

HR Avatar Terms and Conditions

Updated: October 16, 2014

PLEASE READ THESE TERMS, TERMS OF USE, TERMS OF SERVICE, TERMS AND CONDITIONS (TERMS AND CONDITIONS) CAREFULLY BEFORE USING HR AVATAR, INC.'S WEBSITES, PRODUCTS OR SERVICES. BY ACCESSING OR USING THIS SITE, OR USING ANY HR AVATAR'S PRODUCTS OR SERVICES MADE AVAILABLE THROUGH THIS SITE, OR BY ENTERING INTO A SEPARATE AGREEMENT FOR ANY HR AVATAR PRODUCTS OR SERVICES IN WHICH THESE TERMS AND CONDITIONS ARE REFERENCED, YOU AGREE TO BE LEGALLY BOUND BY THESE TERMS AND CONDITIONS.

1. Acceptance of Terms

HR Avatar Inc. (We/Us/Our) provides our Service to you and the organization you represent (You/Your), subject to these Terms and Conditions. Access or use of any of our websites, products, software, content, data, or professional services, (collectively – the Service), in any way – including browsing our website – is subject to these Terms and Conditions and any changes that We may publish to this document from time to time.

The Service includes, but is not limited to:

- HR Avatar websites (Site), including www.hravatar.com, www.clicflic.com and www.simajob.com.
- HR Avatar software and object code (Technology).
- HR Avatar Materials (Materials), including information, documents, communications, files, text, graphics, media, reports, content, and data available as part of the Service or through the Service;
- HR Avatar End-Products, including assessments, job previews, software products and custom End-Products;
- HR Avatar professional services (Professional Services), including technical services, consultation, or custom media production services;

By accessing or using the Service or any portion of the Service in any way, including, without limitation, accessing the Site, registering for an account, using an End-Product, accessing HR Avatar professional services, you agree to and are bound by these Terms and Conditions.

You may also be bound by additional terms in a separate agreement you make with HR Avatar. If a conflict exists between these Terms and Conditions and a separate agreement, these Terms and Conditions prevail.

You must be authorized and of legal age to use the Service.

HR Avatar reserves the right to change these Terms and Conditions and other guidelines or rules posted on the Site from time to time at its sole discretion, and will provide notice of material changes on the

home page of the Site. Your continued use of the Services, after such notice has been posted, constitutes your acceptance of the changes. If you do not comply with these Terms and Conditions, your authorization to use the Services may be suspended or terminated and you will still be obligated to these Terms and Conditions and other HR Avatar agreements you may have entered into.

2. User Conduct

In using the Site, including any Service made available through it, you agree:

- Not to disrupt or interfere with the security of, or otherwise cause harm to, the Site, or any Services, Materials, system resources, accounts, passwords, servers, or networks connected to or accessible through the Site or any affiliated or linked websites;
- Not to upload, post or otherwise transmit through the Site any viruses or other harmful, disruptive or destructive files;
- Not to create a false identity;
- Not to upload, enter, or provide information or materials to the Service unless you have the right to use the information or material for your anticipated and actual use,
- Not to use or attempt to use another's account, password, service, or system without express authorization from Us;
- Intentionally or unintentionally violate any applicable local, state, national or international law, or any regulations having the force of law;
- Not to collect information about other users, nor spam or harass, others;
- Not to harm or harass any minor;
- Not to use the Service in a fashion that is considered by HR Avatar (acting reasonably) as or under applicable law is considered pornographic, obscene, immoral, infringing, defamatory or libelous in nature, or that would be reasonably likely to bring any person or property reflected in the Content into disrepute;
- Not to upload or provide to Us materials for which you do not have the appropriate authority or right to provide for the anticipated or actual use.

[Managing Content and Communications](#)

Although it is not our intention to do so, We reserve the right, at our sole discretion, to delete or remove your content from the Site and to restrict, suspend, or terminate your access to all or parts of this Site, at any time (including, without limitation, our good faith belief that you have not complied with these Terms and Conditions) without prior notice or liability.

We may, but we are not obligated to, monitor or review any areas of the Site where users transmit or post user content, and the substance of any user content.

To the maximum extent permitted by law, We will have no liability relating to user content arising under the laws of copyright, libel, privacy, obscenity, or otherwise.

3. User Registration

Where use of the Site or certain Services of the Site require user registration, You will be required to provide certain registration information (the "Registration Data").

In registering to use the Site, including any Services available through it, you agree to:

- Provide accurate, complete and up to date information about yourself as required by the Sites registration form, including your legal name, the legal name of the organization you represent, and Your accurate contact information.
- Maintain and update your Registration Data to keep it accurate, complete and up to date.

