

Customers

Master Services Agreement

www.immersivelabs.com





This Agreement governs the access to or use of the Platform and the Services that Immersive provides to the Customer.

This Agreement forms a legally binding contract between the Customer and Immersive. This Agreement applies to the exclusion of any terms the Customer seeks, or has sought to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing. By executing or otherwise accepting an Order Form or the Customer's employees, agents, representatives, and/or independent contractors accessing or using the Platform or the Services and accepting these terms by way of a click-through, the Customer agrees to the terms and conditions contained in this Agreement.

1. Definitions

1.1. In this Agreement:

Access Credentials means any username, identification number, password, license or security key (including any API key), security token, PIN, or similar method, used to verify an individual's identity and authorization to access the Platform, the Services, and/or the APIs.

Agreement means these terms and conditions, any terms and conditions incorporated by reference, and any Order Forms.

API means any application programming interface made available by Immersive to use, integrate, or interoperate with the Platform.

Anti-Bribery Laws means applicable laws that prohibit corruption or the bribery of, or the providing of unlawful gratuities, facilitation payments, or other benefits to, any government official or any other person, including but not limited to: (a) the United States Foreign Corrupt Practices Act of 1977; and (b) the United Kingdom Bribery Act 2010.

Authorized Users means the employees, agents, representatives and/or independent contractors of the Customer and any Customer Group company that the Customer authorizes to use the Platform and the Services.

Customer means the Person who has contracted for access to the Platform and the Services from Immersive through an Order Form.

Customer Data means the electronic data (including any personal data), information, materials, text, prompts, images, or other content relating to the Customer submitted, uploaded, imported, or transferred by the Customer to be stored, shared, or hosted on or through the Platform and the Services (including to be incorporated into any Customer Produced Content or made available as an Input to Immersive AI), or otherwise made available by the Customer through the Services.

Customer Produced Content means custom content created solely by the Customer on the Platform using Customer Data in the content builder tools on the Platform.

Customer Sponsored Company means a supplier, vendor, client, or other Person that has been granted access to the Platform by the Customer in accordance with Clause 2.4 (*Customer Sponsored Companies*).

Documentation means the Product and Services Guide made available at www.immersivelabs.com/legal/.

Fees means the total fees and/or charges specified in the applicable Order Form or otherwise chargeable by Immersive pursuant to this Agreement.

Group means, as to a party to this Agreement, that party together with its holding company or any subsidiary, either the party or its holding company or any other company under common control with it from time to time (but only for so long as that control exists).

Immersive means the company described in Clause 16.10 (*Contracting Entity, Notices, Governing Law, and Venue*).

Immersive AI means generative AI feature(s) and functionality (including machine learning, deep learning, and other similar artificial intelligence technologies) which are made available by Immersive on the Platform.

Immersive Community means the community forum and resource database which relate to the Platform, and which is known as “The Human Connection”, including but not limited to the community.immersivelabs.io domain, all related domains and subdomains.

Inputs has the meaning given to it in Clause 15.3.2 (*Immersive AI*).

Intellectual Property Rights means patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

License Quantities means the numbers of Authorized Users, exercises, range resources/credits or similar as described in the Documentation and as set out in the Order Form.

Modules means the modules listed in the Documentation which are made available by Immersive on the Platform, and which may include Hands-On Labs, Technical Exercising, and Organizational Exercising modules.

Order Form means the order form(s) or quote(s) executed by the Customer and Immersive or another agreed method between the Customer and Immersive or a Reseller that references: (i) this Agreement; (ii) the Modules which are accessible by the Customer; (iii) (as relevant) the number of Authorized Users, assessments, scenarios or resources for such Modules.

Outputs has the meaning given to it in Clause 15.3.2 (*Immersive AI*).

Person means any individual, firm, corporation (including non-profit corporation), partnership, company, estate, unincorporated organization, limited liability company, division, trust, joint venture, association, government, governmental entity or agency, or other entity or organization.

Platform means the cyber security skills platforms known as “Immersive Labs” or “Immersive” and any content or software made available or displayed on them, including but not limited to the <https://iml.immersivelabs.online/> and <https://dashboard.snaplabs.io> domains, all related domains and subdomains, and the APIs.

Platform Results means any results generated by use of the Platform and/or the Services by the Customer's Authorised Users, including usage statistics, Authorized User records, performance data and metrics.

Proof of Concept (POC) means access to the Platform as part of a proof of concept, proof of value, trial, demo, pilot, or similar.

Reseller means an authorized third-party resellers or distributors of Immersive which may be used, subject to Clause 14 (*Resellers and Managed Service Providers*), by Immersive to resell licenses to provide access to the Platform and/or the Services to the Customer.

