

## Terms of Service Agreement

**Effective Date: February 3rd, 2023**

PLEASE READ THIS TERMS OF SERVICE AGREEMENT (“**AGREEMENT**”) CAREFULLY. THIS AGREEMENT IS A LEGAL CONTRACT BETWEEN YOU (“**USER**”, “**YOU**”, “**YOUR**”, ETC.) AND TRACTOR ZOOM, INC., A DELAWARE CORPORATION (“**COMPANY**,” “**WE**,” OR “**US**”).

**SECTION 14 OF THIS AGREEMENT IS AN ARBITRATION CLAUSE THAT REQUIRES MOST DISPUTES BETWEEN US TO BE RESOLVED THROUGH BINDING AND FINAL ARBITRATION INSTEAD OF IN COURT. SEE SECTION 14 FOR MORE INFORMATION REGARDING THIS ARBITRATION CLAUSE.**

By accessing or using tractorzoom.com, tractorzoompro.com or any subdomain or page of either address, and/or accessing, using, downloading or installing any other website, mobile application or other digital property with an authorized link or reference to this Agreement (each of the foregoing, a “**Digital Property**”), or registering an account or accessing or using any content, information, services, features or resources available or enabled via any Digital Property (collectively with the Digital Properties, the “**Services**”), including but not limited to clicking on a button or taking another action to signify your acceptance of this Agreement, you: (1) agree to be bound by this Agreement and any future amendments and additions to this Agreement as published through the Services; (2) represent you are of legal age in your jurisdiction of residence to form a binding contract; and (3) represent that you have the authority to enter into this Agreement personally and, if applicable, on behalf of any company, organization or other legal entity on whose behalf you use the Services. **If you do not agree to be bound by this Agreement, you may not access, download, post information to, obtain information from or otherwise use the Services.**

Your use of the Services is also subject to the Company’s Privacy Policy, any additional terms, conditions and policies that we may from time to time separately post on the Services (“**Supplemental Terms**”) which are incorporated by reference into this Agreement. Some of the specialized features and tools accessible through our Services are provided by third-party companies pursuant to their own separate Terms of Service (“**Third-Party Terms**”) that differ from ours. By using such third-party features and tools, you agree that your relationships with the third-party service providers will be governed by the applicable Third-Party Terms.

Company reserves the right to modify this Agreement or Company’s policies relating to the Services at any time, effective upon posting of an updated version of this Agreement, and/or the Company’s Privacy Policy, and/or any applicable Supplemental Terms on the applicable Services. You should regularly review this Agreement, as your continued use of the Services after any such changes constitutes your agreement to such changes, and Company is not required to give specific notice of such changes to you other than the posting to the Services of the updated terms containing such changes.

**1. Registration.** When registering an account for the Services or directing Company’s representatives to register an account on your behalf (“**Account**”), you agree to provide, either directly or through information provided to Company’s representatives, only true, accurate, current and complete information requested by the registration form (the “**Registration Data**”) and to promptly update the Registration Data thereafter as necessary, including but not limited to immediately updating any Registration Data that becomes false or incorrect after it is submitted. You represent that you are not barred from using the Services under any applicable law and that you will be responsible for all activities, whether or not authorized by you, that occur under your Account or using your login credentials. You agree to monitor your Account to restrict its use by minors and other unauthorized users and agree not to share your Account or password with anyone. You further agree to notify Company immediately of any unauthorized

use of your password or any other breach of the security of your Account and to exit from your Account at the end of each session. You agree not to create an Account, or direct Company's representatives to create an Account, using a false identity or alias or if you previously have been banned from using any of the Services. You further agree that you will not maintain more than one Account for the same Company service at any given time. Company reserves the right to remove or reclaim any usernames at any time and for any reason. You acknowledge and agree that you have no ownership or other property interest in your Account and that all rights in and to your Account are owned by and inure to the benefit of Company. For the avoidance of doubt, this Agreement applies to any and all uses of the Services by you, whether or not you create an Account or access the Services using your Account.