You are responsible for maintaining the confidentiality of your account and for all activities carried out using your account information. You agree to notify Us immediately of any unauthorized activity using your account information.

We reserve the right, in our sole discretion, to suspend or terminate Your account and/or Your use of the Site and we may refuse any current or future use of the Services if We believe in good faith that you have knowingly failed to comply with the above user registration terms.

4. Data Privacy

Your Registration Data and certain other information that you provide to us are subject to our Privacy Policy. (<https://www.hravatar.com/ta/help/privacy.xhtml>)

You acknowledge, consent and agree that We may access, preserve, and disclose your account information, content and account data if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce any agreement between You and Us; (c) respond to claims that any Content violates the rights of third-parties; (d) respond to your requests for customer service; or (e) protect the rights, property, or personal safety of HR Avatar, its employees, customers, and the public.

Cookies

Our Site, like many others, stores and retrieves information on your browser using cookies. This information is used to make the site work as you expect it to. It is not personally identifiable to you, but it can be used to give you a more personalized web experience, track your use of the Site by us and our ad-tracking partners. Some of these cookies are necessary for the website to function and cannot be switched off in our systems. They are usually only set in response to actions made by you which amount to a request for service, such as setting your privacy preferences, logging in or filling in forms. You can set your browser to block or alert you about these cookies, but some parts of the site will not then work. These cookies do not store any personally identifiable information.

5. Links

The Service may provide links to third-party websites or resources. We make no claims for and are not responsible for those sites and resources and You access them at your own risk. Because We have no control over such sites and resources, you acknowledge and agree that We are not responsible for the availability of such external sites or resources, and We do not endorse and are not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that We shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any

such Content, goods or services available on or through any such site or resource and that you access them at your own risk.

6. Fees

You understand that access to Services may be subject to Our Fees and contingent upon your payment of the Fees. The Fees are defined on the Site or defined within a separate agreement.

Payments are processed immediately for orders placed on the Site. Payments are due upon invoice for any order place using a separate Agreement. You are required to pay any Fees for which You agree to and failure to do so will be cause for suspension or termination of the Service and you will still be obligated to pay the agreed upon Fee.

[Purchasing HR Avatar Credits](#)

HR Avatar Credits are a means for allowing you to purchase use of End-Products without specifying exactly which End-Products you wish to use until after you purchase them. This provides You the flexibility to be able to select the End-Product title at the time you need to use it without having to make a separate purchase each time. Purchasing credits is, therefore, the same as purchasing a license to use the End-Product. HR Avatar credits have no cash value, expire in 12 months from date of purchase and are not transferrable and are not refundable.

7. End-Products

We make End-Products available through the Site and Service. An End-Product is a finished product for end use. All of our End-Products are additionally subject to an End-Product License included in these Terms and Conditions.

As an example, when You use the Site to Administer an HR Avatar assessment, you are using your pre-purchased HR Avatar credits to purchase a Media End-Product License for a single use (to administer the test to one person), and subject to the Media End-Product License.

Other End-Product Licenses must be purchased under an agreement with Us:

End Products	License Type
HR Avatar Assessments HR Avatar Job Previews Custom Media-End Product Any End-Product created using IMO-Builder or Sim-Builder	Media End-Product License
IMO-Builder Sim-Builder Test Administration System	Technology End-Product License

The Licenses are defined in a later section of these Terms and Conditions.

8. Intellectual Property

Our Service is a complex set of software, technology, proprietary content and audio/visual media, data, branded art assets, and service. HR Avatar owns the Intellectual Property rights for, or has secured the right to use, the Materials within our Services. We consider Intellectual Property Rights violations a serious matter. It is our intention to respect the rights of authors, protect our intellectual property, and properly fulfill our obligations when granted the right to use another's intellectual property. You agree to not violate intellectual property rights in connection with the Service.

[Your Intellectual Property](#)

When you upload or provide information or materials or your intellectual property to Us or to the Service by any method, we understand that you do so for an intended purpose. For example, if you upload media into our Software on our Site to create a Media End-Product, the purpose is for your Use within your account and for use within the finished and downloadable Media End-Product produced by the Service or for Our use to provide the Service to You.

ANY OF YOUR INTELLECTUAL PROPERTY THAT YOU PROVIDE TO US REMAINS YOUR INTELLECTUAL PROPERTY.

