



Trellus, INC

TERMS OF USE

Effective Date: 9/22/2022

Welcome to bytrellus.com (the "**Website**"). This Terms of Use Agreement (the "**Agreement**") is made and entered into by and between you and Trellus Inc. (the "**Company**", "**us**", "**we**", or "**our**"). This Agreement sets forth the terms and conditions that use of and access to the Website, mobile application, software and any products, materials, and related services provided by the Company (collectively, the "**Services**").

The Services are a platform connecting consumers ("**Buyers**") to businesses ("**Merchants**") and facilitating delivery through independent third-party drivers ("**Carriers**") (collectively "**Users**") or "**you**"). The Services are designed to make it easier for Buyers to shop and support local businesses. The Services enable Users to arrange and schedule transportation, logistics and/or delivery services, with Drivers. In certain instances the Services may also include an option to receive transportation, logistics and/or delivery services for an upfront price, subject to acceptance by the respective Drivers. YOU ACKNOWLEDGE THAT YOUR ABILITY TO OBTAIN TRANSPORTATION, LOGISTICS AND/OR DELIVERY SERVICES THROUGH THE USE OF THE SERVICES DOES NOT ESTABLISH TRELLUS INC. AS A PROVIDER OF TRANSPORTATION, LOGISTICS OR DELIVERY SERVICES OR AS A TRANSPORTATION CARRIER. YOU ACKNOWLEDGE THAT BY HAVING ACCESS TO AND RECEIVING DELIVERY REQUESTS DOES NOT REQUIRE YOU TO ACCEPT.

1. Acceptance of this Agreement.

1.1. Acceptance Through Using or Accessing the Services.

Please review the following terms carefully. By accessing or using the Services (or by clicking on "accept" or "agree" to this Agreement when prompted), you agree to be bound by the terms and conditions of this Agreement on behalf of yourself or the entity or organization that you represent. If you do not agree to the terms and conditions of this Agreement, you may not use or access the Services and must exit the Website immediately.

1.2. Eligibility Requirements to Use or Access the Services.

To use the Website or any other Services, you must be (i) at least 18 years old, (ii) a resident of the United States, and (iii) not a competitor of or using the Services for purposes that are competitive with the Company.

You must be 21 to use the Services for any transaction which includes alcoholic beverages. We do not, offer to sell or solicit sales of any good, including alcohol. Our Service enables licensed alcohol retailers to conveniently deliver goods. The Service is not meant to facilitate any improper furnishing of inducements by any manufacturer, importer, supplier, wholesaler or distributor of alcohol beverages to any retailer of alcoholic beverages or to facilitate any improper exclusionary practices by any alcohol beverage licensee. Our Service may be limited or not available at all in some places due to local law or other restrictions.

By accessing or using the Services, you represent and warrant that you meet all the foregoing eligibility requirements. You also represent and warrant that you have the right, authority, and capacity to enter into this Agreement on your behalf or the entity or organization that you represent. If you do not meet all these requirements, you may not use or access the Services.

1.3. Changes to this Agreement.

The Company reserves the right to change this Agreement from time to time in its sole discretion without notice to you. The latest version of the Agreement will be posted on the Website and should be reviewed prior to accessing or using the Services. All changes will be effective immediately when posted on the Website and will apply to your use of and access to the Services from that point onward.

Your continued use of or access to the Services following any changes to this Agreement shall constitute your acknowledgment of such changes and agreement to be bound by the terms and conditions of such changes. You should check this page frequently so that you are aware of any changes since they are binding on you.

2. Access to the Services.

- (a) *Changes to Your Access and the Services.* The Services may change from time to time as the Company evolves, refines, or adds more features to the Services. The Company reserves the right to modify, withdraw, or discontinue the Services, in whole or in part, at any time without notice to you. You agree that the Company shall have no liability to you or any third party for any losses or damages caused by the Services not being available, in whole or in part, at any time or for any period.
- (b) *Creating an Account.* You may be required to register for an account and provide certain information about yourself to access the Services or certain features of the Services. You promise to provide us with accurate, complete, and updated information about yourself. The Company may have different types of accounts for different users. If you connect to any Services with a third-party service, you grant us permission to access and use your information from such service as permitted by that service to store your login credentials for that service. All information that you provide will be governed by our Privacy Policy ([\[LINK TO PRIVACY](#)

POLICY]). You consent to all actions that we may take with respect to your information consistent with our Privacy Policy.

