

Last updated: December 14, 2021

TERMS AND CONDITIONS

PLEASE READ THESE TERMS AND CONDITIONS (“AGREEMENT”) CAREFULLY. THE TERMS HEREIN APPLY TO ALL QUOTES, PURCHASE ORDERS, AND INVOICES (REFERRED TO INDIVIDUALLY OR TOGETHER AS “ORDERS”) PROVIDED BY FRACSUN LLC (“FRACSUN”, “WE”, OR “US”) AND ARE THE EXCLUSIVE BINDING AGREEMENT BETWEEN THE PARTIES REGARDING THE PURCHASE, PAYMENT FOR AND USE OF THE SERVICES PROVIDED, UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING BY FRACSUN AND YOU. THE ACCEPTANCE OF ANY OR ALL OF THE ORDERS IS CONDITIONAL UPON YOUR ASSENT TO THE TERMS OF THIS AGREEMENT HEREIN. THIS AGREEMENT SHALL EXCLUSIVELY GOVERN ANY PURCHASE ORDER, DOCUMENT OR COMMUNICATIONS RECEIVED FROM YOU BY FRACSUN, AND FRACSUN HEREBY REJECTS ALL PROVISIONS CONTAINED IN ANY SUCH PURCHASE ORDER, DOCUMENT OR COMMUNICATIONS FROM YOU THAT CONFLICT WITH OR ARE INCONSISTENT WITH THE TERMS OF THIS AGREEMENT.

THIS AGREEMENT CONTAINS AN ARBITRATION PROVISION, CLASS ACTION WAIVER AND TIME LIMIT ON SUBMITTING CLAIMS THAT AFFECT YOUR RIGHTS. YOU ACKNOWLEDGE AND AGREE THAT YOU WERE INFORMED ABOUT THE APPLICABILITY OF THESE TERMS BEFORE PURCHASING THE SERVICES AND HAD AN OPPORTUNITY TO REVIEW AND RESPOND BEFORE ACCEPTING. BEFORE ACCESSING OR USING THE SERVICES YOU MUST READ THE FOLLOWING AGREEMENT CAREFULLY.

You acknowledge and agree that (1) you have read and agree to be bound by this agreement, (2) you are of legal age to form a binding contract with Fracsun, and (3) you have the authority to enter into this Agreement personally or on behalf of the entity you represent, and to bind that entity to this agreement. If you are entering into this agreement on behalf of an entity, you represent and warrant that you have authority to agree to be legally bound by the following terms on behalf of such entity. If you do not agree to all of the terms of this Agreement, you are not permitted to access or use the Services.

For the purposes of this agreement, the term “you” refers to the individual or legal entity, as applicable, that was directed to this agreement. Fracsun and you may be referred to individually as a “party” and collectively as the “parties”. The effective date shall be the date of the parties execution of an Order.

PLEASE NOTE THAT THESE TERMS ARE SUBJECT TO CHANGE BY FRACSUN IN ITS SOLE DISCRETION AT ANY TIME.

When changes are made, Fracsun will make available the updated Agreement on the Fracsun Website (the “Website”), at: <https://www.fracsun.com/resources#>. We will also update the “Last Updated” date at the top of the webpage. If we make any material changes, and you have registered with us to create an Account (as defined in Section 1.6 below) we may also send an email to you at the last email address you provided to us. Any changes to this Agreement will be effective immediately for new users of the Services and will be effective thirty (30) days after posting notice of such changes on the Website for existing users. Fracsun may require you to provide consent to

the updated Agreement in a specified manner for further use of the Services to be permitted. If you do not agree to any change(s) after receiving a notice of such change(s), you shall stop using the Services. Otherwise, your continued use of the Services constitutes your acceptance of such change(s).

In addition, your use of certain services may be subject to additional terms (“Supplemental Terms”) and such Supplemental Terms will be presented to you for your acceptance when you sign up to use the supplemental service. If this Agreement are inconsistent with the Supplemental Terms, the Supplemental Terms shall control with respect to such supplemental service. The Supplemental Terms will be incorporated into this Agreement.

