

## Image-Spark Terms and Conditions

1. **Introduction.** Please read this web page carefully. It contains the Terms and Conditions governing your access to and use of the Image-Spark Web Site. If you do not accept these Terms and Conditions or you do not meet or comply with their provisions, you may not use the Site. These Terms and Conditions are effective as of July 1, 2005.
2. **Binding Agreement.** These Terms and Conditions, together with all Exhibits to these Terms and Conditions (as they may be amended from time to time by Image-Spark) form a binding agreement (the "Agreement") between you and The Canterinburg Group, L.L.C., owner of Image-Spark (hereinafter referred to as "Image-Spark"). Your access to or use of the Site indicates your acceptance of these Terms and Conditions. You are agreeing to use the Site at your own risk.
3. **Certain Definitions.** The following definitions apply to this Agreement:
  - 3.1. "Client" means a User who is registered as a member of the Site.
  - 3.2. "Content" includes all Text, Graphics, Design, Videos and Programming used on the Site.
  - 3.3. "Design" includes the color combinations and the page layout of the Site. "Programming" includes both client-side code (HTML, JavaScript, Flash, etc.) and server-side code (Active Server Pages, VBScript, databases, etc.) used on the Site.  
"Document" refers to any posting to the Site, whether job or resume. "Services" means any services provided on the Site by Image-Spark or its agents.
  - 3.4. "Employer" means a person or entity that is accessing the Site to review the student profiles, post a job or for any reason related to the purpose of seeking candidates for employment.
  - 3.5. "Graphics" includes all logos, buttons, and other graphical elements on the Site, with the exception of paid advertising banners.
  - 3.6. "Image-Spark Web Site" or the "Site" includes www.image-spark.com in its entirety and its related sites owned or operated by Image-Spark, and includes their Content and Services as applicable in the context.
  - 3.7. "Text" includes all text on every page of the Site, whether editorial, navigational, or instructional.
  - 3.8. "User" refers to any individual or entity who uses any aspect of the Site.
  - 3.9. "Videos" means any video content that describes and/or depicts you that you may provide to be included in the Content.
  - 3.10. "You" and "you" means the person who (or the entity on behalf of whom you are acting) that is agreeing to these Terms and Conditions.
4. **Acceptable Use of the Site.**
  - 4.1. **General Use Rules.** The Site is intended for individuals seeking employment and for Employers or recruiters seeking candidates for employment. You may use this Site only for lawful purposes within the stated context of Image-Spark's intended and acceptable use of the Site. Image-Spark is the sole interpreter of the Site's intended and acceptable use. Without limiting the generality of the foregoing, Image-Spark reserves the right to edit Content, including without limitation Videos, and to use Content, including without limitation Videos, for Image-Spark's promotional and marketing purposes, and each User hereby consents to such rights, as well as all other rights in these Terms and Conditions, reserved by Image-Spark.
  - 4.2. **License to Use by Users who are Prospective Employees.** Image-Spark hereby grants you a limited, terminable, non-exclusive right to access and use the Site only for your personal use in your career planning and employment seeking efforts for yourself. This authorizes you to view and download a single copy of the material on the Site solely for your personal, noncommercial use. You agree that you are solely responsible for the Content of any Document you post to the Site and any consequences arising from such posting. Your use of the Site is a privilege. Image-Spark reserves the right to suspend or terminate that privilege for any reason at any time, in its sole discretion.