- (c) *Account Responsibilities.* You are entirely responsible for maintaining the confidentiality of your password and account. You are also entirely responsible for any and all activities associated with your account. Your account is personal to you and you agree not to provide any other person with access to the Services or any portions of it using your username, password, or other security information. You should ensure that you exit from your account at the end of each session. You should use extra caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information. You may not transfer your account to anyone else without our prior written permission. You agree to notify the Company immediately of any actual or suspected unauthorized use of your account or any other breach of security. The Company will not be liable for any losses or damages arising from your failure to comply with the above requirements. You will be held liable for losses or damages incurred by the Company or any third party due to someone else using your account or password.
- (d) *Termination or Deletion of an Account.* The Company shall have the right to suspend or terminate your account at any time in our sole discretion for any or no reason, including if we determine that you have violated any terms or conditions of this Agreement. You may delete your account at any time, for any reason, by following the instructions on the Website.

3. Policy for Using the Services.

3.1. How Buyers may use the Services. Buyers may browse the Merchants on the Services, however any transaction will be solely between the Buyer and the Merchant and we are not a party to, nor are we responsible for that transaction.

3.2. How Merchants may use the Services. The Services will enable you to: (a) facilitate delivery of goods from you to Customer (the "**Delivery**"); (b) connect you to a Carrier; and (c) view Delivery information.

3.2.1. Eligibility. Merchant may not use the Services to deliver:

(a) Individual Packaged Items over 35lbs total weight; (Batch deliveries over 250 combined weight.)

(b) larger than: 36" x 36" x 36" measurement;

(c) live animals;

(d) hazardous or dangerous materials;

(e) illicit or illegal products;

(g) Compressed gas/tanks, combustible, flammable, or dangerous goods;

(h) tobacco, tobacco products, vape products of any kind;

3.2.2 *Alcohol*. Merchants may use the Services for transactions which include alcoholic beverages. However, The Merchant must

(a) collect all fees associated with the purchase and delivery of alcohol products;

(b) confirm the purchaser and recipient are of legal age to consume the product;

(c) seal and package the contents in accordance with state and local ordinances;

(d) and otherwise comply with any laws or regulations governing the sale, distribution, delivery or consumption of alcoholic beverages.

3.2.3. *Delivery Request*. Merchants may request the delivery of a product or products through the Services ("Delivery Request"). This Delivery Request will include relevant information about the Merchant, product, Buyer, fees and any other relevant information. After the delivery is completed the Merchant will receive a notification of the successful delivery. The Merchant can access their merchant account and view all current and previous deliveries in the delivery 'details' section.

3.2.5. *Fees and Payment*. In consideration of our provision of the Services, Merchant shall pay to Company all applicable charges (collectively, the "Fees") on the terms set forth on the pricing page. <https://delivery.bytrellus.com/pricing> Merchant hereby authorizes and permits the Company to charge the Fees via ACH, credit card, third party payment processor.

3.2.6 *Representing Yourself Honestly*. We value transparency. This means that you must represent yourself, your company and your products accurately. Additionally, you agree that you will respect the intellectual property of others, not engage in fee avoidance, not create multiple shops on our Services, not coordinate pricing with other sellers.

3.2.7. *Privacy and Protection of Personal Information*. You are responsible for protecting Buyers' personal information you receive or process, and you must comply with all relevant legal requirements. This includes applicable data protection and privacy laws that govern the ways in which you can Buyer information. These laws may require that you post and comply with your own privacy policy, which must be accessible to Buyer with whom you interact on our Services. Your privacy policy must be compatible with this policy and our Privacy Policy. You are an independent controller of data relating to Buyers that you may have obtained through the Services.

In particular, when you sell using our Services, you may receive and determine what to do with certain personal information, such as when communicating with users and entering into transactions with buyers. This

means you process personal information. You are responsible for protecting user personal information you receive or process and complying with all relevant legal requirements when you use the Services. This includes applicable data protection and privacy laws that govern the ways in which you can use a user's information. Also, if you disclose personal information without the buyer's proper consent, you are responsible for that unauthorized disclosure. This includes, for example, disclosures you make or unintentional data breaches. For example, you may receive a buyer's email address or other information as a result of entering into a transaction with that buyer. This information may only be used for communications related to the Services unless the Buyer authorizes you to use it for other purposes. You may not use this information for unsolicited commercial messages or unauthorized transactions. Without the Buyer's consent, you may not add any user to your email or physical mailing list, use that buyer's identity for marketing, or obtain or retain any payment information. Please bear in mind that you're responsible for knowing the standard of consent required in any given instance. If the Company and the Merchant are found to be joint data controllers of personal information, and if we are sued, fined, or otherwise incur expenses because of something that you did in your capacity as a joint data controller of Buyer personal information, you agree to indemnify us for the expenses it occurs in connection with your processing of buyer personal information.