Services means the services specified in the Documentation and as set out in an Order Form including support services.

Start Date means the start date stated in the initial Order Form or the date the Customer accesses the Platform, whichever is earlier.

Third-Party Tooling has the meaning given to it in Clause 15.2.1.

Term has the meaning given to it in Clause 3.2 (*Term and Termination*).

Terms of Use means the terms of use governing access to the Platform by Customer Sponsored Companies available at www.immersivelabs.com/legal/.

2. Platform and Services

2.1.1. Immersive grants to the Customer a non-exclusive, non-transferable, non-sublicensable (save as set out in Clause 2.4 (*Customer Sponsored Companies*), limited, and revocable right for the Authorized Users to access Modules in the Platform during the Term solely for the Customer's internal business operations to improve cyber skills (**License**) with such grant conditional on the Customer's continuing compliance with this Agreement.

2.2. The Customer may purchase additional Modules and/or License Quantities by entering into a new Order Form.

2.3. Group Companies:

2.3.1. The Customer is responsible for the acts and omissions of all Authorized Users (including those belonging to Group Companies), and their compliance with this Agreement.

2.3.2. Subject to Clause 2.3.3, the Customer warrants and represents that it has the necessary permissions to act as agent on behalf of any Group companies and to provide Immersive with access to user data in the Platform belonging to such Group companies.

2.3.3. If a Customer Group company enters an Order Form directly with Immersive, that Order Form is a separate obligation of the Group company and only such Group company shall have rights and obligations in relation to such Order Form.

2.4. Customer Sponsored Companies:

- 2.4.1. Subject to Immersive's prior written approval, the Customer may grant a sub-license of the License to a Customer Sponsored Company provided that the Customer ensures the Customer Sponsored Company accepts and complies with the Terms of Use, which governs access to the Platform by such Customer Sponsored Company.
- 2.4.2. Without prejudice to any other rights and remedies available to Immersive, Immersive may suspend or terminate access to the Platform where the Customer Sponsored Company does not agree to or breaches the Terms of Use.
- 2.4.3. The Customer warrants and represents that it has the necessary permissions to act as agent on behalf of any Customer Sponsored Company and to provide Immersive with access to user data in the Platform belonging to such Customer Sponsored Company.

3. Term and Termination

- 3.1. This Agreement shall start on the Start Date of the initial Order Form and shall continue until the expiry or termination of all Order Forms, unless terminated earlier in accordance with Clause 3.3.
 - 3.1.1. Each Order Form shall start on the Start Date and shall continue until the end date stated on the Order Form at which point the Order Form shall automatically renew for additional periods of the same duration (**Term**), unless terminated earlier in accordance with Clause 3.3.
- 3.2. This Agreement or an individual Order Form may be terminated:
 - 3.2.1. by either party by giving notice in writing (of no less than 30 days) before the end of the then-current term (provided always that fees paid shall be non-refundable (pro-rata or otherwise) and any fees not paid which relate to the remainder of the then-current term (prior to the effect of the termination notice) shall become immediately due and payable);
 - 3.2.2. by either party if the other party:
 - i. commits a material breach (which, if capable of remedy, is not remedied within 10 days of written notice of the breach from the other party) of this Agreement; and/or
 - ii. becomes insolvent, ceases trading, enters into liquidation, or generally becomes unable to pay its debts within the meaning of s.123 of the Insolvency Act or any analogous event in any relevant jurisdiction; and/or
 - iii. in the circumstances described in Clause 11.3 (*Indemnities*); and/or
 - 3.2.3. by Immersive if the Customer fails to pay any amount due under this Agreement on the due date and remains in default for not less than 10 days after being notified in writing to make payment.
- 3.3. Upon termination of an Order Form for any reason, all licences and rights granted under this Agreement pursuant to the Order Form shall immediately terminate.
- 3.4. Upon termination of this Agreement for any reason:

