

## **ARCESIUM WEBSITE TERMS OF USE**

***IMPORTANT: PLEASE CAREFULLY READ AND UNDERSTAND THESE WEBSITE TERMS OF USE (THESE "TERMS") BEFORE ACCESSING, USING, OR SUBMITTING INFORMATION OVER OUR WEBSITE (DEFINED BELOW). THESE TERMS CONTAIN DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITIES. THESE TERMS FORM AN ESSENTIAL BASIS OF OUR AGREEMENT. PLEASE PRINT AND RETAIN A COPY OF THESE TERMS FOR YOUR RECORDS.***

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**THESE TERMS CONTAIN ARBITRATION PROVISIONS THAT WAIVE YOUR RIGHT TO A COURT HEARING AND RIGHT TO A JURY TRIAL. ARBITRATION IS MANDATORY AND IS THE EXCLUSIVE REMEDY FOR ANY AND ALL DISPUTES RELATED TO THIS WEBSITE.**

You can review the most current version of these Terms at any time on this page [www.arcesium.com/legal/terms-of-use/](http://www.arcesium.com/legal/terms-of-use/). We reserve the right to update, change, or replace any part of these Terms by posting updates and/or changes to our Website. It is your responsibility to check this page periodically for changes. YOUR CONTINUED USE OF OR ACCESS TO THE WEBSITE FOLLOWING THE POSTING OF ANY CHANGES CONSTITUTES BINDING ACCEPTANCE OF THOSE CHANGES.

### **1. WEBSITE USE**

By using the Website and agreeing to these Terms, you represent that you are at least the age of majority in your state or province of residence. You also affirm that you have the legal capacity to enter into a binding contract with us, have read these Terms, and understand and agree to them.

### **2. PRIVACY AND SECURITY DISCLOSURE**

Any personal data we receive from you, whether through the use of our website or otherwise, will be handled in accordance with our Privacy Policy, which may be viewed [here](#). By using our Website, you agree the Privacy Policy is incorporated into these Terms by reference and constitutes a part of these Terms. We may collect, use, and disclose your personal data for the purposes described in our Privacy Policy. If you do not agree with our Privacy Policy, please do not use our Website.

### **3. GENERAL CONDITIONS AND WEBSITE USER CONDUCT RESTRICTIONS**

All aspects of our Website are protected by U.S. and international copyright, trademark, and other intellectual property laws. You do not acquire any ownership or other rights by downloading or using the Website or any material on it.

All material on the Website, including without limitation all informational text, photographs, animation, illustrations, artwork, software, music, sound, photographs, graphics, audio, video, messages, files, documents, images, or other materials (collectively, the "Materials"), whether publicly posted or privately transmitted, as well as all derivative works thereof, are owned by Arcesium.

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You agree not to use or attempt to use the Website in any unlawful manner. You further agree not to commit any act or attempt to commit any act on or through the Website that may be in breach of applicable laws or in breach of the restrictions set by Arcesium, including but not limited to: (1) hacking and other digital or physical attacks on the Website; (2) performing any action that could result in excessive usage that adversely impacts the performance of the Website; (3) using the Website in a way that infringes, misappropriates, or violates any person's rights; (4) reverse assembling, reverse compiling, decompiling, translating, or otherwise attempting to discover the source code or underlying components of models, algorithms, and systems of the Website (except to the extent such restrictions are contrary to applicable law); (5) using any automated or programmatic method to extract data or output from the Website, including scraping, web harvesting, or web data extraction; or (6) using our Website in a manner that is not in compliance with all applicable laws, regulations, export restrictions, ordinances, and with all additional use restrictions set forth in these Terms or hereafter adopted by Arcesium with notice provided to you.

#### **4. MODIFICATIONS TO THE WEBSITE**

We reserve the right to modify or discontinue access to the Website (or any part or content thereof) without notice at any time. We shall not be liable to you or to any third party for any modification, suspension, or discontinuance of access to the Website.

#### **5. THIRD PARTY WEBSITES**

This section applies to everyone who interacts with our online presence, including social media postings, comment sections, feeds, and other elements of social media postings viewable on YouTube, TikTok, Facebook, LinkedIn, or any of the many other available external third-party platforms we may use ("Social Media Presence").