1. OVERVIEW

1.1 Our Service. Fracsun offers a hosted service that integrates with the individual items of hardware that have been provisioned to access Fracsun’s cloud and imported into Fracsun’s systems. Our services include hardware devices (each, a “Device” or “ARES”) to perform various Internet of Things related tasks and functions to compile, analyze, and display data from the Device(s) on a hosted web service (independently or collectively with the provisioning of a Device, the “Service”). Fracsun may, in its sole discretion, charge fees in connection with certain other services and may limit the number of Events that may be performed. As used herein, an “Event” means any HTTP/HTTPS request made by the Service to ARES, including without limitation, via webhooks or integrations or any discrete message sent via integrations, websockets or server sent event (SSE) streams by the Service to any third party service(s).

1.2 Device Policy. You are solely responsible and liable for each ordered Device. Fracsun does not provide installation services for the Devices. You agree to be responsible and liable for the proper installation of each Device and any damage (material or personal) that may occur to your photovoltaic array or any other surrounding property. By using the Fracsun Devices, you do so solely at your own risk.

1.3 Hosted Service. Fracsun is not responsible for the accuracy, reliability, availability, effectiveness, or correct use of information you receive through the Service. The Service may change from time to time or vary by geographic location. Soiling and weather data may be unavailable, inaccurate, or incomplete, and we expressly disclaim any liability that may result from inaccurate, corrupt, unauthorized or poor-quality data or Documentation. Use of the Service should not replace your good judgment and common sense.

1.4 Monitoring. You agree to provide us with access to your photovoltaic array, data and other materials related to your use of the Service as reasonably requested by us to provide the Service, verify your compliance with this Agreement, and otherwise use such data in accordance with this Agreement.

1.5 Refusal of Service. Fracsun will have the right, in its sole discretion, to refuse to permit your use of the Service with a particular photovoltaic array or any other system. Unless Fracsun states otherwise, such rejection will not terminate this Agreement with respect to any Service. Fracsun will have no liability to you for such refusal.

1.6 Accounts.

a. Accounts. In order to use certain features of the Service, you may be required to register for an account with Fracsun (an “Account”).

b. Registration Information. You represent and warrant that: (i) all required registration information you submit is truthful and accurate; and (ii) you will maintain the accuracy of such information. Fracsun may suspend or terminate your Account if you breach any of the terms of this Agreement. You are responsible for maintaining the confidentiality of your Account login information and are fully responsible for all activities that occur under your Account. You agree to immediately notify Fracsun of any unauthorized use, or suspected unauthorized use of your Account, or any other breach of security. Fracsun will not be liable for any loss or damage arising from your failure to comply with the above requirements. Personal information entered while registering your Account or contacting our team will be collected, stored, protected, processed and used in accordance with our Privacy Policy, as posted on <https://www.fracsun.com/resources#> and incorporated in this Agreement by reference.

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1.7 System Requirements. The Devices require connection to cellular towers, and the hosted services to view your data require a high-speed Internet connection. You are responsible for ensuring and maintaining the cellular and network connections that connect your Device and network to the Services including, but not limited to, browser software that supports the protocols and functionalities we use in the provisioning of the Services. We are not responsible for notifying you of any upgrades, fixes or enhancements to any such software or for any compromise of data transmitted across computer networks or telecommunications facilities (including but not limited to the Internet or any cellular towers or satellites). We assume no responsibility for the reliability or performance of any connections as described in this Section.

2. LICENSED USES AND RESTRICTIONS

2.1 Access Grant. Subject to your compliance with this Agreement, we grant you a limited, non-exclusive, non-assignable, non-transferable license to internally use and access (i) the hosted Services solely as necessary to use in conjunction with the authorized use of the Devices; (ii) the Devices to analyze soiling data of your photovoltaic array site at a location as set forth in an Order; and (iii) the soiling data and documentation, in tangible or electronic form, in conjunction with your authorized use of the Services (“Documentation”). All other uses of the Services are strictly prohibited.

2.2 Delivery. Fracsun shall provide access to the hosted Service via electronic transfer after the Effective Date. Except as agreed upon in writing by the parties, the Device(s) shall be shipped by regular mail (or as otherwise agreed upon in an Order) and shall be deemed accepted upon being made available to you. For the avoidance of doubt, all fees associated with shipping and custom formalities, including, import and export, are your sole responsibility. In the event that you desire, Fracsun will arrange transport and you will pay for freight and handling charges.

