



TERMS OF USE

Effective Date: May 1, 2023

PLEASE NOTE: YOUR USE OF AND ACCESS TO OUR SERVICES (AS DEFINED BELOW) ARE SUBJECT TO THE FOLLOWING TERMS OF USE. IF YOU DO NOT AGREE TO ALL OF THE FOLLOWING, YOU MAY NOT USE OR ACCESS THE SERVICES IN ANY MANNER. PLEASE READ THESE TERMS OF USE CAREFULLY. THEY COVER IMPORTANT INFORMATION ABOUT SERVICES PROVIDED TO YOU AND ANY CHARGES, TAXES, AND FEES WE BILL YOU. THESE TERMS OF USE INCLUDE INFORMATION ABOUT FUTURE CHANGES TO THESE TERMS OF USE, AUTOMATIC RENEWALS, LIMITATIONS OF LIABILITY, A CLASS ACTION WAIVER, AND RESOLUTION OF DISPUTES BY ARBITRATION INSTEAD OF IN COURT.

1. Acceptance of the Terms of Use. These Terms of Use are entered into by and between you (“Member” or “you”) and Vimient LLC, a Delaware limited liability company (“Vimient”, “we” or “us”). The following terms and conditions, together with the Privacy Policy (as defined below) (collectively, these “Terms of Use”), govern your access to and use of the Services.

Please read these Terms of Use carefully before you use the Services. By using the Services, or by clicking to accept or agree to the Terms of Use when this option is made available to you, you accept and agree to be bound and abide by these Terms of Use. If you do not want to agree to these Terms of Use, you must not access or use the Services.

2. Changes to the Terms of Use. We may revise and update these Terms of Use from time to time in our sole discretion. All changes are effective immediately when we post them to the Website (as defined below). However, any changes to the dispute resolution provisions set forth in Section 15.D. will not apply to any disputes for which the parties have actual notice on or before the date the change is posted on the Website. Notice of any changes to these Terms of Use will also be sent to you. Your continued use of the Services following such notice of the revised Terms of Use constitutes your acceptance and agreement to such changes.

3. Services. Subject to the terms and conditions of these Terms of Use, Vimient shall provide Member with certain wellness monitoring and reporting services, including the following components (collectively, the “Services”):

A. Devices. A suite of technological products used to monitor certain daily behavior of Member and provide alerts to specified recipients with different severity levels based

on events, perceived events and/or deviations from a Member's typical daily routine. Such technological products may include a:

(1) sleep mat, which tracks Member's heart rate, time asleep, number of interruptions, and time in REM, light sleep and deep sleep (the "Sleep Mat"),

(2) scale, which tracks and measures Member's weight, body mass index (BMI), fat percentage, water percentage, bone weight and muscle weight (the "Scale"), and

(3) wearable device that acts as a wristwatch and a phone, which tracks, measures and analyzes data related to Member's activity, location, resting pulse, heart rate variability, respiration rate and sleep cycle (the "Wristwatch Device" and, together, with the Sleep Mat and the Scale, the "Devices", and each, a "Device").

B. Website: Our website can be accessed at www.vimient.com (the "Website").

C. Vimient Hub. The downloadable Vimient application capable of installation and use on wireless electronic devices owned or controlled by you, such as your smartphone or tablet (the "Vimient Hub"). Features of the Vimient Hub include (i) storage and analysis of data generated by the Devices (the "Data"), (ii) a notification function, (iii) document and data review, (iv) insights into Member's daily life and (v) electronic messaging/communication with the Wellness Coaches (as defined below).

D. Wellness Coaches. Vimient's call center professionals ("Wellness Coaches") will, among other things, through the use of an internal Vimient web-based portal, (a) monitor and review the Data, (b) communicate with Member and Member's Authorized Representative, if applicable, with respect to the Data, and (c) coach Member with respect to Member's mental, physical and emotional wellbeing.

We reserve the right to suspend, discontinue or otherwise change any part of the Services at any time, in our sole discretion and without notice.

