

Website/Online Services Terms of Use

Updated July 2024

Our websites and other digital or online services (collectively referred to as the “Sites”) are made available to the public as online information and communication services provided by the Clinical Genome Resource’s GenomeConnect and its affiliates (collectively referred to as “GenomeConnect,” “us,” and “we”). Our Website/Online Services Terms of Use help you understand what you can do on our Sites and what your responsibilities are. By continuing to use our Sites, you signify your agreement to these Terms of Use. If you do not agree with these Terms of Use, please do not use our Sites.

PLEASE NOTE THAT THESE TERMS OF USE CONTAIN A DISPUTE RESOLUTION PROVISION THAT REQUIRES ARBITRATION, WAIVES YOUR RIGHT TO TRIAL BY JURY, AND WAIVES YOUR RIGHT TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING IN THE EVENT OF DISPUTES, AS SET OUT IN MORE DETAIL IN PARAGRAPH 19 BELOW.

The Basics

1. All information on the Sites is owned by ClinGen’s GenomeConnect.
2. Please don’t reuse information—including images—from the Sites without our written permission.
3. We can’t provide medical advice on the Sites or through email. If you’re having a medical emergency, call 911. If you have questions about your diagnoses or genetic test results, speak with your healthcare provider.
4. You’re responsible for activities that occur on your account.
5. We’re not responsible for content on other websites that we link to.
6. You can link to our Sites, but please refer to #2 above.

For more specifics about these Terms of Use, please read the legal details below.

1. Privacy

- Your privacy is of the utmost importance to us. Please review GenomeConnect’s Privacy Policy for a thorough description of how we gather, use, and protect your personal

information. For GenomeConnect participants, detailed information about data sharing can be found in the consent form.

2. Restrictions on Use and Ownership

- All pages within the Sites and any material made available for download are the property of ClinGen's GenomeConnect and/or its subsidiaries and affiliates.

ClinGen's GenomeConnect hereby grants site visitors, including participants, a nonexclusive license to use the Sites solely for personal, informational, and non-commercial use.

Use of certain features of the Sites requires registration and creation of a username and password.

As a condition of your use of the Sites, you warrant to GenomeConnect that you will not use the Sites for any purpose that is unlawful or not permitted by these Terms of Use.

We expressly restrict the use of the Sites for purposes including (but not limited to):

- Competitive Advantage: You may not use the Sites to obtain materials, data, or information for purposes of gaining a competitive advantage.
 - Commercial Benefit / Financial Gain (Payment): You may not use the Sites for commercial purposes or provide your login credentials in exchange for payment.
 - Non-Personal Use: The Sites are intended for personal use only. Do not provide your login credentials, including user name and/or password to third parties.
- The contents of the Sites, including the text, images, audio, and video, are copyrighted and may not be distributed, modified, reproduced, or used, in whole or in part, without the prior written consent of ClinGen's GenomeConnect, except that you may download content from the Sites to any single computer for your personal, informational and non-commercial use only, provided you keep intact all copyright, trademark, and other proprietary notices and comply with any applicable end user license agreements. For purposes of these Terms of Use, any use of these materials on any other website or networked computer environment for any purpose is prohibited.
 - If you breach any of these Terms of Use, your authorization to use the Sites automatically terminates and you must immediately destroy all downloaded or printed materials obtained from the Sites.

Any rights not expressly granted by these Terms of Use or any applicable end user license agreements are expressly reserved by ClinGen.

3. Logo and Intellectual Property

- The ClinGen and GenomeConnect logo cannot be used without prior approval of the ClinGen Steering Committee.
- If you use data from GenomeConnect in a publication or presentation, please include the following citations:
 - Kirkpatrick, B. E., Riggs, E. R., Azzariti, D. R., Miller, V. R., Ledbetter, D. H., Miller, D. T., Rehm, H.L, and Faucett, W. A. (2015). GenomeConnect: Matchmaking Between Patients, Clinical Laboratories, and Researchers to Improve Genomic Knowledge. *Human Mutation*, 36(10), 974-978. doi:10.1002/humu.22838.
 - Savatt, J. M., Azzariti, D.R., Faucett, W.A., Harrison, S., Hart, J., Kattman, B., Landrum, M.J., Ledbeter, D.H., Rangel Miller, V., Palen, E., Rehm, H.L., Rhode, J., Turner, S., Vidal, J.A., Wain, K.E., Riggs, E.R., and Martin, C.L. (2018). ClinGens GenomeConnect Registry Enables Patient-centered Data Sharing. *Human Mutation*, 39(11),1668-676. doi:10.1002/humu.23633.
- **If you would like acknowledge GenomeConnect in the publication, we ask that you do so as follows:**
 - This study makes use of data from the Clinical Genome Resource's (ClinGen) GenomeConnect registry and the participants that provided their genetic and health data. GenomeConnect is primarily funded by the National Human Genome Research Institute (NHGRI) through the following grant: U24HG006834. ClinGen is primarily funded by the National Human Genome Research Institute (NHGRI), through the following three grants: U24HG006834, U24HG009649, U24HG009650.