- 3.4.1. all Order Forms in effect at the date of termination shall immediately terminate and all licences and rights granted under this Agreement shall immediately terminate;
 - 3.4.2. the accrued rights of the parties as at the termination date or the continuation after termination of Clauses 4 (*Customer Responsibilities*), 9 (*Intellectual Property Rights*), 10 (*Confidentiality*), 11 (*Indemnities*) and 12 (*Limitation of Liability*) which shall not be affected or prejudiced; and
 - 3.4.3. each party shall return and make no further use of any equipment, property, or other items belonging to the other party.
- 4. Customer Responsibilities**
- 4.1. The Customer undertakes at all times to ensure that it and its Authorized Users shall:
 - 4.1.1. carry out its responsibilities in this Agreement in a timely manner to enable Immersive to provide the Services;
 - 4.1.2. use all commercially reasonable endeavours to prevent any unauthorized access to the Platform and/or other areas of the Platform outside the relevant Modules or agreed Licence Quantities and shall not share Access Credentials between Authorized Users;
 - 4.1.3. comply with all applicable laws and regulations with respect to its activities under this Agreement and shall maintain all necessary licences, consents, and permissions necessary for performance of obligations under this Agreement;
 - 4.1.4. use the Platform in accordance with and only for the purposes it is intended as described in the Documentation.
 - 4.2. The Customer undertakes at all times to ensure that it and its Authorized Users shall not:
 - 4.2.1. copy, modify, duplicate, create derivative works from, frame, mirror, publish or republish, download, display, transmit, or distribute all or any portion of the Platform in any form or media or by any means or de-compile, reverse compile, reverse engineer, disassemble or otherwise reduce to human-perceivable form all or any part of them;
 - 4.2.2. access or use the Platform or the Services to create, provide, or assist in any way the creation of, any software, platform or services that compete with the Platform or the Services;
 - 4.2.3. introduce any software, Customer Data, or material that is malicious or technologically harmful to the Platform or any related databases, infrastructure or use the Platform in any way that causes or may cause damage to the Platform or impairment of its availability or accessibility;
 - 4.2.4. use the Platform or the Services to generate revenue or for other commercial purposes without obtaining Immersive's prior consent;
 - 4.2.5. share any techniques and/or answers on how to complete labs or other content with any other person;
 - 4.2.6. perform any security testing of the Platform without Immersive's prior written consent or circumvent safeguards or safety mitigations in the Platform.

- 4.3. The Customer acknowledges and agrees that Immersive may suspend or terminate the Services for a breach of this Clause 4.
- 4.4. Immersive shall be entitled to review the Customer's use of and/or access to the Platform and, to the extent of any misuse of the Licences and/or Licence Quantities, Immersive may disable the relevant access and/or charge the Customer for any unauthorized access.

5. **Immersive Responsibilities**

- 5.1. Immersive shall:
 - 5.1.1. provide the Customer with the Access Credentials (or the ability to create Access Credentials) and take the steps necessary for the Customer and its Authorized Users to access the Platform; and
 - 5.1.2. provide the Platform and the Services with reasonable care and skill and in accordance with the Documentation.
- 5.2. To the extent the Platform or the Services do not conform with Clause 5.1, Immersive shall use its reasonable commercial endeavours to correct any such non-conformance or provide the Customer with an alternative means of accomplishing the desired performance with such correction being the Customer's sole and exclusive remedy for breach of Clause 5.1.
- 5.3. Notwithstanding Clauses 5.1 and 5.2, Immersive does not warrant that the Customer's use of the Services shall be uninterrupted or error-free and is not responsible for any delays, delivery failures, or other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.
- 5.4. Immersive warrants that it will:
 - 5.4.1. maintain all licences, consents, and permissions necessary for the performance of its obligations under this Agreement; and
 - 5.4.2. deploy industry standard anti-virus software designed to ensure that viruses or other harmful code are not introduced to the Customers' environment.

6. **Fees and Payment**

- 6.1. The Customer shall pay all Fees specified in the applicable Order Form without any deduction, set-off, or withholding whatsoever. All Fees are quoted and payable in the currency indicated in the Order Form and are based on the Services purchased, not the Services used.
- 6.2. Immersive shall be entitled to notify the Customer of an increase the Fees prior to the start of each renewal term, with any such increase being agreed between the parties.
- 6.3. The Fees shall be invoiced on or around the Start Date and on or around the start of each renewal term. Fees are non-cancellable and non-refundable (pro-rata or otherwise). Except as otherwise stated in an Order Form, the Customer shall pay the Fees within 30 days of the invoice date. Payment by check is not accepted by Immersive. If the Customer disputes any part of an invoice, it shall: (i) notify Immersive in writing of such dispute within 14 days of the invoice date; (ii) as part of the written notice, describe the nature of the dispute; and (iii) pay all undisputed amounts when due.