4. Use of Devices.

A. Ownership of Devices. Member acknowledges and understands that the Devices are being provided to Member for use in connection with the Services, and shall be the property of Member. Member further acknowledges and understands that Member shall be solely responsible and liable for all damage or loss to any Device while in Member's possession, and shall bear the repair or replacement cost to any damaged or lost Device.

B. Third-Party Terms. Member acknowledges and understands that (i) the Devices are developed, manufactured and supported by third-party manufacturers, and (ii) in addition to these Terms of Use, Member's use of the Devices is subject to the terms, conditions and privacy policies of the applicable third-party manufacturer. For the avoidance of doubt, with respect to Member's use of the Wristwatch Device, Member agrees to be bound by the "Navigil USA General Terms and Conditions of Communication Services for Consumer Customers",

available at [Navigil Terms & Conditions](#), which general terms and conditions are incorporated herein by reference in their entirety.

5. Using the Services.

A. Account.

(1) Member will be required to sign up for an account through the Website or the Vimient Hub, and select a unique password and user name (“Member ID”). Member agrees to provide Vimient with accurate, complete, and updated registration information about Member. Member may not select a Member ID name that Member does not have the right to use, or another person’s name with the intent to impersonate that person. Member may not transfer Member’s account to anyone else without Vimient’s prior, written consent.

(2) Member may only use the Services for 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 Member. If Member’s use of the Services is prohibited by applicable law, then Member is not authorized to use the Services. Vimient will not be responsible for Member’s use of the Services in any way that violates any law, rule or regulation.

(3) Member will not share Member’s account, password or Member ID with anyone, and Member will protect the security of Member’s account, password and Member ID. Member is responsible for any activity associated with Member’s account.

B. Electronic communications. In connection with the Services, you agree that Vimient may contact you by telephone, e-mail or SMS message, including for marketing purposes. You may opt out of receiving communications from Vimient for marketing purposes at any time by clicking the “unsubscribe” link at the bottom of an email. **BY SIGNING UP FOR THE SERVICES, YOU AGREE TO RECEIVE COMMUNICATIONS FROM VIMIEN, AND YOU REPRESENT AND WARRANT THAT EACH PERSON YOU REGISTER FOR THE SERVICES OR FOR WHOM YOU PROVIDE AN E-MAIL ADDRESS OR WIRELESS PHONE NUMBER HAS CONSENTED TO RECEIVE COMMUNICATIONS FROM VIMIEN.** You agree to indemnify and hold Vimient 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 your breach of the foregoing.

C. Authorized Representatives.

(1) Member may link a family member, friend, or other trusted individual, entity or organization (“Authorized Representative”) to Member’s account to help Member use the Services. In order to link an Authorized Representative to Member’s account, Member must execute and deliver to Vimient an Authorization (as defined below) and the Authorized Representative must acknowledge such Authorization.

(2) Member acknowledges and agrees that:

(a) Once linked to Member’s account, an Authorized Representative will have access to information generated about Member, and personal

information provided by Member, in connection with Member's use of the Services, including the Data.

(b) Member can revoke an Authorized Representative's access at any time by providing Vimient with a written revocation. Vimient is not responsible for any information that an Authorized Representative has retained before or after Member has revoked the Authorized Representative's access to Member's account.

(c) Vimient is not responsible for any acts or omissions by an Authorized Representative (including after Member has revoked an Authorized Representative's access to Member's account).

D. Wellness Services and Data.

(1) MEMBER ACKNOWLEDGES AND UNDERSTANDS THAT THE SERVICES ARE WELLNESS SERVICES ONLY AND ARE THEREFORE NOT DESIGNED TO BE, AND VIMIENT MAKES NO PROMISE THAT THE SERVICES ARE, MEDICAL, HEALTHCARE, OR EMERGENCY MEDICAL SERVICES. FURTHERMORE, VIMIENT MAKES NO PROMISE THAT SUCH SERVICES WILL EXTEND, PROLONG OR SAVE MEMBER'S LIFE. USE OF THE SERVICES IS NOT A SUBSTITUTE FOR HEALTHCARE. NO DOCTOR-PATIENT OR PROVIDER-PATIENT RELATIONSHIP IS CREATED BY MEMBER'S USE OF THE SERVICES.