By providing any materials to us, including Your Intellectual Property, you represent that you have the legal right to use that material and intellectual property for the intended and actual purpose. It is up to You to understand how the materials you provide to Us or the Service will be used. You also grant to Us a world-wide, non-exclusive, perpetual license to use Your provided intellectual property for the intended and actual purpose and for the following additional purposes:

- To provide and support the Service for you;
- To use aggregate data for any purpose, providing it does not disclose personally identifying information about any individual and it does not disclose your organization's proprietary or sensitive information;
- To make limited marketing use of any End-Product containing Your Intellectual Property, such as for demonstration purposes to a small audience, provided such use does not expose Your sensitive or confidential information;

You recognize that by providing any information or material to Us, you make that information and materials accessible to our 3rd-party support providers involved in providing the Service to You and, depending on Your actual use of the Site, accessible to the public.

[Our Intellectual Property](#)

The Site, Technology, Materials and Services provided through the Site, and their presentation, selection and arrangement on the Site, are Our Intellectual Property and protected by copyright, trademark, patent, and/or other intellectual property laws, and any unauthorized use of the Materials or Services on the Site may violate such laws and these Terms and Conditions.

Any End-Product you access through the Service is our Intellectual Property and is additionally subject to the applicable End-Product License defined in these Terms and Conditions.

Except as expressly implied in these Terms and Conditions, We do not grant any express rights to use the Materials and/or Services. You agree not to copy, republish, frame, download, transmit, modify, rent, lease, loan, sell, assign, distribute, license, sublicense, reverse engineer, or create derivative works based on the Service or any part of the Service, or the selection and arrangement of materials, Except as expressly authorized in these Terms and Conditions or separate signed agreement with Us. In addition, you agree not to use any data mining, robots, or similar data gathering and extraction methods in connection with the Site or any of the Service.

In the process of engaging with You, such as during a sales cycle or in support of a Professional Services project with You, HR Avatar may provide you Materials such as: demos, examples, product samples, a free trial, project materials, project deliverables, mock-ups, drafts, portions of a custom End-Product, and other materials that facilitate communication and/or completion of the project. These Materials are Our Intellectual Property and remain our Intellectual Property and are subject to these Terms and Conditions. You may use these materials only for the purpose of evaluating Us and/or managing the project. When the project is completed, You agree to return or destroy these materials and You agree to no longer use them for any purpose. You agree to certify compliance to this stipulation upon request. Any other use is not permitted.

[No Works Made For Hire](#)

Unless each specific work is specified as a “Work Made For Hire” in a separate agreement, HR Avatar provides NO works, including those developed to meet specific customer requirements or works generated by Your use of our Site, Technology or Service, as “Works Made For Hire”.

[Trademark and Intellectual Property Infringement](#)

The HR Avatar name and logo, the ClicFlic name and logo, other related marks are trademarks of HR Avatar and you agree to not use them or display them without Our permission. You also agree not to hide or remove them from HR Avatar Intellectual Property.

[Branded Intellectual Property](#)

The HR Avatar Animation Assets including. HR Avatar characters, backgrounds, props, specific animation and art-style, and voice-performances are the intellectual property of HR Avatar, Inc. Use of any HR Avatar intellectual property in any way without the express permission of HR Avatar is strictly prohibited and may cause irreparable harm to HR Avatar, Inc. and is a violation of U.S. and international copyright, trademark, and intellectual property laws.

[Intellectual Property Claims](#)

You agree to defend Us, (and for this paragraph clause, including each of our officers, directors, shareholders and employees), indemnify Us and hold Us harmless from any 3rd party claim of intellectual property infringement associated with materials provided to Us by You, any 3rd party claim of intellectual property infringement arising from or relating to your breach or alleged breach of these Terms and Conditions.

9. Disclaimer of Warranties

In using any HR Avatar Service, you expressly understand and agree that:

- The Site, Technology, Materials and Services provided with the Site are provided "as is" and "as available" basis and that use of the Service is at your own risk.
- We disclaim all warranties of any kind, whether by express or implied, including, but not limited to the implied warranties or merchantability, fitness for a particular purpose and non-infringement.
- We make no warranties regarding the accuracy, reliability, quality or availability of any Service.
- Any damage to your computer or loss of data that results from the use of the Service, or from the download of any material will be your sole responsibility and is done at your own discretion.
- No advice or information obtained from the Service, whether written or oral, shall create any warranty not expressly stated.

Further, We make no warranty or condition that:

- The Services will meet your requirements
- The Services will be uninterrupted, timely, secure or error-free.
- The results that may be obtained from the use of the Service will be accurate or reliable
- The quality of any products, Services, information, or other material purchased or obtained by you through the Services will meet your expectations
- Any errors in the Technology will be corrected.

