services or any of the Services' computer systems or networks;
- k. you will not use the Services in any way that is unlawful, harms Nclusion's business, its service providers, its licensors, its representatives, or any other user, or breaches any policy or notice on the Services;
- l. you will not link to or from the Sites to or from any third-party website that may portray Nclusion in a misleading, derogatory, or otherwise defamatory manner or which may contain any material that is unlawful, harmful, fraudulent, tortious, vulgar, violative of privacy or publicity rights, infringing of intellectual property or other proprietary rights, or otherwise objectionable in Nclusion's sole discretion, including unauthorized or unsolicited advertising.
- m. you will not impersonate another person or misrepresent your affiliation with another person or entity, such as by using another person's e-mail to sign up for the Services;
- n. you will not charge any person for access to any portion of the Services or any information on the Services;
- o. you will not access the Services through automated queries (such as by screen or database scraping, spiders, robots, crawlers, or any other automated activity with the purpose of obtaining information from the Services) without Nclusion's prior express written permission;
- p. you will not engage in "framing" or "mirroring," or otherwise simulate the appearance or functionality of the Services; and
- q. you will not assist, encourage, or enable others to do any of the preceding prohibited activities.

3. Representations and Warranties. You represent and warrant that:

- a. you are 18 years of age or older and you have all requisite rights and authority to use the Services and to enter into these Terms;
- b. the performance of your obligations under these Terms will not violate, conflict with, or result in a default under any other agreement, including confidentiality agreements between you and third parties;
- c. you will use the Services for lawful purposes only and subject to these Terms, and that such use will comply with applicable laws;
- d. you agree that Nclusion will not be liable for any losses incurred as a result of a third party's use of the Services;

- e. you will not use the Services in any manner that could damage, disable, overburden or impair the Services, or interfere with use of the Services by others;
- f. any information submitted to the Services or to Nclusion by you will be true, accurate, and correct when submitted;
- g. you have the express permission of any person or entity whose e-mail address or contact information you provide through a "subscribe," "e-mail this," or other similar feature of a Site, to provide such information to Nclusion;
- h. you understand that, except as expressly stated in these Terms, these Terms do not grant you any license to use, reproduce, distribute, display or provide access to any portion of the Services on third-party websites, or otherwise;
- i. you will not attempt to gain unauthorized access to the Services or computer systems or networks under the control or responsibility of Nclusion through hacking, cracking, password mining, or any other unauthorized means;
- j. you are not a competitor of Nclusion or its licensors and are not using the Services or services provided by the Sites for reasons that are in competition with Nclusion or its licensors;
- k. if you use the Services in your capacity as an employee, as an owner, or otherwise as an agent of another person or entity, you agree on behalf of yourself and such person or entity, jointly and severally, to be bound by these Terms; and
- l. you will not impersonate another person or misrepresent your affiliation with another person or entity, including using another person's e-mail address to sign up for the Services.

4. Intellectual Property.

- a. Content of the Services. Nclusion or its licensors own all of the content that is made available in connection with the Services (the "Services Content"), including visual interfaces, interactive features, graphics, designs, databases and their data, computer code, products, software, and all other elements and components of the Services. Nclusion or its licensors also own the copyrights, trademarks, service marks, trade names, and other intellectual and proprietary rights throughout the world associated with the Services and the Services Content, which are protected by copyright, trade dress, patent, trademark, and other applicable intellectual property rights and laws.
- b. Restrictions. You may not modify, reproduce, distribute, create derivative works or adaptations of, publicly display, perform, or in any way exploit any of the Services Content in whole or in part, except as expressly authorized by the applicable rights holder. Except as expressly and unambiguously provided by these Terms, neither Nclusion nor any of its licensors grant you any express or implied rights, and all rights in and to the Services and the Services Content are retained by their holders.

5. Privacy. Nclusion respects your privacy and limits the sharing of data about you with third parties. Please see the Nclusion.com Privacy Policy for more information.

