

Emtrain® Terms of Service

Effective Date: June 23, 2021

These Terms of Service (these “Terms”) govern your use of the Emtrain website (the “Site”), the Emtrain platform (containing courses, micro-lessons, videos and questions/answers) and associated tools (collectively, the “Services”) made available by Emtrain, Inc. (“Emtrain,” “we,” and “us”). Your use of the Services indicates that you agree on behalf of yourself or the entity that you represent (collectively, “you”) to be bound by these Terms as well as the [Emtrain Privacy Policy](#).

Please read these Terms carefully before registering for or otherwise using the Services (including if you use the free Emtrain Micro Lessons, described below). These Terms include information about future changes to these Terms, limitations of liability, a class action waiver and resolution of disputes by arbitration instead of in court. PLEASE NOTE THAT YOUR USE OF AND ACCESS TO OUR SERVICES ARE SUBJECT TO THE FOLLOWING TERMS; IF YOU DO NOT AGREE TO ALL OF THE FOLLOWING, YOU MAY NOT USE OR ACCESS THE SERVICES IN ANY MANNER.

ARBITRATION NOTICE AND CLASS ACTION WAIVER: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION SECTION BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

I. Overview

Emtrain provides a platform of online education addressing ethics, respect and inclusion topics.

II. Registration

Use of the Services requires that you register with Emtrain. When you register with Emtrain, you will be asked to disclose certain personal information, including your name and email address, and to set up a user name and password, all of which will be subject to our Privacy Policy. You are responsible for all activities that occur under your account and for keeping your password and log-in information secure. You agree that you (1) will monitor your account, (2) will not share your account or password with anyone, (3) will not transfer your account to anyone else without our prior written permission, and (4) will notify Emtrain immediately of any unauthorized use of your account or password, or any other breach of security. You agree to provide us with true, accurate and complete information as requested in our registration process. You also agree to update such information promptly as necessary to keep it current and accurate.

You represent and warrant that you are an individual of legal age to form a binding contract.

You will only use the Services for your own internal, personal, non-commercial use, and not on behalf of or for the benefit of any third party, and only in a manner that complies with all laws that apply to you. If your use of the Services is prohibited by applicable laws, then you aren't authorized to use the Services.

If you access the Services in connection with an enterprise account holder ("Enterprise Account Holder"), your access to the Services will terminate automatically upon the Enterprise Account Holder terminating its relationship with Emtrain.

III. Payment

You agree to pay all fees or charges to your account for the Services in accordance with the fees, charges and billing terms in effect at the time that each fee or charge is due and payable. Unless otherwise indicated in an order form, you must provide Emtrain with a valid credit card (Visa, MasterCard, or any other issuer accepted by

us) (“Payment Provider”) as a condition to signing up for Emtrain’s Whole Culture. Your Payment Provider agreement governs your use of the designated credit card account, and you must refer to that agreement and not these Terms to determine your rights and liabilities with respect to your Payment Provider. By providing Emtrain with your credit card number and associated payment information, you agree that Emtrain is authorized to verify information immediately, and subsequently invoice your account for all fees and charges due and payable to Emtrain hereunder and that no additional notice or consent is required. You agree to immediately notify Emtrain of any change in your billing address or the credit card used for payment hereunder. Emtrain reserves the right at any time to change its prices and billing methods, either immediately upon posting on our Site or by e-mail delivery to your organization’s administrator(s).

Any attorney fees, court costs, or other costs incurred in collection of delinquent undisputed amounts shall be the responsibility of and paid for by you.

All fees for the Services are non-refundable. No contract will exist between you and Emtrain for the Services until Emtrain accepts your order by a confirmatory e-mail or other appropriate means of communication.

You are responsible for any third-party fees that you may incur when using the Services.

If your account is associated with an Enterprise Account Holder, the Enterprise Account Holder may pay fees for your access to the Services. If the Enterprise Account Holder ceases to pay such fees, your access to the Services may be restricted or terminated.

IV. User Conduct, Commitments and Understandings

- A. You agree not to access (or attempt to access) any of the Services by any means other than through the interfaces that are provided by Emtrain.