**2. Disclaimer of Content/Information Warranties.** We strive to use reasonable efforts to include information on the Services that is accurate and current, HOWEVER, WE CANNOT AND DO NOT GUARANTEE THE ACCURACY, COMPLETENESS OR AUTHENTICITY OF ANY INFORMATION ON THE SERVICES AND THE SERVICES AND THE INFORMATION PROVIDED THEREON AND THEREBY IS PRESENTED "AS-IS", "WHERE-IS" AND "WITH ALL FAULTS" AND WITHOUT WARRANTY OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO ACCURACY, AUTHENTICITY OR COMPLETENESS OF INFORMATION. FURTHER, THE INFORMATION ON THE SERVICES MAY INCLUDE CERTAIN INFORMATION OR CONTENT SUBMITTED BY THIRD PARTIES (WHETHER OR NOT EXPRESSLY IDENTIFIED AS HAVING BEEN SUBMITTED BY THIRD PARTIES), INCLUDING BUT NOT LIMITED TO INFORMATION RELATED TO PRODUCT AND EQUIPMENT AUCTIONS AND LISTINGS (SUCH INFORMATION AND CONTENT, COLLECTIVELY, "**THIRD PARTY INFORMATION**"). YOU ACKNOWLEDGE AND AGREE THAT WE ARE NOT IN A POSITION TO CONTROL OR CONFIRM ANY THIRD PARTY INFORMATION, INCLUDING BUT NOT LIMITED TO THE ACCURACY OR COMPLETENESS THEREOF, AND THAT THEREFORE ANY USE OR RELIANCE ON THIRD PARTY INFORMATION BY YOU IS SOLELY AT YOUR OWN RISK.

**3. Third Party Links.** The Services may from time to time display or otherwise provide links to websites or other digital properties controlled by persons or entities other than the Company ("**Third Party Links**"). When you click on a Third Party Link, we will not warn you that you have left the Services. The Company does not control and is not responsible for Third-Party Links or any content or other material that you may encounter by clicking on a Third Party Link. The Company provides these Third-Party Links only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to them, or any content, products or services accessible through such links. Your use of all Third-Party Links is solely at your own risk you hereby agree to assume all such risks.

#### **4. User Content.**

**4.1 Responsible Party for Content.** The Services may permit Users to post, upload or otherwise make available certain content and information, including but not limited to content or information related to auctions and product listings, and other Third Party Content (such content, whether or not solicited by the Company, "**User Content**"). User Content also includes any content Users post on publicly available websites which contain information related to auctions and product listings, whether submitted directly by you or acquired by Company directly from your website or other postings. Company has no obligation to pre-screen any content, including but not limited to any User Content. You use all User Content and interact with other Users at your own risk, and by your use or access of the Services you hereby assume all such risks. Without limiting the foregoing, Company reserves the right in its sole discretion to pre-screen, refuse, or remove any content for any reason. Company shall have the right to remove any content that violates this Agreement or is otherwise objectionable, in Company's sole discretion. Further,

Company may use User Content related to past and future publicly available audition and product listings made available by Users.

**4.2 Ownership of Your Content.** Company does not claim ownership of any User Content you make available on the Services or which Company may retrieve from you, your website or any publicly available source (“**Your Content**”). However, when you as a User post or publish Your Content on or in the Services or other publicly available sources, you represent and warrant that: (i) that you have and shall at all times have all of the necessary rights to grant Company the license set forth in Section 4.3; (ii) Your Content is and shall at all times be accurate, complete and not misleading in any manner; (iii) Your Content does not and shall not violate the restrictions on content set forth in Section 4.5 below; and (iv) if any of the foregoing warranties become false, you shall immediately remove or modify Your Content such that Your Content complies with all of such warranties. Except with respect to Your Content, you agree that you have no right or title in or to any content that appears on or in the Services.