6. Indemnification. You agree to indemnify, defend, and hold Nclusion, as well as Nclusion's parents, subsidiaries, affiliates, any related companies, suppliers, licensors, and partners, including the shareholders, officers, directors, employees, agents, and representatives of each of them (collectively, the "Indemnified Parties") harmless from any and all claims, liability, damages, and costs (including, but not limited to, reasonable attorneys' fees) arising out of or relating to: (i) your access to or use of the Services; (ii) your violation of these Terms, including without limitation your breach of any representation or warranty; or (iii) your infringement of any intellectual property or other right of any person or entity. Nclusion reserves the right to, but is not obligated to, assume the exclusive defense and control of any matter for which you are required to indemnify the Indemnified Parties, and you agree to cooperate with Nclusion's defense of such claims. Nclusion will use reasonable efforts to notify you of any such claim, action, or proceeding if and when Nclusion becomes aware of it.

7. **Third-Party Services.** The Services include links to third-party products, services, and websites, as well as materials provided by third parties (collectively, "Third-Party Content"). Neither these Terms nor the Services endorse or take responsibility for any Third-Party Content. You agree that the Indemnified Parties are not responsible for the availability or contents of Third-Party Content. You understand that the Indemnified Parties have no obligation to, and generally do not, approve or monitor materials provided by third parties through the Services. Your use of Third-Party Content is at your own risk.
8. **Disclaimer of Warranties.** YOUR USE OF THE SERVICES IS AT YOUR OWN RISK. NCLUSION MAKES NO GUARANTY OF CONFIDENTIALITY OR PRIVACY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED THROUGH THE SERVICES. TO THE FULLEST EXTENT PROVIDED BY LAW, NCLUSION WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES, OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA, OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE SERVICES.

THE SERVICES AND ANY CONTENT OBTAINED THROUGH A SITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER NCLUSION NOR ITS LICENSORS MAKE ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE SERVICES. WITHOUT LIMITING THE FOREGOING, NEITHER NCLUSION NOR ITS LICENSORS REPRESENT OR WARRANT THAT THE SERVICES OR ANY CONTENT OBTAINED THROUGH THE SERVICES WILL BE ACCURATE, RELIABLE, ERROR OR MALWARE-FREE, OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT A SITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE SERVICES WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

TO THE FULLEST EXTENT PROVIDED BY LAW, NCLUSION HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

9. **Limitations of Liability.** NCLUSION AND ITS SUBSIDIARIES AND AFFILIATES, AND THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE "RELEASEES"), SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE USE OR INABILITY TO USE THE SITES, ANY SITE CONTENT, OR DOWNLOADED CONTENT, INCLUDING WITHOUT LIMITATION, LOST BUSINESS OR PROFITS, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), EQUITY, BREACH OF CONTRACT, OR OTHERWISE (AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE OR NCLUSION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE). RELEASEES ALSO SHALL NOT HAVE ANY LIABILITY OR RESPONSIBILITY FOR ANY ACTS, OMISSIONS, OR CONDUCT OF ANY SITES USER OR OTHER THIRD PARTY. TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL THE COLLECTIVE LIABILITY OF THE RELEASEES EXCEED ONE HUNDRED DOLLARS (\$100.00 USD), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE FOREGOING LIMITATION OF LIABILITY, NCLUSION'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

10. Disputes, Arbitration and Class Action Waiver.

PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

ARBITRATION USES A NEUTRAL ARBITRATOR INSTEAD OF A JUDGE OR JURY, ALLOWS FOR MORE LIMITED DISCOVERY THAN IN COURT, AND IS SUBJECT TO VERY LIMITED REVIEW BY COURTS. YOU MAY CHOOSE TO BE REPRESENTED BY A LAWYER IN ARBITRATION OR PROCEED WITHOUT ONE. THIS ARBITRATION PROVISION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