B. You, directly or indirectly, alone or with any other party, shall not take any of the actions set forth below, and a violation of any of the following is grounds for termination of your right to use or access the Services:

1. modify, change, create derivative works of, disassemble, decompile or otherwise reverse engineer the Services, or any software provided in connection with the Services (“Software”), or remove proprietary legends in the Services or Software;
2. distribute, transfer, resell, rent, lease, or loan the Services or Software to any other party, except as described herein;
3. jeopardize the security of your Emtrain account or make the Services or Software available to anyone else, such as in a service bureau arrangement or for any similar commercial time-sharing or third party training use;
4. attempt, in any manner, to obtain the password, account, or other security information from any other user;
5. copy or store significant portions of any materials, text, graphics, data, articles, photos, images, illustrations or other content provided through the Services (the “Content”), or use data mining, robots, or similar data gathering and extraction tools;
6. harass, threaten or otherwise cause distress, unwanted attention or discomfort to a person or entity;
7. post or otherwise transmit any User Submission (as defined below) that (i) infringes or violates the intellectual property rights or other rights of any party (including Emtrain); (ii) you do not have the right to transmit, such as information that is subject to a confidentiality agreement between you and another party; (iii) contains sexually explicit images or other content that is offensive; (iv) exploits or is harmful to minors in any way; (v) contains hateful, defamatory, or discriminatory content or incite hatred against any individual or group, or (v) promotes or provides instructional information about illegal activities or promotes physical harm or injury against any group or individual;

8. use your username and password for any unauthorized purpose, or impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
 9. violate (intentionally or unintentionally) any applicable local, state, national or international law or regulation including, but not limited to, any applicable export control laws, privacy laws or any other purpose not reasonably intended by Emtrain;
 10. interfere with or disrupt the Services or Software, or servers or networks connected to the Software, or disobey any requirements, procedures, policies or regulations of networks connected to the Services or Software; or
 11. transmit to Emtrain or upload to this Site any Harmful Code, or run any form of auto-responder, “spam” or other processes on the Services that interfere with the proper working of the Services (including by placing an unreasonable load on the Services’ infrastructure). “Harmful Code” shall mean software referred to as “viruses,” “worms,” “trojan horses,” “time bombs,” “time locks,” “drop dead devices,” “traps,” “access codes,” “cancelbots” or “trap door devices”.
- C. You agree that anything you post, upload, share, store, or otherwise provide through the Services is your “User Submission.” You are solely responsible for all User Submissions you contribute to the Services. You represent that all User Submissions submitted by you are accurate, complete, up-to-date, and in compliance with all applicable laws, rules and regulations.
- D. You agree that you are solely responsible for (and that Emtrain has no responsibility to you or to any third party for) any breach of your obligations under these Terms and for the consequences (including any loss or damage which Emtrain may suffer) of any such breach.
- E. The Services may contain links to other sites on the Internet which are owned and operated by third parties (the “External Sites”). When you access External Sites, you accept that there are risks in doing so, and that Emtrain is not responsible for such risks. You acknowledge that Emtrain is not responsible for the accuracy or availability of the materials located on or

through, any External Sites. Emtrain will not and cannot monitor, verify, censor or edit the content of any External Sites. You should read the terms and conditions and privacy policy of those External Sites and contact the site administrator for those External Sites if you have any concerns regarding such links or the materials located on such External Sites. By using the Services, you release and hold us harmless from any and all liability arising from your use of any External Sites.

- F. You access the Services at your own risk. You acknowledge that by accessing the Site, you may come into contact with Content that you find harmful, offensive, threatening, indecent or objectionable. You acknowledge that Emtrain shall have no liability to you for how you may interpret and use the Content, or what actions you may take as a result of having been exposed to the Content, including, but not limited to explicit language and other potentially offensive material. You hereby release us from all liability for you having acquired or not acquired Content through the Services.
- G. If there is a dispute between you and any user or third party (including the Enterprise Account Holder), you agree that Emtrain is under no obligation to become involved. In the event that you have a dispute with one or more other users, you release Emtrain, its directors, officers, employees, agents, and successors from claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and/or our Services. You shall and hereby do waive California Civil Code Section 1542 or any similar law of any jurisdiction, which says in substance: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

V. Intellectual Property Rights

The materials displayed or performed or available on or through the Services, including, but not limited to, the Content are protected by copyright and/or other

intellectual property laws. You promise to abide by all copyright notices, proprietary legends, any trademark and service mark attributions, any patent markings, and other indicia of ownership on the Content or other materials accessed through the Services. You shall not use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell, commercialize or otherwise exploit for any purpose any Content not owned by you, (i) without the prior consent of the owner of that Content or (ii) in a way that violates someone else's (including Emtrain's) rights. The delivery of, and license to, the Content and/or access to third party materials does not transfer to you any commercial or promotional use rights in the Content or any portion thereof. Emtrain reserves all rights not specifically granted herein.