**4.3 License to Your Content.** You grant Company, and anyone authorized by Company, an irrevocable, transferrable, nonexclusive, perpetual, worldwide, royalty-free right and license, with right of sublicenses through multiple tiers of sublicensees, to use, copy, display, publicly perform, transmit, modify, publish, distribute, make derivative works of, sublicense, and otherwise commercially and non-commercially exploit and use Your Content (in whole or in part) in any manner or medium now existing or hereafter developed (including print and electronic storage) and for any purpose. The foregoing grant includes the right to exploit any proprietary rights in Your Content, including, but not limited to, under copyright, trademark, trade secret, patent or other intellectual property laws that exist in any relevant jurisdiction. In connection with the exercise of these rights, you grant Company, and anyone authorized by Company, the right to identify you as the author of Your Content by name, email address or screen name, as we deem appropriate. You will not receive any compensation of any kind for the use of Your Content and you hereby waive any right to any compensation you may otherwise have. Note that other Users may search for, see, use, modify and reproduce any of Your Content that you submit to the Services.

**4.4 Ratings and Reviews.** Ratings and reviews posted by Users on our Services are User Content that is not endorsed by Company and does not represent the views of Company. Company does not assume liability for ratings and reviews or for any claims for economic loss resulting from such ratings and reviews. Because we expect Users to maintain a high level of integrity with respect to ratings and reviews posted through the Services, you agree: (i) to base any rating or review you post only on your first-hand experience with the applicable business, product, or service; (ii) you will not provide a rating or review for any business, product, or service with respect to which you have a competitive, ownership or other economic interest, employment relationship or other affiliation; (iii) you will not submit a rating or review in exchange for payment or other benefits from any individual or entity; and (iv) your review will comply with the terms of this Agreement. If we determine, in our sole discretion, that any rating or review could diminish the integrity of the ratings and reviews, we may exclude such User Content without notice.

**4.5 Other Restrictions on User Conduct.** You agree not to use the Services for any purpose prohibited by this Agreement or by applicable law. You shall not (and shall not permit any third-party to) (a) take any action or (b) make available any content on or through the Services that: (i) infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any person or entity; (ii) is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another’s privacy, tortious, obscene, offensive, or profane; (iii) constitutes unauthorized or unsolicited advertising, junk or bulk e-mail; (iv) involves commercial activities and/or sales without Company’s prior written consent, such as contests, sweepstakes, barter, advertising, or pyramid schemes; or (v) impersonates any person or entity, including any employee or representative of Company. You are solely responsible for all content and information made available by you and/or made available by anyone acting through your Account (whether or not authorized by you).

**5. Feedback.** You agree that your submission of any ideas, suggestions, documents, and/or proposals to Company (“**Feedback**”) is at your own risk and that Company has no obligations with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to Company the right to use any Feedback in any way at any time without any additional approval or compensation, and you hereby waive any right that you may have to any such compensation.

## **6. Ownership of and License to Use the Services.**

**6.1 Use of the Services.** Except with respect to User Content, Company and its suppliers own all rights, title and interest in the Services. The Services are protected by copyright and other intellectual property laws throughout the world. Subject to this Agreement, Company grants you a limited license to use the Services solely for their intended purposes. Any future release, update or other addition to the Services shall be subject to this Agreement. Company, its suppliers and service providers reserve all rights not granted in this Agreement.

**6.2 Trademarks.** Company’s name and other related graphics, logos, service marks and trade names used on or in connection with the Services are the trademarks of Company and may not be used without permission in connection with any third-party products or services. Other trademarks, service marks and trade names that may appear on or in the Services are the property of their respective owners. You will not remove, alter or obscure any copyright notice, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services.