- 6.4. Any payment (except payment subject to a good faith dispute) not received from the Customer by the due date may accrue late charges at the rate of 8% of the outstanding balance per year (assessed daily), or the maximum amount permitted by law (which may be zero), whichever is the lower, from the date payment was due until the date paid.
- 6.5. If an invoice is more than 30 days past due (except with respect to payments subject to a good faith dispute), Immersive may, without liability to the Customer, suspend access to the Platform upon 10 days written notice until such amounts are paid in full.
- 6.6. All Fees are exclusive of value added tax, use tax, goods and services tax, sales tax, use tax, or any similar taxes or legally imposed fees (including but not limited to fees or other charges imposed by the Customer's bank or other third-party payment providers in relation to transferring the Fees to Immersive), duties or contributions based on such amounts payable, all of which shall be the sole responsibility of the Customer. To avoid doubt, Immersive shall be responsible for taxes based on its net income.

7. Customer Data and Customer Produced Content

- 7.1. Subject to Clause 7.2, the Customer retains ownership of and title to any Intellectual Property Rights in the Customer Data and any Customer Produced Content.
- 7.2. As between Immersive and the Customer, any Customer Produced Content generated by Immersive AI shall belong to the Customer save that Immersive makes no warranty or representation that the Intellectual Property Rights contained in Outputs and incorporated into Customer Produced Content are capable of ownership by or assignment to the Customer.
- 7.3. The Customer grants Immersive and its sub-processors or other third party vendors a non-exclusive, royalty-free, fully paid up, sub-licensable right and licence to process, store, copy, cache, access, use, transmit, display, disclose, reproduce, or modify Customer Data and any Customer Produced Content insofar as reasonably necessary for Immersive to provide the Platform and the Services in accordance with this Agreement.
- 7.4. The Customer understands that Customer Data (including personal data of Authorized Users) and any Customer Produced Content may be transferred by Immersive from the jurisdiction of origin and may be hosted and processed by Immersive in the United Kingdom, United States, EU, and/or any other countries listed on the list of sub-processors (available www.immersivelabs.com/legal/).
- 7.5. The Customer shall ensure that the Customer Data (i) does not infringe any required consents or permissions, applicable laws or regulations, or third-party Intellectual Property Rights and (ii) does not contain any material that is abusive or threatening, deceptive, discriminatory (or promote discrimination on any basis), knowingly misleading, likely to cause anxiety, embarrass, harass or harm another person, sexually explicit, or violent. Immersive shall have the right to remove any Customer Data and/or Customer Produced Content from the Platform that is in breach of this Clause.

- 7.6. The Customer is solely responsible for, and Immersive shall have no liability for the accuracy, quality, integrity, legality, and appropriateness of any Customer Data and any Customer Produced Content.
- 7.7. Upon expiry or termination of this Agreement, the Customer shall have 30 days in which to request a copy of Platform Results. After this period, Immersive may securely destroy such Platform Results and any Customer Data that has formed part of the Services and shall have no obligation to store them. The Customer may request Immersive to continue to store such data subject to agreeing appropriate terms.

8. **Data Protection**

- 8.1.1. To the extent that Immersive processes Authorized User personal data as a processor on behalf of the Customer as controller (as such terms are defined in the DPA), the data processing agreement made available at www.immersivelabs.com/legal/ (DPA) shall apply.

9. **Intellectual Property Rights**

- 9.1.1. All Intellectual Property Rights in and to the Services, Platform, and Documentation (including any updates, modifications and/or improvements) (**Immersive IPR**) belong to and shall continue to belong to Immersive.
- 9.2. Immersive IPR shall, without limitation include Intellectual Property Rights in:
- 9.2.1. any content (excluding any Customer Produced Content) created by Immersive for the Customer whether jointly or otherwise save where stated otherwise in the applicable Order Form; and
- 9.2.2. any ideas or suggestions made by the Customer as to how to improve the Platform or Services (including any ideas, know-how, submissions provided for the creation of any content for the Customer).
- 9.2.3. The Customer irrevocably assigns to the Immersive all such Intellectual Property Rights (including any created in the future).
- 9.3. The Customer has no right to access the software code (including object code, intermediate code, and source code) of the Platform and, except as expressly stated in this Agreement, the Customer does not have any rights to any patents, copyright, database right, trade secret, trademarks, or any other rights or licences in respect of the Platform, the Services, and/or the Documentation.
- 9.4. The Customer grants Immersive a non-exclusive, non-transferable, non-sublicensable, irrevocable and perpetual right to compile, collect, copy, modify, publish and use anonymous data in aggregate form that is generated from, or based upon, Customer's use of the Services (**Aggregate Data**); on condition that: (i) Aggregate Data does not include Customer Confidential Information; (ii) Aggregate Data does not include any information that can be used directly, or in connection with other data, to identify, contact or locate an individual; (iii) Aggregate Data is combined with data from other customers and cannot be used to identify, directly or indirectly, Customer; and (iv) Immersive uses Aggregate Data solely for data analytics, statistical reporting, or other lawful business purposes.