The sites and platforms that host our Social Media Presence are not controlled by us and therefore have their own privacy policies and terms of use. We have no obligation to monitor or remove any material thereon.

#### **6. DISCLAIMER OF WARRANTIES**

ARCESIUM DOES NOT REPRESENT OR ENDORSE THE ACCURACY OR RELIABILITY OF ANY ADVICE, OPINION, STATEMENT, OR ANY OTHER INFORMATION DISPLAYED OR DISTRIBUTED THROUGH THE WEBSITE. YOU ACKNOWLEDGE THAT ANY RELIANCE UPON ANY SUCH OPINION, ADVICE, STATEMENT, OR OTHER INFORMATION SHALL BE AT YOUR SOLE RISK. IN ADDITION, EXCEPT WHERE PROHIBITED BY LAW, THIS WEBSITE IS PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS WITHOUT WARRANTIES

OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE MAKE NO, AND EXPRESSLY DISCLAIM ANY AND ALL, REPRESENTATIONS AND WARRANTIES AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY, AND/OR COMPLETENESS OF ANY INFORMATION ON THIS WEBSITE. WE DO NOT REPRESENT OR WARRANT, AND EXPRESSLY DISCLAIM THAT: THE WEBSITE OR THE SERVER(S) THAT MAKE THE WEBSITE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NO INFRINGEMENT OF THIRD-PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

#### **7. DISCLAIMER OF LIABILITIES**

EXCEPT WHERE PROHIBITED BY LAW, IN NO EVENT SHALL ARCESIUM OR ANY OF ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, INDEPENDENT CONTRACTORS, AND/OR AGENTS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE, OR ANY OTHER DAMAGES, FEES, COSTS, OR CLAIMS ARISING FROM OR RELATED TO THESE TERMS, ARCESIUM, THE PRIVACY POLICY, THE SERVICES, OR YOUR OR A THIRD-PARTY'S USE OR ATTEMPTED USE OF THE WEBSITE, REGARDLESS OF WHETHER ARCESIUM HAS HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES, FEES, COSTS, OR CLAIMS. THIS INCLUDES, WITHOUT LIMITATION, ANY LOSS OF USE, LOSS OF PROFITS, LOSS OF DATA, LOSS OF GOODWILL, COST OF PROCUREMENT OF SUBSTITUTE SERVICES OR PRODUCTS, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR OTHER DAMAGES. THIS APPLIES REGARDLESS OF THE MANNER IN WHICH DAMAGES ARE ALLEGEDLY CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), WARRANTY, OR OTHERWISE. IF, NOTWITHSTANDING THE LIMITATIONS OF LIABILITY SET FORTH ABOVE, ARCESIUM IS FOUND LIABLE UNDER ANY THEORY, ARCESIUM'S LIABILITY AND YOUR EXCLUSIVE REMEDY WILL BE LIMITED TO USD \$500.00. THIS LIMITATION OF LIABILITY SHALL APPLY FOR ALL CLAIMS, REGARDLESS OF WHETHER ARCESIUM WAS AWARE OF OR ADVISED IN ADVANCE OF THE POSSIBILITY OF DAMAGES OR SUCH CLAIMS. SOME STATES DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU AND YOU MAY HAVE ADDITIONAL RIGHTS.

#### **8. DISPUTE RESOLUTION BY MANDATORY BINDING ARBITRATION AND CLASS ACTION WAIVER**

**PLEASE READ THIS PROVISION CAREFULLY; IT REQUIRES YOU TO ARBITRATE ANY DISPUTE OR CLAIM BETWEEN YOU AND ARCESIUM ON AN INDIVIDUAL BASIS.**

YOU AGREE THAT ANY DISPUTE OR CLAIM ARISING FROM OR RELATING TO THESE TERMS, THIS ARBITRATION PROVISION, ARCESIUM'S PRIVACY POLICY, ARCESIUM'S ADVERTISING OR MARKETING PRACTICES, OR ARCESIUM'S PRODUCTS OR SERVICES SHALL BE SUBMITTED TO BINDING, FINAL, AND CONFIDENTIAL ARBITRATION BEFORE A SINGLE ARBITRATOR ADMINISTERED BY THE AMERICAN ARBITRATION