- a. Arbitration. Any dispute, claim, or controversy arising out of or relating to these Terms or the Privacy Policy, or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of these Terms to arbitrate, shall be either determined by binding arbitration in Las Vegas, Nevada before one arbitrator or submitted to small claims court in Las Vegas, Nevada. If the arbitrator finds this location to be unreasonably burdensome to you, a new location may be selected, or arbitration may be conducted over the phone, using video conferencing, or using similar methods. You may be entitled to an in-person hearing near your place of residence. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Any arbitration arising out of or related to these Terms shall be conducted in accordance with the expedited procedures set forth in the JAMS Comprehensive Arbitration Rules and Procedures as those Rules exist on the effective date of these Terms, including Rules 16.1 and 16.2 of those Rules.
- b. No Class Actions. YOU AND NCLUSION AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Nclusion agree otherwise, the arbitrator may not consolidate more than one person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim.
- c. Seeking Arbitration. If you believe you have a dispute with us, prior to initiating arbitration or filing a claim in small claims court, you must first call our customer service representatives and present your claim or dispute to allow us the opportunity to resolve the claim or dispute. Similarly, if we believe we have a dispute with you, our customer service representatives will first contact you in an attempt to resolve the dispute. If the dispute cannot be resolved by customer service, and either you or we intend to seek arbitration, the party wishing to initiate arbitration must send to the other party a written notice of the claim ("Notice"). The Notice to Nclusion must be addressed to: Nclusion, Inc., PO Box 95222, Las Vegas, Nevada 89193. If Nclusion initiates arbitration, it will send a written Notice to an e-mail address you have previously provided to Nclusion, if available. Nclusion may also use any other means to contact you. A Notice, whether sent by you or by Nclusion, must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If you and Nclusion do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, you or Nclusion may commence an arbitration proceeding or file a claim in small claims court. Arbitration forms can be downloaded from www.jamsadr.com. If you are required to pay a filing fee, after Nclusion receives Notice that you have commenced arbitration, Nclusion will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than \$10,000 USD or the arbitrator determines the claims are frivolous, in which event you will be responsible for filing fees.
- d. Hearing. If your claim is for \$10,000 USD or less, Nclusion agrees that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic or video hearing, or by an in-person hearing as established by the JAMS Rules. If your claim exceeds \$10,000 USD, the right to a hearing will be determined by the JAMS Rules. In the event that the arbitration will be conducted solely on the basis of submitted documents, the arbitrator's decision and award will be made and delivered within six (6) months of the selection of the arbitrator, unless extended by the arbitrator. Except as expressly set forth herein, the payment of all filing, administration, and arbitrator fees will be governed by the JAMS Rules.
- e. Award: In the event arbitration awards you damages of an amount at least \$100 USD greater than Nclusion's last documented settlement offer, Nclusion will pay your awarded damages or \$2,500 USD, whichever is greater.
- f. Injunctive Relief. Notwithstanding the foregoing, you and Nclusion both agree that you or Nclusion may sue in court to enjoin infringement or other misuse of intellectual property rights or in other scenarios where injunctive relief is appropriate. In the event a court or arbitrator having jurisdiction finds any portion of these Terms unenforceable, that portion shall not be effective, and the remainder of the Agreement shall remain effective. No waiver, express

or implied, by either party of any breach of or default under these Terms will constitute a continuing waiver of such breach or default or be deemed to be a waiver of any preceding or subsequent breach or default.

- g. Confidentiality. The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.
- h. Governing Law and Rules. This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Nevada, exclusive of conflict or choice of law rules. The parties acknowledge that these Terms evidence a transaction involving interstate commerce. Notwithstanding the foregoing with respect to applicable substantive law, any arbitration conducted pursuant to the terms of these Terms shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16). In any arbitration arising out of or related to these Terms, the arbitrator is not empowered to award punitive or exemplary damages, except where permitted by statute, and the parties waive any right to recover any such damages. In any arbitration arising out of or related to these Terms, the arbitrator may not award any incidental, indirect, or consequential damages, including damages for lost profits. The parties adopt and agree to implement the JAMS Optional Arbitration Appeal Procedure (as it exists on the effective date of these Terms) with respect to any final award in an arbitration arising out of or related to these Terms.

