

# **XDIMENSIONAL TECHNOLOGIES, INC., NEXSURE EAI DEVELOPER PORTAL TERMS AND CONDITIONS**

Last updated: **December 14, 2022**

These Terms and Conditions (“Agreement”) govern access to and use of the XDTI Developer Tools and/or Services and apply to You and Your employer, employees, agents, contractors and any other entity on whose behalf You accept these terms (collectively “You” and “Your”). If you access or use the Developer Tools and/or Services or complete an Order Form, You accept this Agreement. If You are entering into this Agreement on behalf of a company or other legal entity, You represent that You have the authority to bind such entity. This Agreement, WHICH INCLUDES A MANDATORY ARBITRATION REQUIREMENT IN SECTION 12.5 BELOW, constitutes a binding legal agreement between You and XDimensional Technologies, Inc. (“XDTI,” “We,” “Us,” and “Our”). If You and XDTI are parties to an existing agreement governing the use of Developer Tools and Services, the terms of that agreement will control to the extent there is a conflict between these Terms and Conditions and your agreement. Please read the Agreement carefully and print or download a copy for Your future reference.

**IF YOU DO NOT AGREE TO THIS AGREEMENT OR YOU DO NOT HAVE THE AUTHORITY TO AGREE, YOU MUST NOT ACCEPT THE AGREEMENT OR ACCESS THE TOOLS.**

You agree to receive electronically all communications, agreements, and notices that We provide in connection with the Tools (“Communications”), including by email, text, in-app notifications, or posted on an XDTI site or through any XDTI product or service. You agree that all Communications that We provide to You electronically satisfy any legal requirement that such Communications be in writing.

We may modify this Agreement or any additional terms, which are relevant to a particular product or service, to reflect changes in the law or to the Tools. We will post the revised terms on the Site (as defined in Section 1, below). PLEASE REVIEW THE SITE ON A REGULAR BASIS TO OBTAIN TIMELY NOTICE OF ANY REVISIONS. IF YOU CONTINUE TO USE THE TOOLS AFTER THE REVISED TERMS TAKE EFFECT, YOU AGREE TO BE BOUND BY THE REVISED AGREEMENT. You agree that We shall not be liable to You or to any third party for any modification of this Agreement.

## **1. DEFINITIONS**

**“Account”** means the Developer Portal account, as further described in Section 4, or an XDTI production account, established by You to enable You to access and use the Tools and Services.

**“API”** means one or more application programming interfaces that support interoperation of applications with XDTI products and services, including but not limited to the Nexsure Enterprise Application Integration (“Nexsure EAI”) API toolkit.

**“API Materials”** means any API libraries, Integration Keys, software, source files, sample code, reference documentation, how-to guides, and template materials.

**“Authorized User”** means one individual, whether an employee, business partner, contractor or agent that You register to use the XDTI Services. An Authorized User must be identified by a unique

username and password and two or more persons may not use the Services as the same Authorized User.

**“Developer Credentials”** include, but are not limited to, the confidential passwords, integration keys, RSA private keys, OAuth client secrets, and the like, that are used for secure access and authentication as a part of the Tools and Services.

**“Developer Tools and/or Services”** or **“Tools”** means the Developer Portal Account, Sandbox, XDTI Content, the API, and API Materials including the API as well as any other services or tools that XDTI makes available for You to use for the purpose of building and operating an Integration.

**“XDTI Content”** means content from or regarding XDTI’s products or services.

**“Nexsure”** means XDTI’s Nexsure Insurance Platform, a comprehensive cloud-based insurance processing and distribution technology software solution to support agents, brokers, wholesalers, MGAs/MGUs, program administrators, carriers, and policyholders, inclusive of hosting services and distribution via a Software-as-a-Service (“SaaS”) model.

**“Integration”** means a computer application, including but not limited to web, client/server, mobile, and IoT applications, that use API or API materials to interact with XDTI Services, including without limitation Nexsure, and Our websites.

**“Integrator Key”** (or client App ID) means the one globally unique identifiers (GUID) that is used to identify Your Integration and is necessary to authenticate Your API calls from such integration.

**“Order Form”** means the engagement schedule or other such document that sets forth the pricing, features and options of a purchase by You from XDTI. An Order Form is not binding until it is duly executed by both XDTI and You, at which point it becomes incorporated into and part of this Agreement.