10. Limitation of Liability

To the extent not prohibited by applicable law, We are not liable for any direct, indirect, incidental, special, consequential, punitive, or exemplary damages, including but not limited to, damages for loss of profits, revenue, goodwill, use, data, electronically transmitted orders or other economic advantage (even if We have been advised of the possibility of such damages), however caused and regardless of the theory of liability, whether in contract (including fundamental breach), tort (including negligence) or otherwise, arising out of, or related to:

- The use or inability to use the Services;
- The cost of procurement of substitute goods and services purchased or obtained or messages received or transactions entered into through or from the Services;
- Unauthorized access to or alteration of your transmissions or data;
- Statements or conduct of any third party on the Services or Site;
- Any other matter relating to the Services, including content you may download, use, modify or distribute from the Site.

You have the sole responsibility for adequate protection and backup of data and/or equipment used in connection with the Site and will not make a claim against Us for lost data, re-run time, inaccurate output, work delays or lost profits resulting from the use of content.

You agree to hold Us harmless from, and you covenant not to take any legal action against Us for any claims based on using the Site, whether in contract (including fundamental breach), tort (including negligence) or otherwise except where We are prevented by law from making such exclusions or limitations.

[Exclusions and limitations](#)

Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the limitations of the sections above may not apply to you.

11. Media End-Product License

HR Avatar Media End-Products are media products in a finished, usable form intended for end-use. This includes:

- HR Avatar Media End-Products made available for use on the Site such as: Assessments, Job Previews, and Demos
- Custom Media Products HR Avatar produces to meet customer requirements
- Any IMO or SIM produced using HR Avatar Technology, such as IMO-Builder or Sim-Builder.

HR Avatar Media End-Products are the Intellectual Property of HR Avatar, Inc. Use of any HR Avatar Media End-Product is subject to the HR Avatar Terms and conditions.

By Your agreement to the purchase terms, HR Avatar Terms and Conditions, and completed payment for this License, HR Avatar grants You a non-transferrable, non-exclusive, worldwide license to use the End-Product named in your Purchase Agreement, for the purpose and period specified in your Purchase Agreement, subject to the terms of this license and the HR Avatar Terms and Conditions.

End-Product

This End-Product is the whole, final media product intended for end-use. The End-Product is comprised of media content and any embedded data and object code. You may use the End-Product, only as a whole, for the purpose stated in your Purchase Agreement. Any other use is not permitted.

Other Content that is Not the End-Product

In the process of engaging with You, such as during a sales cycle or in support of a development project with You, HR Avatar may provide you materials, demos, examples, project deliverables, mock-ups, drafts, portions of the End-Product, and other materials. These materials are not the End-Product. You may use these materials only for the purpose of evaluating HR Avatar and managing the development project. These materials remain the property of HR Avatar or the original author. When the development project is completed, You agree to return or destroy these materials and You agree to no longer use them for any purpose. You agree to certify compliance to this stipulation upon request. Any other use is not permitted.

Prohibited Use:

Any use not permitted above is prohibited. By way of example, and not limitation, the following are "Prohibited Uses:"

- Copying or distributing other than as defined in your purchase agreement;
- Broadcast on television, cable or satellite TV
- Use in a fashion that is considered by HR Avatar (acting reasonably) as or under applicable law is considered pornographic, obscene, immoral, infringing, defamatory or libelous in nature, or that would be reasonably likely to bring any person or property reflected in the Content into disrepute;
- Sale, resale or distribution for profit, except as defined in a separate contract document;
- Incorporation in another product for sale, resale or distribution for profit except as defined in a separate contract document;

- Sub-licensing, re-selling, renting, lending, assigning, gifting or otherwise transferring or distributing the licensed media or the rights granted under this license;
- Removal of any notice of copyright, trade-mark or other proprietary right from any place where it is on or embedded in the End-Product, including the media and the media player;
- Separating, extracting, copying, modifying or using any part of the End-Product for any purpose;
- Modifying the End-Product or any portion of the End Product;
- Creating derivative works from the End-Product or any HR Avatar provided materials;
- Use in which the End-Product is made accessible as audio or music only, separate from its associated video/imagery counterpart;
- Use in which, without altering the End-Product, it is made to appear to the user as altered, such as by overlaying imagery or audio when the End-Product is used;
- Performing any action designed to discover, disclose or compromise trade secret such as: test design, questions, and answers; or embedded data or source code;
- Making the End-Product available to unauthorized users;
- Attempting to perform any of the above.