**7. Restrictions on Use of Services.** The rights granted to you in this Agreement are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit the Services or any portion of the Services; (b) you shall not frame or use framing techniques to enclose any trademark, logo or Services (including images, text, page layout or form) of Company; (c) you shall not use any metatags or other “hidden text” using Company’s name or trademarks; (d) you shall not modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the Services except to the extent the foregoing restrictions are expressly prohibited by applicable law; (e) you shall not use any manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to “scrape” or download data from the Services (except that we grant the operators of public search engines revocable permission to use spiders to copy materials from the website for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (f) you shall not access the Services to build a similar or competitive website, application or service; (g) except as expressly stated herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; (h) you shall not remove or destroy any copyright notices or other proprietary markings contained on or in the Services; (i) you shall not interfere with or attempt to interfere with the proper functioning of the Services or use the Services in any way not expressly permitted by this Agreement; and (j) you shall not attempt to harm our Services, including but not limited to, by violating or attempting to violate any related security features, introducing viruses, worms, or similar harmful code into the Services, or interfering or attempting to interfere with use of the Services by any other user, host or network, including by means of overloading, “flooding,” “spamming,” “mail bombing”, or “crashing” the Services. Any unauthorized use of the Services terminates the licenses granted by Company pursuant to this Agreement, and Company has no obligation to give you any notice of such termination.

**8. Indemnification.** You agree to indemnify and hold Company, its affiliates, and the officers, directors, employees, agents, representatives, partners and licensors of each (collectively, the “**Company Parties**”) harmless from any damages, losses, costs, liabilities and expenses (including reasonable attorneys’ fees) of any nature whatsoever, expressly including but not limited to consequential damages, losses and costs,

relating to or arising out of any claims concerning: (a) Your Content; (b) your use or misuse of the Services; (c) your violation of this Agreement; (d) your violation of any rights of another party, including any Users; or (e) your violation of any applicable laws, rules or regulations. Company reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Company in asserting any available defenses. This provision does not require you to indemnify any of the Company Parties for any unconscionable commercial practice by the Company Parties or for the Company Parties' gross negligence, fraud, deception, false promise, misrepresentation or concealment, suppression or omission of any material fact. You agree that the provisions in this Section will survive any termination of your Account, this Agreement or your access to the Services.

**9. Disclaimer of Warranties and Conditions.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE SERVICES AND ANY PRODUCTS OFFERED THROUGH THE SERVICES IS AT YOUR SOLE RISK, AND THE SERVICES AND ANY PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, COMPANY AND THE OTHER COMPANY PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT ARISING FROM USE OF THE SERVICES AND PRODUCTS. COMPANY AND THE OTHER COMPANY PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) THE SERVICES OR ANY PRODUCTS WILL MEET YOUR REQUIREMENTS OR (2) YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE OR (3) THE SERVICES ARE OR WILL BE FREE OF COMPUTER VIRUSES OR OTHER HARMFUL COMPONENTS.

**IF YOU RELY ON ANY DATA OR INFORMATION OBTAINED THROUGH THE SERVICES, YOU DO SO AT YOUR OWN RISK. YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE OR LOSS THAT RESULTS FROM YOUR USE OF SUCH DATA OR INFORMATION.**

**THE SERVICES ARE PROVIDED WITH THE UNDERSTANDING THAT COMPANY AND ITS USERS ARE NOT ENGAGED IN RENDERING LEGAL, MEDICAL, COUNSELING OR OTHER PROFESSIONAL SERVICES OR ADVICE. THE SERVICES ARE NO SUBSTITUTE FOR PROFESSIONAL SERVICES OR ADVICE.**

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES. IF THESE LAWS APPLY TO YOU, THEN THE DISCLAIMERS SET FORTH HEREIN SHALL BE CONSTRUED TO COMPLY WITH SUCH LAWS, AND SOME OR ALL OF THE FOREGOING DISCLAIMERS, EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

