



TERMS OF USE

1. **Acceptance of Terms of Use.** Thank you for visiting this website (the “Site”). XLT Management Services, Inc. (“we,” “our,” “us,” and “XLTMS”) offers access to and use of the Site subject to your acceptance without modification of these terms, conditions, and notices contained herein. Please read these Terms of Use carefully before using the Site. By using this Site, you are accepting these Terms of Use. Additionally, you represent and warrant that your use of the Site is for commercial purposes and you are only accessing the Content (as defined below) or services of the Site as an agent of your employer.
2. **Description of the Site.** The Site allows access and use of XLTMS’ descriptions of XLTMS products, industries served, services provided by XLTMS (both standard and custom), and related materials (“Content”) to the extent and in the manner offered through the Site.
3. **Electronic Signatures.** By using the Service, you agree to transact electronically through the Site. You agree that your electronic signature is the legal equivalent of your manual signature. You further agree that your use of a key pad, mouse or other device to select an item, button, icon or similar act/action, constitutes your signature as if actually signed by you in writing. You also agree that no certification authority or other third party verification is necessary to validate your electronic signature, and the lack of such certification or third party verification will not in any way affect the enforceability of your electronic signature.
4. **Communications Consent.** By providing your telephone number, you are providing express written consent to receive communications from XLTMS, (including its affiliates, agents, service providers, and affiliates) for any purpose, including but not limited to marketing various services from both XLTMS and companies XLTMS has joint marketing agreements with. Additionally, you agree to receive communications from XLTMS regarding any service, and any information you may have obtained via your use of a Website. You agree that these communications include, but are not limited to, the use of an Automated Telephone Dialing System, prerecorded and/or artificial voice, SMS, MMS, text, fax, email or other similar means. Note, regardless of whether your phone number is registered on a state or federal Do Not Call list. You agree that XLTMS is not responsible for any charges to you regarding these communications. Standard voice and data rates may apply. Should you wish to no longer receive communications, you may text “STOP” to cease receiving such communications. Further, you understand that you do not need to provide this consent to call as a condition to receive any good or service, in which case you should not provide your phone number.
5. **Intellectual Property and Rights to Access Site.**
 - 5.1. **Ownership.** The Site’s Content, and all data in the Site, is owned by XLTMS and/or its agents, and the underlying technology and format are owned or licensed by XLTMS. The Site’s technology and format are protected by applicable domestic and



international patent, copyright and other intellectual property and proprietary rights and laws, and is offered to you, as it exists on the Site, for limited use pursuant to these Terms of Use. You shall not copy, distribute, publish, perform, modify download, transmit, transfer, sell, or license, create derivative works from or based on, publicly display, frame, link, or in any other way exploit any of the Site, in whole or in part, without the prior written permission of XLTMS or the respective copyright holder.

5.2. **License.** Subject to this Agreement, XLTMS hereby grants you a non-exclusive, non-transferable license for your or your affiliates' internal business purposes and in order: (i) to access and use the Content in order to determine if XLTMS products or services are suitable for your use; (ii) to access and use Content generated through or available on the Site; and (iii) reproduce or distribute solely within your employer's organization or to your employer's affiliates Content generated through or available on the Site. All rights not explicitly granted in this Agreement are reserved by XLTMS. You may not use the Site in any manner inconsistent with this Agreement.

5.3. **Trademark Notices.** All trademarks, service marks, trade names, and logos contained in the Site are the property of their respective owners.

6. **Links to Third Party Sites.** The Site may contain links to other Web Sites ("Linked Sites") and access to third party content, products and services. These Linked Sites are not under XLTMS control and XLTMS is not responsible for the content of any Linked Site, including, without limitation, any link contained in a Linked Site, or any changes or updates to a Linked Site. XLTMS is not responsible for webcasting or any other form of transmission received from any Linked Site. XLTMS is providing these links to you only as a convenience, and the inclusion of any link does not imply endorsement by XLTMS of the site or any association with its operators. You bear all risks associated with the access to, and use of, such websites and third party content, products and services.

