

SIX SECONDS TERMS OF SERVICE

These Terms of Service (“**Agreement**”) govern your access to and use of the Six Seconds application user interface, communications tools, and related products and services provided by Six Seconds. (“**Six Seconds**,” “**we**,” or “**us**”) and the Service (as defined below). PLEASE READ THIS AGREEMENT CAREFULLY. BY ACCESSING OR USING THE SERVICE, YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT WISH TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE SERVICE. YOU MAY NOT ACCESS OR USE THE SERVICE IF YOU ARE UNDER 13 AND DO NOT HAVE CONSENT OF YOUR PARENT OR GUARDIAN. Certain features of the Service may be subject to additional guidelines, terms, or rules, which will be posted in connection with such features. All such additional guidelines, terms, and rules, are hereby incorporated by reference into this Agreement.

1. Services. Six Seconds provides the following services (collectively, the “**Service**”): the test taking and competency analysis module (“**Assessment**”), a tool that is hosted by or on behalf of Six Seconds and made available to an end user (the “**Test Taker User**” or “**you**”) to allow you to access the Service and the Assessment.

2. User Access to Service.

2.1 User Access. To use the Service, we will provide you with a personalized link that will allow you access to the Service. You will ensure that all information you provide will be true, accurate, and complete. Should we suspect that any information you provide is not true, accurate, or complete, we have the right to suspend or terminate your use of the Service. You will be responsible for any activities that occur through your use of the Service, for the entire duration of the time that you have access to the Service via the personalized link. You will not: (a) provide any false personal information on the Service; or (b) allow any other user or individual to access your personalized link in order to gain access to the Service..

3. User Information

3.1 Content License. By submitting information (e.g., your demographic information and questionnaire answers) to the Service (“**User Information**”), you hereby grant to Six Seconds an irrevocable, perpetual, non-exclusive, royalty-free and fully paid, worldwide, transferable license, with the right to sublicense through multiple tiers, to reproduce, distribute, modify, publicly display, publicly perform, prepare derivative works of, transmit, and otherwise use such User Information, in any format or medium now known or developed in the future, in connection with the Service and for the creation of anonymized aggregated data, industry reports and/or statistics (“**Aggregate Data**”) to be used for Six Seconds’ business purposes, research, and industry reporting/education; provided, however, that Six Seconds will ensure that such Aggregate Data will not personally identify you or any other User. You represent and warrant that: (a) you have the right to grant the foregoing license and to post the User Information; (b) the User Information will not infringe, misappropriate, violate or contravene any third party rights (including any intellectual property rights); and (c) the User Information is accurate. You are solely responsible for the User Information that you submit to the Service.

3.2 User Guidelines. You agree to comply with the guidelines listed herein and any other user guidelines posted on the Service. Six Seconds reserves the right (but is not obligated) to investigate and to take appropriate legal action in its sole discretion for any violation of this provision or this Agreement or any conduct or content that is offensive, illegal, or violates the rights of, harms, or threatens the safety of, other users or third parties, including removing such content from the Service, notifying the appropriate authorities regarding and identifying the source of such content, barring violators from accessing the Service. Without limiting the foregoing: (a) you will comply with all applicable laws, including privacy laws, intellectual property laws, and regulatory requirements; (b) you will not post inappropriate, inaccurate, or objectionable content to the Service; (c) you will not post or upload any virus, time bomb, worm, corrupted file, or other software routine capable of disrupting, disabling, or harming the operation of, or providing unauthorized access to the Service; and (d) you will not use the Service to do or promote anything that is unlawful, illegal, misleading, defamatory, or libelous.

4. License

4.1 Service. During the term of this Agreement and subject to the terms of this Agreement, Six Seconds grants to you a nontransferable, nonexclusive license (without the right to sublicense) to access and use the Service or the Assessment, as applicable, solely for your personal, non-commercial purposes, and for no other use.

4.2 Restrictions. You acknowledge that the structure, organization, and source code of the Service constitute valuable trade secrets of Six Seconds and its licensors. Accordingly, you shall not: (a) license, sell, rent, lease, transfer, assign, distribute, host, outsource, disclose, or otherwise commercially exploit the Service or make the Service available to any third party; (b) modify, adapt, alter, translate, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Service; (c) merge the Service with other software; (d) access the Service in order to build a similar or competitive product or service; or (e) copy, reproduce, distribute, republish, post, or transmit any part of the Service in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means. Any future release, update, or other addition to functionality of the Service provided by Six Seconds (if any) shall be subject to the terms of this Agreement unless Six Seconds expressly states otherwise.