**“Sandbox”** means the online environment where You may access the Tools and where You may test Your Integrations in a demonstration or non-production environment.

**“Site”** means XDTI.com, any other XDTI domain or subdomain, and any website that supports use of the Tools and development of an Integration, including, but not limited to, nonproduction or demonstration environments.

## **2. ACCOUNTS AND REGISTRATION**

**2.1** During the Term (as defined in Section 7) and subject to compliance with the terms of this Agreement, You may register for an Account and access and use the Tools. As a condition of Your registration, You represent that: (i) You meet the requirements for the legal age of majority in the jurisdiction where You reside; (ii) You are not barred by the laws of the United States or the applicable laws of another country from accessing and using the Services; (iii) that You shall provide (and keep up to date) information that is truthful, accurate and complete; and (iv) You consent to XDTI collecting, using and sharing your data as described in XDTI’s [Privacy Policy](#).

**3.2** By accessing the API or API Materials, You explicitly agree that You and any Integration you develop or support shall comply with: (i) the applicable XDTI API guidelines (as may be available from time to time); (ii) Your Order Form (if any); and (iii) any license agreement governing the software we make available for use with the API (if any).

### **3. OWNERSHIP & RIGHT TO USE**

**3.1** Except for those limited rights expressly granted in this Section 3, XDTI reserves all rights, title, and interest in and to the Tools and any related intellectual property developed by or for XDTI. You authorize Us to interact with your Integration, including to engage in any copying or transmission that is necessary to provide the Tools or any XDTI Content, such as Nexsure.

**3.2** Subject to your compliance with the terms of this Agreement, You are granted a limited, revocable, non-transferable and non-sublicensable right to use the Tools for the sole purpose of developing and supporting Your Integration. Your license to use the API is (i) internal (all others, including any affiliates, must obtain their own license and Integration Key); and (ii) limited to making direct server calls to XDTI for the XDTI Content and to distributing the XDTI Content to Your end users, immediately upon receipt by Your servers.

**3.3** You acknowledge that XDTI reserves the right to terminate or modify, in any manner, in Our sole discretion, the Tools, including any of its content, in whole or in part, with or without notice. Modifications may affect Your Integration and may require You to make changes to Your Integration at Your own cost to continue to be compatible with the API or other aspects of the Tools. We will not be liable if, for any reason, all or any part of the Tools or a Sandbox is unavailable for any time or for any period.

**3.4** Your Use of the Tools is non-exclusive. You acknowledge and agree that XDTI may: (i) sell or otherwise make available its products and services to any customer; and (ii) independently develop or extend its products and services without regard to whether those products or services compete with Your Integration.

**3.5** The XDimensional Technologies and Nexsure names and logos (“Brand Assets”) are trademarks of XDimensional Technologies, Inc. and are protected by U.S. and international copyright laws. Any usage by You of Brand Assets must be pre-approved by XDTI. You acknowledge and agree that XDTI may require Integrations to meet certain quality and branding requirements, including, but not limited to, display of an XDTI logo. You grant XDTI the right to use Your company name and logo as necessary to identify your Integration and to promote the Tools.

**3.6** Unless otherwise agreed by the parties in writing, You are not entitled to any support from XDTI for the Tools. You acknowledge and agree that XDTI may update or modify the Tools from time to time at XDTI’s sole discretion. You are solely responsible for making any changes to the Your Integration required for access and use of the Tools as a result of any such update or modification.

### **4. DEVELOPER PORTAL ACCOUNT**

**4.1** XDTI's Developer Portal Account includes a Sandbox as a part of the Tools and Services. XDTI may set and enforce limits on use of Your Account, the Sandbox, the API and other aspects of the Tools. If Your use of Your Account exceeds the limits for the type of Account you use, XDTI may require you to purchase an Account that suits your needs. XDTI may change the prices, features or options associated with any particular Account plan without notice.

