

The Fogarty Institute for Innovation Terms of Use

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PLEASE READ CAREFULLY THE FOLLOWING TERMS OF USE. BY SUBMITTING AN APPLICATION, ACCESSING, BROWSING, OR USING THE FII SITE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING ANY ADDITIONAL GUIDELINES AND FUTURE MODIFICATIONS (COLLECTIVELY, THE “TERMS”). BY SUBMITTING AN APPLICATION YOU ACKNOWLEDGE THAT ALL TEAM MEMBERS LISTED ON AN APPLICATION HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS.

1. **Eligibility.** THE FII SITE IS NOT AVAILABLE TO PERSONS UNDER THE AGE OF 18 OR TO ANY USERS PREVIOUSLY SUSPENDED OR REMOVED FROM THE FII SITE BY FII. By submitting an Application or by otherwise using the FII Site, you represent that you and all team members listed on your Application are at least 18 years of age and have not been previously suspended or removed from the FII Site.
2. **Privacy Notice.** Your privacy is important to FII. FII’s [Privacy Policy](#) is hereby incorporated into these Terms by reference. Please read this notice carefully for information relating to FII’s collection, use, and disclosure of the information you provide to FII and your personal information.
3. **Individual Features and Services.** When using the FII Site, you will be subject to any additional posted guidelines or rules applicable to specific services and features which may be posted from time to time (the “Guidelines”). All such Guidelines are hereby incorporated by reference into these Terms.
4. **Modification of these Terms.** FII reserves the right, at our discretion, to change, modify, add, or remove portions of these Terms at any time. Please check these Terms and any Guidelines periodically for changes. Your continued use of the FII Site after the posting of changes constitutes your binding acceptance of such changes. For any material changes to these Terms, such amended terms will automatically be effective thirty days after they are initially posted on the FII Site.
5. **Prohibited Conduct.**

BY USING THE FII SITE YOU AGREE NOT TO:

- 5.1 use the FII Site for any purposes other than to access information offered by the FII Site;
- 5.2 rent, lease, loan, sell, resell, sublicense, distribute or otherwise transfer the licenses granted herein or any Materials (as defined in Section 9, below);
- 5.3 impersonate any person or entity, falsely claim an affiliation with any person or entity, forge another person’s digital signature, misrepresent the source, identity, or content of information transmitted to FII or via the FII Site, or perform any other similar fraudulent activity;
- 5.4 delete the copyright or other proprietary rights on the FII Site;
- 5.5 use the FII Site for any illegal purpose, or in violation of any local, state, national, or international law, including, without limitation, laws governing intellectual property and other proprietary rights, and data protection and privacy;

5.6 remove, circumvent, disable, damage or otherwise interfere with security-related features of the FII Site, features that prevent or restrict use or copying of any content accessible through the FII Site, or features that enforce limitations on the use of the FII Site;

5.7 reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the FII Site or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;

5.8 modify, adapt, translate or create derivative works based upon the FII Site or any part thereof, except and only to the extent foregoing restriction is expressly prohibited by applicable law; or

5.9 intentionally interfere with or damage operation of the FII Site or any user's enjoyment of them, by any means, including uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code.

6. **Innovator Support Applications.** You agree that the information you provide to FII on an Application ("Application Information") and all other information provided to FII will be true, accurate, current, and complete and will ensure that this information is kept accurate and up-to-date at all times. FII may use and disclose the Application Information in accordance with the Privacy Policy. FII DOES NOT INTEND TO DISCLOSE APPLICATION INFORMATION TO ENTITIES THAT MAY BE COMPETITIVE TO YOU OR THE BUSINESS VENTURE DESCRIBED ON AN APPLICATION, BUT FII WILL NOT BE LIABLE IN THE EVENT APPLICATION INFORMATION IS SO DISCLOSED. Your submission of an Application does not obligate FII to provide you with any support, and FII reserves the right, in its sole discretion, to terminate any discussions with you regarding the Innovator Support program. FII DOES NOT GUARANTEE OR WARRANT THAT A BUSINESS VENTURE DESCRIBED ON AN APPLICATION, EVEN IF SELECTED BY FII TO PROVIDE SUPPORT UNDER THE INNOVATOR SUPPORT PROGRAM, WILL BE SUCCESSFUL OR PROFITABLE.