2.3 Restrictions. You agree that you will not, and will not assist, permit, authorize, or enable others to do any of the following without our express written consent: (i) reverse engineer or decompile the Service or the Devices or any component thereof, alter, modify, adapt or attempt to create a substitute or similar service through use of or access to the Service or the Devices, unless this is expressly permitted or required by applicable law; (ii) copy, rent, lease, sell, transfer, assign,

sublicense, distribute, time-share, commercially exploit or resell, or otherwise make available to third-parties any part of the Service or the Devices, or accompanying Documentation (Devices, Services and Documentation collectively, the “Fracsun Properties”); (iii) use Fracsun’s name to endorse or promote any product; (iv) use the Fracsun Properties for any illegal, unauthorized, or otherwise improper purposes, or in any manner which would violate this Agreement; (v) remove any legal, copyright, trademark, or other proprietary rights notices contained in or on the Fracsun Properties; (vi) use the Fracsun Properties in a manner that, as determined by Fracsun, in our sole discretion, exceeds reasonable request volume, constitutes excessive or abusive usage, or otherwise fails to comply or is inconsistent with any part of the Fracsun Properties; (vii) imply any, affiliation, sponsorship, or endorsement by Fracsun; (viii) use the Services in breach of this Agreement or contravention of applicable laws, or in any other way that would be considered dangerous, menacing, inappropriate or unlawful.

2.4 Usage Limitations. We may utilize technical measures to prevent over-usage and stop usage of the Service by a Device after any usage limitations are exceeded or suspend your access to the Service with or without notice to you.

2.5 Website Policies. Fracsun may have additional policies, terms or conditions governing your use of the Website, which will be made available at <https://www.fracsun.com/resources#>. In addition to this Agreement, you agree to abide by any such policies, terms or conditions that apply to your use of the Website.

3. OWNERSHIP

3.1 Fracsun Property. As between you and Fracsun, Fracsun owns all right, title and interest in and to the Fracsun Properties including without limitation all intellectual property rights. Except for the license granted in Section 2.1 (Access Grant), this Agreement grants you no right, title, or interest in the Fracsun Properties, or any intellectual property owned or licensed by us. You agree to abide by all applicable proprietary rights laws and other laws, as well as any additional copyright notices and restrictions contained in this Agreement.

3.2 Service Data. By use of our Services, you agree to grant Fracsun worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license, with the right to sublicense, to use, view, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast, access, view, and otherwise exploit the data collected by Devices installed at your locations or otherwise submitted, entered, transferred or stored as part of your use of the Services (“Service Data”) in accordance with this Section 3.2. For the purposes of this Agreement, Service Data does not include any personally identifiable information. You represent and warrant that you have provided, and will continue to provide, adequate notices and have obtained, and will continue to obtain, the necessary permissions and consents for all Service Data you provide during your use of the Services, and that all such Service Data is accurate. Fracsun expressly disclaims liability for any problems with the Services or analysis that are based on inaccurate Service Data you provide. Fracsun may use Service Data to analyze regional soiling patterns and provide this data in anonymized form to third parties in accordance with our internal data management policies. At no time will Fracsun provide third parties with information that will enable the third parties to identify the device, location, customer, or customer specific origin of this data. Fracsun will not use any personal identifiable information and will only provide analysis to third parties in a format that obscures the customer specific origin or owner of the data. You understand and agree that we shall be under no obligation to (i) maintain Service Data in confidence; (ii) pay compensation for any such

data or any related use; or (iii) respond to any specific requests or use any Service Data. We will never sell, rent, or lease any of your personal information.

3.3 User Feedback. By using the Services, you agree to grant Fracsun a fully paid-up, royalty-free, worldwide, transferable, sub-licensable (through multiple layers), assignable, irrevocable and perpetual license to implement, use, modify, commercially exploit, incorporate into the Services or otherwise use any suggestions, enhancement requests, recommendations or other feedback you, or any third parties acting on your behalf, submits to us verbally, by e-mail or by any other means. We also reserve the right to seek intellectual property protection for any features, functionality or components that may be based on or that were initiated by suggestions, enhancement requests, recommendations or other feedback you, or any third parties acting on your behalf, submits to us verbally, by e-mail or by any other means.