12. Technology End-Product License

By Your agreement to the purchase terms, HR Avatar Terms and Conditions, and completed payment for this License, HR Avatar grants You a non-transferrable, non-exclusive, worldwide license to use the End-Product named in your Purchase Agreement, for the number of users, and period specified in your Purchase Agreement, subject to the terms of this License and the HR Avatar Terms and Conditions.

HR Avatar Technology End-Products are provided as a service (Software as a Service -SaaS). This License applies to:

- The Site as it applies to the named end-product;
- The Software of the named end-product;
- Object Code generated by the Software;
- And data and materials embedded in the above;

Other Content that is Not the End-Product

In the process of engaging with You, such as during a sales cycle or in support of a development project with You, HR Avatar may provide you technical information, software code, object code, materials, demos, examples, project deliverables, mock-ups, drafts, portions of the End-Product, and other materials. These materials are not the End-Product. You may use these materials only for the purpose of evaluating HR Avatar and managing the development project. These materials remain the property of HR Avatar or the original author. When the development project is completed, You agree to return or destroy these materials and You agree to no longer use them for any purpose. You agree to certify compliance to this stipulation upon request. Any other use is not permitted.

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- Broadcast on television, cable or satellite TV
- Use in a fashion that is considered by HR Avatar (acting reasonably) as or under applicable law is considered pornographic, obscene, immoral, infringing, defamatory or libelous in nature, or that would be reasonably likely to bring any person or property reflected in the Content into disrepute;
- Sale, resale or distribution for profit, except as defined in a separate contract document;
- Incorporation in another product for sale, resale or distribution for profit except as defined in a separate contract document;
- Sub-licensing, re-selling, renting, lending, assigning, gifting or otherwise transferring or distributing the licensed media or the rights granted under this license;
- Removal of any notice of copyright, trade-mark or other proprietary right from any place where it is on or embedded in the End-Product, including the media and the media player;
- Separating, extracting, copying, modifying or using any part of the End-Product for any purpose;
- Modifying the End-Product or any portion of the End Product;
- Creating derivative works from the End-Product or any HR Avatar provided materials;

- Use in which the End-Product is made accessible as audio or music only, separate from its associated video/imagery counterpart;
- Use in which, without altering the End-Product, it is made to appear to the user as altered, such as by overlaying imagery or audio when the End-Product is used;
- Performing any action designed to discover, disclose or compromise trade secret such as: test design, questions, and answers; or embedded data or source code;
- Making the End-Product available to unauthorized users;
- Attempting to perform any of the above.

[Media Objects](#)

Some of our Technology Products support the production and packaging of Media End-Products. Any Media End-Products produced using this product are subject to the Media End-Product License and the HR Avatar Terms and Conditions.

13. General

[Entire Agreement.](#)

These Terms and Conditions constitute the entire agreement between you and HR Avatar regarding your use of the Site. These Terms may be incorporated into a other signed agreements between You and HR Avatar.

[You](#)

The term You/Your refers to you, the organization You represent in this agreement and anyone that You allow to act on your behalf in connection with your agreement with Us.

[Choice of Law and Forum.](#)

The Terms and Conditions and any HR Avatar agreements incorporating these Terms and Conditions and the relationship between You and Us shall be governed by the laws of the State of Virginia without regard to its conflict of law provisions. You and We agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Fairfax, Virginia.

[Waiver and Severability of Terms.](#)

The failure of HR Avatar to exercise or enforce any right or provision of the Terms and Conditions shall not constitute a waiver of such right or provision. If any provision of the Terms and Conditions is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms and Conditions remain in full force and effect.

[No Right of Survivorship and Non-Transferability.](#)

You agree that, except as otherwise expressly provided in these Terms and Conditions, there shall be no third party beneficiaries to this agreement.

If your Site account is for your own use, You agree that your Site account is non-transferable and any rights to your Site account logon id or contents within your account terminate upon your death. Upon

receipt of a copy of a death certificate, your account may be terminated and all contents therein permanently deleted.

If your Site account is for your organization, You agree that your account is non-transferrable unless the organization, or substantially all of the organization is acquired by another, in which case transfer will be by written permission, which will not be unreasonably withheld.

[Statute of Limitations.](#)

You agree that regardless of any statute or law to the contrary, any claim or cause of action that You make arising out of or related to use of the Service or the Terms and Conditions must be filed within one (1) year after such claim or cause of action arose or be forever barred.

[Termination](#)

If this agreement is terminated for any reason, you must stop using the Service and any Materials that you may have downloaded or received from the Service, including any copies you have made, must be immediately destroyed. Any Intellectual Property must be returned and all Intellectual Property terms will survive Termination.

[Violation](#)

Report violations of any of these Terms and Conditions to: Support@hravatar.com.