## **10. Limitation of Liability.**

**10.1 Disclaimer of Certain Damages.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY PARTIES SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUE OR FOR INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES OR COSTS DUE TO LOSS OF DATA, PRODUCTION, OR USE, BUSINESS INTERRUPTION OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER OR NOT THE COMPANY PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10.2 Cap on Liability.** UNDER NO CIRCUMSTANCES WILL THE TOTAL AGGREGATE AMOUNT THAT THE COMPANY PARTIES ARE LIABLE TO YOU EXCEED THE GREATER OF (A) THE TOTAL AMOUNT ACTUALLY PAID TO COMPANY BY YOU DURING THE TWELVE-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY, (B) THE REMEDY OR PENALTY IMPOSED BY THE STATUTE OR REGULATION UNDER WHICH SUCH CLAIM ARISES, OR (C) ONE HUNDRED DOLLARS (\$100). THE FOREGOING CAP ON LIABILITY SHALL NOT APPLY TO LIABILITY OF A COMPANY PARTY FOR (X) DEATH, TANGIBLE PROPERTY DAMAGE, OR PERSONAL INJURY CAUSED BY A COMPANY PARTY'S GROSS NEGLIGENCE OR FOR (Y) ANY INJURY CAUSED BY A COMPANY PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

**10.3 User Content and Settings.** THE COMPANY PARTIES ASSUME NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY CONTENT, USER COMMUNICATIONS OR PERSONALIZATION SETTINGS.

**10.4 Basis of the Bargain.** THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THE COMPANY AND YOU.

**10.5 Exclusions.** THE LAWS OF SOME STATES DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, THE FOREGOING DISCLAIMERS, EXCLUSIONS AND LIMITATIONS SHALL BE CONSTRUED TO COMPLY WITH SUCH LAWS AND SOME OR ALL OF THE FOREGOING DISCLAIMERS, EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU AND YOU MIGHT HAVE OTHER RIGHTS.

**11. Procedure for Making Claims of Copyright Infringement.** If you believe content posted on the Services infringes your copyright rights, please provide us with the following information: (1) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (2) a description of the copyrighted work that you claim has been infringed; (3) a description of the location on the Services of the material that you claim is infringing; (4) your address, telephone number and e-mail address; (5) a written statement that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; and (6) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. Correspondence regarding notice of claims of copyright infringement should be addressed to:

BrownWinick Law Firm

Attn: Joe Leo

666 Grand Avenue, Suite 2000

Des Moines, Iowa 50309

**12. Termination.** At its sole discretion, Company may modify or discontinue the Services, or may modify, suspend or terminate your access to the Services, for any reason, with or without notice to you and without liability to you or any third party. In addition to suspending or terminating your access to the Services, Company reserves the right to take appropriate legal action, including without limitation pursuing civil, criminal or injunctive redress. Even after your right to use the Services is terminated, this Agreement will remain enforceable against you. Additionally, all of your obligations and Company's rights that should by their nature survive termination of your use of the Services, including but not limited to your warranty and indemnification obligations, the disclaimers and limitations on Company's liability, and the license granted by you in Your Content, shall survive and continue in full force and effect.

**13. International Users.** The Services are controlled and offered by Company from its facilities in the United States of America. Company makes no representations that the Services are appropriate or available for use in other locations. Those who access or use the Services from other countries do so at their own volition and are responsible for compliance with local law.

**14. Dispute Resolution.** Please read the following arbitration agreement in this Section 14 (“Arbitration Agreement”) carefully. It requires you to arbitrate most disputes with Company and limits the manner in which you can seek relief from us.