4. Communications and Claims of Copyright Infringement

- Other than where specifically noted, GenomeConnect does not want to receive confidential or proprietary information from you through the Sites. Please note that any information or material sent to GenomeConnect through the Sites, including email and all data, images, sounds, text, and other things embodied therein (collectively "Communications") will be deemed NOT to be confidential except as provided otherwise

by our Privacy Policy. By sending GenomeConnect any Communications, you grant GenomeConnect an unrestricted, irrevocable, worldwide, royalty free license to use, reproduce, display, perform, modify, transmit, and distribute those Communications in and on all media now known or later developed, and you also agree that GenomeConnect is free to use any ideas, concepts, know-how, or techniques that you send us for any purpose. You hereby waive your rights in any such materials or information, and you hereby warrant that any such materials and information are original with you, or that you have the right to submit such materials or information. You agree that you shall have no recourse against GenomeConnect for any alleged or actual infringement or misappropriation of any proprietary right in your Communications to us.

5. No Medical Advice

- Nothing on the Sites may be considered medical advice, diagnosis, or treatment. All health and health-related information contained within the Sites is intended to be general in nature and should not be used as a substitute for a visit to a healthcare professional. The information you obtain from the Sites might be inappropriate for your own situation or might be misinterpreted. GenomeConnect assumes no responsibility for how you use the information you obtain from the Sites.
- If you have a medical emergency, call 911. If you have questions related to your health or genetic test results, reach out to your healthcare provider. The Sites are not a substitute for consultation with your physician. You should never change or stop any course of treatment prescribed by your physician without first consulting him or her. Only your physician can properly diagnose and treat your illness.

Also, please note that although we strive to keep our information up to date, information changes rapidly, and some information may be out of date.

6. WARRANTY DISCLAIMER

- YOU UNDERSTAND AND AGREE THAT WE DO NOT PROVIDE ANY WARRANTY WITH RESPECT TO THE SITES. INSTEAD, YOU AGREE THAT THE SITES, INCLUDING ANY CONTENT OR INFORMATION CONTAINED WITHIN THEM OR ANY SITE-RELATED SERVICES, ARE PROVIDED "AS IS," WITH ALL FAULTS, WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESSED OR

IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT, AS WELL AS WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE SITES. YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SITES, SITE-RELATED SERVICES, AND HYPERLINKED WEBSITES. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY GENOMECONNECT OR GENOMECONNECT'S AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.

- GENOMECONNECT CANNOT ENSURE THAT THE INFORMATION CONTAINED ON ITS SERVER WILL BE AVAILABLE AT ALL TIMES, AND BECAUSE YOU ARE RESPONSIBLE FOR INPUTTING INFORMATION ONTO GENOMECONNECT'S SERVER, GENOMECONNECT CANNOT ENSURE THAT THE INFORMATION PROVIDED ON ITS SITES WILL BE ACCURATE. THUS, GENOMECONNECT MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY OF CONTENT OF THIS INFORMATION. GENOMECONNECT HAS PROVIDED THE INFORMATION ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. GENOMECONNECT NEITHER WARRANTS THAT THE USE OF THE SITES WILL BE UNINTERRUPTED OR ERROR-FREE, NOR THAT ERRORS WILL BE CORRECTED.

7. WAIVER, RELEASE AND LIMITATION OF LIABILITY

- IN ADDITION, YOU AGREE THAT, TO THE FULLEST EXTENT ALLOWED BY LAW, NEITHER GENOMECONNECT, NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, INFORMATION PROVIDERS OR SUPPLIERS SHALL HAVE ANY LIABILITY TO YOU UNDER ANY THEORY OF LIABILITY OR INDEMNITY IN CONNECTION WITH YOUR USE OF THE SITES OR ANY RELATED APPLICATIONS. YOU HEREBY RELEASE AND FOREVER WAIVE ANY AND ALL CLAIMS YOU MAY HAVE AGAINST GENOMECONNECT, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, INFORMATION PROVIDERS OR SUPPLIERS (INCLUDING BUT NOT LIMITED TO CLAIMS BASED UPON THE NEGLIGENCE OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, INFORMATION PROVIDERS OR SUPPLIERS)

FOR LOSSES OR DAMAGES YOU SUSTAIN IN CONNECTION WITH YOUR USE OF THE SITES.