## **5. YOUR RESPONSIBILITIES**

**5.1** XDTI's provision of the Tools is conditioned on Your acknowledgement of and agreement to the following:

(i) You are entirely responsible for any and all activities that occur under Your Account and will ensure that Your use of the Tools is only for lawful purposes and in compliance with this Agreement and any other applicable terms, policies or rules, such as XDTI's Privacy Policy;

(ii) You will keep Your Developer Credentials confidential, and not share them with any third party. If You believe that Your Developer Credentials have been obtained by any other person or that Your Account has been used in an unauthorized way, You agree to notify Us immediately at the contact information provided below in Section 12.3;

(iii) You will reference an Integration Key issued to You as an approved licensee in all calls to the API, as well as in requests for access tokens necessary to make further calls to the API;

(iv) You will participate in any review or approval process applicable to Your Integration;

(v) You will provide the XDTI Content to users on "as is" terms, with disclaimers substantially equivalent to those set forth in Section 8 (Warranties & Disclaimers); and

(vi) If Your Integration collects data from or about end users or their devices via the API, You will ensure that it is collected and used in compliance with all applicable laws, industry standard security practices, and a privacy policy that You (a) make available to the individuals from whom information is collected; and (b) comply with.

**5.2** In connection with this Agreement and your use of the Tools, You will not, and You will not permit others to:

(i) violate any law or regulation (including relevant electronic signature laws), or rights of any person, including but not limited to intellectual property rights, rights of privacy, or rights of personality;

(ii) sell, lease, lend, redistribute, transfer, or sublicense the API, API Materials, Integration Keys or access thereto;

(iii) charge others for XDTI Content or access thereto, except with Our prior written agreement;

(iv) promote any products, services, or materials that constitute, promote or are used primarily for the purpose of dealing in: spyware, adware, viruses, or other malicious programs or code, counterfeit

goods, items subject to US embargo, hate materials or materials urging acts of terrorism or violence, goods made from protected animal/plant species, recalled goods, hacking/surveillance/interception/descrambling equipment, cigarettes, illegal drugs and paraphernalia, unlicensed sale of prescription drugs and medical devices, pornography, prostitution, body parts and bodily fluids, stolen products and items used for theft, fireworks, explosives, and hazardous materials, government IDs, police items, unlicensed trade or dealing in stocks and securities, gambling items, professional services regulated by state licensing regimes, non-transferable items such as airline tickets or event tickets, non-packaged food items, weapons and accessories;

(v) transmit any viruses, malware or other computer programming that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system or data;

(vi) retain any copies of the XDTI Content, other than limited intermediate copies and only as necessary to perform activities permitted under this Agreement. This means that You must delete intermediate copies when they are no longer required for the purpose for which they were created;

(vii) make it appear or permit someone else to make it appear that XDTI Content is available from a third-party website;

(viii) remove, obscure or alter any XDTI terms and conditions or links to or notices of those terms;

(ix) extract data elements from the XDTI Content except as necessary to support Your Integration;

(x) use the API other than on an individual transactional basis (i.e., You will not permit Your users to access the XDTI Content in bulk);

(xi) make more calls than allowed or any calls to the API that are not permitted by Our applicable API guidelines or in violation of any other restrictions in this Agreement;

(xii) frame any web page served by XDTI servers, unless you have secured Our prior written permission;

(xiii) reproduce, modify, distribute, decompile, disassemble or reverse engineer any portion of the API or any data provided by XDTI, or use robots, spiders, scrapers, viruses, Trojan Horses or any other technology to: (a) access or use XDTI Content or the Tools to obtain any information beyond what XDTI allows under this Agreement; (b) change any XDTI Content; (c) break or circumvent any of XDTI's technical, administrative, procedural or other measure that pertains to security; (d) disrupt or degrade the performance of the Site or the API; or (e) otherwise test the vulnerability of Our systems or networks;

(xiv) damage, disable, overburden, or impair the Tools, or otherwise interfere with the use or enjoyment of the Tools by others;

(xv) violate any U.S. denied-party lists, embargoed country restriction, or applicable export law or regulation, including, but not limited to, providing access to or use of the Tools to persons on the U.S. government denied-party lists or in violation of any export restriction or embargo of the United States;

(xvi) access the Tools if You are Our direct competitor, except with Our prior written consent;

(xvii) access the Tools for purposes of monitoring availability, performance or functionality, or for any other benchmarking or competitive purposes;

(xviii) use the Tools or any information gained from the use thereof to train, calibrate, or validate, in whole or in part, any other systems, programs or platforms, or for benchmarking, software-development, or other competitive purposes, or use the Tools for any other purposes that are outside the purposes defined in Section 3 above.