**14.1 Applicability of Arbitration Agreement.** You agree that any dispute between you and us relating in any way to the Services, our advertising or marketing practices, or this Agreement, will be resolved by binding arbitration, rather than in court, except that (1) you may assert claims in small claims court if your claims qualify, so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis; and (2) Company may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). **This Arbitration Agreement shall apply, without limitation, to all claims that arose or were asserted before the Effective Date of this Agreement or any prior version of this Agreement.**

**IF YOU AGREE TO ARBITRATION WITH COMPANY, YOU ARE AGREEING IN ADVANCE THAT YOU WILL NOT PARTICIPATE IN OR SEEK TO RECOVER MONETARY OR OTHER RELIEF IN ANY LAWSUIT FILED AGAINST COMPANY ALLEGING CLASS, COLLECTIVE, AND/OR REPRESENTATIVE CLAIMS ON YOUR BEHALF. INSTEAD, BY AGREEING TO ARBITRATION, YOU MAY BRING COVERED CLAIMS AGAINST COMPANY ONLY IN AN INDIVIDUAL ARBITRATION PROCEEDING. IF SUCCESSFUL ON SUCH CLAIMS, YOU COULD BE AWARDED MONEY OR OTHER RELIEF BY AN ARBITRATOR. YOU ACKNOWLEDGE THAT YOU HAVE BEEN ADVISED THAT YOU MAY CONSULT WITH AN ATTORNEY IN DECIDING WHETHER TO ACCEPT THIS ARBITRATION AGREEMENT.**

**14.2 Arbitration Rules and Forum.** The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to BrownWinick Law Firm, Attn: Joe Leo, 666 Grand Avenue, Suite 2000, Des Moines, Iowa 50309. The arbitration will be conducted by JAMS, an established alternative dispute resolution provider. Disputes involving claims and counterclaims with an amount in controversy under \$250,000, not inclusive of attorneys’ fees and interest, shall be subject to JAMS’ most current version of the Streamlined Arbitration Rules and procedures available at <http://www.jamsadr.com/rules-streamlined-arbitration/>; all other claims shall be subject to JAMS’s most current version of the Comprehensive Arbitration Rules and Procedures, available at <http://www.jamsadr.com/rules-comprehensive-arbitration/>. JAMS’s rules are also available at [www.jamsadr.com](http://www.jamsadr.com) or by calling JAMS at 800-352-5267. If JAMS is not available to arbitrate, the parties will select an alternative arbitral forum.

You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the county where you live or at another mutually agreed location. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

**14.3 Authority of Arbitrator.** The arbitrator, and not any federal, state or local court or agency shall have exclusive authority to resolve any dispute related to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitrator will decide the rights and liabilities, if any, of you and Company. The arbitration proceeding will not be consolidated with any other matters or joined with any other proceedings or parties. The arbitrator shall have the authority to grant motions dispositive

of all or part of any claim or dispute. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum's rules, and this Agreement (including the Arbitration Agreement). The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which any award (or decision not to render an award) is based, including the calculation of any damages awarded. The arbitrator shall follow the applicable law. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and us.

**14.4 Waiver of Jury Trial.** YOU AND COMPANY HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT (OTHER THAN SMALL CLAIMS COURT AND/OR FOR INTELLECTUAL PROPERTY MATTERS AS PERMITTED IN SECTION 14.1) AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and Company are instead electing that all covered claims and disputes shall be resolved by arbitration under this Arbitration Agreement, except as specified in section 14.1 above. An arbitrator can award on an individual basis the same damages and relief as a court and must follow this Agreement as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.

**14.5 Waiver of Class or Consolidated Actions.** ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS, COLLECTIVE OR REPRESENTATIVE BASIS. ONLY INDIVIDUAL RELIEF IS AVAILABLE FOR CLAIMS COVERED BY THIS ARBITRATION AGREEMENT, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. Notwithstanding anything to the contrary herein, in the event that this Section 14.5 is deemed invalid or unenforceable with respect to a particular claim or dispute, neither you nor we shall be entitled to arbitration of such claim or dispute and instead the applicable claim or dispute shall be resolved in a court as set forth in Section 15.5.