4. RELATIONSHIP

4.1 Marketing. We may publicly refer to you, orally or in writing, as a licensee and customer of Fracsun and We may publish your name and logo on the Fracsun Website or promotional materials without prior written consent, payment, or notification. You grant us all necessary rights and licenses to do so, and disclaim all right and liability that may result from such use.

4.2 Support. Fracsun may provide you with reasonable support, upgrades, or modifications for the Service at our discretion. Fracsun may terminate the provision of such support or modifications to you at any time without notice or liability to you.

4.3 Independent Development. You acknowledge and agree that Fracsun may be independently creating applications, content and other products with the use of data collected by Device(s) installed at one or more of your properties. Nothing in this Agreement will be construed as restricting or preventing Fracsun from creating and fully exploiting such applications, content and other items, without any obligation to you. If you elect to provide us with any comments, suggestions, or feedback related to our Service, you assign all right, title and interest in and to such comments, suggestions and feedback to us, and acknowledge that we will be entitled to use, implement and exploit any such feedback in any manner without restriction, and without any obligation of accounting, or compensation or other duty to account.

5. FEES AND PAYMENT TERMS

5.1 Device Purchase and Subscription Fees. Customers may choose to purchase a Device without the hosted service subscription. The fees payable by you for the Device, and, or hosted service subscription, including the Service license and the term as applicable (“Subscription Term”) will be set forth in an Order (“Subscription Fees”), and invoiced in accordance with the pricing terms set out in the Order. At any time during a Subscription Term, you may increase your Order by ordering additional Devices, Events, or service subscriptions (“Usage Parameters”) and, upon Fracsun’s acceptance of such change in an Order, you shall pay the Subscription Fees for such increase, pro-rated for the remainder of your then-current Subscription Term. The updated Order shall renew concurrently with your then-current Subscription for a period equal to your initial Subscription Term.

5.2 Payment Terms. All payments shall be made in the currency of, and within the borders of the

United States. You will pay taxes, shipping duties, withholdings, back withholdings and the like; when Fracsun has the legal obligation to pay or collect such taxes, the appropriate amount shall be paid by you directly to Fracsun. You will reimburse Fracsun for all reasonable travel and other related expenses incurred by Fracsun in its performance hereunder; provided, however, that such expenses shall have been pre-approved by you.

5.3 Invoicing. Fracsun will send you an invoice detailing the Subscription Fees, and any other costs, upgrades or expenses as set forth in an Order, or as otherwise agreed upon in writing by the Parties (“Invoice”). All Invoices are due on the due date as indicated in the Invoice. Your Subscription Term will begin on the date indicated in the Order or Invoice, as the case may be, but you will not be able to access the Services until the first Invoice is paid in full.

5.4 Late Payments and Updates to Billing Information. You are responsible for providing valid and current payment information and you agree promptly update your Account information of any updates or changes, including payment information, with any changes that may occur. If you fail to pay an Invoice or any other charges indicated on any Order within five (5) business days of notice that payment is delinquent, or if you do not update payment information upon Fracsun’s request, in addition to all other remedies available under law and equity, we may suspend or terminate access to and use of the Services. Additionally, Fracsun may charge you a penalty for late payments in the amount of 1.5% per month, or if less, the maximum amount permitted under applicable law.

5.5 Third-Party Payment Processors. If you pay by credit card or certain other payment instruments, you may be provided with a third-party interface to input, change, and update your payment information to make payment. Payments made by credit card, debit card or certain other payment instruments for the Services may be billed and processed by a third-party payment agent. You hereby authorize the third-party agent to charge your credit card, debit card, or other payment instrument for the Services, both in advance on a periodic basis if applicable and in accordance with any Order, Invoice, or the Services. To the extent the payment agent is not Fracsun, the payment agent is acting solely as a billing and processing agent for and on behalf of Fracsun and shall not be construed to be providing the applicable Service. Any third-party payment agent or intermediary is not permitted to store, retain or use your billing information except to process payment for the Services. Fracsun reserves the right to charge you for any transaction or service fee charged to Fracsun for processing payments.