- 4.3. License to Use by Users who are Employers.** Image-Spark hereby grants to any Employer a limited, terminable, non-exclusive right to access and use the Site only for such Employer's internal business use seeking candidates for employment. This authorizes any Employer to view and download a single copy of the material on the Site solely for such Employer's own use directly related to using the Site for the purpose of searching and recruiting job prospects. For additional terms of use as they relate to searching our profiles and video resumes, please see our Profile Database Terms and Conditions, which are incorporated herein by reference. You may not sell, transfer or assign any products or services or your rights to any products or services (including access to the Profile Database) provided by Image-Spark to any third party without the express written authorization of Image-Spark. You agree that you are solely responsible for the Content of any Document you post to the Site and any consequences arising from such posting. Image-Spark reserves the right to suspend or terminate your access and use at any time if Image-Spark determines that you are in breach of any of these Terms and Conditions.
- 4.4. Responsibility for Content.** You are solely responsible for any Content you or Image-Spark on your behalf, may submit, publish or display (hereinafter, "post") for use on the Site or transmit to other Users. By posting Content to the Site, You automatically grant, and You represent and warrant that You have the right to grant, to Image-Spark an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, and distribute such Content and to prepare derivative works of, or incorporate into other works, such Content, and to grant and authorize sublicenses thereof. By posting Content to the Site, You grant Image-Spark and its affiliates the royalty-free, perpetual, irrevocable, sublicenseable (through multiple tiers), non-exclusive right (including any moral rights) and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, communicate to the public, perform and display the Content (in whole or in part) worldwide and/or to incorporate it in other works in any form, media, or technology now known or later developed, for the full term of any rights that may exist in such Content. You also warrant that the holder of any rights, including moral rights in such Content, has completely and effectively waived all such rights and validly and irrevocably granted to You the right to grant the license stated above. You also permit any User to access, display, view, store and reproduce such Content for personal use. Notwithstanding anything in these Terms and Conditions, You agree that Image-Spark shall have an irrevocable, royalty-free, perpetual, exclusive, fully paid, worldwide license to use, copy, perform, display, and distribute any and all videos that Image-Spark may record or generate concerning You and to prepare derivative works of, or incorporate into other works, such videos, and to grant and authorize sublicenses thereof.
- 4.5. Other Specific Rules.** You represent, warrant and agree that you will not use (or plan, encourage or help others to use) the Site for any purpose or in any manner that is prohibited by these Terms and Conditions or by applicable law. It is your responsibility to ensure that your use of the Site complies with these Terms and Conditions and all applicable laws.
- 4.6. House Rules for Posting, Conduct and Security.** You agree to comply with the "House Rules" for posting, conduct and security on the Site, which are attached hereto as Exhibit A.
- 5. Intellectual Property Rights.** The Site and all right, title and interest in and to the Site is the sole property of Image-Spark or its licensors, and is protected by U.S. copyright and international treaties. Except for the limited licenses expressly granted to you in these Terms and Conditions, Image-Spark reserves for itself and its licensors all other right, title and interest. Without limitation on the foregoing, you may not reproduce, modify, display, sell, or distribute the Content, or use it in any other way for public or commercial purpose. This includes copying or adapting the code used to generate Web pages on the Site. "Image-Spark," the Image-Spark

design logo and certain other names or logos are service marks or trademarks of Image-Spark, and all related product and service names, design marks and slogans are the service marks or trademarks of Image-Spark. In addition, the "look" and "feel" of the Site (including color combinations, button shapes, layout, design and all other graphical elements) are also protected by Image-Spark's trademarks, service marks and copyrights. All other product and service marks contained on the Site are the trademarks of their respective owners.

**6. Disclaimers and Limitations on Image-Spark's Liability.**

**6.1. Allocation of Responsibility** Image-Spark assumes no responsibility for Documents posted by Users and no responsibility for the activities, omissions or other conduct of Users. Image-Spark acts as a portal for the online distribution and publication of User submitted information and has no obligation to screen communications or information in advance and is not responsible for screening or monitoring Documents posted by Users. If notified by a User of a Document which allegedly does not conform to this agreement, Image-Spark may investigate the allegation and determine in good faith and in its sole discretion whether to remove or request the removal of such Document. Image-Spark has no liability or responsibility to Users for performance or nonperformance of such activities. Image-Spark may take any action with respect to User submitted information that it deems necessary or appropriate, in its sole discretion.

**6.2. No endorsements by Image-Spark.** Nothing on the Site shall be considered an endorsement, representation or warranty with respect to any User or third party, whether in regards to its web site, products, services, hiring, experience, employment or recruiting practices, or otherwise.

**6.3. No Guaranty of Results.** Image-Spark is not an employment agency or a recruiting firm, and makes no representations or guarantees regarding the effectiveness or timeliness of the Site in meeting the employment objectives of Users. Image-Spark does not guarantee that Documents posted by Users will result in candidates being hired or positions being filled, and is not responsible for any employment decisions, for whatever reason made, made by any User.

