

## TERMS OF SERVICE (CLICKWRAP) AGREEMENT

THIS TERMS OF SERVICE AGREEMENT (“Agreement”) is made between \_\_\_\_\_ (“Company”) and any person (“User”) who completes the registration process to open and maintain an account with the Company’s interactive online and communication service (“Service”). Company and User are collectively referred to as the “parties.”

BY CLICKING THE ACCEPTANCE BUTTON OR ACCESSING, USING OR INSTALLING ANY PART OF THE SERVICE, USER EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT. IF USER DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THE BUTTON INDICATING NON-ACCEPTANCE MUST BE SELECTED, COMPANY WILL PROMPTLY CANCEL THIS TRANSACTION AND USER MAY NOT ACCESS, USE OR INSTALL ANY PART OF THE SERVICE.

### 1. Service Terms and Limitations

a. *Description.* The Service is proprietary to Company and is protected by intellectual property laws and international intellectual property treaties. User’s access to the Service is licensed and not sold. Subject to the timely payment of all Fees and the terms and limitations set forth in this Agreement, Company agrees to provide User with a personal, non-transferable and non-exclusive account enabling User to access and use the Service.

b. *Accessibility.* User agrees that from time to time the Service may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which Company may undertake from time to time; or (iii) causes beyond the control of Company or which are not reasonably foreseeable by Company.

c. *Equipment.* User shall be solely responsible for providing, maintaining and ensuring compatibility with the Service, all hardware, software, electrical and other physical requirements for User’s use of the Service, including, without limitation, telecommunications and internet access connections and links, web browsers or other equipment, programs and services required to access and use the Service.

### 2. Limitations

a. *Security.* User shall be solely responsible for the security, confidentiality and integrity of all messages and the content that User receives, transmits through or stores on the Service. User shall be solely responsible for any authorized or unauthorized access to User’s account by any person. User agrees to bear all responsibility for the confidentiality of User’s password and all use or charges incurred from use of the Service with User’s password.

b. *Privacy.* When reasonably practicable, Company will attempt to respect User’s privacy. Company will not monitor, edit, or disclose any personal information about User or User’s account, including its contents or User’s use of the Service, without User’s prior consent unless Company has a good faith belief that such action is necessary to: (i) comply with legal process or other legal requirements of any governmental authority; (ii) protect and defend the rights or property of Company; (iii) enforce this Agreement; (iv) protect the interests of users of the Service other than User or any other person; or (v) operate or conduct maintenance and repair of Company’s services or equipment, including the Service as authorized by law. User has no expectation of privacy with respect to the Internet generally. User’s IP address is transmitted and recorded with each message User sends from the Service. Company does provide certain information in aggregate form collected from and relating to User to third persons such as advertisers and sponsors.

### **3. Fees**

a. *Payment.* User shall pay Company for the Service the subscription charge of \_\_\_\_\_ (\$\_\_\_\_\_), the first such payment due and payable upon commencement of the Service and each successive payment due and payable on or prior to the first day of each calendar month thereafter ("Fees"). Company expressly reserves the right to change the Fees at any time, upon notice to User.

b. *Collection and Taxes.* All Fees, Taxes and other charges shall be billed to User's credit card at the current international currency conversion rate. User shall be responsible for and shall pay Company all currency conversion charges, sales, use, value-added, personal property or other tax, duty or levy of any kind, including interest and penalties thereon ("Taxes"), whether imposed now or hereinafter by any governmental entity. User shall promptly pay Company in the event of any refusal of User's credit card issuer to pay any amount to Company for any reason. User agrees to pay interest at the rate of 1.5% per month on any outstanding balance, together with costs of collection, including attorney's fees and costs. In the event User fails to pay any amount in advance, Company may immediately suspend or terminate this Agreement and User's access to the Service.

### **4. User Representations**

User represents and warrants to Company that: (a) User is over the age of eighteen (18) and has the power and authority to enter into and perform User's obligations under this Agreement; (b) all information provided by User to Company is truthful, accurate and complete; (c) User is the authorized signatory of the credit or charge card provided to Company to pay the Fees; (d) User shall comply with all terms and conditions of this Agreement, including, without limitation, the provisions set forth at Section 5; and (e) User has provided and will provide accurate and complete registration information, including, without limitation, User's legal name, address and telephone number.