(2) Member acknowledges that the Wellness Coaches who may communicate Data as part of Services are not healthcare professionals or providers and they are not providing Member with any healthcare services. Member further acknowledges that the Services do not create a doctor-patient or provider-patient relationship between Member and Vimient or any Vimient representative. The Services are provided to assist Member in managing independent living and in-home care, and not for any other medical or health purposes. The Services are also not a health insurance product.

(3) Member acknowledges and understands that Vimient is not a "healthcare provider" nor a "covered entity" and Vimient (including its agents and employees) are not "healthcare providers" or "covered entities", both terms as defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Vimient is and shall remain compliant with all California privacy laws applicable to Services.

(4) Member understands and agrees that information about Member, including Data and other Content (as defined below) provided to Member in connection with the Services, is for informational purposes only. Such Data and Content is not intended to be considered and should not be considered by Member to be "medical information," as defined by California law. The Services are not meant to identify, diagnose or treat any medical or health conditions; the Data and Content are to be used for wellness benefits only. Member should see a healthcare provider for any medical or health questions or conditions. Use of the Services in connection with acute, life-threatening events should be routinely reviewed and approved by a healthcare provider.

(5) MEMBER SHOULD NOT RELY ON THE SERVICES FOR ANY EMERGENCY MEDICAL NEEDS. IF MEMBER EXPERIENCES A MEDICAL EMERGENCY, MEMBER SHOULD IMMEDIATELY CALL 911 AND A HEALTHCARE PROFESSIONAL.

6. Member Representations and Warranties. In addition to representations and warranties Member makes elsewhere in these Terms of Use, Member also represents and warrants that Member:

A. Is at least eighteen (18) years of age.

B. Has provided Vimient with information that is accurate, complete and current, including, without limitation, Member's legal name, address, telephone number, healthcare related information, and any other information necessary to provide the Services. MEMBER AGREES TO NOTIFY VIMIEN IN WRITING IMMEDIATELY IF THERE IS ANY CHANGE IN THE FOREGOING INFORMATION.

C. Member will not use the Services or interact with the Services in a manner that:

(1) infringes or violates the intellectual property rights or any other rights of anyone (including Vimient);

(2) violates any law or regulation, including, without limitation, any applicable export control laws;

(3) is harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable;

(4) jeopardizes the security of Member's account or the security of anyone else's account (such as allowing someone else to log into the Services as you);

(5) attempts, in any manner, to obtain the password, account, or other security information from any other member;

(6) violates the security of any computer network, or cracks any passwords or security encryption codes;

(7) "crawls," "scrapes," or "spiders" any page, data, or portion of or relating to the Services or Content (through use of manual or automated means); or

(8) decompiles, reverse engineers, or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services.

7. Intellectual Property Rights.

A. The Services, the Data, and the respective content, text, graphics, data, articles, photos, images, illustrations, and other content (all of the foregoing, the "Content"),

features, and functionalities (including but not limited to all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof) are owned by Vimient, its licensors, or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws. These Terms of Use permit Member to use the Services for Member's own personal, non-commercial use only.

B. The Vimient name and logo and all names, logos, product and service names, designs, and slogans related to the Services are trademarks of Vimient or its affiliates or licensors. Member must not use such marks without the prior written consent of Vimient. All other names, logos, product and service names, designs, and slogans are the trademarks of their respective owners.

8. Privacy; Authorization.

A. Privacy Policy. Vimient's Privacy and Security Policy (which at all times shall be accessible to Member in the Vimient Hub or at www.vimient.com) is incorporated herein by reference and made a part of these Terms of Use.

B. Third-Party Access to Data. The Devices are produced and administered by third parties, and not Vimient. Accordingly, Member acknowledges and understands that:

(1) the Data may be gathered, analyzed, and maintained by such third parties for purposes of assisting Vimient in providing the Services;

(2) the Data gathered by such third parties shall be subject to the privacy and security policies of the applicable third parties;

(3) Vimient shall not be liable for any privacy or security breach relating to information transferred to, maintained or disclosed by, such third parties;

(4) any such third-party privacy or security breach shall be subject to, and resolved in accordance with, the privacy and security policies of the applicable third-party; and

(5) Vimient makes no representation that the privacy and security policies of such third parties are compliant with California privacy laws.