11. Termination

- a. By you. You may terminate this Agreement at any time by providing written notice of termination to Nclusion at Nclusion, Inc., PO Box 95222, Las Vegas, Nevada 89193.
- b. By Nclusion. If Nclusion has reason to suspect that you have breached these Terms, or that any of your information is not authorized, correct, current and complete, Nclusion may, in addition to taking or reserving any other remedies against you, terminate your access to the Sites without notice or liability, at any time and for any or no reason in its sole and absolute discretion. Any suspension or termination of your access to the Sites shall not affect provisions of these Terms, such as indemnification and limitations of liability, that are by their nature intended to survive such suspension, termination, or cancellation.

12. Miscellaneous

- a. No Assignment. These Terms, and any rights or obligations under these Terms, are not assignable, transferable or sublicensable by you except with Nclusion's prior written consent, but may be assigned or transferred by Nclusion without restriction. Any attempted assignment by you shall violate these Terms and be void and unenforceable.
- b. Beneficiaries. Nothing in these Terms is intended to, nor will be deemed to, confer rights or remedies upon any third party.
- c. Amendments; Waivers. Nclusion may modify these Terms as provided in Section 1(b) (Revision of these Terms). These Terms may not be modified, amended, or waived, in whole or in part, by you except by a written instrument signed by Nclusion. Except as expressly set forth herein, any failure of either party to take action in response to any breach of these Terms by the other party shall not constitute a waiver of such breach or of performance required by the other party; and no waiver of any provision of these Terms shall constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless expressly provided therein.
- d. Notices. To send notices to Nclusion, or if you have any questions regarding these Terms, please contact Nclusion at tos@nclusion.com. Nclusion may provide you with notices, including notices of changes to these Terms, by electronic mail, regular mail, or communications through the Services. Please note that by providing us with your

e-mail address, postal address, or phone number, you are agreeing that we or our agent may contact you at that address or number in a manner consistent with our Privacy Policy.

- e. **Entire Agreement.** These Terms contain the entire agreement between the parties with respect to the subject matter hereof, and supersede all prior and contemporaneous representations, promises, agreements and understandings, whether oral or written, between the parties concerning the subject matter hereof. You may from time to time enter into binding legal agreements relating to certain services available through the Services, which may have terms that are different from those of these Terms. In the event of any inconsistency, the terms of such other agreement shall control with respect to such services.
- f. **Severability.** If any provision of these Terms is deemed to be invalid or unenforceable, the remaining provisions of these Terms shall be valid and binding and of like effect as though such provision were not included.
- g. **New Jersey Residents.** If you are a consumer residing in New Jersey, the following provisions of this Agreement do not apply to you (and do not limit any rights that you may have) to the extent that they are unenforceable under New Jersey law: (a) Disclaimer of Warranty; (b) Limitation of Liability; (c) Indemnity; and (d) under Disputes, the Arbitration and Class Action Waiver and the governing law provisions (solely to the extent that your rights as a consumer residing in New Jersey are required to be governed by New Jersey law). According to N.J.S.A. 56:12-16, you may have additional rights if you are a New Jersey resident and other provisions of this Agreement are found to violate an established legal right.

13. Contact Information. If you have questions about these Terms, or if you have technical questions about the operation of the Sites, please contact us at tos@nclusion.com by writing us at Nclusion, Inc., PO Box 95222, Las Vegas, Nevada 89193. If you have any questions or comments about Nclusion or our products or have other customer service needs, please support@nclusion.com for information on contacting our consumer service representatives.