7. **Third-Party Sites, Products and Services; Links.** The FII Site may include links or references to other web sites or services solely as a convenience to Users ("Reference Sites"). FII does not endorse any such Reference Sites or the information, materials, products, or services contained on or accessible through Reference Sites. In addition, your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the FII Site are solely between you and such advertiser. ACCESS AND USE OF REFERENCE SITES, INCLUDING THE INFORMATION, MATERIALS, PRODUCTS, AND SERVICES ON OR AVAILABLE THROUGH REFERENCE SITES IS SOLELY AT YOUR OWN RISK.

8. **Termination; Terms of Use Violations.**

8.1 FII. You agree that FII, in its sole discretion, for any or no reason, and without penalty, may terminate your use of and access to the FII Site or any part thereof, with or without notice. You agree that any termination of your access to the FII Site or portion thereof may be affected without prior notice, and you agree that FII will not be liable to you or any third party for any such termination. Any suspected fraudulent, abusive or illegal activity may be referred to appropriate law enforcement authorities. These remedies are in addition to any other remedies FII may have at law or in equity. As discussed herein, FII does not permit copyright infringing activities on the FII Site, and will terminate access to the FII Site to Users who are found to be repeat infringers.

8.2 You. Your only remedy with respect to any dissatisfaction with (i) the FII Site, (ii) any term of these Terms, (iii) Guidelines, (iv) any policy or practice of FII in operating the FII Site, or (v) any content or information transmitted through the FII Site, is to terminate these Terms. You may terminate these Terms at any time by discontinuing use of any and all parts of the FII Site.

9. **Ownership; Proprietary Rights.** The FII Site is owned and operated by FII. The visual interfaces, graphics, design, compilation, information, computer code (including source code or object code), products, software, services, and all other elements of the FII Site provided by FII (the "Materials") are protected by United States copyright, trade dress, patent, and trademark laws, international conventions, and all other relevant intellectual property and proprietary rights, and applicable laws. All Materials contained on the FII Site are the property of FII or its

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10. **Indemnification.** You agree to indemnify, save, and hold harmless FII, its affiliates, contractors, employees, agents and its third-party suppliers, licensors, and partners from any claims, losses, damages, liabilities, including legal fees and expenses, arising out of your use or misuse of the FII Site, any violation by you of these Terms, or any breach of the representations, warranties, and covenants made by you herein. FII reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify FII, and you agree to cooperate with FII's defense of these claims. FII will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it.

11. **Disclaimers; No Warranties.**

11.1 No Warranties. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, FII, AND ITS AFFILIATES, PARTNERS, LICENSORS AND SUPPLIERS DISCLAIM ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM FII OR THROUGH THE FII SITE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. YOU EXPRESSLY ACKNOWLEDGE THAT AS USED IN THIS SECTION 11 THE TERM FII INCLUDES FII'S OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, LICENSORS AND SUBCONTRACTORS.

11.2 "As is" and "As available" and "With All Faults". YOU EXPRESSLY AGREE THAT USE OF THE FII SITE IS AT YOUR SOLE RISK. THE FII SITE AND ANY DATA, INFORMATION, THIRD-PARTY SOFTWARE, REFERENCE SITES, SERVICES, OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE FII SITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE", "WITH ALL FAULTS" BASIS AND WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND EITHER EXPRESS OR IMPLIED.

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11.5 Harm to Your Computer. YOU UNDERSTAND AND AGREE THAT YOU USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN INFORMATION, MATERIALS, OR DATA THROUGH THE FII SITE (INCLUDING RSS FEEDS) OR ANY REFERENCE SITES AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM) OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF SUCH MATERIAL OR DATA.

12. **Limitation of Liability and Damages.**

12.1 Limitation of Liability. UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WILL FII OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS, LICENSORS, OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM ANY UNSUCCESSFUL COURT ACTION OR LEGAL DISPUTE, LOST BUSINESS, LOST REVENUES, OR LOSS OF ANTICIPATED PROFITS OR ANY OTHER PECUNIARY OR NON-PECUNIARY LOSS OR DAMAGE OF ANY NATURE WHATSOEVER) ARISING OUT OF OR RELATING TO THESE TERMS OR THAT RESULT FROM YOUR USE OF OR YOUR INABILITY TO USE THE FII SITE OR ANY REFERENCE SITES, OR ANY OTHER INTERACTIONS WITH FII, EVEN IF FII OR A FII AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, FII'S LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

12.2 Limitation of Damages. IN NO EVENT WILL FII OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS, LICENSORS, OR SUPPLIERS TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR USE OF THE FII SITE OR YOUR INTERACTION WITH OTHER THE FII SITE USERS (WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, WARRANTY, OR OTHERWISE), EXCEED THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING THE FII SITE DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE OF THE CLAIM OR ONE HUNDRED DOLLARS, WHICHEVER IS GREATER.