In the event that the Company and Merchant are found to be joint data controllers of personal information, and if we are sued, fined, or otherwise incurs expenses because of something that you did in your capacity as a joint data controller of buyer personal information, you agree to indemnify HP for the expenses it occurs in connection with your processing of buyer personal information. For more information, please see our Privacy Policy.

3.2.8. *Customer Service.* We expect you to provide a high level of customer service. By selling on the Services, you agree to:

(a) Honor your shipping and processing times. Sellers are obligated to ship an item or otherwise complete a transaction with a Buyer in a prompt manner, unless there is an exceptional circumstance.

(b) Respond to Messages in a timely manner.

(c) Resolve disagreements or disputes directly with the Buyer.

(d) If you are unable to complete an order, you must notify the Buyer and cancel the order.

3.2.9. *Insurance.* Sellers shall carry in full force and effect certain types and minimum limits of insurance which shall protect Company: (i) commercial general and professional liability coverage, with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in annual aggregate. Such insurance policies: (a) shall be issued by an insurer licensed to practice in the state of residence or an insurer pre-approved by Company, such approval not to be unreasonably withheld. Seller

shall provide Company with Certificates of Insurance evidencing ongoing compliance with this Section.

3.3. How Carriers may use the Services.

3.3.1. Eligibility. As a condition precedent to your become a Carrier on the Services you must:

(a) be at least 21 years of age, or the age of legal majority in your jurisdiction.

(b) submit certain personal information, such as your name, address, mobile phone number, current DMV record, valid minimum insurance requirement and age, as well as at least one valid payment method supported by Company.

(c) submit to a background check and certify you have not been convicted of a felony.

(d) maintain accurate, complete, and up-to-date information in your Account. Your failure to maintain accurate, complete, and up-to-date Account information, including having an invalid or expired payment method on file, may result in your inability to access or use the Services.

(e) allow Company and Services to communicate with you through text message and email. You are responsible for obtaining the data network access necessary and costs associated with the use of the Services. Your mobile network's data and messaging rates and fees may apply if you access or use the Services from your device.

(e) maintain the security and secrecy of your Account username and password at all times. Unless otherwise permitted by Company. in writing, you may only possess one Account. and

(f) maintain and clean the vehicle you use in conjunction with the Services. We are not responsible for any resulting damage or wear and tear on your vehicle.

3.3.2. *Delivery.* Carriers will be granted access to the an application for Carriers ("Dispatch App"). Delivery requests will appear in the Dispatch App and Carriers may accept them at their discretion. If a Carrier accepts a delivery request the Carrier is shall complete that delivery at their earliest convenience once accepted and must deliver prior to 9pm of the same day. Carriers are required to complete the tasks associated with each delivery which may include taking a picture of the successful delivery via the Dispatch App, scan/image of drivers licenses for a delivery with age requirements, signature of recipient or other actions. Carrier must complete the delivery and any associated actions to be eligible for payment. Carriers may deliver alcohol/tobacco products to Buyers. You must confirm each alcohol/tobacco product delivery to Buyer in accordance with Company policy. You may not leave alcohol/tobacco products at the delivery location

without confirmation. If the delivery cannot be confirmed, you must return product to the Merchant.

3.3.3. Independent Contractor. Carrier's relationship with the Company will be that of an independent contractor and not that of an employee. Carrier shall be solely responsible for determining the method, details and means of performing the Services. Carrier may not subcontract their duties to another or agents.

Carrier acknowledges and agrees that Carrier have no authority to enter into contracts that bind the Company or create obligations on the part of the Company without the prior written authorization of the Company.

Carrier acknowledges and agrees that Carrier shall not be eligible for any Company employee benefits and, to the extent Carrier otherwise would be eligible for any Company employee benefits but for the express terms of this Agreement, Carrier (on behalf of itself and its employees) hereby expressly declines to participate in such Company employee benefits.

Carrier shall have full responsibility for applicable withholding taxes for all compensation paid to Carrier under this Agreement, and for compliance with all applicable labor and employment requirements with respect to Carrier's self-employment, sole proprietorship or other form of business organization, including state worker's compensation insurance coverage requirements and any U.S. immigration visa requirements. Carrier agrees to indemnify, defend and hold the Company harmless from any liability for, or assessment of, any claims or penalties with respect to such withholding taxes, labor or employment requirements, including any liability for, or assessment of, withholding taxes imposed on the Company by the relevant taxing authorities with respect to any compensation paid to Carrier.

