

Snorkl

Terms of Use

Effective date: November 8th, 2023

Welcome to Terms of Use (the “**Terms**”) for Snorkl, Inc. (for purposes of these Terms, “**Snorkl**”, “**we**”, “**us**”). Please read on to learn the rules and restrictions that govern your use of our website(s), products, services and applications (the “**Services**”). If you have any questions, comments, or concerns regarding these Terms or the Services, please contact us at:

Email: support@snorkl.app

These Terms are a binding contract between you (“**you**”, “**Teacher**”, “**Student**”, “**School**”, or “**Guardian**”, respectively based on your user type or relationship with us) and Snorkl. “**Teacher**” means any user who registers for the Services as a teacher, including teachers, paraprofessionals, aides, substitute teachers, behavior specialists, and other school employees using the Services to work with Students. “**Student**” means any user who registers for the Services as a student. “**School**” means any school district or school that registers for the Services. “**Guardian**” means (a) the lawful and natural parent of a minor Student, (b) the lawfully adoptive parent of a minor Student, or (c) the legal guardian of a minor Student.

Your use of the Services in any way means that you agree to all of these Terms, and these Terms will remain in effect while you use the Services. These Terms include the provisions in this document as well as those in the [Privacy Policy](#). **Your use of or participation in certain Services may also be subject to additional policies, rules and/or conditions (“Additional Terms”), which are incorporated herein by reference, and you understand and agree that by using or participating in any such Services, you agree to also comply with these Additional Terms.** If you are a School, the Additional Terms may include a separate written agreement or order form between you and Snorkl that incorporates these terms by reference (each a “**School Agreement**”).

Please read these Terms carefully. They cover important information about Services provided to you. **These Terms include information about [future changes to these Terms](#), [limitations of liability](#), [a class action waiver and resolution of disputes by arbitration instead of in court](#). PLEASE NOTE THAT YOUR USE OF AND ACCESS TO OUR SERVICES ARE SUBJECT TO THE FOLLOWING TERMS; IF YOU DO NOT AGREE TO ALL OF THE FOLLOWING, YOU MAY NOT USE OR ACCESS THE SERVICES IN ANY MANNER.**

ARBITRATION NOTICE AND CLASS ACTION WAIVER: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE [ARBITRATION AGREEMENT 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.

What is Snorkl and how do the Services work?

Snorkl is an online service that allows Teachers and Students to interact via a digital whiteboard. Through the Services, Teachers can ask Students questions and Students can provide responses by recording their screen activity along with their voice.

Without limiting the generality of the section titled “[Who is responsible for what I see and do on the Services?](#)” below or any other term or condition of these Terms, you understand that we are not a party

to any agreements or understandings between you and any School and that any recourse you may have is solely against the School and not against us.

Will these Terms ever change?

We are constantly trying to improve our Services, so these Terms may need to change along with our Services. We reserve the right to change the Terms at any time, but if we do, we will place a notice on our site located at <https://my.snorkl.app>, send you an email, and/or attempt to notify you by some other reasonable means.

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

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

What about my privacy?

Snorkl takes the privacy of its users very seriously. For the current Snorkl Privacy Policy, please click [here](#).

Children's Online Privacy Protection Act

The Children's Online Privacy Protection Act ("**COPPA**") requires that online service providers obtain verifiable consent from a child's Guardian ("**Guardian Consent**") before they knowingly collect personally identifiable information online from children who are under thirteen (13). Therefore, except for the Required Information (defined below) we only collect personally identifiable information through the Services from a child under 13 where (1) that child's School and/or Teacher has agreed (via the terms described in the following paragraph) to obtain Guardian Consent for that child to use the Services and disclose personally identifiable information to us, or (2) where the parent or legal guardian of a child has provided verifiable Guardian Consent. We do not knowingly collect or solicit personally identifiable information from children under thirteen (13) without obtaining verifiable Guardian Consent, except for the limited amount of personally identifiable information we need to collect in order to obtain Guardian Consent ("**Required Information**"). Until we have received Guardian Consent, we will only use Required Information for the purpose of obtaining Guardian Consent. If you are a child under thirteen (13), please do not attempt to register for or otherwise use the Services or send any personal information about yourself to us before we obtain Guardian Consent, except for the Required Information in the context of the Guardian Consent process. If we learn we have collected personal information from a child under thirteen (13), we will delete that information as quickly as possible. If you believe that a child under thirteen (13) may have provided us with personal information (beyond the Required Information) without our obtaining Guardian Consent, please contact us at support@snorkl.app.