7. **No Unlawful or Prohibited Use.** By using the Site, you represent and warrant to XLTMS that you will not use the Site in any manner that: (a) is defamatory, derogatory, degrading or harassing of another or constitutes a personal attack; (b) invades another's privacy or includes, copies or transmits another's confidential, sensitive or personal information; (c) promotes bigotry, racism, hatred or harm against any group or individual; (d) is obscene or not in good taste; (e) violates, infringes or promotes the violation or infringement of another's rights, including intellectual property rights; (f) violates or promotes the violation of any applicable laws or regulations; (g) contains a solicitation of funds, goods or services, or promotes or advertises goods or services; (h) contains any viruses, Trojan horses, or other components designed to limit or harm the functionality of a computer; (i) could damage, disable, overburden, or impair the Site or interfere with any other party's use and enjoyment of the Site; or (j) for any purpose that is prohibited by these terms, conditions, and notices. You may not obtain or attempt to obtain any materials or information through any means not



intentionally made available or provided for through the Site. We may report you to the relevant authorities and may act under the fullest extent of applicable laws if you transmit or upload content intended or designed to cause harm.

8. **Export Controls.** You may not export or re-export any Content received from the Site or Products acquired using the Site except in full compliance with all USA laws and regulations, including, without limitation, the USA Export Administration Laws and Regulations. Use contrary to those laws is prohibited. Access to or use of the Site from countries sanctioned by the USA is strictly prohibited. Neither the products nor the Content acquired through the use of the Site may be acquired for or shipped, transferred, exported or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals or residents; nor may such products or Content be used for nuclear activities, missile projects, or chemical or biological weapons, unless specifically authorized by the USA government for such purposes; or for terrorist activities. You are responsible for complying with any local laws in your country that may impact your right to import, export, or use the products that may be acquired as a result of your use of the Site or the Content found on the Site.

9. **Changes to Site.** We reserve the right to modify, suspend, or discontinue this Site, in whole or in part, at any time, with or without notice.

10. **Disclaimer.**

10.1. THIS SITE, INCLUDING WITHOUT LIMITATION, THE CONTENT AND OTHER MATERIALS CONTAINED IN OR ACCESSIBLE THROUGH THIS SITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT WITH RESPECT TO ALL SUCH MATERIALS ARE DISCLAIMED. NO WARRANTY IS MADE THAT THIS SITE OR ITS CONTENT OR SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE SITE OR CONTENT WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. NO WARRANTY IS MADE CONCERNING THE ACCURACY OF THE INFORMATION CONTAINED ON THE SITE, OR THE QUALITY OF ANY SERVICES AVAILABLE THROUGH THE SITE. NO REPRESENTATION OR WARRANTY IS MADE THAT THIS SITE OR ITS SERVER(S) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. FURTHER, XLTMS DISCLAIMS ANY RESPONSIBILITY FOR ANY DAMAGE TO COMPUTER SYSTEM OR LOSS OF DATA RESULTING FROM USE OF THE SITE.

10.2. IN JURISDICTIONS WHICH RESTRICT OR DO NOT ALLOW THE LIMITATION OR EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS, THE ABOVE EXCLUSIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED UNDER THE LAW.



11. **Limitation of Liability.** YOU UNDERSTAND THAT IN NO EVENT WILL XLTMS OR ITS MANAGERS, MEMBERS, OFFICERS, DIRECTORS, SHAREHOLDERS, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, WHETHER IN AN ACTION UNDER CONTRACT, NEGLIGENCE, BREACH OF STATUTORY DUTY, STRICT LIABILITY OR ANY OTHER THEORY, ARISING OUT OF: (A) YOUR USE OR INABILITY TO USE THE SITE, OR (B) YOUR RELIANCE ON ANY SERVICES OR CONTENT PROVIDED BY THE SITE; EVEN IF ANY OF SUCH PARTIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ALSO, IN NO EVENT WILL ANY OF THE ABOVE IDENTIFIED PARTIES IN THIS SECTION BE LIABLE TO YOU FOR AN AMOUNT GREATER THAN \$500 (USD). IN JURISDICTIONS WHICH RESTRICT OR DO NOT ALLOW THE ABOVE LIMITATIONS OF LIABILITY, THE ABOVE LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED UNDER THE LAW.