3.3.4. Confidentiality. Carrier understands that Company may provide Carrier with information, including Confidential Information (as defined below), without which Carrier would not be able to perform Carrier's duties to the Company. Carrier agrees, at all times during the term of the Relationship and thereafter, to hold in strictest confidence, and not to use, except for the benefit of the Company to the extent necessary to perform the Services, and not to disclose to any person, firm, corporation or other entity, without written authorization from the Company in each instance, any Confidential Information that Carrier obtains from the Company or otherwise obtains, accesses or creates in connection with, or as a result of, the Services during the term of the Relationship, whether or not during working hours, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of Carrier or of others who were under confidentiality obligations as to the item or items involved. Carrier further agrees not to make copies of such Confidential Information except as authorized by the Company.

Carrier understands that “Confidential Information” means information and physical material not generally known or available outside the Company and information and physical material entrusted to the Company in confidence by third parties. Confidential Information includes, without limitation: (i) Company Inventions (as defined below); and (ii) Buyer personal data, technical data, trade secrets, know-how, research, product or service ideas or plans, software codes and designs, algorithms, developments, inventions, patent applications, laboratory notebooks, processes, formulas, techniques, biological materials, mask works, engineering designs and drawings, hardware configuration information, agreements with third parties, lists of, or information relating to, employees and consultants of the Company (including, but not limited to, the names, contact information, jobs, compensation, and expertise of such employees and Carriers), lists of, or information relating to, suppliers and customers (including, but not limited to, customers of the Company on whom Carrier called or with whom Carrier became acquainted during the Relationship), price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information disclosed to Carrier by the Company either directly or indirectly, whether in writing, electronically, orally, or by observation.

Carrier’s agreements in this Section are intended to be for the benefit of the Company and any third party that has entrusted information or physical material to the Company in confidence. Carrier further agrees that, during the term of the Relationship and thereafter, Carrier will not improperly use or disclose to the Company any confidential, proprietary or secret information of Carrier’s former clients or any other person, and Carrier agrees not to bring any such information onto the Company’s property or place of business. This Agreement is intended to supplement, and not to supersede, any rights the Company may have in law or equity with respect to the protection of trade secrets or confidential or proprietary information.

3.3.5. Insurance. Carriers shall carry in full force and effect certain types and minimum limits of insurance which shall protect Company: (i) commercial general and professional liability coverage, with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in annual aggregate. Such insurance policies: (a) shall be issued by an insurer licensed to practice in the state of residence or an insurer pre-approved by Company, such approval not to be unreasonably withheld. Carrier shall provide Company with Certificates of Insurance evidencing ongoing compliance with this Section.

3.3.6 Safe Operation. You are responsible for the operation of your vehicle in a safe and legal manner. Company is not responsible for any parking, or moving violations received any anytime. Trellus is not responsible for any property or personal damage a driver may inflict while operating his/her vehicle. If at anytime your DMV record is updated or changed to include any moving violation or criminal occurrence after your initial application you must inform Company within 24 hours of the offense.

3.3.7 Compensation. Each Carrier must have a bank account to accept payment via direct deposit. Company will pay Carrier within twenty-four hours of the completion of a delivery. After each payment transaction you will receive a receipt by email confirming the payment period. If your primary Account payment method is determined to be expired, invalid or otherwise not able to be charged, you will be notified to provide an alternate payment account.

3.4. Prohibited Uses.

You may use the Services for lawful purposes only and in accordance with this Agreement. You agree not to use the Services in any way that could damage the Services or general business of the Company. You may use the Services for any business or commercial purposes.

3.5. Prohibited Activities.

You further agree not to engage in any of the following prohibited activities in connection with using the Services:

- (a) *No Violation of Laws or Obligations.* Violate any applicable laws or regulations (including intellectual property laws and right of privacy or publicity laws) or any contractual obligations.
- (b) *No Unsolicited Communications.* Send any unsolicited or unauthorized advertising, promotional materials, spam, junk mail, chain letters, or any other form of unsolicited communications, whether commercial or otherwise.
- (c) *No Impersonation.* Impersonate others or otherwise misrepresent your affiliation with a person or entity in an attempt to mislead, confuse, or deceive others.
- (d) *No Harming of Minors.* Exploit or harm minors in any way, including exposing inappropriate content or obtaining personally identifiable information.
- (e) *Compliance with Content Standards.* Upload, display, distribute, or transmit any material that does not comply with the Content Standards set out below in this Agreement.
- (f) *No Interference with Others' Enjoyment.* Harass or interfere with anyone's use or enjoyment of the Services, or expose the Company or other users to liability or other harm.
- (g) *No Interference or Disabling of the Services.* Use any device, software, or routine that interferes with the proper working of the Services, or take any action that may interfere with, disrupt, disable, impair, or create an undue burden on the infrastructure of the Services, including servers or networks connected to the Website.
- (h) *No Monitoring or Copying Material.* Copy, monitor, distribute, or disclose any part of the Services by automated or manual processes, devices, or

means. This includes, without limitation, using automatic devices such as robots, spiders, offline readers, crawlers, or scrapers to strip, scrape, or mine data from the Website; *provided, however*, that the Company conditionally grants to the operators of public search engines revocable permission to use spiders to copy materials from the Website for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials.