C. Member Authorization. At the time of Member's account creation, Member shall execute and deliver to Vimient an Authorization for Use and Disclosure of Medical Information (which will be available to Member on the Website or in the Vimient Hub), pursuant to which Member grants full authority to Vimient and identified third party entities to share the Data for the specific use described therein ("Authorization"). Member acknowledges and understands that, while the Services do not trigger the need for compliance with HIPAA or the California Confidentiality of Medical Information Act ("CMIA"), out of an abundance of caution the Authorization is fully compliant with CMIA in the event any Data is determined to include "medical information" that is shared with third parties.

9. Member Contributions.

A. All information or data you post, upload, share, store, or otherwise provide on the Website, the Vimient Hub or otherwise through the Services (each, a “Member Submission”), is owned by you. For all Member Submissions, you hereby grant Vimient a fully paid, royalty-free, sublicensable, irrevocable, and worldwide license to translate, modify (for technical purposes, for example making sure your Content is viewable on an iPhone as well as a computer) and reproduce and otherwise act with respect to such Member Submissions, in each case to enable us to operate, enhance or supplement the Services. Upon termination of these Terms of Use, Vimient will stop displaying your Member Submissions to other members, but you understand and agree that it may not be possible to completely delete that Content from Vimient’s records, and that your Member Submissions may remain viewable elsewhere to the extent they were copied or stored by others.

B. You are responsible for all Member Submissions 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. You will keep all your registration information accurate and current. You are responsible for all your activity in connection with the Services.

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

10. Reliance on Information Posted.

A. The information presented on the Website, the Vimient Hub or otherwise through the Services is made available solely for general information purposes. We do not warrant the accuracy, completeness, or usefulness of this information. Any reliance you place on such information is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such materials by you.

B. The Website or the Vimient Hub may include content provided by third parties, including materials provided by other members, bloggers, and third-party licensors, syndicators, aggregators, and/or reporting services. All statements and/or opinions expressed in these materials, and all articles and responses to questions and other content, other than the content provided by Vimient, are solely the opinions and the responsibility of the person or entity providing those materials. These materials do not necessarily reflect the opinion of Vimient. We are not responsible, or liable to you or any third party, for the content or accuracy of any materials provided by any third parties.

11. Payment.

A. Fees. You agree to pay all charges associated with the Services, including, but not limited to, charges for installation, monthly service fees, and applicable federal, state, and local taxes and fees (the “Fees”). We will provide you with notice of applicable pricing

contemporaneous with your order and/or activation. We will provide you with notice of any change in the Fees.

B. Billing. Our billing is processed through a third-party payment processor (the “Payment Processor”) who will bill you for the Services and associated taxes and fees through a payment account linked to your online billing account (“Billing Account”). The processing of payments will be subject to the terms, conditions and privacy policies of the Payment Processor in addition to these Terms of Use. We are not responsible for error by the Payment Processor. By choosing to use the Services, you agree to pay us, through the Payment Processor, Fees and you authorize us, through the Payment Processor, to charge your chosen payment provider (your “Payment Method”). We reserve the right to correct any errors or mistakes that the Payment Processor makes even if it has already requested or received payment. We also reserve the right to change our billing methods at any time; any changes to billing methods will be posted on or through the Website or the Vimient Hub. Your continued use of the Services after changes have taken effect means that you accept such changes.

C. Recurring Billing. The Services may consist of an initial period, for which there is a one-time charge, followed by recurring period charges as agreed to by you. By choosing a recurring payment plan, you acknowledge that the Services have an initial and recurring payment feature, and you accept responsibility for all recurring charges prior to cancellation.