Subject to these Terms, Emtrain grants each user of the Services a worldwide, non-exclusive, non-sublicensable and non-transferable license to use Content solely for purposes of using the Services. Use, reproduction, modification, distribution or storage of any Content for any purpose other than using the Services is expressly prohibited without prior written permission from us. You understand that Emtrain owns the Services. You won't modify, publish, transmit, participate in the transfer or sale of, reproduce (except as expressly provided in this Section), create derivative works based on, or otherwise exploit any of the Services.

In order to display your User Submissions on the Services, you hereby grant Emtrain a royalty-free, perpetual, sublicensable, irrevocable, and worldwide license to translate, modify (for technical purposes) and reproduce and otherwise act with respect to such User Submissions, in each case to enable us to operate the Services. Your ownership in User Submissions is retained by you. If you store a User Submission in your own personal Emtrain account, in a manner that is not viewable by any other user except you (a "Personal User Submission"), you grant Emtrain the license above, as well as a license to display, perform, and distribute your Personal User Submission for the sole purpose of making that Personal User Submission accessible to you and providing the Services necessary to do so. Please note that all of the aforementioned licenses are subject to our [Privacy Policy](#) to the extent they relate to User Submissions that are also your personally-identifiable information.

At your discretion, you may provide feedback to Emtrain concerning the functionality and performance of the Services from time to time, including, without limitation, identifying potential errors, improvements, modifications, bug fixes, or enhancements (“Feedback”). If you, through your evaluation or otherwise, suggests any Feedback, you hereby assign the ownership in all Feedback to Emtrain.

As between the parties, Emtrain owns and shall continue to own all right, title and interest in and to all aggregate and statistical information or analyses created and developed by Emtrain from performance, usage and employee sentiment data generated through your use of the Site, Services or Software (collectively, “Aggregate Data”). Aggregate Data is de-identified so that you cannot be identified as the source within the Aggregate Data.

VI. Governing Law

Your use of the Services and these Terms shall be governed by, and construed in accordance with, the internal laws of the State of California without reference to the choice of law or conflicts of law principles thereof, and all claims relating to or arising out of your use of the Services or these Terms, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of California without reference to the choice of law or conflicts of law principles thereof.

VII. Warranties; Warranty Disclaimers

THE MATERIALS, CONTENT ON THIS SITE AND SERVICES ARE PROVIDED “AS IS”, “AS AVAILABLE” WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR OTHER VIOLATION OF RIGHTS. EMTRAIN SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR THE ACCURACY, COPYRIGHT COMPLIANCE, LEGALITY OR DECENCY OF ANY CONTENT OR MATERIALS POSTED ON THE SITE OR SERVICES, OR FOR DAMAGES RELATED TO YOUR USE OF THE SERVICES. EMTRAIN MAKES NO GUARANTEES AS TO UPTIME OR

AVAILABILITY OF THE SERVICES. THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. EMTRAIN IS NOT RESPONSIBLE FOR ANY DELAYS, INTERRUPTIONS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS, INCLUDING INTERNET CONGESTION, VIRUS ATTACKS, AND DENIAL OF SERVICES (DOS) ATTACKS.

VIII. Limitation of Liability

UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF ANY STATUTORY OR OTHER DUTY OF CARE, SHALL EMTRAIN OR ITS THIRD PARTY LICENSORS BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR PROFIT, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION ARISING OUT OF THE USE, OR THE INABILITY TO USE, THE MATERIALS ON THIS SITE OR THE SERVICES, (B) ANY SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, OR (C) ANY MATTER BEYOND OUR REASONABLE CONTROL.

EMTRAIN'S ENTIRE AND AGGREGATE LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT YOU HAVE PAID OR IS PAYABLE TO EMTRAIN FOR THE SERVICES DURING THE TWELVE (12) MONTHS PRECEDING THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED, EVEN IF EMTRAIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

IX. Entire Agreement; Severability

These Terms constitute the entire agreement between you and us regarding the subject matter hereof and supersede all proposals and prior discussions and writings between the parties with respect thereto. No failure or delay in enforcing any right or exercising any remedy will be deemed a waiver of any right or remedy. Each provision of these Terms is a separately enforceable provision. If any provision of these Terms is determined to be or becomes unenforceable or illegal, such provision shall be reformed to the minimum extent necessary in order for these Terms to remain in effect in accordance with its terms as modified by such reformation.