12. **Indemnification.**

12.1. You shall defend us against any claim made or brought against us by a third party alleging that your use of the Content or any services or communications provided via the Site in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party, or violates applicable law; and shall indemnify us for any damages finally awarded against, and for reasonable attorney's fees incurred by, us in connection with any such Claim; provided, that we: (a) promptly give you written notice of the Claim; (b) give you sole control of the defense and settlement of the Claim (provided that you may not settle any Claim unless the settlement unconditionally releases us of all liability); and (c) provide to you all reasonable assistance, at our expense.

12.2. This Section 12 (Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section.

13. **Security.** We have implemented commercially reasonable administrative, procedural, and technical measures designed to secure your use of the Site from commonly known vulnerabilities which could have an adverse impact on the devices you use to access the Site or Content provided by the Site. However, due to the nature of the Internet and related technology, We cannot absolutely guarantee the security of your device, and XLTMS expressly disclaims any such obligation. You hereby acknowledge and understand that such risk is inherent in interacting with any website, including this Site, and take full responsibility for any harm, danger or damage that ensues.

14. **Termination/Access Restriction.**



14.1. **Termination.** XLTMS reserves the right, at its sole discretion, to terminate or limit your access to the Site and the related services or any portion thereof at any time, without notice.

14.2. **Access Restriction.** To the maximum extent permitted by law, this Agreement is governed by the laws of the State of Illinois, U.S.A. and you hereby consent to the exclusive venue of Chicago, Illinois, U.S.A. in all arbitrations or other disputes arising out of or relating to the use of the Site. Use of the Site is unauthorized in any jurisdiction that does not give effect to all provisions of these terms of use, including without limitation this paragraph. You agree that no joint venture, partnership, employment, or agency relationship exists between you and XLTMS as a result of this Agreement or use of the Site. XLTMS' performance of this Agreement is subject to existing laws and legal process, and nothing contained in this Agreement is in derogation of XLTMS' right to comply with governmental, court and law enforcement requests or requirements relating to your use of the Site or information provided to or gathered by XLTMS with respect to such use. If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Agreement shall continue in effect. Unless otherwise specified herein, this Agreement constitutes the entire agreement between the user and XLTMS with respect to the Site and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between the user and XLTMS with respect to the Site. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

15. **Arbitration & Class Action Waiver**

15.1. PLEASE READ THIS SECTION CAREFULLY - IT AFFECTS YOUR LEGAL RIGHTS AND GOVERNS HOW YOU AND XLTMS CAN BRING CLAIMS AGAINST EACH OTHER. THIS SECTION WILL, WITH LIMITED EXCEPTION, REQUIRE YOU AND XLTMS TO SUBMIT CLAIMS AGAINST EACH OTHER TO BINDING AND FINAL ARBITRATION ON AN INDIVIDUAL BASIS. THIS MEANS THAT YOU WILL NOT BE ABLE TO BRING A CLASS, COLLECTIVE, OR REPRESENTATIVE LAWSUIT IN A COURT OF LAW BEFORE A JUDGE OR JURY CONCERNING ANY DISPUTE THAT MAY ARISE WHICH IS COVERED BY THE ARBITRATION AGREEMENT AND ARE INSTEAD AGREEING TO SUBMIT ANY SUCH DISPUTE SOLELY ON YOUR OWN BEHALF TO AN IMPARTIAL ARBITRATOR.

15.2. You and XLTMS mutually agree to forego the delay and expense of using a court of law and choose instead to benefit from the speedy, economical, and impartial dispute resolution procedure of using binding arbitration for any disputes that arise between You and



XLTMS, its related and affiliated companies, and/or any current or former employee, officer, or director of XLTMS or any related or affiliated company as it relates to Your use of the Site and these Terms of Use. You and XLTMS agree that this Arbitration and Class Action Waiver is governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and will survive even after these Terms of Use terminate. Any revision to or termination of the Terms of Use that modify or terminate this Arbitration and Class Action Waiver shall not apply to a pending arbitration, to any claim that accrued prior to the modification or termination, or to any claim that the asserting party knew about prior to the modification or termination, except as may be required by applicable law.