If you are a School or Teacher, you represent and warrant that you are solely responsible for complying with COPPA, meaning that you must either:

- (a) obtain advance written consent from all Guardians whose children under thirteen (13) will be accessing the Services. You are responsible for understanding how our Services may collect and use information of users of the Services, including children. When obtaining consent from Guardians, you must provide them with our [Privacy Policy](#). You must keep all consents on file and

provide them to us if we request them. If you are a Teacher, you represent and warrant that you have permission and authorization from your School to use the Services as part of your curriculum, and for purposes of COPPA compliance, you represent and warrant that you are entering into these Terms on behalf of your School. If you are entering into this agreement on behalf of a School, you will only grant access codes to Teachers who are current employees of your School. Upon termination of a Teacher's employment with you, you will require such individual to return and cease using all access codes he or she has in his or her possession. If at any time you learn a user of the Services claims to be affiliated with your School who is not, in fact, affiliated with your School, you will notify us immediately. For more information on COPPA, please

- see <https://www.ftc.gov/tips-advice/business-center/privacy-and-security/children%27s-privacy>; or
- (b) provide "school consent" on behalf of such students under 13, as a result of using the Services in an educational setting, solely for educational purposes that are for the benefit of Students, Teachers, or the School itself. Schools, school districts, or educational institutions are responsible for providing consent on behalf of the parents and legal guardians of students. This means that the School or educational institution, not the individual parents, can consent to the collection of Students' Personal Information. If you are a School or Teacher seeking to provide "school consent," you must notify parents and legal guardians about the data collection and use policies of the Services under these Terms and the Privacy Policy, and allow them to opt out if they object to the data collection.

Family Educational Rights and Privacy Act

If you are a School or Teacher subject to the provisions of the Family Educational Rights and Privacy Act ("FERPA"), you agree that: (A) you appoint Snorkl as a "school official" as that term is used in FERPA §§99.7(a)(3)(iii) and 99.31(a)(1) and as interpreted by the Family Policy Compliance Office, and determine that you and Snorkl have a "legitimate educational interest," for the purpose of carrying out our responsibilities under these Terms and (B) Snorkl acknowledges that you are bound by all relevant provisions of FERPA and agrees that it will work to ensure you do not breach any such relevant provisions by ensuring Personal Information obtained from you by Snorkl in the performance of these terms: (i) will not be disclosed to third parties, except as expressly permitted in FERPA, without signed and dated written consent of the student, or if the student is under eighteen (18) years of age, signed and written consent of the student's parents/guardians and (ii) will be used only to fulfill Snorkl's responsibilities under these Terms. In accordance with FERPA, the parties agree that any consents to disclose information may be made electronically. Notwithstanding anything to the contrary, nothing in these Terms prevents Snorkl from using or disclosing or otherwise exercising all rights in de-identified, anonymized, or aggregate information derived from educational records.

What are the basics of using Snorkl?

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

Generally, Schools will be responsible for procuring Guardian Consents for individual Students. By sending an invitation, or asking Snorkl to send an invitation, to a Student to set up an account and Snorkl User ID, the School represents and warrants that it has received the applicable Guardian Consent for the Student to create an account and Snorkl User ID and to agree to these Terms.

Additionally, you may be able to access certain parts or features of the Services by using your account credentials from other services (each, a “**Third Party Account**”), such as those offered by Google and Microsoft. By using the Services through a Third Party Account, you permit us to access certain information from such accounts for use by the Services. You are ultimately in control of how much information is accessible to us and may exercise such control by adjusting your privacy settings on your Third Party Account.