- (i) *No Viruses, Worms, or Other Damaging Software.* Upload, transmit, or distribute to or through the Services any viruses, Trojan horses, worms, logic bombs, or other materials intended to damage or alter the property of others, including attacking the Services via a denial-of-service or distributed denial-of-service attack.
- (j) *No Unauthorized Access or Violation of Security.* Violate the security of the Services through (i) any attempt to gain unauthorized access to the Services or to other systems or networks connected to the Services, (ii) the breach or circumvention of encryption or other security codes or tools, or (iii) data mining or interference to any server, computer, database, host, user, or network connected to the Services.
- (k) *No Reverse Engineering.* Reverse engineer, decompile, or otherwise attempt to obtain the source code or underlying information of or relating to the Services.
- (l) *No Collecting User Data.* Collect, harvest, or assemble any data or information regarding any other user without their consent. This includes, without limitation, their emails, usernames, or passwords.
- (m) *No Other Interference.* Otherwise attempt to interfere with the proper working of the Services.
- (n) *Attempt or Assist Others in Attempting.* Attempt any of the foregoing or assist, permit, or encourage others to do or attempt any of the foregoing.

3.6. Geographic Restrictions.

The Company is based in the United States. The Services are for use by persons located in the United States only. By choosing to access the Services from any location other than the United States, you accept full responsibility for compliance with all local laws. The Company makes no representations that the Services or any of its content are accessible or appropriate outside of the United States.

4. Intellectual Property Rights.

4.1. Ownership of Intellectual Property.

You acknowledge that all intellectual property rights, including copyrights, trademarks, trade secrets, and patents, in the Services and its contents, features, and functionality (collectively, the "**Content**"), are owned by the Company, its licensors, or other providers of such material. The Content is

protected by U.S. and international intellectual property or proprietary rights laws. Neither this Agreement nor your access to the Services transfers to you any right, title, or interest in or to such intellectual property rights. Any rights not expressly granted in this Agreement are reserved by the Company and its licensors.

4.2. License to Use the Services.

During the Term of this Agreement, the Company grants you a limited, non-exclusive, non-transferable, non-sublicensable, and revocable license to use and access the Content for any business or commercial use in accordance with this Agreement. The Content may not be used for any other purpose. This license will terminate upon your cessation of use of the Services or at the termination of this Agreement.

4.3. Certain Restrictions.

The rights granted to you in this Agreement are subject to the following restrictions:

- (a) *No Copying or Distribution.* You shall not copy, reproduce, publish, display, perform, post, transmit, or distribute any part of the Content in any form or by any means except as expressly permitted herein or as enabled by a feature, product, or the Services when provided to you.
- (b) *No Modifications.* You shall not modify, create derivative works from, translate, adapt, disassemble, reverse compile, or reverse engineer any part of the Content.
- (c) *No Exploitation.* You shall not sell, license, sublicense, transfer, assign, rent, lease, loan, host, or otherwise exploit the Content or the Services in any way, whether in whole or in part.
- (d) *No Altering of Notices.* You shall not delete or alter any copyright, trademark, or other proprietary rights notices from copies of the Content.
- (e) *No Competition.* You shall not access or use the Content in order to build a similar or competitive website, product, or service.
- (f) *Systematic Retrieval.* You shall not use any information retrieval system to create, compile, directly or indirectly, a database, compilation, collection or directory of the Content or other data from the Services.

4.4. Trademark Notice.

All trademarks, logos, and service marks displayed on the Services are either the Company's property or the property of third parties. You may not use such trademarks, logos, or service marks without the prior written consent of their respective owners.

5. User Content.

5.1. User Generated Content.

The Services may contain ratings, reviews, message boards, chatrooms, profiles, forums, and other interactive features that allow users to post, upload, submit, publish, display, or transmit to other users or other persons content or materials (collectively, "**User Content**") on or through the Services.

You are solely responsible for your User Content. Please consider carefully what you choose to share. All User Content must comply with the Content Standards set forth below. Any User Content you post on or through the Services will be considered non-confidential and non-proprietary. You assume all risks associated with the use of your User Content. This includes any reliance on its accuracy, completeness, reliability, or appropriateness by other users and third parties, or any disclosure of your User Content that personally identifies you or any third party. You agree that the Company shall not be responsible or liable to any third party for any User Content posted by you or any other user of the Services.