ASSOCIATION (“AAA”) UNDER ITS CONSUMER ARBITRATION RULES. THIS ARBITRATION PROVISION SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT (“FAA”), 9 U.S.C. §§ 1-16, AND THE ARBITRATOR SHALL BE BOUND BY THE TERMS OF THIS ARBITRATION PROVISION. THE ARBITRATOR SHALL HAVE THE EXCLUSIVE AND SOLE AUTHORITY FOR DETERMINING WHETHER A DISPUTE OR CLAIM IS ARBITRABLE. THE ARBITRATOR SHALL FOLLOW APPLICABLE SUBSTANTIVE LAW OF THE STATE OF NEW YORK TO THE EXTENT CONSISTENT WITH THE FAA, AND SHALL BE AUTHORIZED TO AWARD ALL REMEDIES AVAILABLE IN AN INDIVIDUAL LAWSUIT UNDER SUBSTANTIVE LAW, INCLUDING WITHOUT LIMITATION COMPENSATORY, STATUTORY, AND PUNITIVE DAMAGES, DECLARATIVE, INJUNCTIVE AND OTHER EQUITABLE RELIEF, INCLUDING PUBLIC INJUNCTIVE RELIEF, AND ATTORNEYS’ FEES AND COSTS WHERE AVAILABLE UNDER APPLICABLE SUBSTANTIVE LAW. THE ARBITRATOR MAY ONLY RESOLVE DISPUTES OR CLAIMS BETWEEN YOU AND ARCESIUM AND MAY NOT CONSOLIDATE CLAIMS OR PROCEEDINGS WITHOUT ARCESIUM’S CONSENT. THE ARBITRATOR MAY NOT HEAR CLASS OR REPRESENTATIVE CLAIMS OR REQUESTS FOR RELIEF ON BEHALF OF OTHER INDIVIDUALS. IF A COURT OR ARBITRATOR DECIDES THAT ANY PART OF THIS AGREEMENT TO ARBITRATE CANNOT BE ENFORCED AS TO A PARTICULAR CLAIM FOR RELIEF OR REMEDY, THEN THAT CLAIM OR REMEDY (AND ONLY THAT CLAIM OR REMEDY) MUST BE BROUGHT IN COURT AND ANY OTHER CLAIMS MUST BE ARBITRATED.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, YOU AGREE THAT ARCESIUM HAS THE RIGHT TO BRING A CLAIM AGAINST YOU IN THE STATE OR FEDERAL COURTS OF NEW YORK FOR INJUNCTIVE RELIEF, EQUITABLE RELIEF, OR OTHERWISE ARISING FROM ANY POTENTIAL OR ACTUAL MISAPPROPRIATION OR INFRINGEMENT OF ARCESIUM’S INTELLECTUAL PROPERTY RIGHTS AND YOU AGREE THAT VENUE IS PROPER AND THAT YOU ARE SUBJECT TO PERSONAL JURISDICTION IN SUCH FORUM.

UNLESS YOU TIMELY OPT-OUT, YOU WILL NOT HAVE THE RIGHT TO: (A) HAVE A COURT OR JURY DECIDE YOUR DISPUTE OR CLAIM; (B) OBTAIN INFORMATION PRIOR TO THE HEARING TO THE SAME EXTENT THAT YOU WOULD HAVE IN COURT; (C) PARTICIPATE IN A CLASS ACTION IN COURT OR IN ARBITRATION, EITHER AS A CLASS REPRESENTATIVE, CLASS MEMBER, OR CLASS OPPONENT; (D) ACT AS A PRIVATE ATTORNEY GENERAL IN COURT OR IN ARBITRATION; OR (E) JOIN OR CONSOLIDATE YOUR DISPUTE OR CLAIM WITH THE DISPUTE OR CLAIM OF ANY OTHER PERSON. OTHER RIGHTS THAT YOU WOULD HAVE HAD IF YOU WENT TO COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION.

YOU MAY OPT OUT OF ARBITRATION BY SENDING A LETTER TO: ARCESIUM LLC, ATTN: LEGAL DEPARTMENT, 1166 AVENUE OF THE AMERICAS, 4TH FLOOR, NEW YORK, NY 10036, STATING YOUR NAME, THE PRODUCT YOU PURCHASED, AND YOUR INTENT TO OPT OUT OF ARBITRATION.