X. Termination

Emtrain has the right to terminate or suspend your access to all or part of the Services or the Site for any reason in our discretion, including your breach of these Terms. Emtrain has the sole right to decide whether you are in violation of any of the restrictions set forth in these Terms.

You have the right to terminate your use of the Services at any time by contacting us at privacy@emtrain.com; please refer to our Privacy Policy <https://emtrain.com/emtrain-privacy-policy>, as well as the licenses above, to understand how we treat information you provide to us after you have stopped using our Services. Keep in mind that account termination may result in destruction of any Content associated with your account.

Sections III – X, XIV and XV shall survive the termination of these Terms.

XI. Amendments

Emtrain reserves the right to change the Terms at any time, but if we do, we will place a notice on our site located at <https://emtrain.com/>, send you an email, and/or notify you by some other means. If you don't agree with the new Terms, you will no longer be able to use the Services. If you use the Services in any way after a change to the Terms is effective, you will be deemed to have agreed to all of the changes. Except for changes made by Emtrain as described herein, no other

amendment or modification of these Terms shall be effective unless in writing and signed by both you and us.

XII. Assignment

You may not assign, delegate or transfer these Terms or your rights or obligations hereunder, or your Services account, in any way (by operation of law or otherwise) without Emtrain's prior written consent. We may transfer, assign, or delegate these Terms and our rights and obligations without your consent.

XII. Force Majeure

Emtrain shall not be liable to you for any delay or failure of Emtrain to perform its obligations hereunder if such delay or failure arises from any cause or causes beyond the reasonable control of Emtrain. Such causes shall include, but are not limited to, acts of God, floods, fires, loss of electricity or other utilities, labor strike, or delays by you in performing any requirements hereunder.

XIV. Arbitration; Waiver of Jury Trial; Class Action Waiver

- A. Any dispute, controversy or claim arising under, out of or relating to these Terms and any subsequent amendments of these Terms, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to arbitration before the JAMS ("JAMS") in accordance with the JAMS Streamlined Arbitration Rules and Procedures (the "Rules") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes. The arbitrator shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. The place of arbitration shall be San Francisco, California. The language to be used in the arbitral proceedings shall be English. The

arbitrator may award any form of individual or equitable relief, including injunctive relief. Any award will be final and conclusive to the parties and may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for injunctive or other equitable relief at any time.

- B. YOU AND EMTRAIN WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR JURY. In any litigation between you and Emtrain over whether to vacate or enforce an arbitration award, YOU AND EMTRAIN WAIVE ALL RIGHTS TO A JURY TRIAL, and elect instead to have the dispute be resolved by a judge.
- C. 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. CLAIMS OF MORE THAN ONE CLIENT OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CLIENT OR USER. If however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither you nor Emtrain is entitled to arbitration; instead all claims and disputes will be resolved in a court as set forth in (E) below.
- D. You have the right to opt out of the provisions of this Section by sending written notice of your decision to opt out to the following address: 1731 J St #200, Sacramento, CA 95811 postmarked within thirty (30) days of first accepting these Terms. You must include (i) your name and residence address, (ii) the email address and/or telephone number associated with your account, and (iii) a clear statement that you want to opt out of these Terms' arbitration agreement.
- E. If you send the opt-out notice in (D), and/or in any circumstances where the foregoing arbitration agreement permits either you or Emtrain to litigate any dispute arising out of or relating to the subject matter of these Terms in court, then the foregoing arbitration agreement will not apply to either party, and both you and Emtrain agree that any judicial proceeding (other than small claims actions) will be brought in the state or federal courts located in, respectively, San Francisco County, California, or the federal district in which that county falls.

- F. If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then all of the preceding language in this Arbitration Agreement section will be null and void. This arbitration agreement will survive the termination of your relationship with Emtrain.

XV. Notices

All notices regarding these Terms and the Services will be provided in writing to you by e-mail using the contact information provided by you upon registration or by posting on the Site. Notice will be deemed given one (1) business day after e-mail transmission from Emtrain, or two (2) business days after the date of posting.

XVI. Questions and Comments

If you have any questions regarding these Terms, please contact Emtrain by emailing experts@emtrain.com.