### **5. Prohibited Uses**

User is solely responsible for any and all acts and omissions that occur under User's account or password, and User agrees not to engage in unacceptable use of the Service, which includes, without limitation, use of the Service to: (a) disseminate, store or transmit unsolicited messages, chain letters or unsolicited commercial email; (b) disseminate or transmit material that, to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious; (c) disseminate, store or transmit files, graphics, software or other material that actually or potentially infringes the copyright, trademark, patent, trade secret or other intellectual property right of any person; (d) create a false identity or to otherwise attempt to mislead any person as to the identity or origin of any communication; (e) export, re-export or permit downloading of any message or content in violation of any export or import law, regulation or restriction of the United States and its agencies or authorities, or without all required approvals, licenses or exemptions; (f) interfere, disrupt or attempt to gain unauthorized access to other accounts on the Service or any other computer network; (g) disseminate, store or transmit viruses, trojan horses or any other malicious code or program; or (h) engage in any other activity deemed by the Company to be in conflict with the spirit or intent of this Agreement.

### **6. Termination**

This Agreement is effective upon User's acceptance as set forth herein and shall continue in full force until terminated. User may terminate this Agreement for any reason upon thirty (30) days prior notice to Company. Company reserves the right, in its sole discretion and without notice, at any time and for any reason, to: (a) remove or disable access to all or any portion of the Service; (b) suspend User's access to or use of all or any portion of the Service; and (c) terminate this Agreement.

## **7. Disclaimer of Warranties**

THE SERVICE IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. USE OF THE SERVICE IS AT USER’S SOLE RISK. COMPANY DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES COMPANY MAKE ANY WARRANTY AS TO ANY RESULTS THAT MAY BE OBTAINED BY USE OF THE SERVICE. COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN RELATION TO THE SERVICE.

## **8. Limitation of Liability**

UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE TO USER OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES FOR ANY MATTER ARISING FROM OR RELATING TO THIS AGREEMENT, THE SERVICE OR THE INTERNET GENERALLY, INCLUDING, WITHOUT LIMITATION, USER’S USE OR INABILITY TO USE THE SERVICE, ANY CHANGES TO OR INACCESSIBILITY OF THE SERVICE, DELAY, FAILURE, UNAUTHORIZED ACCESS TO OR ALTERATION OF ANY TRANSMISSION OR DATA, ANY MATERIAL OR DATA SENT OR RECEIVED OR NOT SENT OR RECEIVED, ANY TRANSACTION OR AGREEMENT ENTERED INTO THROUGH THE SERVICE, OR ANY DATA OR MATERIAL FROM A THIRD PERSON ACCESSED ON OR THROUGH THE SERVICE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE. IN NO EVENT SHALL COMPANY’S TOTAL LIABILITY FOR DIRECT DAMAGES EXCEED THE TOTAL FEES PAID BY USER TO COMPANY HEREUNDER. SOME STATES PROHIBIT THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, THUS THIS LIMITATION OF LIABILITY MAY NOT APPLY TO USER. IF USER IS DISSATISFIED WITH THE SERVICE, USER’S SOLE AND EXCLUSIVE REMEDY SHALL BE FOR USER TO DISCONTINUE USE OF THE SERVICE AND TERMINATE THIS AGREEMENT IN ACCORDANCE WITH SECTION 6.

## **9. Indemnification**

User agrees to indemnify, hold harmless and defend Company, its shareholders, directors, officers, employees and agents from and against any action, cause, claim, damage, debt, demand or liability, including reasonable costs and attorney’s fees, asserted by any person, arising out of or relating to: (a) this Agreement; (b) User’s use of the Service, including any data or work transmitted or received by User; and (c) any unacceptable use of the Service, including, without limitation, any statement, data or content made, transmitted or republished by User which is prohibited as unacceptable at Section 5.

## **10. Miscellaneous**

a. *Independent Contractors.* The parties and their respective personnel, are and shall be independent contractors and neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

b. *Amendment.* Company shall have the right, at any time and without notice, to add to or modify the terms of this Agreement, simply by delivering such amended terms to User by email at the address provided to Company by User. User’s access to or use of the Service after the date such amended terms are delivered to User shall be deemed to constitute acceptance of such amended terms.