- 9.5. The Platform and the Services contain certain open-source software. Immersive warrants that the open-source software shall not: (i) diminish the license rights provided in this Agreement or limit the Customer's ability to use the Platform in accordance with the applicable Order Form or (ii) create any obligation on the part of the Customer to license the Customer's software under any open source or similar license.

10. Confidentiality

- 10.1. Each party shall take all reasonable steps to ensure that the other party's Confidential Information (as defined below) to which it has access is held in confidence and shall not make it available to any third party or use it for any purpose other than the implementation of this Agreement.
- 10.2. Confidential Information means: (i) any information that would be regarded as confidential by a reasonable business person relating to: (a) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities; and (b) the operations, processes, product information, know-how, designs, trade secrets, technical information or software; (ii) any information related to the Platform, the Services, and/or the Documentation (including the Access Credentials); (iii) any other information that is identified as being of a confidential or proprietary nature; and (iv) any information or analysis derived from (i)-(iii) above.
- 10.3. A party's Confidential Information does not include information that: (i) is or becomes publicly known other than through any act or omission of the receiving party; (ii) was in the other party's lawful possession before the disclosure; (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (iv) is independently developed by the receiving party, which can be demonstrated by written evidence; or (v) is trivial, obvious, or useless, including but not limited to Customer's or Authorized User's interactions with the Platform, lab completions, and clicks within the platform.
- 10.4. A party may disclose Confidential Information to the extent that the disclosure is required by law, any governmental or regulatory authority, or by a court or other authority of competent jurisdiction, provided that (to the extent it is permitted to do so) it gives as much notice as possible to the disclosing party, and to the extent that the disclosure is to its professional advisors.

11. Indemnities

- 11.1. The Customer shall defend and indemnify Immersive against claims, actions, proceedings, losses, damages, expenses, and costs (including without limitation court costs and legal fees) arising out of or in connection with: (i) Customer Data or Customer Produced Content being in breach of Clause 7.5 (*Customer Data*); (ii) any liability arising from the Customer's use of Third Party Tooling in breach of Clause 15.2.1 (*Third Party Tooling*), provided that (i) the Customer is given prompt notice of any such claim; (ii) Immersive provides reasonable cooperation to the Customer in the defence and settlement of such claim, at the Customer's expense; and (iii) the Customer is given sole authority to defend or settle the claim, provided that under no circumstances may any settlement admit fault on the part of Immersive or require Immersive to pay money without Immersive's prior written consent in each instance.

- 11.2. Immersive shall defend the Customer against any third-party claim that the Platform or the Services infringe any third-party Intellectual Property Right and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that: (i) Immersive is given prompt notice of any such claim; (ii) the Customer provides reasonable cooperation to Immersive in the defence and settlement of such claim, at Immersive's expense; (iii) the Customer does not make any admission or attempt to settle the matter; and (iv) Immersive is given sole authority to defend or settle the claim. The Customer acknowledges and agrees that Outputs created by Immersive AI are excluded from this Clause and are subject to Clause 15.3.3 (*AI Features*).
- 11.3. In the defence or settlement of any claim, Immersive may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 3 days' notice to the Customer without any additional liability or obligation to pay compensation to the Customer.
- 11.4. In no event shall Immersive, its employees, agents, and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: (i) a modification of the Services or Documentation by anyone other than Immersive; (ii) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Immersive; or (iii) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Immersive or any appropriate authority.
- 11.5. This Clause states the Customer's sole and exclusive rights and remedies for infringement of any Intellectual Property Right.
12. **Limitation of Liability**
- 12.1. THE FOLLOWING PROVISIONS SET OUT THE ENTIRE FINANCIAL LIABILITY OF IMMERSIVE (AND THE ENTIRE LIABILITY OF ITS EMPLOYEES, AGENTS, SUB-CONTRACTORS, AND SUB-PROCESSORS OR OTHER THIRD-PARTY VENDORS) TO THE CUSTOMER IN RESPECT OF ANY BREACH OF THIS AGREEMENT AND ANY REPRESENTATION, MISREPRESENTATION (WHETHER INNOCENT OR NEGLIGENT) STATEMENT OR TORTIOUS ACT OF OMISSION (INCLUDING WITHOUT LIMITATION NEGLIGENCE) ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.
- 12.2. EXCEPT AS SET FORTH IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IMMERSIVE DOES NOT MAKE ANY, AND EXPRESSLY DISCLAIMS ALL OTHER, WARRANTIES, CONDITIONS, AND REPRESENTATIONS, WHETHER ORAL OR WRITTEN, EXPRESS, OR IMPLIED, OR ARISING BY USAGE OF TRADE OR COURSE OF DEALING, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR MEETING THE CUSTOMER'S REQUIREMENTS.
- 12.3. NOTHING IN THIS AGREEMENT EXCLUDES ANY LIABILITY THAT CANNOT BE LIMITED BY LAW, INCLUDING BUT NOT LIMITED TO LIABILITY FOR DEATH OR PERSONAL INJURY (TO THE EXTENT CAUSED BY NEGLIGENCE) OR FOR FRAUD OR FRAUDULENT MISREPRESENTATION.