You further agree that the Company shall not be responsible for any loss or damage incurred as the result of any interactions between you and other users. Your interactions with other users are solely between you and such users. If there is a dispute between you and any other user, we are under no obligation to become involved.

5.2. License.

You hereby grant to the Company an irrevocable, non-exclusive, royalty-free and fully paid, transferable, perpetual, and worldwide license to reproduce, distribute, publicly display and perform, prepare derivative works of, incorporate into other works, and otherwise use and exploit your User Content, and to grant sublicenses of the foregoing rights, in connection with the Services and the Company's business including, without limitation, for promoting and redistributing part or all of the Services in any media formats and through any media channels.

You represent and warrant that you have all the rights, power, and authority necessary to grant the rights granted herein to any User Content that you submit. You hereby irrevocably waive all claims and have no recourse against us for any alleged or actual infringement or misappropriation of any proprietary rights in any communication, content, or material submitted to us. Please note that all of the following licenses are subject to our Privacy Policy ([INSERT LINK TO PRIVACY POLICY]) to the extent they relate to any User Content that contains any personally identifiable information.

5.3. Content Standards.

You agree not to send, knowingly receive, upload, transmit, display, or distribute any User Content that does not comply with the following standards ("**Content Standards**"). User Content must not:

- (a) *Violate Laws or Obligations.* Violate any applicable laws or regulations (including intellectual property laws and right of privacy or publicity laws), or any contractual or fiduciary obligations.

- (b) *Promote Illegal Activity or Harm to Others.* Promote any illegal activity; advocate, promote, or assist any unlawful act; or create any risk of any harm, loss, or damage to any person or property.
- (c) *Infringe Intellectual Property Rights.* Infringe any copyright, trademark, patent, trade secret, moral right, or other intellectual property rights of any other person.
- (d) *Defamatory, Abusive, or Otherwise Objectionable Material.* Contain any information or material that we deem to be unlawful, defamatory, trade libelous, invasive of another's privacy or publicity rights, abusive, threatening, harassing, harmful, violent, hateful, obscene, vulgar, profane, indecent, offensive, inflammatory, humiliating to other people (publicly or otherwise), or otherwise objectionable. This includes any information or material that we deem to cause annoyance, inconvenience, or needless anxiety, or be likely to upset, embarrass, alarm, or annoy another person.
- (e) *Promotion of Sexually Explicit Material or Discrimination.* Promote sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age.
- (f) *Fraudulent Information or Impersonation.* Contain any information or material that is false, intentionally misleading, or otherwise likely to deceive any person including, without limitation, impersonating any person, or misrepresenting your identity or affiliation with any person or organization
- (g) *Endorsement by the Company.* Represent or imply to others that it is in any way provided, sponsored, or endorsed by the Company or any other person or entity, if that is not the case.

5.4. *Monitoring and Enforcement.*

We reserve the right at all times, but are not obligated, to:

- (a) take any action with respect to any User Content that we deem necessary or appropriate in our sole discretion, including if we believe that such User Content violates the Content Standards or any other provision in this Agreement, or creates liability for the Company or any other person. Such action may include reporting you to law enforcement authorities.
- (b) remove or reject any User Content for any or no reason in our sole discretion.
- (c) disclose any User Content, your identity, or electronic communication of any kind to satisfy any law, regulation, or government request, or to protect the rights or property of the Company or any other person.
- (d) Terminate or suspend your access to all or part of the Services for any or no reason, including without limitation, any violation of this Agreement.

We do not review User Content before it is posted on or through the Services, and therefore cannot ensure prompt removal of questionable User Content. Accordingly, the Company and its affiliates, and their respective officers, directors, employees or agents, assume no liability for any action or inaction regarding transmissions, communications, or content provided by any user or third party. The Company shall have no liability or responsibility to anyone for performance or non-performance of the activities described in this Section.

5.5. Copyright Infringement (Digital Millennium Copyright Act Policy).

The Company respects the intellectual property of others and expects users of the Services to do the same. It is the Company's policy to terminate the users of our Services who are repeat infringers of intellectual property rights, including copyrights. If you believe that your work has been copied in a way that constitutes copyright infringement and wish to have the allegedly infringing material removed, please provide the following information in accordance with the Digital Millennium Copyright Act to our designated copyright agent:

- (a) a physical or electronic signature of the copyright owner or a person authorized to act on their behalf;
- (b) a description of the copyrighted work that you allege has been infringed;
- (c) a description of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled;
- (d) a description of where the material that you claim is infringing is located;
- (e) your contact information, including your address, telephone number, and email address;
- (f) a statement that you have a good faith belief that use of the objectionable material is not authorized by the copyright owner, its agent, or under the law; and
- (g) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Please note that pursuant to 17 U.S.C. § 512(f), any misrepresentation of material fact in a written notification automatically subjects the complaining party to liability for any damages, costs, and attorneys' fees incurred by us in connection with the written notification and allegation of copyright infringement.