15.3. To initiate arbitration, the party desiring to pursue a legal dispute must prepare a written demand setting forth the claim(s) and deliver the written demand within the applicable statute of limitations period by hand or first class mail to the representatives of the other party. You and XLTMS agree that the arbitration shall be administered by American Arbitration Association (“AAA”) before a single arbitrator mutually agreed upon by the parties, and if the parties cannot agree within thirty (30) days after names of potential arbitrators have been proposed, then by a single arbitrator who is chosen by the AAA. Except to the extent that they are modified by the rules below, if You are an individual person, the AAA Consumer Arbitration Rules that are in effect at the time of the filing of the demand will apply.

15.4. The parties agree that the applicable AAA rules are modified as follows:

- Any arbitrator must be neutral as to all parties. Standards for the recusal of an arbitrator shall be the same standards under which trial judges are recused under Illinois state law.
- No party is entitled to its attorneys’ fees, except as may be awarded in a matter authorized by and consistent with applicable law.
- All discovery shall be subject to any and all objections available under FRCP 26(b). Each party shall avoid broad or widespread collection, search, and production of documents, including electronically stored information (“ESI”). If a compelling need is demonstrated by the requesting party, the production shall: (i) be narrowly tailored in scope; (ii) only come from sources that are reasonably accessible without undue burden or cost; and (iii) be produced in a searchable format, if possible without undue burden or cost, and which is usable by the receiving party and convenient and economical for the producing party. Where the costs and burdens of the requested discovery outweigh its likely benefit, considering the needs of the case, the amount in controversy, and the importance of the discovery in resolving the issues, the arbitrator shall deny such requests or order production on condition that the requesting party advance to the producing party the reasonable costs involved in making the production, subject to the allocation of costs in the final award.



- The arbitrator shall have the authority to award the same damages and other relief that would have been available in court pursuant to the law governing the dispute(s).
- Either party shall have the right to file motions to dismiss and motions for summary judgment/adjudication.
- The arbitrator shall have the authority to issue an award or partial award without conducting a hearing on the grounds that there is no claim on which relief can be granted or that there is no genuine issue of material fact to resolve at a hearing.
- The Federal Rules of Evidence shall apply to all arbitration proceedings.
- The arbitrator must issue a decision in writing, setting forth in summary form the reasons for the arbitrator's determination and the legal basis therefor.
- The arbitrator's authority shall be limited to deciding the case submitted by the parties to the arbitration. Therefore, no decision by any arbitrator shall serve as precedent in other arbitrations except to preclude the same claim from being re-arbitrated between the same parties.
- The parties may settle any dispute on a mutual basis without involvement of the arbitrator.
- You will pay the first \$250, and XLTMS will pay all other filing, administrative, or hearing fees. If XLTMS initiates arbitration, XLTMS will pay all filing, administrative, and hearing fees. Regardless of which party initiates arbitration, You will remain responsible for Your attorneys' fees and costs unless the law governing the Covered Claim provides for an award of attorneys' fees and costs and the arbitrator determines as part of the arbitration award that You may recover a certain amount of attorneys' fees and costs.

15.5. Except as otherwise required under applicable law, You and XLTMS agree to arbitrate any disputes only on an individual basis and hereby waive any right to bring, participate in, or receive money or any other relief from any representative, class, or collective proceeding ("Class Action Waiver"). No party may bring a claim on behalf of other individuals, and no arbitrator hearing any claim under these Terms of Use may: (a) without the consent of all parties, combine more than one individual's claim or claims into a single case; (b) order, require, participate in, or facilitate production of class-wide contact information or notification of others of potential claims; or (c) arbitrate any form of a class, collective, or representative proceeding.

16. **Persons Not of Age of Majority.** Persons who are not 18 years of age are not eligible to use the Site, and no information in relation to such persons should be included in a Submission.



17. **Waiver and Severability.** The failure of XLTMS to exercise or enforce any rights or provisions in these Terms of Use will not constitute a waiver of such right or provision. If any part or provision of these Terms of Use is found to be unenforceable, such part or provision may be modified to make the Terms of Use as modified, legal and enforceable. The rest of the Terms of Use will not be affected.

18. **Contact Information.** If You have any questions regarding these Terms of Use, please contact XLTMS at:

XLT Management Services, Inc.
Attn: Legal Department
2050 Finley Road, Suite 80
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