You represent and warrant that you are an individual of legal age to form a binding contract (or if not, you’ve received your Guardian’s permission to use the Services and have gotten your Guardian to agree to these Terms on your behalf).

You will only use the Services for your own internal, personal, non-commercial use, and not on behalf of or for the benefit of any third party, and only in a manner that complies with all laws that apply to you. If your use of the Services is prohibited by applicable laws, then you aren’t authorized to use the Services. We can’t and won’t be responsible for your using the Services in a way that breaks the law.

You will not share your Snorkl User ID, account or password with anyone, and you must protect the security of your Snorkl User ID, account, password and any other access tools or credentials. You’re responsible for any activity associated with your Snorkl User ID and account.

What about messaging?

As part of the Services, you may receive communications through the Services, including messages that Snorkl sends you (for example, via email). When signing up for the Services, you will receive a welcome message and instructions on how to stop receiving messages.

Are there restrictions in how I can use the Services?

You represent, warrant, and agree that you will not provide or contribute anything, including any Content or User Submission (as those terms are defined below), to the Services, or otherwise use or interact with the Services, in a manner that:

- (a) infringes or violates the intellectual property rights or any other rights of anyone else (including Snorkl);
- (b) violates any law or regulation, including, without limitation, any applicable export control laws, privacy laws or any other purpose not reasonably intended by Snorkl;
- (c) is dangerous, harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable;
- (d) jeopardizes the security of your Snorkl User ID, account or anyone else’s (such as allowing someone else to log in to the Services as you);
- (e) attempts, in any manner, to obtain the password, account, or other security information from any other user;
- (f) violates the security of any computer network, or cracks any passwords or security encryption codes;

- (g) runs Maillist, Listserv, any form of auto-responder or “spam” on the Services, or any processes that run or are activated while you are not logged into the Services, or that otherwise interfere with the proper working of the Services (including by placing an unreasonable load on the Services’ infrastructure);
- (h) “crawls,” “scrapes,” or “spiders” any page, data, or portion of or relating to the Services or Content (through use of manual or automated means);
- (i) copies or stores any significant portion of the Content; or
- (j) decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services.

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

What are my rights in the Services?

The materials displayed or performed or available on or through the Services, including, but not limited to, text, graphics, data, articles, photos, images, illustrations, User Submissions (as defined below) and so forth (all of the foregoing, the “**Content**”) are protected by copyright and/or other intellectual property laws. You promise to abide by all copyright notices, trademark rules, information, and restrictions contained in any Content you access through the Services, and you won’t use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell, commercialize or otherwise exploit for any purpose any Content not owned by you, (i) without the prior consent of the owner of that Content or (ii) in a way that violates someone else’s (including Snorkl’s) rights.

Subject to these Terms, we grant each user of the Services a worldwide, non-exclusive, non-sublicensable and non-transferable license to use (i.e., to download and display locally) Content solely for purposes of using the Services. Use, reproduction, modification, distribution or storage of any Content for any purpose other than using the Services is expressly prohibited without prior written permission from us. You understand that Snorkl owns the Services. You won’t modify, publish, transmit, participate in the transfer or sale of, reproduce (except as expressly provided in this Section), create derivative works based on, or otherwise exploit any of the Services. The Services may allow you to copy or download certain Content, but please remember that even where these functionalities exist, all the restrictions in this section still apply.

What about anything I contribute to the Services – do I have to grant any licenses to Snorkl or to other users?

User Submissions

Anything you post, upload, share, store, or otherwise provide through the Services is your “**User Submission**”. Some User Submissions may be viewable by other users. You are solely responsible for all User Submissions you contribute to the Services. You represent that all User Submissions submitted by you are accurate, complete, up-to-date, and in compliance with all applicable laws, rules and regulations.