- TO THE FULLEST EXTENT ALLOWED BY LAW, GENOMECONNECT AND ITS AFFILIATES, SUPPLIERS, AND OTHER THIRD PARTIES MENTIONED ON THE SITES ARE NEITHER RESPONSIBLE NOR LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM LOST PROFITS, LOST DATA, OR BUSINESS INTERRUPTION) ARISING OUT OF OR RELATING IN ANY WAY TO THE SITES, SITE-RELATED SERVICES AND PRODUCTS, CONTENT OR INFORMATION CONTAINED WITHIN THE SITES, AND/OR ANY HYPERLINKED WEBSITE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOUR SOLE REMEDY FOR DISSATISFACTION WITH THE SITES, SITE-RELATED SERVICES, AND/OR HYPERLINKED WEBSITES IS TO STOP USING THE SITES AND/OR THOSE SERVICES. FURTHER, GENOMECONNECT IS NOT RESPONSIBLE OR LIABLE FOR ANY DEFAMATORY, OFFENSIVE OR ILLEGAL USE OR CONDUCT OF A USER OF THE SITES.

8. Visitor Chat Rooms and Other Interactive Areas

- GenomeConnect may, but is not obligated to, monitor or review any areas of the Sites where visitors transmit or post Communications or communicate solely with each other, including, but not limited to, chat rooms, bulletin boards, participant matching feature, and other user forums, and the content or any such Communications. GenomeConnect, however, will have no liability related to the content of any such Communications, whether or not arising under the laws of copyright, libel, privacy, obscenity, or otherwise. GenomeConnect retains the right to remove, in its sole discretion, Communications that include any material deemed abusive, defamatory, obscene, or otherwise inappropriate.
- **Your Interactions with Other Participants:** You are solely responsible for your interactions with other participants. You understand that GenomeConnect does not conduct background checks or screenings on any participants. GenomeConnect also does not verify the statements of participants. GenomeConnect makes no representations or warranties as to the conduct of participants. GenomeConnect is not

responsible for the conduct of any participant. To the fullest extent allowed by applicable law, in no event shall GenomeConnect be liable (directly or indirectly) for any losses or damages whatsoever, whether direct, indirect, general, special, compensatory, consequential, and/or incidental, arising out of or relating to the conduct of you or anyone else in connection with the use of the participant matching service including, without limitation, death, bodily injury, emotional distress, and/or any other damages resulting from communications or meetings with other participants you meet through the participant matching service. You agree to take all necessary precautions in all interactions with other participants, particularly if you decide to communicate off the website or meet in person.

9. Links or Pointers to Other Sites

- ClinGen's GenomeConnect makes no representations whatsoever about any other website that you may access through the Sites or any entity that may post its advertisements on the Sites. When you access a non-GenomeConnect site, please understand that it is independent from GenomeConnect, and that GenomeConnect has no control over the content on that website. In addition, a hyperlink to a non-GenomeConnect website does not mean that GenomeConnect endorses or accepts any responsibility for the content, or the use, of the linked site or its privacy practices that may be different from GenomeConnect. GenomeConnect does not represent or endorse the accuracy or reliability of any of the information, content or advertisements contained on, distributed through, linked, downloaded or accessed from any of the services contained on the Sites, nor the quality of any products, information or other materials displayed, purchased or obtained by you as a result of an advertisement or any other information or offer in or in connection therewith. It is up to you to take precautions to ensure that whatever you select for your use or download are free of such items as viruses, worms, Trojan horses, and other items of a destructive nature. If you decide to access any of the third party sites linked to the Sites, you do this entirely at your own risk.

10. Hyperlinks to This Site

- Persons constructing other websites may, of course, link to any of the pages on the Sites. However, you may not copy any of the materials from the Sites onto your own

Web server for any reason. Also, you may not link to isolated elements on the Sites (including photographs, illustrations, diagrams, buttons, text, or any other elements whatsoever) for the purpose of "inlining" them into the context of other web pages, or for linking such isolated elements to other web pages. In other words, link to entire pages on the Sites, or don't link at all. Any other use will be a violation of copyright and could subject you to legal action.

11. Caching

- Web mirror sites, and commercial online services, may request written permission to cache the entirety of the Sites to their hard drives for the purpose of enabling people to access them more easily or view them more rapidly. Note, however, that under no circumstances will they be granted the right to copy parts of the Sites piecemeal, but only to copy the entirety of the Sites, preserving all the interior and exterior links, and not employing any of the materials out of their original context.