D. Current Information Required. You must provide current, complete and accurate information for your Billing Account. You must promptly update all information to keep your Billing Account current, complete and accurate (such as a change in billing address, credit card number or credit card expiration date), and you must promptly notify us or our Payment Processor if your Payment Method is canceled (e.g., for loss or theft) or if you become aware of a potential breach of security, such as the unauthorized disclosure or use of your user name or password. Changes to such information can be made in your account settings; however, this may temporarily disrupt your access to the Services while Vimient verifies your new payment information and may result in a change to your payment billing date. Vimient is not liable for any loss caused by any unauthorized use of your credit card, debit card or any other method of payment by a third party in connection with your use of the Services. **IF YOU FAIL TO PROVIDE ANY OF THE FOREGOING INFORMATION, YOU AGREE THAT WE MAY CONTINUE CHARGING YOU FOR ANY USE OF THE SERVICES UNDER YOUR BILLING ACCOUNT UNLESS YOU HAVE TERMINATED THE SERVICES AS SET FORTH BELOW.**

E. Change in Amount Authorized. If the amount to be charged to your Billing Account varies from the amount you preauthorized (other than due to the imposition or change in the amount of state sales taxes), you have the right to receive, and we shall provide, notice of the amount to be charged and the date of the charge before the scheduled date of the transaction. Any agreement you have with your payment provider will govern your use of your Payment Method. You agree that we may accumulate charges incurred and submit them as one or more aggregate charges during or at the end of each billing cycle.

F. Auto-Renewal for the Services. The Services will be automatically extended for successive renewal periods of the same duration as the term originally selected, at the then-current non-promotional rate. If you do not want to continue to be charged on a recurring monthly basis, you must terminate your Vimient account before the end of the recurring term. The Services cannot be terminated before the end of the period for which you have already paid. Member acknowledges and understands that Vimient will not (i) prorate or discount any Fees for partial month Service periods, and (ii) refund any Fees that you have already paid.

12. Limitation on Liability

A. Warranty Disclaimer. Vimient makes no representations or warranties concerning any Content contained in or accessed through the Services, and Vimient shall not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in or accessed through the Services. The Devices are provided “AS IS” and without any warranty of any kind from Vimient. THE SERVICES AND CONTENT ARE PROVIDED BY VIMIEN ON AN “AS-IS” AND “AS AVAILABLE” BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES AS TO EQUIPMENT OR SERVICES LISTED ON THE WEBSITE, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. VIMIEN DOES NOT GUARANTEE THAT THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR CONTENT WILL BE EFFECTIVE, RELIABLE OR ACCURATE OR WILL MEET MEMBER’S REQUIREMENTS; THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; OR THAT THE QUALITY OF ANY EQUIPMENT OR THE USE OF THE SERVICES WILL MEET MEMBER’S EXPECTATIONS. VIMIEN MAKES NO GUARANTEES, REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY CONTENT AVAILABLE THROUGH THE SERVICES.

B. 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 VIMIEN (OR ITS LICENSORS OR SUPPLIERS) BE LIABLE TO MEMBER OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES RESULTING FROM INJURY, LOSS OF LIFE OR PROPERTY DAMAGE, OR (B) ANY AMOUNT IN EXCESS OF THE TOTAL FEES PAID TO VIMIEN BY MEMBER FOR THE SERVICES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE ON WHICH THE ALLEGED LIABILITY AROSE, OR (C) ANY MATTER BEYOND VIMIEN’S REASONABLE CONTROL.

13. Term; Termination.

A. Termination by Vimient. Vimient may terminate these Terms of Use at any time for any reason, or no reason at all, by providing you with three (3) days written notice.

B. Termination by You. After a period of ninety (90) days from your acceptance of these Terms of Use, you may terminate these Terms of Use for any reason by notifying us in one of the following ways: (1) through your online account; or (2) by sending an electronic notice by email to info@vimient.com. Prior to effecting such termination, or any other change to your account, we may verify your identity and confirm your election. In the event that you terminate these Terms of Use, or your use of the Services, within twelve (12) months of your acceptance of these Terms of Use, you acknowledge that you will be assessed, and agree to pay to Vimient, a \$500 termination fee (the “Termination Fee”).

C. Member’s Obligations Upon Termination. You agree that upon termination of these Terms of Use you will:

- (1) Immediately cease all use of the Services;
- (2) Pay in full all Fees accrued through the date of termination, including, if applicable, the Termination Fee; and
- (3) Return each Device to Vimient within seven (7) days of termination.