**6.4. WARRANTY DISCLAIMERS.**

(a) THE SITE IS PROVIDED ON AN 'AS IS' BASIS WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. IMAGE-SPARK, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIMS ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OF THIRD PARTIES' RIGHTS, AND FITNESS FOR PARTICULAR PURPOSE. IMAGE-SPARK MAKES NO WARRANTIES ABOUT THE ACCURACY, RELIABILITY, COMPLETENESS, OR TIMELINESS OF THE SITE.

(b) WITHOUT LIMITATION ON THE FOREGOING:

(i) IMAGE-SPARK DOES NOT WARRANT THAT THE SITE WILL OPERATE ERROR-FREE OR THAT THE SITE AND ITS SERVERS ARE FREE OF COMPUTER VIRUSES OR OTHER HARMFUL MECHANISMS. IF YOUR USE OF THE SITE RESULTS DIRECTLY OR INDIRECTLY IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, IMAGE-SPARK IS NOT RESPONSIBLE FOR THOSE COSTS.

(ii) IMAGE-SPARK MAKES NO REPRESENTATIONS OR GUARANTEES REGARDING THE TRUTHFULNESS, ACCURACY, COMPLETENESS, TIMELINESS OR RELIABILITY OF ANY DOCUMENTS POSTED BY USERS, OR OF ANY OTHER FORM OF COMMUNICATION ENGAGED IN BY USERS. DOCUMENTS MAY CONTAIN INACCURACIES OR TYPOGRAPHICAL ERRORS. YOU AGREE THAT ANY RELIANCE ON DOCUMENTS POSTED BY USERS, OR ON ANY OTHER FORM OF COMMUNICATION WITH USERS, WILL BE AT YOUR OWN RISK.

(III) IMAGE-SPARK MAKES NO REPRESENTATIONS OR GUARANTEES REGARDING THE CONTENT OF THE SITE, INCLUDING, BUT NOT LIMITED TO, BROKEN LINKS, INACCURACIES OR TYPOGRAPHICAL ERRORS.

**6.5. DAMAGE LIMITATIONS, ALLOCATIONS OF LIABILITY AND EQUITABLE RELIEF.**

(a) YOU ASSUME ALL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SITE, THE INTERNET GENERALLY, AND THE DOCUMENTS YOU POST OR ACCESS AND FOR YOUR CONDUCT ON AND OFF THE SITE. (b) IN NO EVENT SHALL IMAGE-SPARK (OR ANY OF ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AFFILIATES, AGENTS OR ADVERTISERS), BE LIABLE FOR ANY NON-DIRECT DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, INCIDENTAL AND CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA, LOST EMPLOYMENT OPPORTUNITY, OR BUSINESS INTERRUPTION) RESULTING FROM OR ARISING UNDER OR IN CONNECTION WITH THE USE OR ACCESS TO, OR THE INABILITY TO USE OR ACCESS, THE SITE AND/OR ANY DOCUMENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT IMAGE-SPARK IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. (c) BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OR LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE LIMITATIONS SET FORTH IN THE PRECEDING PARAGRAPH MAY NOT APPLY TO YOU. IF ANY ARE HELD INAPPLICABLE OR UNENFORCEABLE FOR ANY REASON, THEN IMAGE-SPARK'S MAXIMUM LIABILITY TO YOU FOR ANY NON-DIRECT TYPE OF DAMAGES SHALL BE LIMITED TO U.S. \$200.00 IN THE AGGREGATE. (d) IN NO EVENT SHALL IMAGE-SPARK (OR ANY OF ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AFFILIATES, AGENTS OR ADVERTISERS), BE LIABLE FOR ANY DIRECT DAMAGES IN EXCESS IN THE AGGREGATE OF U.S. \$200.00 (OR, IF YOU ARE AN EMPLOYER WITH A SERVICES AGREEMENT WITH IMAGE-SPARK, THE AMOUNTS ACTUALLY PAID BY YOU TO IMAGE-SPARK UNDER THIS AGREEMENT IF GREATER THAN U.S. \$200.00). (e) DUE TO THE NATURE OF THIS AGREEMENT, IN ADDITION TO MONEY DAMAGES, YOU AGREE THAT IMAGE-SPARK WILL BE ENTITLED TO EQUITABLE RELIEF UPON A BREACH OF THIS AGREEMENT BY YOU.