- 12.4. OTHER THAN IN RELATION TO ANY LIABILITY UNDER CLAUSE 12.3, NEITHER PARTY SHALL IN ANY CIRCUMSTANCES BE LIABLE WHETHER IN TORT (INCLUDING FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY HOWSOEVER ARISING), CONTRACT, MISREPRESENTATION (WHETHER INNOCENT OR NEGLIGENT) OR OTHERWISE FOR: (A) LOSS OF PROFITS, SALES OR BUSINESS OR OPPORTUNITY; (B) DEPLETION OF GOODWILL OR SIMILAR LOSSES; (C) LOSS OF ANTICIPATED SAVINGS OR WASTED EXPENDITURE; (D) LOSS OF USE OR BUSINESS INTERRUPTION; (E) LOSS OR CORRUPTION OF DATA OR INFORMATION; (F) ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PURE ECONOMIC LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES; REGARDLESS OF WHETHER SUCH LOSSES ARE FORESEEABLE OR IF IMMERSIVE HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.
- 12.5. OTHER THAN IN RELATION TO ANY LIABILITY ARISING AS A RESULT OF (A) CLAUSE 12.3, (B) THE CUSTOMER'S OBLIGATION TO MAKE PAYMENT OF THE FEES, (C) LIABILITY UNDER THE INDEMNITY IN CLAUSE 11.1 (*CUSTOMER INDEMNITIES*), THE TOTAL AGGREGATE LIABILITY OF A PARTY TO THE OTHER PARTY IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE OR BREACH OF STATUTORY DUTY HOWSOEVER ARISING) MISREPRESENTATION (WHETHER INNOCENT OR NEGLIGENT), RESTITUTION, INDEMNIFICATION OR OTHERWISE, ARISING IN CONNECTION WITH THE PERFORMANCE (OR NON-PERFORMANCE) OF THIS AGREEMENT AND THE SERVICES PROVIDED SHALL IN ALL CIRCUMSTANCES BE LIMITED TO 110% OF THE FEES ACTUALLY PAID BY THE CUSTOMER UNDER THE THEN CURRENT ORDER FORM(S) IN THE TWELVE MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE.
- 12.6. IMMERSIVE SHALL NOT BE LIABLE FOR AND THE CUSTOMER SHALL HOLD IMMERSIVE HARMLESS FROM ANY LOSSES THAT ARISE IN CONNECTION WITH THE CUSTOMER'S BREACH OF THIS AGREEMENT AND/OR THE ACTS OR OMISSIONS OF A RESELLER APPOINTED IN ACCORDANCE WITH CLAUSE 14 (*RESELLERS AND MANAGED SERVICE PROVIDERS*).
13. **Compliance**
- 13.1. Both parties represent and warrant that, in connection with this Agreement, they shall comply with all Anti-Bribery Laws and all applicable anti-slavery and human trafficking laws, statutes, and regulations including, but not limited to, the Modern Slavery Act 2015.
- 13.2. The Customer shall comply with all laws related to export control and that it shall not export, re-export, sell, supply, sublicense or transfer Immersive's products or services to any country or person to which the United States, United Kingdom or European Union has embargoed or restricted the provision of such items, or to nationals of those countries or locations, or to any other embargoed or restricted destinations or persons, including those entities that are fifty per cent (50%) or more owned or controlled by embargoed or restricted persons. The Customer shall be solely responsible for compliance with all import, re-import, export, re-export, sanctions, anti-boycott laws and other regulations that apply to the Customer's or Authorized Users use of the Platform but, notwithstanding the foregoing, shall not use the Platform to host any Customer Data which is subject to UK, EU and/or U.S. sanctions and export controls.

13.3. A breach of this Clause 13 is a material breach for the purposes of Clause 3.3 (*Term and Termination*).

14. **Resellers and Managed Service Providers**

14.1. **Payment – Resellers:** Subject to Immersive’s prior written approval, the Customer may procure access to the Platform via a Reseller.