12.3 Reference Sites. THESE LIMITATIONS OF LIABILITY ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY YOU BY REASON OF ANY PRODUCTS OR SERVICES SOLD OR PROVIDED ON ANY REFERENCE SITES OR OTHERWISE BY THIRD PARTIES OTHER THAN FII AND RECEIVED THROUGH OR ADVERTISED ON THE FII SITE OR RECEIVED THROUGH ANY REFERENCE SITES.

12.4 Basis of the Bargain. YOU ACKNOWLEDGE AND AGREE THAT FII HAS ENTERED INTO THESE TERMS IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND FII, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND FII. FII WOULD NOT BE ABLE TO PROVIDE THE FII SITE TO YOU ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

12.5 Limitations by Applicable Law. SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE AND JURISDICTION TO JURISDICTION.

13. **Miscellaneous.**

13.1 Notice. FII may provide you with notices, including those regarding changes to these Terms, by email, regular mail or postings on the FII Site. Notice will be deemed given twenty-four hours after email is sent, unless FII is notified that the email address is invalid. Alternatively, we may give you legal notice by mail to a postal address, if provided by you through the FII Site or an Application. In such case, notice will be deemed given three days after the date of mailing. Notice posted on the FII Site is deemed given 30 days following the initial posting.

13.2 Waiver. The failure of FII to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision. Any waiver of any provision of these Terms will be effective only if in writing and signed by FII.

13.3 Dispute Resolution and Arbitration.

(a) Governing Law. These Terms will be governed by and construed in accordance with the laws of the State of California, without giving effect to any principles of conflicts of law.

(b) Arbitration. For any claim related to these Terms or the FII Site, excluding claims for injunctive or other equitable relief, where the total amount sought is less than ten thousand U.S. Dollars (\$10,000.00 USD), either FII or you may elect at any point in or during a dispute or proceeding to resolve the claim through binding non-appearance-based arbitration. A party electing arbitration shall initiate it through an established alternative dispute resolution ("ADR") provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (a) the arbitration shall be conducted, at the option of the party seeking relief, by telephone, online, or based solely on written submissions; (b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

(c) Jurisdiction. You agree that any action at law or in equity arising out of or relating to these Terms or FII will be filed only in the state or federal courts in and for Santa Clara County, California, and you hereby consent and submit to the personal and exclusive jurisdiction of such courts for the purposes of litigating any such action, except as provided in Section 13.3(b) regarding arbitration. Notwithstanding this, either party shall still be allowed to apply for injunctive or other equitable relief to protect or enforce that party's intellectual property rights in any court of competent jurisdiction where the other party resides or has its principal place of business.

(d) Improperly Filed Claims. All claims you bring against FII must be resolved in accordance with this Section 13.3. All claims filed or brought contrary to this Section 13.3 shall be considered improperly filed. Should either party file a claim contrary to this Section 13.3, the other party may recover attorneys' fees and costs up to one thousand U.S. Dollars (\$1,000.00 USD), provided that such party seeking such fees has notified the other in writing of the improperly filed claim, and the other has failed to promptly withdraw the claim.

13.4 Severability. If any provision of these Terms or any Guidelines is held to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated from these Terms to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions.

13.5 Assignment. These Terms and related Guidelines, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by FII without restriction. Any assignment attempted to be made in violation of these Terms shall be void.

13.6 Survival. Upon termination of these Terms, any provision which, by its nature or express terms should survive, will survive such termination or expiration, including, but not limited to, sections 7 through 13.

13.7 Headings. The heading references herein are for convenience purposes only, do not constitute a part of these Terms, and will not be deemed to limit or affect any of the provisions hereof.

13.8 Entire Agreement. These Terms, the Privacy Policy and Guidelines constitute the entire agreement between you and FII relating to the subject matter herein and will not be modified except in writing, signed by both parties, or by a change to these Terms, Privacy Policy or Guidelines made by FII as set forth in Section 4 above.

13.9 Claims. YOU AND FII AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE FII SITE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

13.10 Disclosures. The FII Site is operated by FII: infofogarty@fogartyinstitute.org.