12. Choice of Law and Venue

- These Terms of Use are entered into in the Commonwealth of Pennsylvania, and except as set out in paragraph 19 below, you agree that your access to the Sites and these Terms of Use, as well as any dispute between you and GenomeConnect related to the Sites or the Terms of Use, shall be governed by and/or construed in accordance with the laws of Commonwealth of Pennsylvania, exclusive of its choice of law rules. In any action to enforce these Terms of Use, the prevailing party will be entitled to costs and attorneys' fees. In the event that any of the Terms of Use are held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that these Terms of Use shall otherwise remain in full force and effect. Any cause of action or claim you may have with respect to your use of GenomeConnect Sites must be commenced within one (1) year after the claim or cause of action arises. GenomeConnect failure to insist upon or enforce strict performance of any provision of these Terms of Use shall not be construed as a waiver of any provision or right.

13. Indemnification

- You agree to indemnify, defend and hold harmless GenomeConnect, its affiliates, officers, directors, employees, agents, suppliers and licensors from and against all losses, expenses, damages and costs, including reasonable attorneys' fees, resulting from any violation of these Terms of Use or any activity related to your use of the Sites or accounts (including negligent or wrongful conduct) by you or any other person accessing the Sites using your account or password.

14. Third Party Rights

- The provisions of paragraphs 7 (Waiver, Release and Limitation of Liability) and 13 (Indemnification) are for the benefit of GenomeConnect and its affiliates, officers, directors, employees, agents, suppliers and licensors. Each of these individuals or entities shall have the right to assert and enforce those provisions directly against you on its own behalf.

15. Term; Termination

- These Terms of Use shall commence upon your accessing the Sites. These Terms of Use may be terminated by GenomeConnect without notice at any time for any reason. The provisions of the Disclaimer set forth above and of paragraphs 4 (Claims of Copyright Infringement), 12 (Choice of Law), 13 (Indemnification), 14 (Third Party Rights), and 19 (Dispute Resolution) shall survive any termination of these Terms of Use.

16. Assignment

- GenomeConnect may assign its rights and duties under these Terms of Use to any party at any time without notice to you.

17. Notice

- GenomeConnect may deliver notice to you under these Terms of Use by means of electronic mail, a general notice on the Sites, or by written communication delivered by first class U.S. mail to your address on record in GenomeConnect's account information.

18. Entire Agreement

- These Terms of Use constitute the entire agreement between GenomeConnect and you pertaining to the subject matter hereof. In its sole discretion, GenomeConnect may from time to time revise these Terms of Use by updating this posting, and the revised Terms of Use will be effective immediately upon posting. You should review these Terms of Use when you use the Sites. In the event of substantive changes, you may be prompted to review the Terms of Use. Certain provisions of these Terms of Use may be superseded by expressly designated legal notices or terms located on particular pages within the Sites. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of these Terms of Use.

19. DISPUTE RESOLUTION

PLEASE READ THE FOLLOWING PARAGRAPHS CAREFULLY BECAUSE THEY REQUIRE ARBITRATION OF CERTAIN DISPUTES ON AN INDIVIDUAL BASIS AND LIMIT THE PROCEDURES BY WHICH YOU AND GENOMECONNECT CAN SEEK RELIEF.

Agreement to Arbitrate and Jury Waiver. You and GenomeConnect mutually agree to resolve Disputes (as defined below) with GenomeConnect in arbitration, as set forth in more detail below. Both you and GenomeConnect waive the right to a jury trial on any Disputes, to the fullest extent of the law. The word “Disputes” means any disputes, claims, suits, actions, causes of action, losses, liabilities, and/or demands in any way relating to, in connection with, or arising out of the Sites or these Terms of Use, including any past, currently pending, existing, or future Disputes of any kind. “Disputes” do not include, and this arbitration and class waiver provision does not apply to, claims by or against GenomeConnect employees related to the terms or conditions of their employment, claims by GenomeConnect participants, individual actions brought in small claims court for disputes fully within the scope of such court’s jurisdiction, or claims in which either party seeks injunctive or other equitable relief to prevent the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents.

Class Action Waiver. To the maximum extent allowed by applicable law, you and GenomeConnect agree that each may bring claims against the other only in your or its individual capacity, on an individual basis, and that you and GenomeConnect each waive any right to pursue claims on a class, collective, non-individual, mass, or consolidated basis or in a representative proceeding. The arbitrator may not join or consolidate more

than one person's claims, and may not otherwise preside over any form of representative, collective, non-individual, mass, or class proceeding. Nothing in these terms should be read to allow class arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Dispute Resolution provision and its terms are unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.