6. TERM AND TERMINATION

6.1 Term. Subject to termination as set forth herein, the Subscription Term of this Agreement will commence on the date indicated in the Order or Invoice, and will continue for as long as the Services are being provided to you under this Agreement. The initial Subscription Term shall be for one (1) year, unless otherwise provided in an Order, and shall automatically renew for successive Subscription Terms equal in duration to the initial Subscription Term, unless either party notifies the other party in writing, not less than sixty (60) calendar days before the expiration of the then-current Subscription Term, that such party does not wish to renew the Service license for an additional Subscription Term.

6.2 Termination. Either party may terminate this Agreement immediately without further notice if the other party breaches its obligations under this Agreement and does not remedy such breach within

thirty (30) calendar days of the date on which the breaching party received written notice of such breach from the non-breaching party. Fracsun may terminate this Agreement within ten (10) days' notice of your non-payment of the Subscription Fees.

6.3 Effect on Termination. Upon termination of this Agreement: (i) all rights and licenses granted will terminate immediately; (ii) any and all payment obligations, if any, will be due; and (iii) within ten (10) calendar days of such termination, each party shall destroy or return all Confidential Information of the other party in its possession or control, and will not make or retain any copies of such information in any form, except that the receiving party may retain one (1) archival copy of such information solely for purposes of ensuring compliance with this Agreement.

6.4 Deletion of Account. Fracsun will use reasonable efforts to delete your Account (or any part thereof), upon termination of this Agreement, or upon request.

6.5 Survival. Sections 3 (Ownership), 4.3 (Independent Development), 5 (Fees and Payment Terms), 6.5 (Survival), and 7 (Confidentiality) through 12 (General) will survive any termination of this Agreement.

7. CONFIDENTIALITY

7.1 Confidentiality. "Confidential Information" means any proprietary information received by the other party during, or prior to entering into, this Agreement that a party should know is confidential or proprietary based on the circumstances surrounding the disclosure including, without limitation, the Service and any non-public technical and business information. Confidential Information does not include information that (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (iv) the receiving party rightfully obtains from a third party without restriction on use or disclosure. You and Fracsun agree to maintain the confidentiality of Confidential Information. The receiving party of any Confidential Information of the other party agrees not to use such Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The receiving party shall protect the secrecy of and prevent disclosure and unauthorized use of the disclosing party's Confidential Information using the same degree of care that it takes to protect its own confidential information and in no event shall use less than reasonable care. The receiving party may disclose the Confidential Information of the disclosing party if required by judicial or administrative process, provided that the receiving party first provides to the disclosing party prompt notice of such required disclosure to enable the disclosing party to seek a protective order. Upon termination or expiration of this Agreement, the receiving party will, at the disclosing party's option, promptly return or destroy (and provide written certification of such destruction) the disclosing party's Confidential Information.

7.2 Service Data. Notwithstanding Section 7.1, above, Service Data shall not be considered Confidential Information. Fracsun may use any Service Data in accordance with Section 3.2, above, and in accordance with Fracsun's internal data management policies.

8. WARRANTY

8.1 Device Warranty. For Device only purchases, the purchase price includes the fees for a (1) year Device warranty. If you have purchased a Device and the hosted subscription services, the Subscription Fees for the first year of the Subscription Term includes the fees for an unlimited Device warranty through the Subscription Term, provided all Invoices are paid on time. Failing to pay an Invoice will invalidate the Device warranty. Fracsun's warranty terms on the Devices are set forth in the warranty policy found here <https://www.fracsun.com/resources#>.

