

# McMaster Augmented Reality Virtual Reality Application (the “Application”) Terms of Use Agreement (the “Agreement”)

**IMPORTANT - PLEASE READ CAREFULLY:** This is an Agreement to access and use the Application and is a legally binding agreement between you and McMaster University (“McMaster”). By accessing or using the Application and/or the Materials, as defined in section 2.1 below, you are agreeing to the terms below. You agree to comply with the terms and that the terms control your relationship with McMaster. Please read all the terms carefully. If you use the Application and/or the Materials in conjunction with other products or services, then the terms for those other products or services will also apply. If you do not agree to the terms of this Agreement, you are not authorized to use the Application and must not access and/or use the Application and/or the Materials in any capacity.

## TERMS OF USE

### 1. ACCOUNT AND REGISTRATION

1. You may not use the Application or the Materials and may not accept the terms of this Agreement if you are a person barred from using or accessing an Application similar to this Application or using or accessing materials and documents similar to the Materials, under the applicable laws of Canada or other countries including the country in which you are resident or from which you use the Application and/or the Materials.
2. If you are using the Application and/or the Materials on behalf of an entity, such as a legal dependent, you represent and warrant that you have authority to do so. All references to “you” in the Agreement refer to your use of the Application and/or Materials on behalf of that entity.
3. Use of the Application and/or the Materials through your credentials is for your use by you only. You must not make the Application and/or the Materials available to any other person or entity or allow any other person or entity to access and/or use the Application and/or Materials using your credentials.

### 2. OWNERSHIP

1. You acknowledge that McMaster owns all right, title and interest in the copyright and all other intellectual property rights to the Application, including, but not limited to, any content, materials, results that are found on or provided by the Application, as a result of any data that may be provided by you (the “Materials”). McMaster does not grant you any ownership interest in the Application, and/or the Materials and only grants you permission to access and use the Application and/or the Materials in accordance with the terms of this Agreement. No rights, title or interest in or to any official mark, trade-mark, service mark, logo or trade name of McMaster is granted to you under this Agreement.

### 3. AUTHORIZED USES

1. Provided you comply with all the terms and conditions of this Agreement, McMaster grants you a non-exclusive, non-transferable, revocable, license for access and use of the Application and/or the Materials for personal, non-commercial purposes only.

### 4. PROHIBITED USES

1. You must not:
  1. sell, download, print, distribute, reproduce, rent, modify, adapt, reverse engineer, translate, make available to anyone other than you, or otherwise distribute copies of the Application and/or the Materials.
  2. include the Application and/or the Materials as a component of a commercial product or use the Application and/or the Materials for performing research (whether commercial, or non-commercial, funded or non-funded) or other non-personal use
  3. remove or obscure any copyright, trade-mark or other proprietary notices from Application and/or the Materials;
  4. otherwise use the Application and/or the Materials on behalf of any third party, with the exception of any legal dependents;
  5. use the Application and/or the Materials to create, develop, distribute or market any product, application or service that is competitive to McMaster and/or its affiliates (to be determined at McMaster’s sole discretion);
  6. defame, abuse, harass, stalk, or threaten others;
  7. transfer the Application and/or the Materials to any ad network, ad exchange, data broker, or other advertising or monetization-related toolset or to any other service; or
  8. use the Application and/or the Materials in any manner that makes the Application and/or the Materials available to any third party, in whole or in part, with use of your own credentials.

### 5. DISCLAIMER OF WARRANTIES

1. The Application and the Materials have been developed for McMaster. McMaster is providing you the Application and the Materials “as is” with all faults and without warranty of any kind, either express or implied.
2. McMaster expressly disclaims and excludes all warranties and representations expressed or implied, including but not limited to, any implied warranties that the Application or the Materials are merchantable, accurate or fit for a particular purpose. McMaster does not warrant that the Application or the Materials will meet your requirements or that the access and/or use of the Application and the Materials will produce a desired result, or that the Application or the Materials will operate uninterrupted, or error free or that any defects in the Application or the Materials will be corrected. McMaster does not warrant that the use of the Application or the Materials will not infringe any patent, copyright or trade-mark or other rights.

**USE OF THE APPLICATION MAY CAUSE CERTAIN NEGATIVE PHYSICAL AND PSYCHOLOGICAL SIDE EFFECTS AND IS NOT RECOMMENDED FOR USE BY CHILDREN UNDER THE AGE OF 13. BY USING THE APPLICATION, YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE READ THE HEALTH AND SAFETY WARNING DISPLAYED IN THE APPLICATION AND UNDERSTAND THE WARNING AND INSTRUCTIONS TO STOP USING THE APPLICATION IF YOU EXPERIENCE ANY DISCOMFORT.**

### 6. ASSUMPTION OF RISK

1. You assume all risk and responsibility for the selection, installation, use, quality, performance and results obtained from the Application and the Materials.

2. McMaster cannot guarantee the continued availability of the Application and/or the Materials and may cease providing the Application and/or the Materials, if for example and without limitation, McMaster is unable to host the Application and/or the Materials on McMaster servers, in a manner acceptable to McMaster or the business model changes for the use and access of the Application and/or the Materials. Should McMaster cease providing the Application and/or the Materials, you agree and acknowledge that your access and use may stop immediately, without any forewarning or any notification to you.
3. While McMaster makes every effort to check and test material at all stages of production, McMaster is not able to guarantee that the Application and/or Materials will never be faulty, free of viruses and/or errors, nor that it will work continuously, nor that it will be maintained in a fully operational condition. It is always wise for you to run an anti-virus program on all material downloaded from the internet. McMaster cannot accept any liability for any loss, disruption or damage to your data or your system, which may occur whilst you are using the Application and/or Material derived from the Application. Users must not misuse the Application by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful. Application and/or Materials users must not attempt to gain unauthorized access to the Application, the server on which the Application and/or Materials is stored, or any server, computer or database connected to the Application and/or Materials. Users must not attack our site via a denial-of-service attack or a distributed denial-of service attack. If you breach this provision, you will have committed a criminal offence under the applicable Ontario legislation. McMaster will report any such breach to the relevant law enforcement authorities and will co-operate with those authorities by disclosing the Application user's identity to them. In the event of such a breach, the Application user's right to use the Application will cease immediately.