- 7. Payment of Services upon Termination of Service Agreement.** If at any time during the course of this Agreement you should terminate a Service Agreement in which these Terms and Conditions have been incorporated by reference, not to include your termination in the case of breach of this Agreement or the Service Agreement by Image-Spark, Image-Spark shall reserve the right to receive all payments from you for the Services used by you up to termination and for fifty percent (50%) of the remaining unused portion of the Service Agreement.
- 8. Links to Other Sites.** Image-Spark contains links to third party web sites. These links are provided solely as a convenience to you and not as an endorsement by Image-Spark of the contents on such third-party web sites. Image-Spark is not responsible for the content of linked third-party sites and does not make any representations regarding the content or accuracy of materials on such third-party web sites. If you decide to access linked third-party web sites, you do so at your own risk.
- 9. Amendments to this Agreement and Changes to Site.** Image-Spark may revise this Agreement at any time by updating this page. Changes will be binding on you on the date they are posted on the Site (or as otherwise stated in the any notice of such changes). Any use of the Site will be considered acceptance by you of the then-current Terms and Conditions (including any Exhibits thereto). If at any time you find the Terms and Conditions unacceptable, you may not use the Site any longer. Any new or different terms supplied by you are specifically rejected by Image-Spark unless Image-Spark agrees to them in a signed writing specifically including those new or different terms. Image-Spark may change the Site at any time.
- 10. Indemnity.** You agree to defend (with legal counsel selected by Image-Spark), indemnify, and hold harmless Image-Spark (and its officers, directors, employees and agents) from and against any third party claims, actions or demands (including, without limitation, costs, damages and reasonable legal and accounting fees) alleging or resulting from or in connection with your use of the Site, any Document posted by you, Videos posted by you or your breach of this Agreement.

Image-Spark shall use reasonable efforts to provide you prompt notice of any such claim, suit, or proceeding and may assist you, at your expense, in defending any such claim, suit or proceeding.

- 11. User Information.** The Privacy Policy posted on the Site is incorporated into this Agreement by this reference. The Privacy Policy governs data collected through Image-Spark's on-line operations only. Please note, as set forth in the Privacy Policy, that Image-Spark may collect certain personal information from Users and may contact Users periodically in accordance with the terms of the Privacy Policy. In addition, Image-Spark reserves the right to comply, in its sole discretion, with legal requirements, requests from law enforcement agencies or requests from government entities, even to the extent that such compliance may require disclosure of certain information collected from Users.
- 12. Questions and Notices.** Questions concerning the use of the Site should be directed to Feedback. Notices shall be sent, for Image-Spark, to the address listed on the Site, and, for you, to the address submitted by you or such other address as Image-Spark reasonably determines is an appropriate address for you.
- 13. General.** Image-Spark contact information is listed on the Site. Image-Spark makes no claims that the Content is appropriate or may be downloaded outside of the United States. Access to the Content may not be legal by certain persons or in certain countries, and such persons have no right to access or use the Site. If you access Image-Spark from outside of the United States, you do so at your own risk and are responsible for compliance with the laws of your jurisdiction. This Agreement and your Service Agreement, if you have one, are governed by the internal substantive laws of the State of Arizona, without respect to its conflict of laws principles. Jurisdiction for any claims arising under this Agreement or your Service Agreement shall lie exclusively with the state or federal courts in the State of Arizona. The sole relationship between You and Image-Spark is that of independent contractors. If any provision of this Agreement is found to be invalid by any court having competent jurisdiction, the invalidity of all or part of a provision shall not affect the validity of the remaining parts and provisions of this Agreement, which shall remain in full force and effect. All provisions of this Agreement shall survive termination except those granting access or use to the Site, and you shall cease all your use and access thereof immediately. You may not assign or transfer your obligations under this Agreement. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term. Except as expressly provided by Image-Spark in a particular "Legal Notice," or software license or material on particular Web pages of the Site, this Agreement and your Service Agreement where applicable, constitute the entire agreement between you and Image-Spark. Image-Spark shall not be liable or responsible for any delay or failure in performance if such delay or failure is due to causes beyond its control.