14. Indemnification. To the fullest extent allowed by applicable law, Member agrees to defend, indemnify and hold Vimient, its affiliates, officers, agents, employees, managers and members 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 third party claims relating to (a) Member’s use of the Services, and (b) Member’s violation of these Terms of Use. In the event of such a claim, suit, or action (“Claim”), Vimient will attempt to provide Member with notice of the Claim by using the contact information Vimient has for Member (provided that failure to deliver such notice shall not eliminate or reduce Member’s indemnification obligations hereunder).

15. Miscellaneous.

A. Community Members. Notwithstanding anything herein to the contrary, Sections 11 and 13 of these Terms of Use shall not apply to any Member that has not purchased the Services directly from Vimient, including, but not limited to Members (“Community Members”) receiving the Services free of charge or as an add-on service as a resident of Community Facility (as defined below). For the avoidance of doubt, all other provisions of these Terms of Use shall apply to Community Members. For purposes of these Terms of Use, the term “Community Facility” shall mean senior apartments, independent living facilities or any other senior living communities.

B. Assignment. You may not assign, delegate or transfer these Terms of Use or your rights or obligations hereunder, or your Services account. Vimient may transfer, assign, or delegate these Terms of Use and our rights and obligations hereunder without your consent.

C. Choice of Law. These Terms of Use 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.

D. Dispute Resolution.

(1) Binding Arbitration. ARBITRATION NOTICE AND CLASS ACTION WAIVER: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION SECTION BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND VIMIENT WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION. Both you and Vimient acknowledge and agree that for the purposes of any dispute arising out of or relating to the subject matter of these Terms of Use, Vimient's officers, directors, managers, members, employees, independent contractors and licensors ("Personnel") are third party beneficiaries of these Terms of Use, and that upon your acceptance of these Terms of Use, Personnel will have the right (and will be deemed to have accepted the right) to enforce these Terms of Use against you as the third party beneficiary hereof.

(2) Arbitration Rules; Applicability of Arbitration Agreement. Any dispute arising out of or relating to the subject matter of these Terms of Use shall be finally settled by binding arbitration in Sacramento County, California. The arbitration will proceed in the English language, in accordance with the Streamlined Arbitration Rules and Procedures ("Rules") of JAMS/Endispute LLC ("JAMS") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who 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. 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.

(3) Costs of Arbitration. The JAMS rules will govern payment of all arbitration fees.

(4) Waiver of Jury Trial. To the maximum extent permitted by law, YOU AND VIMIENT WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR JURY. You and Vimient 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 Vimient over whether to vacate or enforce an arbitration award, to the maximum extent permitted by law, YOU AND VIMIENT WAIVE ALL RIGHTS TO A JURY TRIAL, and elect instead to have the dispute be resolved by a judge.

(5) 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 MEMBER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR MEMBER. If, however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither you nor we are entitled to arbitration; instead, all claims and disputes will be resolved in a court as set forth in clause (7) below.

(6) 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: Vimient, LLC, 3010 Lava Ridge Court, Suite 200, Roseville, CA 95661, postmarked within 30 days of first accepting these Terms of Use. You must include (1) your name and residence address; (2) the email address and/or telephone number associated with your account; and (3) a clear statement that you want to opt out of the provisions of this Section.

(7) Exclusive Venue. If you send the opt-out notice in compliance with the provisions of clause (6) above, and/or in any circumstances where the foregoing arbitration agreement permits either you or Vimient to litigate any dispute arising out of or relating to the subject matter of these Terms of Use in court, then the foregoing arbitration agreement will not apply to either party and both you and Vimient agree that any judicial proceeding (other than small claims actions) will be brought in the state or federal courts located in Sacramento County, California.

E. Waiver and Severability. No waiver by Vimient of any term or condition set out in these Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of Vimient to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision. If any provision of these Terms of Use is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of these Terms of Use will continue in full force and effect.

F. Entire Agreement. These Terms of Use, together with the Privacy Policy, constitute the sole and entire agreement between you and Vimient regarding the Services and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the Services.