9. **DISCLAIMER AND LIABILITY**

9.1 Disclaimer. EXCEPT AS SET FORTH IN SECTION 8.1, THE SERVICE AND THE DEVICES ARE PROVIDED "AS IS," "WHERE IS," "WITH ALL FAULTS" AND WITH NO WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND. FRACSUN EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, SECURITY, TITLE AND/ NON-INFRINGEMENT. SOME ASPECTS OF THE FRACSUN PROPERTIES ARE EXPERIMENTAL AND HAVE NOT BEEN TESTED IN ANY MANNER. WE DO NOT REPRESENT, WARRANT, OR MAKE ANY CONDITION THAT THE FRACSUN PROPERTIES ARE FREE OF INACCURACIES, ERRORS, BUGS, OR INTERRUPTIONS, OR ARE RELIABLE, ACCURATE, COMPLETE, OR OTHERWISE VALID. WE ARE NOT RESPONSIBLE FOR OUTAGES OR ERRORS IN THE FRACSUN PROPERTIES ATTRIBUTABLE TO THIRD PARTIES OR OUTAGES IN THIRD PARTY INTEGRATED SERVICES. WE ARE ALSO NOT RESPONSIBLE FOR ANY CONTENT OR OTHER MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES, ALL OF WHICH IS OBTAINED AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE THAT RESULTS FROM USE OF THE FRACSUN PROPERTIES INCLUDING, BUT NOT LIMITED TO, ANY DAMAGE TO YOUR COMPUTER SYSTEM OR TO YOUR PHOTOVOLTAIC ARRAY OR INSTRUMENTATION. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH OR FROM OUR SERVICES WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT. THE DEVICE WARRANTY OFFERED BY FRACSUN SHALL BE NULL AND VOID TO THE EXTENT THE ISSUE IS ATTRIBUTABLE TO IMPROPER INSTALLATION OR IF YOU FAIL TO FOLLOW THE PROPER INSTRUCTIONS PROVIDED EITHER ORALLY OR IN THE DOCUMENTATION OR USE THE SERVICES FOR ANY PURPOSE OTHER THAN AS PROVIDED UNDER SECTION 2.1.

9.2 Limitation of Liability. FRACSUN WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, SPECIAL, OR RELIANCE DAMAGES RELATED TO THIS AGREEMENT OR THE SERVICE OR THE DEVICES. CONSEQUENTIAL DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOST PROFITS, LOST REVENUES AND LOST BUSINESS OPPORTUNITIES, WHETHER YOU WERE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES. IN NO EVENT WILL FRACSUN'S AGGREGATE LIABILITY UNDER THIS AGREEMENT OR RELATED TO THE SERVICE OR THE DEVICES EXCEED THE AMOUNTS PAID BY YOU TO FRACSUN DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE ACT(S) GIVING RISE TO LIABILITY HEREUNDER.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES AND SO THESE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU. THE PARTIES HAVE NEGOTIATED THIS AGREEMENT WITH DUE REGARD FOR THE BUSINESS RISK ASSOCIATED WITH THE ARRANGEMENTS DESCRIBED IN THIS AGREEMENT.

10. INDEMNIFICATION.

10.1 Indemnification. You will defend, indemnify and hold harmless Fracsun and its affiliates, and their respective directors, officers, agents, licensors, and other partners and employees from and against any third-party claim arising from or in any way related to your use of the Service or the Devices, or your breach of any obligation herein, 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. We will have the sole and exclusive control and authority to select defense attorneys, and defend and/or settle any such claim at your sole expense

11. THIRD PARTY TOOLS AND LINKS.

11.1 As Is. Fracsun may use or otherwise provide you with access to third-party tools, links or content, including payment processors, through use of the Device or Services which we neither monitor nor have any control nor input. You acknowledge and agree that Fracsun provides access to such tools and content "as is" and "as available" without any warranties, representations or conditions of any kind, and without any endorsement with respect to their use.

11.2 Express Disclaimer. Fracsun shall have no liability whatsoever arising from or relating to the use of third-party tools, links or content, including payment processors. Any use of third-party tools, links or content is entirely at your own risk and discretion and you should ensure that you are familiar with and approve of the terms on which those tools or links are provided by the relevant third-party provider(s). Fracsun is not liable for any harm or damages related to any use of or transactions made in connection with any third-party tools, links, websites, services or products. Complaints, claims, concerns, or questions regarding third-party tools, links and materials should be directed to the relevant third-party provider(s).

12. GENERAL.

12.1 Entire Agreement; Amendment. This Agreement, together with the Orders, constitutes the entire agreement between you and Fracsun and governs your use of the Fracsun Properties. If, through accessing or using the Fracsun Properties, you utilize or obtain any product or service from a third party, you may additionally be subject to such third party's terms and conditions applicable thereto.

12.2 Relationship of Parties. The Parties hereto are independent contractors. Nothing in this Agreement will be deemed to create an agency, employment, partnership, fiduciary, or joint venture relationship between the Parties. Neither Party is the representative of the other Party for any purpose and neither Party has the power or authority as agent, employee, or in any other capacity to represent, act for, bind, or otherwise create or assume any obligation on behalf of the other Party for any purpose whatsoever.