Designated copyright agent for the Company:

5.6. Feedback to the Company.

If you provide the Company with any feedback or suggestions regarding the Services ("**Feedback**"), you hereby assign to the Company all rights in such Feedback and agree that the Company shall have the right to use and fully exploit such Feedback and related information in any manner it deems appropriate. The Company will treat any Feedback that you provide to the Company as non-confidential and non-proprietary. You agree that you will not submit to the Company any information or ideas that you consider to be confidential or proprietary.

6. Assumption of Risk.

The information presented on or through the Services is made available for general information purposes only. The Company does not warrant the accuracy, completeness, suitability, or quality of any such information. Any reliance on such information is strictly at your own risk. The Company disclaims all liability and responsibility arising from any reliance placed on such information by you or any other user to the Services, or by anyone who may be informed of any of its contents.

7. Privacy.

For information about how the Company collects, uses, and shares your information, please review our Privacy Policy ([LINK TO PRIVACY POLICY]). You agree that by using the Services you consent to the collection, use, and sharing (as set forth in the Privacy Policy) of such information.

The Children's Online Privacy Protection Act requires that online service providers obtain parental consent before they knowingly collect personally identifiable information online from children who are under 13 years old. We do not knowingly collect or solicit personally identifiable information from children under 13 years old. If you are a child under 13 years old, please do not attempt to register for the Services or send any personal information about yourself to us. If we learn we have collected personal information from a child under 13 years old, we will delete that information as quickly as possible. If you believe that a child under 13 years old may have provided us personal information, please contact us.

8. Third-Party Links and Ads.

The Services may contain links to third-party websites, resources, and services, as well as advertisements (collectively, "**Third-Party Links**"). Third-Party Links are provided for your convenience only. The Company does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Links. The Company has no control over the contents, products, or services of any Third-Party Link and accepts no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any Third-Party Link, you do so entirely at your own risk and subject to the terms and conditions of use for such Third-Party Link. You should make

whatever investigation you feel necessary or appropriate before proceeding with any transaction in connection with any Third-Party Link.

9. Termination.

9.1. Termination.

The Company may suspend or terminate your access or rights to use the Services at any time, for any reason, in our sole discretion, and without prior notice, including for any breach of the terms of this Agreement. Upon termination of your access or rights to use the Services, your right to access and use the Services will immediately cease. The Company will not have any liability whatsoever to you for any suspension or termination of your rights under this Agreement, including for termination of your account or deletion of your User Content. [If you have registered for an account, you may terminate this Agreement at any time by contacting the Company and requesting termination.]

9.2. Effect of Termination.

Upon termination of this Agreement, any provisions that by their nature should survive termination shall remain in full force and effect. This includes, without limitation, ownership or intellectual property provisions, warranty disclaimers, and limitations of liability. Termination of your access to and use of the Services shall not relieve you of any obligations arising or accruing prior to termination or limit any liability that you otherwise may have to the Company or any third party. You understand that any termination of your access to and use of the Services may involve deletion of your User Content associated with your account from our databases.

10.No Warranty.

THE SERVICES ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS. USE OF THE SERVICES IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT.

WITHOUT LIMITING THE FOREGOING, THE COMPANY AND ITS LICENSORS DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE, COMPLETE, OR CORRECT; THAT THE SERVICES WILL MEET YOUR REQUIREMENTS; THAT THE SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED, ERROR-FREE, OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR THAT THE SERVICES OR ITEMS OBTAINED THROUGH THE SERVICES WILL OTHERWISE MEET YOUR REQUIREMENTS OR EXPECTATIONS. TO THE FULLEST EXTENT PROVIDED BY LAW. WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO YOUR COMPUTER SYSTEM, MOBILE DEVICE, DATA, OR OTHER PROPRIETARY MATERIAL THAT MAY RESULT FROM

YOUR USE OF THE SERVICES OR ITEMS OBTAINED THROUGH THE SERVICES OR YOUR DOWNLOADING OF ANY MATERIAL POSTED ON THE SERVICES. WE DO NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICES ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICES OR THIRD-PARTY LINKS, AND WE WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND ANY THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES OR ANY OTHER USER.

THE SERVICES WOULD NOT BE PROVIDED WITHOUT THESE LIMITATIONS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US THROUGH THE SERVICES SHALL CREATE ANY WARRANTY, REPRESENTATION, OR GUARANTEE NOT EXPRESSLY STATED IN THIS AGREEMENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SERVICES, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF FIRST USE.