## **6. FEES AND PAYMENT TERMS**

**6.1** If You purchase an Account or another aspect of the Tools that requires a fee, You will be invoiced as set forth in the Order Form. Unless otherwise specified in an applicable Order Form You agree (i) to pay the then current list price for the Account or Tools; (ii) that the first invoice will coincide with the Order Start Date; and, (iii) unless otherwise agreed by the parties, all amounts due will be denominated in U.S. dollars. If you fail to timely pay any amounts due, XDTI may assess finance charges equal to the lesser of 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law. You will be responsible for any reasonable attorneys' fees, costs and expenses incurred by XDTI to collect any amounts that are not paid when due.

**6.2** XDTI may accept any partial payment, regardless of any language that would purport to limit XDTI's rights to collect further amounts, and without prejudice to XDTI's right to recover the balance of the amount due or to pursue any other right or remedy. Amounts due to XDTI may not be withheld or offset by You for any reason against amounts due or asserted to be due to You from XDTI. If You fail to timely pay any undisputed amounts due under this Agreement, then without limitation of any of Your other rights or remedies, XDTI may suspend performance of those services until XDTI receives all past due amounts from You.

**6.3** Other than income taxes imposed on XDTI, You will bear all taxes, duties, VAT and all other governmental charges (collectively, "taxes") resulting from this Agreement or transactions conducted in relation to this Agreement or the Tools. If You are exempt from any applicable taxes, You will provide evidence reasonably satisfactory to XDTI of such tax exempt status, and XDTI will not include such taxes in its invoices to You.

## **7. TERM AND TERMINATION**

**7.1 Term.** This Agreement begins upon creation of Your Account or any other access to the Tools and continues until your Account expires or your use of the Tools ceases (including as a result of termination in accordance with this Section 7) ("Term").

**7.2 Termination.** Notwithstanding anything to the contrary herein, and in addition to all other remedies available to Us, We may limit, suspend or terminate Your Account access or use of the Sandbox, API, Integration Key or other aspects of the Tools without notice if: (a) You breach any provision of this Agreement; (b) You violate any policy applicable to the Tools; (c) You transfer use of the Tools to another person without Our consent; (d) We determine, in Our sole discretion, that Your

use of the Tools is excessive, unusually burdensome, or unprofitable to Us; (e), We believe that Your continued use of the Tools presents a threat to the security of other developers or to users any XDTI product or service; (f) at our discretion, for any reason or no stated reason, including pursuant to the provisions of Section 3.4.

**7.3 Effect of Termination & Post-Termination Obligations.** If this Agreement expires or is terminated for any reason: (a) You will pay to XDTI any amounts that have accrued before, and remain unpaid as of the date of the termination or expiration; (b) any and all liabilities of You to XDTI that have accrued before the effective date of the termination will survive; (c) licenses and use rights granted to You under this Agreement will immediately terminate; (d) XDTI's obligation to provide any further services to You under this Agreement will immediately terminate; (e) You will cease using the Brand Assets and the Tools, including the Sandbox, API, and XDTI Content; (f) You will remove implementation of the API and the Integrator Key from Your Integration(s) and delete all copies of the XDTI Content and Brand Assets; and (g) the parties' rights and obligations under Sections 7.3, 8.2, and 9 through 12 will survive.

## **8. WARRANTIES AND DISCLAIMERS**

**8.1 NO WARRANTIES.** THE TOOLS, XDTI CONTENT, AND ACCESS TO THE SANDBOX ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. YOU EXPRESSLY AGREE THAT USE OF THE TOOLS AND THE SANDBOX, INCLUDING ALL CONTENT OR DATA DISTRIBUTED BY, DOWNLOADED OR ACCESSED FROM OR THROUGH THE TOOLS OR THE SANDBOX, IS AT YOUR SOLE RISK. WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT AS TO THE INFORMATION, MATERIALS, AND CONTENT ON THE TOOLS AND SANDBOX. WE DO NOT REPRESENT OR WARRANT THAT MATERIALS IN THE TOOLS AND SANDBOX ARE ACCURATE, COMPLETE, RELIABLE, CURRENT, OR ERROR-FREE.