12.3 Binding Arbitration. YOU UNDERSTAND AND AGREE THAT ALL CLAIMS, DISAGREEMENTS, DISPUTES OR CONTROVERSIES BETWEEN YOU AND FRACSun, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, OR ASSIGNS HAVE IN CONNECTION WITH OR RELATED TO THE USE OR ACCESS OF THE SERVICES OR THIS AGREEMENT **SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION**, WHICH MUST BE COMMENCED **WITHIN ONE (1) YEAR** AFTER SUCH CLAIM OR CAUSE OF ACTION ARISES. THE ARBITRATION SHALL TAKE PLACE IN SAN LUIS OBISPO COUNTY, CALIFORNIA. THE ARBITRATION SHALL BE ADMINISTERED BY AAA IN ACCORDANCE WITH TITLE 9 OF THE U.S. CODE (UNITED STATES ARBITRATION ACT) UNDER THE AAA'S COMMERCIAL DISPUTE RESOLUTION PROCEDURES AS SUPPLEMENTED BY THE SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES (AND AS STATED THEREIN, IF THERE IS A DIFFERENCE BETWEEN THE COMMERCIAL DISPUTE RESOLUTION PROCEDURES AND THE SUPPLEMENTARY PROCEDURES, THE SUPPLEMENTARY PROCEDURES WILL BE USED). **YOU AND WE VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT TO A JURY TRIAL.**

12.4 No Class Action. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AND WE AGREE THAT ANY AND ALL DISPUTES, CLAIMS AND CAUSES OF ACTION YOU OR WE MAY HAVE IN CONNECTION WITH OR RELATED TO THE USE OR ACCESS TO THE SERVICES **WILL BE RESOLVED INDIVIDUALLY, WITHOUT RESORT TO ANY FORM OF CLASS ACTION.** NEITHER YOU NOR WE SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS IN ARBITRATION BY OR AGAINST OTHER USERS OR ARBITRATE, AS A REPRESENTATIVE OR MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY, ANY CLAIM, DISPUTE OR CAUSE OF ACTION IN CONNECTION WITH OR RELATED TO THE USE OR ACCESS OF THE SERVICES OR THIS AGREEMENT.

12.5 Governing Law. This Agreement will be governed in accordance with the laws of the State of California without reference to its conflicts of law principles. The Parties agree to submit to the personal jurisdiction of any court of competent jurisdiction for the enforcement of an arbitral award

12.6 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such term or 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.

12.7 Assignment. Neither Party may assign this Agreement or any of its rights or obligations hereunder, to a third party without the other Party's written consent, except that a Party may assign this Agreement without such consent as a consequence of a merger, consolidation, reorganization, or sale of substantially all of its assets or of the business. Any assignment in violation of the foregoing is null and void. This Agreement inures to the benefit of and is binding upon the Parties hereto and their successors and assigns.

12.8 Waiver. Failure to enforce or a waiver by either Party of one default or breach of the other Party will not be considered to be a waiver of any subsequent default or breach.

12.9 Notices. All notices required or permitted hereunder will be in writing, delivered personally, by email, or by nationally recognized overnight courier (e.g., FedEx) at the Parties' respective addresses. All notices will be deemed effective upon personal delivery, or when received if sent by email or overnight courier. You agree that Fracsun may send any privacy or other notices, disclosures, reports, documents, communications and other records regarding the Service (collectively, "Notices") in electronic form to: (1) the email address that you provided during registration, or (2) by posting the Notice on the Service. The delivery of any Notice is effective when posted to the Service or sent by Fracsun (whichever first occurs), regardless of whether you read the Notice when you receive it or whether you actually receive the delivery. You can withdraw your consent to receive Notices electronically by canceling your Account provided there are no refunds of any kind. You must give notice to us in writing via email to info@Fracsun.com or another address otherwise expressly provided.

12.10 Force Majeure. Neither party will be liable to the other for failure to fulfill obligations hereunder if such failure is due to causes beyond its control, including acts of God, earthquake, fire, flood, embargo, catastrophe, sabotage, utility or transmission failures, governmental prohibitions or regulations, national emergencies, pandemics, insurrections, riots or war.