11.Limitation of Liability.

TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL THE COMPANY OR ITS AFFILIATES, OR THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, OR DIRECTORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE OR INABILITY TO USE THE SERVICES, ANY THIRD-PARTY LINK, OR ANY CONTENT ON THE SERVICES OR SUCH THIRD-PARTY LINK, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF USE, REVENUE, OR PROFIT, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF DATA, LOSS OF GOODWILL, OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOUR SOLE REMEDY FOR DISSATISFACTION WITH THE SERVICES IS TO STOP USING THE SERVICES.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

12.Indemnification.

You agree to indemnify, defend, and hold harmless the Company and its affiliates and their respective officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Party**") from and against any and all losses, claims, actions, suits, complaints, damages, liabilities, penalties, interest, judgments, settlements, deficiencies, disbursements, awards, fines, costs, fees, or expenses of whatever kind, including reasonable attorneys' fees, fees and other costs of enforcing any right to indemnification

under this Agreement, and the cost of pursuing any insurance providers, arising out of or relating to your breach of this Agreement or your use or misuse of the Services including, but not limited to, your User Content or any actions taken by a third party using your account. The Company reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to assist and cooperate with our defense or settlement of these claims.

13. Disputes.

13.1. Governing Law.

All matters relating to this Agreement, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any conflict of law principles.

13.2. Dispute Resolution.

Please read this Section carefully. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

Any dispute, claim or controversy arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation or validity thereof, shall be submitted to and decided by a single arbitrator by binding arbitration under the rules of the American Arbitration Association in New York, NY. The decision of the arbitrator shall be final and binding on the parties and may be entered and enforced in any court of competent jurisdiction by either party. The prevailing party in the arbitration proceedings shall be awarded reasonable attorneys' fees, expert witness costs and expenses, and all other costs and expenses incurred directly or indirectly in connection with the proceedings, unless the arbitrator shall for good cause determine otherwise.

All arbitrations shall proceed on an individual basis. You agree that you may bring claims against the Company in arbitration only in your individual capacity and in so doing you hereby waive the right to a trial by jury, to assert or participate in a class action lawsuit or class action arbitration (either as a named-plaintiff or class member), and to assert or participate in any joint or consolidated lawsuit or joint or consolidated arbitration of any kind. Notwithstanding anything to the contrary under the rules of the American Arbitration Association, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If a court decides that applicable law precludes enforcement of any of this paragraph's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.

YOU UNDERSTAND AND AGREE THAT BY ENTERING INTO THESE TERMS, YOU ARE WAIVING THE RIGHT TO TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

13.3.Limitation to Time to File Claims.

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION AROSE; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY WAIVED AND BARRED.

14.Miscellaneous.

14.1.Waiver.

Except as otherwise set forth in this Agreement, no failure of the Company to exercise, or delay by the Company in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

14.2.Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

14.3.Entire Agreement.

This Agreement, together with all documents referenced herein, constitutes the entire agreement between you and the Company with respect to the subject matter contained herein. This Agreement supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter hereof.

14.4.Headings.

Headings and titles of sections, clauses, and parts in this Agreement are for convenience only. Such headings and titles shall not affect the meaning of any provisions of the Agreement.

14.5.No Agency, Partnership or Joint Venture.

No agency, partnership, or joint venture has been created between you and the Company as a result of this Agreement. You do not have any authority of any kind to bind the Company in any respect whatsoever.

14.6.Assignment.

You shall not assign or delegate any of your rights or obligations under this Agreement without the prior written consent of the Company. Any purported assignment or delegation in violation of this Section shall be deemed null and void. No assignment or delegation shall relieve you of any

of your obligations hereunder. The Company may freely assign or delegate its rights and obligations under this Agreement at any time. Subject to the limits on assignment stated above, this Agreement will inure to the benefit of, be binding on, and be enforceable against each of the parties hereto and their respective successors and assigns.

14.7. Export Laws.

The Services may be subject to U.S. export control laws and regulations. You agree to abide by these laws and their regulations (including, without limitation, the Export Administration Act and the Arms Export Control Act) and not to transfer, by electronic transmission or otherwise, any materials from the Services to either a foreign national or a foreign destination in violation of such laws or regulations.

14.8. Force Majeure

In no event shall the Company be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, pandemic, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.

15. Contact Information.

All notices of copyright infringement claims should be sent to the designated copyright agent as provided in Section 5 (*User Content*). All other feedback, comments, requests for technical support, and other communications relating to the Services should be directed to [EMAIL ADDRESS].