**8.2 Disclaimer.** XDTI: (A) MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND -- WHETHER EXPRESS, IMPLIED IN FACT OR BY OPERATION OF LAW, OR STATUTORY -- AS TO ANY MATTER WHATSOEVER; (B) DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THE LIKE; AND (C) DOES NOT WARRANT THAT THE TOOLS OR THE SANDBOX ARE OR WILL BE ERROR-FREE OR MEET YOUR REQUIREMENTS. YOU HAVE NO RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF XDTI TO ANY THIRD PARTY.

Because some states and jurisdictions do not allow limitations on implied warranties, the above limitation may not apply to you. In that event, such warranties are limited to the maximum extent permitted by, and to the minimum warranty period allowed by the mandatory applicable law.

## **9. YOUR INDEMNIFICATION OBLIGATIONS**

**9.1** You agree to defend, hold harmless and indemnify XDTI, and its subsidiaries, affiliates, officers, agents, employees, and suppliers, from and against any third-party claim arising from or in any way related to Your use of the Tools or XDTI Content, use of Logos other than as set forth in Sections 3 and 4, violation of this Agreement or other actions connected with use of XDTI services, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits,

judgments, litigation costs and attorneys' fees, of every kind and nature. In such a case, We will provide You with written notice of such claim, suit, or action.

## **10. LIMITATIONS OF LIABILITY**

### **10.1 Limitations of Liability.**

(i) IN NO EVENT SHALL XDTI, ITS OFFICERS, DIRECTORS, AGENTS, AFFILIATES, EMPLOYEES, ADVERTISERS, OR DATA PROVIDERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR LOSS OF DATA) WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), EQUITY OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE TOOLS, SANDBOX, XDTI CONTENT, OR XDTI API.

(ii) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, XDTI'S AGGREGATE LIABILITY TO YOU OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT, SHALL IN NO EVENT EXCEED ONE HUNDRED U.S. DOLLARS (\$100.00). REGARDLESS OF ANY LAW OR STATUTE, ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN ONE (1) YEAR.

(iii) SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS OF LIABILITY SO THE ABOVE LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE MANDATORY LAW (AND SHALL NOT LIMIT OR EXCLUDE ANY LIABILITY THAT CANNOT LEGALLY BE EXCLUDED OR LIMITED UNDER MANDATORY LAW).

## **11. CONFIDENTIALITY**

**11.1 "Confidential Information"** means any trade secrets or other information of XDTI or You, whether of a technical, business, or other nature (such as XDTI Content or Your uploaded content), that is disclosed to the other party (the "Recipient") and that is marked "confidential," or, whether or not marked, that a reasonable person would understand to be confidential given the circumstances of the disclosure. Confidential Information does not include any information that: (a) was known to Recipient before receiving it from the disclosing party; (b) is independently developed by Recipient without use of or reference to any Confidential Information of the other party; (c) is acquired by Recipient from another source that did not receive it in confidence from the other party to this Agreement; or (d) is or becomes part of the public domain through no fault or action of Recipient.

**11.2 Restricted Use and Nondisclosure.** During and after the Term, Recipient will: (a) use the Confidential Information of the other party solely for purposes that are consistent with the scope of this Agreement; (b) not disclose such Confidential Information to a third party, except on a need-to-know basis to its attorneys, auditors and consultants who are under confidentiality obligations at least as restrictive as contained herein; and (c) protect such Confidential Information from unauthorized use and disclosure to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature.

**11.3 Required Disclosure.** If Recipient is required by law to disclose Confidential Information of the other party or the terms of this Agreement, Recipient will give prompt written notice to the other party



before making the disclosure, unless prohibited from doing so by the legal or administrative process, and assist the disclosing party to obtain where reasonably available an order protecting the Confidential Information from public disclosure.

**11.4 Ownership.** Recipient acknowledges that, as between the parties, all Confidential Information it receives from the disclosing party, including all copies thereof in Recipient's possession or control, in any media, is proprietary to and exclusively owned by the disclosing party. Nothing in this Agreement grants Recipient any right, title or interest in or to any of the disclosing party's Confidential Information. Recipient's incorporation of the disclosing party's Confidential Information into any of its own materials will not render Confidential Information non-confidential.