14.2. Where the Reseller contractual arrangements remain in force, Clause 6 (*Fees and Payment*) shall not apply to Customer in respect of the applicable Order Form. The Customer shall be responsible for payment of the Services to the Reseller(s) and the Reseller(s) shall be responsible for the payment of Fees to Immersive.

14.3. Where the Reseller contractual arrangements terminate or expire (for whatever reason and at whatever tier in the contractual chain), then this Agreement shall apply in full in respect of access to the Platform and/or the Services and the Customer shall be responsible for payment of all Fees due to Immersive in accordance with Clause 6 (*Fees and Payment*).

14.4. Immersive may (at its discretion) suspend or terminate some or all the Services or this Agreement if the Reseller contractual agreements terminate or expire and/or are breached (including non-payment), by the Customer or the Reseller.

14.5. **Managed Services:** If the Customer has procured access to the Platform via a Reseller that is utilizing the Platform to support a wider service offering to the Customer (**Managed Services**), the Customer confirms and authorizes Immersive on the Customer’s behalf to grant the Managed Service Provider with management access and control over the Customer’s account in the Platform.

14.6. Where the Managed Services offering requires that Customer Data and/or Platform Results are transferred from the Platform to the Reseller’s own systems and/or environment, the Customer authorizes Immersive to transfer such Customer Data and/or Platform Results to the Reseller via the agreed method of transfer.

15. **Product Specific Features**

15.1. **Malicious Code:**

15.1.1. The Platform may, for training purposes, contain malicious software code that has been created by Immersive for use within the Platform only. The Customer shall not and shall not allow the Authorized Users to download and/or create local copies of such software code on the Customer’s environment or systems.

15.2. **Third Party Tooling:**

15.2.1. Subject to Immersive’s prior written approval, the Customer may bring third-party software and/or tools to use within the Platform (**Third-Party Tooling**) and in such circumstances the Customer shall (i) be solely responsible for and shall hold Immersive harmless from purchasing, paying fees, and any liability arising from use of the Third-Party Tooling, and (ii) ensure that all use of the Third Party Tooling meets any licencing terms between the Customer and the third-party tooling provider.

15.3. **AI Features:**

- 15.3.1. The Platform contains Immersive AI. The Customer may (directly or indirectly) provide or make available Customer Data to Immersive AI (**Inputs**), and receive images, materials, files, and other content generated and returned by Immersive AI based on those Inputs (**Outputs**) which may be used in the Services, including without limitation in Customer Produced Content.
 - 15.3.2. Outputs are generated by artificial intelligence, are not verified by Immersive for accuracy, and do not represent Immersive's views. Immersive makes no warranty or representation that the Outputs do not infringe any third-party rights. Immersive does not guarantee the accuracy, completeness, or reliability of any Outputs and shall in no way be liable or responsible for the Customer's use of Outputs or any omissions or errors in Outputs.
 - 15.3.3. Immersive uses technology provided by OpenAI to support Immersive AI. OpenAI may process and host Customer Data to generate Outputs. Immersive shall procure that such Customer Data shall only be used as necessary to provide the OpenAI services and shall not be used to develop or improve the OpenAI services.
 - 15.3.4. Immersive AI is not intended to process Authorized User personal data on behalf of the Customer and the Customer shall ensure that personal data is not included as an Input to Immersive AI.
- 15.4. **Beta:**
- 15.4.1. ANY SERVICES MARKED AS OR OTHERWISE IDENTIFIED AS "BETA" ARE SUPPLIED TO CUSTOMER "AS IS". IMMERSIVE MAKES NO WARRANTIES OR PERFORMANCE COMMITMENTS REGARDING THE BETA SERVICES, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES AND PERFORMANCE COMMITMENTS. IN NO EVENT SHALL IMMERSIVE BE LIABLE TO YOU OR ANY OTHER PARTY FOR DAMAGES OF ANY KIND ARISING FROM INSTALLATION OR USE OF THE BETA SERVICES, WHETHER RESULTING FROM A TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, WARRANTY OR OTHER FORM OF ACTION, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL AND CONSEQUENTIAL DAMAGES, OF ANY KIND ARISING IN ANY WAY OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
16. **General**
- 16.1. **Publicity:**
- 16.1.1. Immersive may on one or more occasions reference the Customer and has a non-exclusive licence to use the Customer's logo in advertisements, brochures, customer lists, presentations, financial reports, or other marketing, promotional or related materials provided that the Customer may, by written notice, withdraw such licence at any time.
 - 16.1.2. In addition, subject to the Customer's prior written consent, Immersive may issue a press release or similar public announcement or communication (beyond the use of

the Customer's logo in accordance with Clause 16.1.1 above) publicizing the relationship between Immersive and the Customer created by this Agreement.