## **Exhibit A - House Rules regarding Posting, Conduct and Security**

Image-Spark is the sole interpreter of these rules. Users who violate these rules may have their access and use of the Site suspended or terminated, at Image-Spark's discretion. Image-Spark reserves the right to change these rules in accordance with the amendment policy in the Terms and Conditions to which this Exhibit A is attached.

### **1. Posting Rules:**

- 1.1.** Your Document may not contain: (i) URLs or links to Web sites for advertising purposes; (ii) copyrighted material (unless you own the copyright or have the owner's permission to post the copyrighted material); (iii) trade secrets (unless you own them or have the owner's permission to post them); (iv) material that infringes on or misappropriates any other intellectual property rights, or violates the privacy or publicity rights of others; (v) anything that is sexually explicit, obscene, libelous, defamatory, threatening, harassing, abusive, or hateful; or (vi) anything that is embarrassing or offensive to another person or entity.
- 1.2.** You may not use your Document(s) to: (i) impersonate another person, living or dead; (ii) post false, inaccurate or misleading information; (iii) post advertisements or solicitations of business (including, but not limited to, Email Processors, Project 21, franchises, "club memberships," distributorships, or anything requiring a monetary investment by the User, including a request for payment to obtain job listings); (iv) post chain letters or pyramid schemes; or (v) post opinions or notices, commercial or otherwise.
- 1.3.** Your Document(s) must contain sufficient detail to convey clearly to the User the nature and requirements of the job opportunity, or your qualifications as a candidate for employment. Documents that encourage the User to "email for more details" are not permitted. Documents from any third party charging a fee or restricting complete access to all resume information are prohibited.
- 1.4.** Job postings must be individual openings for traditional, W-2 or 1099 employees or unpaid internships.
- 1.5.** Resume postings must contain the accurate resume of a living individual seeking employment or an internship on a full-time, part-time, or contractual basis on his or her own behalf.
- 1.6.** Image-Spark is under no obligation to monitor the Documents posted on the Site, but it may monitor Documents at random. Documents found to violate the above Posting Rules may be removed at Image-Spark's discretion.

### **2. Conduct Rules:**

- 2.1.** You may not respond to postings by other Users in any manner or for any purpose other than that which is expected (i.e., to apply for the job or to initiate further discussion with the candidate). Communications soliciting the employer's business by our competitors are prohibited.
- 2.2.** You may not send unsolicited commercial email to Users.
- 2.3.** Protect your password. You are responsible for maintaining the confidentiality of your information and password. You are responsible for all uses of your registration, whether or not authorized by you. If others use your password to post inappropriate material on the Site, you risk losing your access to the Site. You agree to notify Image-Spark immediately of any unauthorized use of your registration and password.
- 2.4.** Report inappropriate postings or conduct to Feedback.
- 2.5.** You may not delete or revise any material posted by any other person or entity.
- 2.6.** If at any time during the term of this agreement Image-Spark comes to the understanding that you:

**2.6.1.** misled Image-Spark of your business practices and/or services, or (ii) purchased services that do not represent your precise business, Image-Spark reserves the right to terminate this agreement.

**2.6.2.** Image-Spark is under no obligation to monitor the conduct of its Users, but it may investigate and respond when violations are reported.

**3. Security Rules:**

**3.1.** Users are prohibited from violating or attempting to violate the security of the Site, including, without limitation: (i) accessing data not intended for such User or logging into a server or account which the User is not authorized to access; (ii) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization; (iii) attempting to interfere with service to any User, host or network, including, without limitation, via means of submitting a virus to the Site, overloading, "flooding", "mailbombing" or "crashing"; (iv) sending unsolicited e-mail, including promotions and/or advertising of products or services; (v) forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting. Violations of system or network security may result in civil or criminal liability.

**3.2.** Violation of these Security Rules may result in civil or criminal liability. Image-Spark will investigate occurrences which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Users who are involved in such violations.

## PROFILE DATABASE TERMS AND CONDITIONS

Image-Spark owns and operates a website located at [www.Image-Spark.com](http://www.Image-Spark.com) (the "Site"), pursuant to which it offers employers and recruiters free memberships allowing access to Image-Spark's profile database ("Profile Search"). This Agreement provides the terms and conditions of each Profile Search.