You agree that you will not post, upload, share, store, or otherwise provide through the Services any User Submissions that: (i) infringe any third party’s copyrights or other rights (e.g., trademark, privacy rights, etc.); (ii) contain sexually explicit content or pornography; (iii) contain hateful, defamatory, or discriminatory content or incite hatred against any individual or group; (iv) exploit minors; (v) depict unlawful acts or extreme violence; (vi) depict animal cruelty or extreme violence towards animals; (vii) promote fraudulent schemes, multi-level marketing (MLM) schemes, get rich quick schemes, online

gaming and gambling, cash gifting, work from home businesses, or any other dubious money-making ventures; or (viii) that violate any law.

Licenses

In order to display your User Submissions on the Services, and to allow other users to enjoy them (where applicable), you grant us certain rights in those User Submissions (see below for more information). Please note that all of the following licenses are subject to our [Privacy Policy](#) to the extent they relate to User Submissions that are also your personally-identifiable information.

By submitting User Submissions through the Services, you hereby do and shall grant Snorkl 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 Submissions in connection with our operation of the Services, solely to the extent required to provide you with the Services. To the extent your User Submissions are accessible by other users of the Services, you also hereby do and shall grant each user of the Services a non-exclusive license to access your User Submissions through the Services, and to use, edit, modify, reproduce, distribute, prepare derivative works of, display and perform such User Submissions using the features and functionalities of the Services. For clarity, the foregoing license grants to us and our users do not affect your other ownership or license rights in your User Submissions, including the right to grant additional licenses to your User Submissions, 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.

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

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

In accordance with the DMCA, we've adopted the following policy toward copyright infringement. We reserve the right to (1) block access to or remove material that we believe in good faith to be copyrighted material that has been illegally copied and distributed by any of our advertisers, affiliates, content providers, members or users and (2) remove and discontinue service to repeat offenders.

(1) Procedure for Reporting Copyright Infringements. If you believe that material or content residing on or accessible through the Services infringes your copyright (or the copyright of someone whom you are authorized to act on behalf of), please send a notice of copyright infringement containing the following information to Snorkl's Designated Agent to Receive Notification of Claimed Infringement (our "**Designated Agent**," whose contact details are listed below):

- (a) A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright that has been allegedly infringed;
- (b) Identification of works or materials being infringed;
- (c) Identification of the material that is claimed to be infringing including information regarding the location of the infringing materials that the copyright owner seeks to

have removed, with sufficient detail so that Snorkl is capable of finding and verifying its existence;

- (d) Contact information about the notifier including address, telephone number and, if available, email address;
- (e) A statement that the notifier has a good faith belief that the material identified in (1)(c) is not authorized by the copyright owner, its agent, or the law; and
- (f) A statement made under penalty of perjury that the information provided is accurate and the notifying party is authorized to make the complaint on behalf of the copyright owner.

(2) Once Proper Bona Fide Infringement Notification is Received by the Designated Agent. Upon receipt of a proper notice of copyright infringement, we reserve the right to:

- (a) remove or disable access to the infringing material;
- (b) notify the content provider who is accused of infringement that we have removed or disabled access to the applicable material; and
- (c) terminate such content provider's access to the Services if he or she is a repeat offender.

(3) Procedure to Supply a Counter-Notice to the Designated Agent. If the content provider believes that the material that was removed (or to which access was disabled) is not infringing, or the content provider believes that it has the right to post and use such material from the copyright owner, the copyright owner's agent, or, pursuant to the law, the content provider may send us a counter-notice containing the following information to the Designated Agent:

- (a) A physical or electronic signature of the content provider;
- (b) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or disabled;
- (c) A statement that the content provider has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material; and
- (d) Content provider's name, address, telephone number, and, if available, email address, and a statement that such person or entity consents to the jurisdiction of the Federal Court for the judicial district in which the content provider's address is located, or, if the content provider's address is located outside the United States, for any judicial district in which Snorkl is located, and that such person or entity will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Designated Agent, Snorkl may, in its discretion, send a copy of the counter-notice to the original complaining party informing that person that Snorkl may replace the removed material or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider accused of committing infringement, the removed material may be replaced or access to it restored in 10 to 14 business days or more after receipt of the counter-notice, at Snorkl's discretion.