## **7. COLLECTING DATA**

1. For information about our data practices, please see our Privacy Policy ([https://nuclear.mcmaster.ca/?page\\_id=1445](https://nuclear.mcmaster.ca/?page_id=1445)) By using the Application and/or the Material you agree that we can collect and use your information in accordance with the Privacy Policy.

## **8. LIMITATION OF LIABILITY**

1. In no event will McMaster be liable to you or any other person for any damages of any kind, including lost profits, data, business interruption or special, incidental or consequential damages, in any way arising out of or in connection with the use or performance of the Application, the Materials, even if McMaster has been advised of the possibility of such damages.
2. McMaster does not accept any responsibility for your use of the Application and/or the Materials, nor for any reliance which you may place on any information given in connection or derived from the Application and/or the Materials.

## **9. INDEMNITY**

1. In consideration for the benefit obtained under this Agreement, you indemnify McMaster, and every other employee, director, board member, student or other affiliate of McMaster (the "Indemnified Parties"), and keep them fully and effectively indemnified, against each and every claim made against any of the Indemnified Parties as a result of your use of the Application and/or the Materials, works or information received from them pursuant to the terms of this Agreement. The liability of McMaster for any breach of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, the Application and/or the Materials, or use of your information, will not extend to any indirect damages or losses, or any loss of profits, loss of revenue, loss of data, loss of contracts or opportunity, whether direct or indirect, even if McMaster has been advised of the possibility of those losses, or if they were within your contemplation.

## **10. THIRD PARTY RIGHTS**

1. The Application and/or the Materials use on your personal device may be dependent on programs, operating systems or other intellectual property of third parties which may require third party Agreements. Compliance to terms and payment of fees associated with these third- party Agreements are the sole responsibility of you and are not included in this Agreement.

## **11. SUPPORT**

1. During the term of this Agreement, McMaster will provide any technical support or assistance to you in relation to the installation, use or access of the Application and/or the Materials. If you require assistance, please contact [reactor@mcmaster.ca](mailto:reactor@mcmaster.ca).

## **12. ACKNOWLEDGMENT OF MCMASTER**

1. McMaster grants you the right to reference the Application or the Materials in any non-academic, non-research publication (including, electronic documents and/or Applications) however you must include appropriate acknowledgment of McMaster. You agree and acknowledge that you will not make any statement regarding your use of the Application, and/or the Materials which suggests partnership with, sponsorship by, or endorsement by McMaster without McMaster's prior written approval.

## **13. TERM AND TERMINATION**

1. This Agreement commences on the date that you are provided access to the Application and the Materials through the Application registration and continues in effect unless it is terminated earlier by McMaster. It may be terminated by McMaster immediately without notice if you fail to comply with any of the terms and conditions of this Agreement. Upon termination of this Agreement, your rights to use you terminate and you must immediately stop using the Application and the Materials, uninstall all copies of the Application and the Materials and any user documentation in your possession or control.

## **14. REPRESENTATION OF AUTHORITY**

1. You represent and warrant that you possess the legal authority to enter into this Agreement and that you will be responsible for your access

and/or use of the Application and the Materials. You are responsible for supplying any hardware (e.g. mobile device) or software (e.g. device OS) necessary to access and/or use the Application.

**15. NO ASSIGNMENT**

1. You must not assign, sublicense or otherwise transfer this Agreement or any rights granted by this Agreement without the prior written consent of McMaster and any attempt to do so without the consent of McMaster will be void.

**16. FORCE MAJEURE**

1. Neither party to this Agreement will be liable for delay or failure to perform their respective obligations this Agreement if such delay or failure arises from any cause beyond the reasonable control of the party ("Force Majeure") provided such party gives the other party written notice of the Force Majeure. Force Majeure includes, without limitation: labour disputes, strikes, other labour or industrial disturbances and any act of God, fire, natural disaster, power failures, accidents, act of government, shortages of materials or supplies and failure of contractors to perform. If a party is temporarily excused from performing its obligations under this Agreement because of Force Majeure, it must promptly resume performance when such Force Majeure is cured or removed.

**17. COMPLETE AGREEMENT**

1. This Agreement contains the entire agreement between you and McMaster relating to the Application and the Materials, and supersedes any prior understandings, arrangements, commitments, communications or agreements, oral or written, between you and McMaster with respect to the Application. McMaster reserves the right to make changes to this Agreement without notice.

**18. SEVERABILITY**

1. If any provision of this Agreement becomes void, invalid, illegal or unenforceable, the remaining provisions will not be affected and will continue in effect as though the unenforceable provision(s) were deleted.

**19. WAIVER**

1. If either party omits or delays to require the other party to punctually fulfill any of its obligations under this Agreement, this omission or delay will not operate as a waiver by that party of its rights under this Agreement.

**20. SURVIVAL**

1. Sections 2-9 and 12-13 shall survive the termination of this Agreement.

**21. GOVERNING LAW**

1. This Agreement will be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada. Any suit, action, or proceeding arising out of or relating to this Agreement must be brought in Ontario, Canada and you submit to the exclusive jurisdiction of the Courts of Ontario and the Courts of Canada as applicable. Use of the Application is prohibited in any jurisdiction which does not give effect to the terms of this Agreement.