- 1. Access Authority and Conditions.** Subject to compliance with each of the terms of this Agreement, Image-Spark agrees to permit You to access the Image-Spark profile database ("Profile Database") via the Site for the purpose of viewing and/or downloading a single copy of available multimedia resumes solely for Your use. Following are certain requirements regarding such access:
  - 1.1.** You may not use the Profile Database in any way which, in Image-Spark's reasonable judgment, adversely affects Image-Spark's business or business prospects, the performance or function of the Site or the Profile Database or interferes with the ability of other Users.
  - 1.2.** You may not use the Profile Database for any purpose other than as an Employer seeking employees, including but not limited to using the information in the Profile Database to sell or promote any products or services.
  - 1.3.** Image-Spark may terminate, update, alter or supplement all or any part of the Profile Search offering at any time. By permitting access to the Image-Spark Profile Database, Image-Spark does not convey any interest in or to the Profile Database or any other Image-Spark property or services. All right, title and interest in and to the Profile Database is and shall remain in Image-Spark.
  - 1.4.** You agree that Your access to the Profile Database will be in compliance with any additional usage requirements provided by Image-Spark from time to time.
- 2. Disclaimer of Warranties.** EMPLOYER USE OF THE IMAGE-SPARK PROFILE DATABASE ARE PROVIDED "AS IS". NO WARRANTY, REPRESENTATION, CONDITION, UNDERTAKING OR TERM, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO THE CONDITION, QUALITY, DURABILITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF THE IMAGE-SPARK PROFILE DATABASE IS GIVEN OR ASSUMED BY IMAGE-SPARK OR ITS AGENTS. ALL SUCH WARRANTIES, REPRESENTATIONS, CONDITIONS, UNDERTAKINGS AND TERMS ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. IMAGE-SPARK MAKES NO WARRANTY WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE RESUMES. IMAGE-SPARK DOES NOT WARRANT THAT YOUR USE OF THE IMAGE-SPARK PROFILE DATABASE WILL BE UNINTERRUPTED, SECURE OR ERROR FREE.
- 3. Limitation of Liability.** IN NO EVENT WILL IMAGE-SPARK BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR PENALTIES (INCLUDING, WITHOUT LIMITATION, FOR LOST PROFITS OR INABILITY TO ACCESS THE PROFILE DATABASE) ARISING HEREUNDER OR IN CONNECTION HERewith, EVEN IF IMAGE-SPARK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR PENALTIES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT SHALL IMAGE-SPARK'S TOTAL AGGREGATE LIABILITY FOR ANY DAMAGES (DIRECT OR OTHERWISE) OR PENALTIES OR LOSS TO YOU OR ANY THIRD PARTY, REGARDLESS OF THE FORM OF ACTION OR CLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL SUBSCRIPTION FEES ACTUALLY PAID BY YOU.
- 4. Indemnification.** You will, at Your sole cost and expense, hold Image-Spark, and its affiliates and its and their respective officers, directors, employees, agents, successors and assigns harmless from and against any and all claims, losses, damages, judgments, costs and expenses (including attorneys' fees and expenses) arising out of or related to Your use of the Profile Database or any breach of the terms hereof in any manner..
- 5. Amendments.** Image-Spark reserves the right to modify the terms and conditions of this Agreement or provide additional usage requirements in its sole discretion at any time by posting

a revised version hereof or by otherwise making such revised terms available for review by You. Any such modifications will supersede all prior versions after the revised version has been posted or otherwise made available as described above. Your continued use of the benefits of the Profile Database after posting or availability constitutes Your agreement to the revision.

6. **Authority.** You represent and warrant that the person accepting this Agreement has full right and authority to enter into this Agreement on Your behalf.
7. **Controlling Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. The exclusive jurisdiction for any action relating to this Agreement shall be a federal or state court in Pima County, Arizona, and the parties consent to such jurisdiction.
8. **Force Majeure.** Image-Spark shall not be liable or responsible for any delay or failure in performance if such delay or failure is due to causes beyond its control.
9. **No Assignment.** You may not assign this Agreement or any of your rights hereunder. Any such attempted assignment shall be null and void.
10. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior written or oral agreements between them with respect thereto.