Pre-Arbitration Notice and Good Faith Negotiations. You and GenomeConnect also agree that each party will notify the other in writing of any Dispute before initiating arbitration, so that we can try to resolve the Dispute informally and individually. Notice by GenomeConnect will be sent to you at your last known street and/or email addresses on file, and notice by you to GenomeConnect will be sent by mail to Geisinger 's Legal Department, 100 N. Academy Avenue, Danville, PA 17822-4031, Attn: Chief Legal Officer. The notice of Dispute must be specific and individual to you and include your name, street address, telephone number, and email address used for access to the Sites, as well as a brief description of the Dispute, the amount of money (if any) at issue, and the specific relief sought. The notice must be signed and include your handwritten signature or the handwritten signature of a GenomeConnect employee, as applicable, depending on which party is initiating the Dispute. You and GenomeConnect then agree to negotiate personally, individually, and in good faith to try to resolve the Dispute. If and only if we cannot resolve the Dispute within thirty (30) days after the notice is received, then either party may commence an arbitration proceeding with a written demand for arbitration. Any limitations period will be tolled from the date the Dispute is noticed to the other side until the expiration of this thirty (30)-day period. Compliance with this Pre-Arbitration Notice provision is a condition precedent and requirement for initiating any arbitration proceedings.

Arbitration Procedures. To make arbitration as cost-efficient for the parties as possible, the parties agree to initiate any arbitration without using an arbitration service provider or administrator and to instead serve directly on the other party a written arbitration demand setting forth the relevant facts and claims. The demand will be specific and individual to you and include the information and signature set out in the Pre-Arbitration Notice provision above. The delivery addresses for service of the written arbitration demand are

the same as set out in the notice paragraph above. The arbitrator will be selected through mutual agreement of the parties, and the arbitrator will be a licensed attorney or a retired judge. The parties may use an arbitrator from the lists of court-approved neutrals listed on the website for the U.S. District Court for the Middle District of Pennsylvania (linked [here](#)) or another mutually agreed-upon arbitrator, and the court will appoint an arbitrator under 9 U.S.C. § 5, if the parties cannot agree. The arbitration will be conducted in Montour County, Pennsylvania; your county of residence; or another mutually agreed location, and the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of arbitration. Any documents exchanged will not be used or shared outside of the arbitration process without the prior written consent of the parties or as required by law. Unless otherwise prohibited by law, all arbitration proceedings will be confidential to GenomeConnect and you, and closed to the public and anyone not a party to the proceeding. The arbitrator will have the authority to award monetary damages and other remedies on an individual basis only to the extent available under applicable law and consistent with and subject to the limitations set forth in these Terms of Use. Also, to the fullest extent allowed by law, the arbitrator may award declaratory or injunctive relief only in favor of you or GenomeConnect and only to the extent necessary to provide the relief warranted by your or GenomeConnect's individual claim. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. Except as modified by these terms, the parties agree to conduct their arbitration pursuant to the JAMS General Arbitration Rules and Procedures, [available here](#).

Arbitration Fees. The party initiating the arbitration will pay any filing, case initiation, or arbitrator fees, up to the amount that would be required to pursue the same claim in the U.S. District Court for the Middle District of Pennsylvania (currently, \$402.00). For individual damages claims with less than \$25,000 at issue, GenomeConnect will pay the additional, reasonable fees and costs of arbitration. For claims with more than \$25,000 at issue, or where a party seeks injunctive or declaratory relief, the parties will share the fees and costs of arbitration equally. The parties' good faith negotiation of reasonable fees with the arbitration provider is authorized as needed. If the arbitrator determines that your or our claim(s) are frivolous, the party bringing the frivolous claim(s) will reimburse the other party for any amounts that other party paid for the arbitration.

Federal Arbitration Act. These Terms of Use affect interstate commerce, and the interpretation and enforceability of this Dispute Resolution provision will be substantively, procedurally, and exclusively governed by and construed and enforced in accordance with the Federal Arbitration Act, 9 U.S.C. § 1, et seq., to the maximum extent permitted by applicable law, except as modified by these Terms of Use.

Forum Selection. For any dispute not subject to arbitration, you and GenomeConnect agree to proceed in state and federal courts covering Montour County, Pennsylvania, and you agree to be subject to personal jurisdiction there, waiving any jurisdictional, venue, or inconvenient forum defenses or objections to those courts. If GenomeConnect does not enforce any rights under these Terms of Use at any point, it will not be deemed a waiver of any provision or right under these Terms of Use.