

SEARCHABLE TERMS OF USE AGREEMENT

Last Updated: January 2021

1) INTRODUCTION

Abilities Workshop Inc., (“Site”, “We”, “Us”, “Our”, “Ours”, etc.) is the owner and operator of www.searchablenow.com, all affiliated websites or mobile versions, and the services that we provide through the Site (“Services”), including SearchABLE, the National Special Needs Resource Database, which provides information to parents of children with special needs on schools, transition programs, scholarships, therapy, nutrition, medicine, financial planning, government programs, and more (“Database”). This Terms of Use Agreement (the “Agreement”) is a legally binding agreement between you, the user (hereinafter “You”, “Your”, “Yours”, etc.) and Us, including any successor or affiliated Site or entity, that governs Your use of the Site and the Services.

This Agreement applies (1) to the entire contents of this Site, (2) to any associated websites that We own or operate and to which We grant You access, (3) to any electronic message exchanged between You and Us, and (4) to Your use of the information that We provide to You as part of the Services. **This Agreement contains disclaimers of warranties, limitations on liability, releases, an arbitration agreement, and a class-action waiver that are an essential basis of this Agreement. By accessing the Site, You certify to Us that (1) You are at least eighteen (18) years old, (2) You have the legal capacity to agree to this Agreement and to perform the acts required therein, and (3) all information provided by You to Us is accurate and current, and You will promptly update this information when necessary to ensure that it remains true.** We specifically disclaim any responsibility or liability for any misrepresentations in any information provided by You or any other user.

Assent and Consideration – You demonstrate Your express consent to all the terms and conditions of this Agreement, **even if you do not read them**, by checking the designated box and/or clicking on the “I Agree” (or similar syntax) button. You must be over the age of eighteen (18) to accept this Agreement, or such acceptance must be provided by Your adult parent or legal guardian. Consideration for Your acquiescence to all of the provisions in this Agreement has been provided to You in the form of allowing You to use Our Site and Our Services. You agree that such consideration is both adequate, and that it is received upon Your viewing or using any portion of any of Our Site and/or Services. If You do not want to accept the terms of this Agreement, You must leave the Site immediately.

Revisions – We may revise these terms on one or more occasions by updating this Agreement. You agree to check the “Last Updated” date at the top of this Agreement to determine if We have made any changes since You last read this document. We will deem Your continued use of the Site after We post the changes as Your acceptance of the changes. If You fail to periodically review this Agreement to determine if any of the terms have changed, You assume all responsibility for Your failure to do so and You agree that such failure amounts to Your affirmative waiver of Your right to review the amended terms. We are not responsible for Your neglect of Your legal rights.

2) ACCESS AND USE OF THE SITE

- a) **Limited Access** – All users may access certain public areas of the Site and register for a free account. You understand that all We are providing You is access to Our Services as We provide them. You need to provide Your own access to the Internet, and any Internet access or other fees that You incur to access Our Site and use Our Services are Your sole responsibility. We are not providing any hardware nor software to You – and You need to purchase or license the necessary hardware and software to access the Site and Services. This Agreement covers all public and non-public areas of the Site.
- b) **Verified and Preferred Accounts** – Users may register and pay for Verified or Preferred accounts which offer such users access to certain upgraded features for a small fee prominently displayed on the Site. Users with a free account may upgrade their membership at any time. Users may only register for Verified or Preferred accounts at the currently displayed price. All previous offers or discounts are unavailable once removed from the Site. The upgraded features associated with these accounts are prominently displayed on the Site. Users that purchase Verified or Preferred accounts will only have access to the upgraded features associated with their account type as listed on the Site at any given time. We reserve the right to change, add, or remove any and all upgraded features at any time, for any reason.
- c) **Grant of Rights to Us** – You retain all ownership rights in any materials that You post or otherwise share on the Site, including listings in the Database and reviews of those listings (“Content”). However, You grant Us a worldwide, perpetual, irrevocable, nonexclusive, royalty-free, sublicensable, and transferable license to all rights in the Content, including the right to use, reproduce, distribute, transmit, prepare derivative works of, display, perform, and otherwise exploit the Content for any reason, including for Site’s business (and the business of our successors), in any medium or technology now known or later developed, including the Internet. This license shall include, but is not limited to, the right to copy and transfer the Content to any affiliate or related or partner sites of Ours, and to post the Content on different pages of the Site at Our sole discretion. We shall not be subject to any obligations of confidentiality regarding any such information unless specifically agreed by Us in writing or required by law. You are solely responsible for the Content and the consequences of posting the Content to the Site. This grant of rights survives termination of this Agreement by either Party.
- d) **Grant of Rights to Our Users** – You grant each user of the Site a worldwide, nonexclusive, royalty-free license to access the Content through the Site, and to use, reproduce, display, and perform the Content as permitted through the Site and under the Terms of Use. This grant of rights survives termination of this Agreement by either Party.
- e) **Limited License to Access and Use Materials** – The Services may contain content, including but not limited to text, software, images, graphics, data, messages, or any other information, and any other website content owned, operated, licensed, or controlled by the Site (collectively, “Materials”). Subject to Your acceptance of this Agreement, We grant You a limited, nonexclusive, nontransferable personal, single copy license to access, view,