5. Ownership. Six Seconds and its licensors own the Service, all content (except for your User Information) contained therein and all intellectual property rights relating to the foregoing. Six Seconds and its licensors reserve all rights not expressly granted under this Agreement. Six Seconds will treat any feedback or suggestions you provide to it as non-confidential and non-proprietary. Six Seconds reserves the right to use any feedback or suggestions you provide in any manner and for any purpose without any obligation to compensate you.

6. Availability and Modification of Service. Six Seconds reserves the right, from time to time, to suspend the Service or any part thereof with or without notice for maintenance, repair, updates, and upgrades relating to the Service or to protect against harm or liability to the Service or Six Seconds. Six Seconds will have the right to modify or discontinue, from time to time, any aspect of the Service. You agree that Six Seconds will not be liable to you or to any third party for any modification, discontinuance, or suspension of the Service or any part thereof.

7. Term and Termination. Subject to this Section 7, this Agreement will remain in full force and effect while you use the Service. You may terminate this Agreement at any time by ceasing to use the Service. Six Seconds will have the right to terminate this Agreement, or suspend or terminate your access to the Service, for any breach of this Agreement immediately upon notice. Upon termination of this Agreement by either party, your right to access and use the Service will terminate immediately. You understand that any such termination may involve deletion of your User Information associated therewith from our live databases. You agree that we will have no liability to you for any costs, expenses, losses, damages, or liabilities arising out of or related to such termination. Even after this Agreement is terminated, the following provisions of this Agreement will remain in effect: Sections **Error! Reference source not found.**1, 6, 8, and 9-16.

8. Warranty Disclaimer. TO THE EXTENT PERMITTED UNDER APPLICABLE LAWS, SIX SECONDS PROVIDES THE SERVICE “AS-IS” AND AS AVAILABLE AND EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, AND NON-INFRINGEMENT. SIX SECONDS DOES NOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS FROM THE USE OF THE SERVICE. SIX SECONDS MAKES NO WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED, FREE OF VIRUSES OR OTHER HARMFUL CODE, TIMELY, SECURE, OR ERROR-FREE. YOU AGREE THAT SIX SECONDS IS NOT RESPONSIBLE FOR THE TIMELINESS, DELETION, ACCURACY, OR MIS-DELIVERY OF ANY COMMUNICATIONS, OR FAILURE TO STORE OR SECURE ANY USER CONTENT OR COMMUNICATIONS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

9. Limitation of Liability. TO THE EXTENT PERMITTED UNDER APPLICABLE LAWS, SIX SECONDS WILL NOT BE LIABLE TO YOU, OR ANY THIRD PARTY, FOR ANY LOST PROFITS, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO YOUR USE OF THE SERVICE UNDER THIS AGREEMENT, EVEN IF SIX SECONDS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, SIX SECONDS’ LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE GREATER OF FIFTY U.S. DOLLARS (US \$50) OR THE AMOUNTS PAID BY YOU TO SIX SECONDS IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT SERVE TO ENLARGE THIS LIMIT. YOU ACKNOWLEDGE AND AGREE THAT THESE LIMITATIONS OF LIABILITY ARE ESSENTIAL AND FUNDAMENTAL PARTS OF THIS AGREEMENT WHICH ARE NECESSARY TO INDUCE SIX SECONDS TO ENTER INTO THIS AGREEMENT.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OF CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

10. User Indemnification. You agree to indemnify and hold Six Seconds, its subsidiaries, affiliates, directors, officers, agents, and employees harmless from any losses, damages, liabilities, claims, demands, costs, or expenses, including reasonable attorneys' fees, arising out of or relating to your: (a) User Information; (b) use of the Service; (c) breach of this Agreement; (d) breach or inaccuracy of any representation or warranty made under this Agreement; or (e) violation of applicable laws or the rights of third parties.

11. Disclosures. If you have any questions about this Terms of Service, please contact us at Six Seconds, +1.831.763.1800 or by e-mail at staff@6seconds.org.