**11.5 Remedies.** Recipient acknowledges that any actual or threatened breach of this Section 11 may cause irreparable, non-monetary injury to the disclosing party, the extent of which may be difficult to ascertain. Accordingly, the disclosing party is entitled to (but not required to) seek injunctive relief in addition to all remedies available to the disclosing party at law and/or in equity, to prevent or mitigate any breaches of this Agreement or damages that may otherwise result from those breaches. Absent written consent of the disclosing party to the disclosure, the Recipient, in the case of a breach of this Section 11, has the burden of proving that the disclosing party's Confidential Information is not, or is no longer, confidential or a trade secret and that the disclosure does not otherwise violate this Section 11.

**11.6 Existing Obligations.** The obligations in this Section 11 are in addition to, and supplement, each party's obligations of confidentiality under applicable law and under any nondisclosure or other agreement between the parties.

## **12. GENERAL**

**12.1 Relationship.** At all times, the parties are independent actors, and are not the agents or representatives of the other. This Agreement is not intended to create a joint venture, partnership, or franchise relationship, or give rise to any third-party beneficiary.

**12.2 Assignability.** You may not assign Your rights or obligations under this Agreement, which include without limitation Your Integration Key, without XDTI's prior written consent. If consent is given, this Agreement will bind Your successors and assigns. Any attempt by You to transfer its rights, duties, or obligations under this Agreement without XDTI's prior written consent is void. XDTI may freely assign its rights, duties, and obligations under this Agreement.

**12.3 Notices.** Except as otherwise permitted herein, any notice required or permitted to be given in accordance with this Agreement will be effective only if it is in writing and sent using: (a) an electronic signature application, (b) certified or registered mail, or, (c) insured courier, to the appropriate party at the address set forth in Your registration information for You or on the Site for XDTI, with a copy, in the case of XDTI, to [execleadershipteam@xdti.com](mailto:execleadershipteam@xdti.com). Either party may change its address for receipt of notice by providing notice to the other party in accordance with this Section. Notices are deemed given upon receipt if delivered using an electronic signature application, two (2) business days following the date of mailing, or one (1) business day following delivery to a courier.

**12.4 Force Majeure.** Except for any payment obligations, neither party will be liable for failure to perform any obligation under this Agreement to the extent such failure is caused by a force majeure event (including acts of God, natural disasters, war, civil disturbance, action by governmental entity, strike and other causes beyond the party's reasonable control). The party affected by the force majeure event will provide notice to the other party within a commercially reasonable time and will use commercially reasonable efforts to resume performance as soon as practicable. Obligations not performed due to a force majeure event will be performed as soon as reasonably possible when the force majeure event concludes.

**12.5 Mandatory Arbitration, Waiver of Class Actions.**

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TOOLS, OR THE SITE SHALL BE RESOLVED BY BINDING ARBITRATION CONDUCTED BEFORE ONE ARBITRATOR, RATHER THAN IN COURT. You agree that performance under this Agreement affects interstate commerce and that the Federal Arbitration Act governs the interpretation and enforcement of these arbitration provisions. This Section 12.5 is intended to be interpreted broadly and governs any and all disputes between us including but not limited to claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory; claims that arose before this Agreement or any prior; and claims that may arise after the termination of this Agreement. The only disputes excluded from this broad prohibition are the litigation of certain intellectual property as provided below.

**12.5.1 Provisional Remedies.** This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction, as necessary to protect the party's rights or property pending the completion of arbitration.

**12.5.2 Initial Dispute Resolution.** Most disputes can be resolved without resort to arbitration. If you have any dispute with us, you agree that before taking any formal action you will contact us at [execleadershipteam@xdti.com](mailto:execleadershipteam@xdti.com) and provide a brief, written description of the dispute and your contact information (including your username, if your dispute relates to an Account). Except for intellectual property, you and XDTI agree to use their reasonable efforts to settle any dispute, claim, question, or disagreement directly through consultation with XDTI, and good faith negotiations shall be a condition to either party initiating a lawsuit or arbitration.