Please contact Snorkl's Designated Agent at the following address:

Snorkl, Inc.
Attn: DMCA Designated Agent
5383 Balboa Avenue,
San Diego, CA 92117

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

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

You are responsible for all Content you contribute, in any manner, to the Services, and you represent and warrant you have all rights necessary to do so, in the manner in which you contribute it.

The Services may contain links or connections to third-party websites or services that are not owned or controlled by Snorkl. When you access third-party websites or use third-party services, you accept that there are risks in doing so, and that Snorkl is not responsible for such risks.

Snorkl has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any third-party websites or by any third party that you interact with through the Services. In addition, Snorkl will not and cannot monitor, verify, censor or edit the content of any third-party site or service. We encourage you to be aware when you leave the Services and to read the terms and conditions and privacy policy of each third-party website or service that you visit or utilize. By using the Services, you release and hold us harmless from any and all liability arising from your use of any third-party website or service.

Your interactions with organizations and/or individuals found on or through the Services, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties. You agree that Snorkl shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings.

If there is a dispute between participants on this site or Services, or between users and any third party, you agree that Snorkl is under no obligation to become involved. In the event that you have a dispute with one or more other users, you release Snorkl, its directors, officers, employees, agents, and successors from claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and/or our Services. You shall and hereby do waive California Civil Code Section 1542 or any similar law of any jurisdiction, which says in substance: "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.”

Will Snorkl ever change the Services?

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

Do the Services cost anything?

Certain features and functionalities of the Services are currently free, but we reserve the right to charge for certain or all Services in the future. We will notify you before any Services you are then using begin carrying a fee, and if you wish to continue using such Services, you must pay all applicable fees for such Services. If you are a School, then your obligation to pay any fees will be set forth in your School Agreement.

What if I want to stop using the Services?

Unless otherwise set forth in a School Agreement, you’re free to do that at any time by contacting us at support@snorkl.app; please refer to our [Privacy Policy](#), as well as the licenses above, to understand how we treat information you provide to us after you have stopped using our Services.

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

Account termination may result in destruction of any Content associated with your account, so keep that in mind before you decide to terminate your account.

If you have deleted your account by mistake, contact us immediately at support@snorkl.app – we will try to help, but unfortunately, we can’t promise that we can recover or restore anything.

Provisions that, by their nature, should survive termination of these Terms shall survive termination. By way of example, all of the following will survive termination: any obligation you have to indemnify us, any limitations on our liability, any terms regarding ownership or intellectual property rights, and terms regarding disputes between us, including without limitation the arbitration agreement.

What else do I need to know?

Warranty Disclaimer. Snorkl and its licensors, suppliers, partners, parent, subsidiaries or affiliated entities, and each of their respective officers, directors, members, employees, consultants, contract employees, representatives and agents, and each of their respective successors and assigns (Snorkl and all such parties together, the “**Snorkl Parties**”) make no representations or warranties concerning the Services, including without limitation regarding any Content contained in or accessed through the

Services, and the Snorkl Parties will not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in or accessed through the Services or any claims, actions, suits procedures, costs, expenses, damages or liabilities arising out of use of, or in any way related to your participation in, the Services. The Snorkl Parties make no representations or warranties regarding suggestions or recommendations of services or products offered or purchased through or in connection with the Services. THE SERVICES AND CONTENT ARE PROVIDED BY SNORKL (AND ITS LICENSORS AND SUPPLIERS) ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

Limitation of Liability. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL ANY OF THE SNORKL PARTIES BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, (B) ANY SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, (C) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF ONE-HUNDRED (\$100) DOLLARS OR (D) ANY MATTER BEYOND OUR REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL OR CERTAIN OTHER DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

Indemnity. You agree to indemnify and hold the Snorkl Parties harmless from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys' fees) arising from or in any way related to any claims relating to (a) your use of the Services (including any actions taken by a third party using your account), and (b) your violation of these Terms. In the event of such a claim, suit, or action ("**Claim**"), we will attempt to provide notice of the Claim to the contact information we have for your account (provided that failure to deliver such notice shall not eliminate or reduce your indemnification obligations hereunder).