**14.6 30-Day Right to Opt Out.** You have the right to opt out of the provisions of this Arbitration Agreement by sending a timely written notice of your decision to opt out to the following address: BrownWinick Law Firm, Attn: Joe Leo, 666 Grand Avenue, Suite 2000, Des Moines, Iowa 50309 within 30 days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, your Account username (if any), the email address you used to set up your Account (if you have one), and a clear statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of this Agreement will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have with us, or may enter into in the future with us.

**14.7 Severability.** Subject to Section 14.5, if any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Arbitration Agreement shall continue in full force and effect.

**14.8 Survival of Agreement.** This Arbitration Agreement will survive the termination or expiration of the Agreement or your relationship with Company.

**14.9 Modification.** Notwithstanding any provision in this Agreement to the contrary, we agree that if Company makes any future material change to this Arbitration Agreement, it will not apply to any individual claim(s) of which you had already provided notice to Company.

## **15. General Provisions.**

**15.1 Electronic Communications.** The communications between you and Company use electronic means, whether you visit the Services or send Company e-mails, or whether Company posts notices on the Services or communicates with you via e-mail. For contractual purposes, you (1) consent to receive communications from Company in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications and documents that Company provides to you electronically will have the same legal effect that such communications or documents would have if they were set forth in "writing." The foregoing sentence does not affect your statutory rights.

**15.2 Assignment.** This Agreement, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without Company's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

**15.3 Force Majeure.** Company shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

**15.4 Questions, Complaints, Claims.** If you have any questions, complaints or claims with respect to the Services, please contact our customer service department using the contact information available on the Services. We will do our best to address your concerns.

**15.5 Exclusive Venue.** To the extent the parties are permitted under this Agreement to initiate litigation in a court, both you and Company agree that all claims and disputes arising out of or relating to this Agreement will be litigated exclusively in the state courts in Polk County, Iowa or federal courts located in the Southern District of Iowa, Central Division. Both you and Company hereby irrevocably waive any right to object to venue in such courts or transfer venue from such courts, except that either you or Company may object to venue in such courts on the grounds that the dispute must be referred to arbitration under the Arbitration Agreement.

**15.6 Governing Law.** THIS AGREEMENT AND ANY ACTION RELATED THERETO WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE STATE OF IOWA, CONSISTENT WITH THE FEDERAL ARBITRATION ACT, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW OR OTHER PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THIS AGREEMENT.

**15.7 Notice.** Where Company requires that you provide an e-mail address, you are responsible for providing Company with your most current e-mail address. In the event that the last e-mail address you provided to Company is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by this Agreement, Company's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to Company at the following address: 10625 Justin Drive, Urbandale, Iowa 50322 or info@tractorzoom.com. Such notice shall be deemed given when received by Company by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address, or, if sent by e-mail, when receipt is confirmed by Company's e-mail system.

**15.8 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**15.9 Severability.** Subject to Section 14.5, if any portion of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions shall remain in full force and effect.

**15.10 Export Control.** You may not use, export, import, or transfer the Services except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the Services, and any other applicable laws. In particular, but without limitation, the Services may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using the Services, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use the Services for any purpose prohibited by U.S. law.

**15.11 For Canadian Residents.**

The Charter of the French Language (Quebec), set out that we must use both English and French to provide services to or communicate with the public. Information provided by entities not subject to the Charter of the French Language is offered in the language provided. Information provided in a language other than English or French is only made available for the convenience of our visitors.

We are committed to ensuring that people with disabilities have equal access to, and can benefit from, all our public-facing services. We believe the accommodation process should be as uncomplicated as possible and respect the dignity and privacy of the client. We strive to build accommodation for clients with disabilities proactively into our processes and practices. If a client wishes to request accommodation for a disability, they can contact us at [info@tractorzoom.com](mailto:info@tractorzoom.com). We will either assist the client with making the request or refer the client to the appropriate person.

**15.12 Consumer Complaints.** In accordance with California Civil 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 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

**15.13 Entire Agreement.** This Agreement, together with Company's Privacy Policy, any applicable Supplemental Terms and Third Party Terms, is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.