12. Electronic Communications. The communications between you and Six Seconds use electronic means, whether you use the Service or send us emails, or whether Six Seconds posts notices on the Service or communicates with you via email. For contractual purposes, you (a) consent to receive communications from Six Seconds in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Six Seconds provides to you electronically satisfy any legal requirement that such communications would satisfy if it were be in a hardcopy writing. The foregoing does not affect your non-waivable rights.

13. Dispute Resolution. *Please read this Arbitration Agreement carefully. It is part of your contract with Six Seconds and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.*

(a) Applicability of Arbitration Agreement. All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with the Terms or the use of any product or service provided by Six Seconds that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement. Unless otherwise agreed, all arbitration proceedings shall be held in English. This Arbitration Agreement applies to you and Six Seconds, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or goods provided under the Terms.

(b) Notice Requirement and Informal Dispute Resolution. Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute ("**Notice**") describing the nature and basis of the claim or dispute, and the requested relief. A Notice to Six Seconds should be sent to: PO Box 1985, Freedom, CA 95019 USA. After the Notice is received, you and Six Seconds may attempt to resolve the claim or dispute informally. If you and Six Seconds do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

(c) Arbitration Rules. Arbitration shall be initiated through JAMS, an established alternative dispute resolution provider ("**ADR Provider**") that offers arbitration as set forth in this section. If JAMS is not available to arbitrate, the parties shall agree to select an alternative ADR Provider. The rules of the ADR Provider shall govern all aspects of the arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with the Terms. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or

disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in a location within 100 miles of your residence, unless you reside outside of the United States, and unless the parties agree otherwise. If you reside outside of the U.S., the arbitrator shall give the parties reasonable notice of the date, time and place of any oral hearing. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. If the arbitrator grants you an award that is greater than the last settlement offer that Six Seconds made to you prior to the initiation of arbitration, Six Seconds will pay you the greater of the award or One Thousand U.S. Dollars (US \$1,000). Each party shall bear its own costs (including attorney's fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the ADR Provider.

(d) *Additional Rules for Non-Appearance Based Arbitration.* If non-appearance based arbitration is elected, the arbitration shall be conducted by telephone, online and/or based solely on written submissions; the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise agreed by the parties.

(e) *Time Limits.* If you or Six Seconds pursues arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the AAA Rules for the pertinent claim.

(f) *Authority of Arbitrator.* If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of you and Six Seconds, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the AAA Rules, and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and Six Seconds.

(g) *Waiver of Jury Trial.* THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and Six Seconds in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND SIX SECONDS WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

(h) *Waiver of Class or Consolidated Actions.* ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF

MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER.

(i) *Confidentiality.* All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent a party from submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

(j) *Severability.* If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.

(k) *Right to Waive.* Any or all of the rights and limitations set forth in this Arbitration Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of this Arbitration Agreement.

(l) *Survival of Agreement.* This Arbitration Agreement will survive the termination of your relationship with Six Seconds.

(m) *Small Claims Court.* Notwithstanding the foregoing, either you or Six Seconds may bring an individual action in small claims court.

(n) *Emergency Equitable Relief.* Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

(o) *Claims Not Subject to Arbitration.* Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark or trade secrets shall not be subject to this Arbitration Agreement.

(p) *Courts.* In any circumstances where the foregoing Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within Santa Cruz County, USA, for such purpose.

14. General. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. You acknowledge that the Service contains valuable trade secrets and proprietary information of Six Seconds, that any actual or threatened breach of the license grant or ownership rights of this Agreement will constitute immediate, irreparable harm to Six Seconds for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. Unless the

context clearly requires otherwise, “includes” and “including” are not limiting. This Agreement constitutes the final, complete, and exclusive agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral.

15. Changes. This Agreement is subject to occasional revision. If we make any material changes to this Agreement, we will make appropriate notices, including posting notice of the changes on the Site. Except for such amendments, no amendment to this Agreement will be valid unless in a writing hand-signed by the parties.

16. Trademark and Copyright Notice. Names, slogans, graphics, logos, service marks, and trade names used on the Service are the trademarks of Six Seconds and may not be used without our permission.

This Agreement was last revised April 21, 2016