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

Choice of Law. These Terms are governed by and will be construed under the Federal Arbitration Act, applicable federal law, and the laws of the State of California, without regard to the conflicts of laws provisions thereof.

Arbitration Agreement. Please read the following ARBITRATION AGREEMENT carefully because it requires you to arbitrate certain disputes and claims with Snorkl and limits the manner in which you can seek relief from Snorkl. Both you and Snorkl acknowledge and agree that for the purposes of any dispute arising out of or relating to the subject matter of these Terms, Snorkl's officers, directors, employees and independent contractors ("**Personnel**") are third-party beneficiaries of these Terms, and that upon your acceptance of these Terms, Personnel will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as the third-party beneficiary hereof.

(a) *Arbitration Rules; Applicability of Arbitration Agreement.* The parties shall use their best efforts to settle any dispute, claim, question, or disagreement arising out of or relating to the subject matter of these Terms directly through good-faith negotiations, which shall be a precondition to either party initiating arbitration. If such negotiations do not resolve the dispute, it shall be finally settled by binding arbitration in San Diego County, California. The arbitration will proceed in the English language, in accordance with the JAMS Streamlined Arbitration Rules and Procedures (the “**Rules**”) then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes. The arbitrator shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction.

(b) *Costs of Arbitration.* The Rules will govern payment of all arbitration fees. Snorkl will pay all arbitration fees for claims less than seventy-five thousand (\$75,000) dollars. Snorkl will not seek its attorneys’ fees and costs in arbitration unless the arbitrator determines that your claim is frivolous.

(c) *Small Claims Court; Infringement.* Either you or Snorkl may assert claims, if they qualify, in small claims court in San Diego County, California or any United States county where you live or work. Furthermore, notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction, to prevent the actual or threatened infringement, misappropriation or violation of a party’s copyrights, trademarks, trade secrets, patents or other intellectual property rights.

(d) *Waiver of Jury Trial.* YOU AND SNORKL WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR JURY. You and Snorkl are instead choosing to have claims and disputes resolved by arbitration. Arbitration procedures are typically more limited, more efficient, and less costly than rules applicable in court and are subject to very limited review by a court. In any litigation between you and Snorkl over whether to vacate or enforce an arbitration award, YOU AND SNORKL WAIVE ALL RIGHTS TO A JURY TRIAL, and elect instead to have the dispute be resolved by a judge.

(e) *Waiver of Class or Consolidated Actions.* ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. If however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither you nor Snorkl is entitled to arbitration; instead all claims and disputes will be resolved in a court as set forth in (g) below.

(f) *Opt-out.* You have the right to opt out of the provisions of this Section by sending written notice of your decision to opt out to the following address: 5383 Balboa Avenue, San Diego, CA 92117 postmarked within thirty (30) days of first accepting these Terms. You must include (i) your name and residence address, (ii) the email address and/or telephone number associated with your account, and (iii) a clear statement that you want to opt out of these Terms’ arbitration agreement.

(g) *Exclusive Venue.* If you send the opt-out notice in (f), and/or in any circumstances where the foregoing arbitration agreement permits either you or Snorkl to litigate any dispute arising out of or relating to the subject matter of these Terms in court, then the foregoing arbitration agreement will not apply to either party, and both you and Snorkl agree that any judicial proceeding (other than small claims actions) will be brought in the state or federal courts located in, respectively, San Diego County, California, or the federal district in which that county falls.

(h) *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 Agreement section will be null and void. This arbitration agreement will survive the termination of your relationship with Snorkl.

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

Except as expressly set forth in the section above regarding the arbitration agreement, you and Snorkl agree there are no third-party beneficiaries intended under these Terms.