## **9. INDEMNIFICATION**

To the fullest extent permitted by law, you agree to indemnify, defend, and hold harmless Arcesium, its parent, subsidiaries, predecessors, successors, and affiliates, and its and their respective partners, officers, directors, agents, representatives, contractors, licensors, service providers, subcontractors, suppliers, interns, and employees, from and against any and all claims, actions, losses, liabilities,

damages, expenses, demands and costs of any kind, including but not limited to reasonable attorneys' fees, arising out of, resulting from, or in any way connected with or related to (1) your breach of these Terms and/or the documents they incorporate by reference, or (2) your violation of any law or the rights of a third party.

#### **10. THIRD-PARTY WEBSITES AND LINKS**

Our Website may include materials from third-parties or links to third party websites. We are not liable for any third party materials or websites. Please review carefully the third party's policies and practices and make sure you understand them before you engage in any transaction. Complaints, claims, concerns, or questions regarding third-party products should be directed to the applicable third party.

#### **11. DIGITAL MILLENNIUM COPYRIGHT ACT NOTICE**

This Website maintains specific contact information provided below, including an email address, for notifications of claimed infringement regarding materials posted to this Website. All notices should be addressed to the following contact person:

Arcesium LLC / Notification of Claimed Infringement

1166 Avenue of the Americas, 4th Floor New York, NY 10036

Attn: DMCA/Copyright Agent

You may contact our agent for notice of claimed infringement specified above with complaints regarding allegedly infringing posted material and we will investigate those complaints. If the posted material is believed in good faith by us to violate any applicable law, we will remove or disable access to any such material, and we will notify the posting party that the material has been blocked or removed.

In notifying us of alleged copyright infringement, the Digital Millennium Copyright Act requires that you include the following information: (i) description of the copyrighted work that is the subject of claimed infringement; (ii) description of the infringing material and information sufficient to permit us to locate the alleged material; (iii) contact information for you, including your address, telephone number and/or email address; (iv) a statement by you that you have a good faith belief that the material in the manner complained of is not authorized by the copyright owner, or its agent, or by the operation of any law; (v) a statement by you, signed under penalty of perjury, that the information in the notification is accurate and that you have the authority to enforce the copyrights that are claimed to be infringed; and (vi) a physical or electronic signature of the copyright owner or a person authorized to act on the copyright owner's behalf. Failure to include all of the above-listed information may result in the delay of the processing of, or inability to process, your complaint.

#### **12. ELECTRONIC COMMUNICATIONS**

You agree that we may communicate electronically with you and that such communications, as well as notices, disclosures, agreements, and other communications that we provide to you electronically, are equivalent to communications in writing and shall have the same force and effect as if they were in writing and signed by the party sending the communication.

#### **13. ASSIGNMENT**

You may not assign any of your rights under these Terms, and any such attempt will be null and void. Arcesium and its affiliates may, in their individual discretion, transfer, without further consent or

notification, all contractual rights and obligations pursuant to these Terms if some or all of Arcesium's business is transferred to another entity by way of merger, sale of its assets, or otherwise.

**14. NO WAIVER**

No waiver by Arcesium of any term or condition set forth in these Terms 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 by Arcesium to assert a right or provision under these Terms shall not constitute a waiver of such right or provision.

**15. SEVERABILITY**

In the event that any provision of these Terms is determined to be unlawful, void, or unenforceable, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms. Such determination shall not affect the validity and enforceability of any other remaining provisions.

**16. TERMINATION**

In the event that we terminate these Terms, Sections 1-17, as well as any representations, warranties, and other obligations made or taken by you, shall survive such termination.

**17. ENTIRE AGREEMENT**

Unless separately addressed in an executed Terms and Conditions, Master Services Agreement, Statement of Work, and/or Order Form entered into between Arcesium and your company (individually or collectively, an "Agreement"), these Terms and any policies or operating rules posted on the Website constitute the entire agreement and understanding between you and Arcesium as it relates to the Website, and supersedes and replaces any prior or contemporaneous agreements regarding the Website (other than an Agreement). Any ambiguities in the interpretation of these Terms shall not be construed against the drafting party.

**18. QUESTIONS OR ADDITIONAL INFORMATION**

If you have any questions or require additional information, you may contact us as follows:

Arcesium LLC

1166 Avenue of the Americas, 4th Floor

New York, NY 10036, Attn: Legal Department

Phone: 1-888-733-8017