16.2. Community:

16.2.1. Following the provisioning of an account on the Platform, Authorized Users shall have automatic access to the Immersive Community, which is a collection of resources and forums with the opportunity for peer-to-peer interaction, media content and support, related to the Platform and which is available at <https://community.immersivelabs.com/>. The Customer may disable access to the Immersive Community from the Platform for their Authorized Users through their organization administrator.

16.2.2. The Immersive Community is separate to and does not form part of the Services. Access to the Immersive Community is governed by the Immersive Website Policy (available at www.immersivelabs.com/legal/).

16.3. Modifications: Immersive may modify this Agreement (including the Documentation) at any time by posting a revised version on its website or otherwise notifying the Customer. All modified terms shall become effective upon posting or as otherwise stated in the notice.

16.4. Waiver: No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

16.5. Entire Agreement: This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter. The parties acknowledge that by entering into this Agreement, they place no reliance on any statement, warranty, or representation other than those expressly set out herein. The parties agree that nothing in this Clause 16.5 shall restrict or exclude liability for fraudulent misrepresentation.

16.6. Assignment: The Customer shall not, without the prior written consent of Immersive, assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under this Agreement. Immersive may at any time assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under this Agreement.

16.7. Severance: If any provision or part-provision of this Agreement is or becomes invalid, illegal, or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

16.8. Third Parties: Except for the Immersive Group, this Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

16.9. Force Majeure: Immersive shall have no liability to the Customer and shall be excused from performance under this Agreement if it is prevented from or delayed in performing its

obligations under this Agreement, or from carrying on its business, by acts, events, omissions, or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Immersive or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, epidemic or pandemic, or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16.10. **Contracting Entity, Notices, Governing Law, And Venue:** (i) the Immersive Group entity entering into this Agreement; (ii) the address to which Customer should direct notices under this Agreement; (iii) the law that shall apply in any dispute or lawsuit arising out of or in connection with this Agreement; and the courts that have exclusive jurisdiction over any such dispute or lawsuit, depend on where Customer is domiciled as follows:

If Customer is domiciled (in):	The Immersive Group company entering into this Agreement is:	Notices should be addressed to:	Governing law is (without regard to its conflicts of law rules):	Courts with exclusive jurisdiction are:
Globally, other than North or South America or the DACH region	Immersive Labs Ltd registered in England and Wales with company number 10553244	General Counsel Immersive Labs, The Programme, All Saints' St, Bristol, United Kingdom, BS1 2LZ	England and Wales	England and Wales
North or South America	Immersive Labs Corporation, a Delaware corporation	General Counsel Immersive Labs, 501 Boylston St, Boston, MA 02116, USA	Massachusetts	Boston, Massachusetts
DACH region (Germany, Austria, or Switzerland)	Immersive Labs GmbH, a German company	General Counsel Immersive Labs, c/o RSM GmbH, Georg-Glock-Straße 4, 40474 Düsseldorf, Germany	Germany	Germany

16.11. Notwithstanding Clause 16.10, Immersive enters into this Agreement on behalf of each member of the Immersive Group.

- 16.12. **Manner Of Giving Notice:** Except as otherwise specified in this Agreement, all notices related to this Agreement shall be in writing and shall be effective upon (a) personal delivery, (b) the second business day after mailing, or (c) except for notices of termination or an indemnifiable claim (**Legal Notices**), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Customer shall be addressed to the relevant billing contact designated by Customer. All other notices to Customer shall be addressed to the relevant organisation administrator designated by Customer.
- 16.13. **Relationship Between Us:** Nothing this Agreement creates or shall be deemed to create any agency or partnership.
17. **Country Specific Terms**
- 17.1. **United States:** The following additional term applies if Customer is domiciled in the United States and the Services, including related software and technology, are provided for ultimate federal government end use. The Services consist of “commercial items,” as defined at FAR 2.101. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Services shall be as provided in this Agreement, except that, for U.S. Department of Defense end users, technical data customarily provided to the public is furnished in accordance with DFARS 252.227-7015. If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this Agreement specifically granting those rights.

Be Ready

Immersive is trusted by the world's largest organizations and governments, including Citi, Pfizer, Humana, HSBC, the UK Ministry of Defence, and the UK National Health Service. We are backed by Goldman Sachs Asset Management, Ten Eleven Ventures, Menlo Ventures, Summit Partners, Insight Partners and Citi Ventures.