**12.5.3 Binding Arbitration.** If the parties do not reach an agreed-upon solution within a period of thirty (30) days from the time informal dispute resolution is initiated under the Initial Dispute Resolution provision above, then either party may initiate binding arbitration as the sole means to resolve claims (except as provided below) subject to the terms of this Agreement set forth below. Specifically, all claims arising out of or relating to this Agreement, the parties' relationship with each other, and/or your use of the XDTI Services shall be finally settled by binding arbitration administered by JAMS in accordance with the JAMS Streamlined Arbitration Procedure Rules for claims that do not exceed \$250,000 and the JAMS Comprehensive Arbitration Rules and Procedures for claims exceeding

\$250,000 in effect at the time the arbitration is initiated, excluding any rules or procedures governing or permitting class actions.

**12.5.4 Arbitrator's Powers.** The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability, or formation of these Terms, including but not limited to any claim that all or any part of these Terms is void or voidable, whether a claim is subject to arbitration or the question of waiver by litigation conduct. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be written and shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction.

**12.5.5 Filing a Demand.** To start an arbitration, you must do the following: (a) Write a Demand for Arbitration that includes a description of the claim and the amount of damages you seek to recover (you may find a copy of a Demand for Arbitration at [www.jamsadr.com](http://www.jamsadr.com)); (b) Send three copies of the Demand for Arbitration, plus the appropriate filing fee, to JAMS, 18881 Von Karman Avenue, Suite 350, Irvine, California 92612; and (c) Send one copy of the Demand for Arbitration to us at: [execleadershipteam@xdti.com](mailto:execleadershipteam@xdti.com).

**12.5.6 Fees & Costs.** If your claim(s) total is less than US \$5,000.00, then: (a) you may choose whether your participation in the arbitration will be conducted on the basis of documents provided to the arbitrator, through a telephonic hearing or by an in-person hearing; (b) XDTI will reimburse your filing fees up to a maximum of US \$1,500.00 unless the arbitrator determines that your claims are frivolous; and (c) XDTI will not seek attorney's fees and costs, unless the arbitrator determines that your claims are frivolous. You are responsible for your own attorneys' fees unless the arbitration rules and/or applicable law provide otherwise.

**12.5.7 No Jury Trial.** The parties understand that, absent this mandatory arbitration section, they would have the right to sue in court and have a jury trial. They further understand that, in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court.

**12.5.8 Venue.** Arbitration shall be initiated and take place in Los Angeles, California, United States, and you and XDTI agree to submit to the personal jurisdiction of any federal or state court in Los Angeles, California in order to compel arbitration, stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.

**12.5.9 Class Action Waiver.** The parties further agree that the arbitration shall be conducted in the party's respective individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. YOU AND XDTI AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provisions set forth above shall be deemed null and void in their entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

**12.5.10 Exception: Litigation of Intellectual Property.** Notwithstanding the parties' decision to resolve all disputes through arbitration, either party may bring enforcement actions, validity determinations, or claims arising from or relating to theft, piracy, or unauthorized use of intellectual property in any state or federal court with jurisdiction or in the U.S. Patent and Trademark Office to protect its intellectual property rights ("intellectual property rights" means patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights).

**12.5.11 Survival.** This Mandatory Arbitration, Waiver of Class Actions section shall survive any termination of your use of the Site or the Developer Tools and/or Services.

**12.6 Governing Law & Venue.** This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of California, U.S.A., without reference to its choice of law rules to the contrary. Notwithstanding the parties' agreement to mandatory arbitration, either party may seek any interim or preliminary injunctive relief from a court of competent jurisdiction in Los Angeles, CA, as necessary to protect the party's rights or property pending the completion of arbitration. The parties submit to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in Los Angeles, California, U.S.A.

**12.7 Waiver.** The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

**12.8 Severability.** If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect. If any material limitation or restriction on the grant of any license XDTI provides to You under this Agreement is found to be illegal, unenforceable, or invalid, the license will immediately terminate.

**12.9 Entire Agreement.** Except as expressly stated herein, this Agreement, which includes the language and paragraphs preceding Section 1, is the final and complete expression of the agreement between these parties regarding the Tools. This Agreement supersedes any previously published iteration of Terms and Conditions applicable to Developers, as well as all previous oral and written communications regarding these matters.