and use the Site, Materials, and the Services contained therein for non-commercial use (on a single computer or mobile device), with all other uses strictly prohibited. We grant You a single copy license to view the Materials. If You are a business entity or commercial concern, Your presence on the Site is not allowed unless it is expressly authorized in writing by Us. We reserve the right to pursue vigorous legal action against unauthorized access by business and commercial entities. We reserve the right to limit the amount of Materials viewed. You will not attempt to circumnavigate any restrictions or limitations on the Materials available to You. You agree to prevent any unauthorized copying of the Site, or any of the Materials contained therein. Any unauthorized use of the Site or any of the Materials contained therein terminates this limited license effective immediately. This is a license to use and access the Site for its intended purpose and is not a transfer of title. You will not copy, share, or redistribute any of the content appearing on this Site. We reserve the right to terminate this license at any time if You breach or violate any provision of this Agreement, in which case You will be obligated to immediately destroy any information or Materials You have downloaded, printed, or otherwise copied from this Site. Violators of this limited license may be prosecuted to the fullest extent under the applicable law.

- f) **Service Interruption** – From time to time due to technological factors, scheduled software uploads and other factors beyond Our control, the Service may be temporarily interrupted and/or access to the Site and the ability to log into the Site may not be available. You agree to hold Us harmless against any such interruption of or inability to access the Service.
- g) **Privacy/Security Warning** – Please take note that while this Site takes reasonable efforts to protect any personal information or private data You provide to the Site, no website or server is immune from hacking or other breaches of security protocols, resulting in the wrongful public release of such information and data. You therefore acknowledge and agree that the Site shall not be liable for any release of private information or personal data provided by any user, and You hereby release the Site from any and all liability and claims associated therewith.
- h) **Agreement to Receive Notifications and Other Communications** – We reserve the right to send electronic mail or other messages to You and to other users. The purpose of these communications may include but is not limited to:
 - i) To provide information to You regarding products or services offered by Our affiliates or partners;
 - ii) To inform You about any of Our related products or services;
 - iii) To provide You with information about any item that We think, in Our sole discretion, may be of interest to You.

3) PAYMENT TERMS

- a) To purchase an upgraded account, You must provide an acceptable payment method to be listed in the Database. If You purchase an upgraded account, You understand and agree

that You are responsible for and will pay any fees, charges, or penalties associated with Your listing, immediately when due in accordance with Our stated billing policy, or that of Our third-party billing agent. Your card issuer agreement may contain additional terms with respect to Your rights and liabilities as a card holder. You agree to pay any and all amounts due immediately upon cancellation or termination of Your account.

- b) We reserve the right to make changes at any time to Our fees and billing methods for purchases made through the Site, including the addition of supplemental charges for any Content or Services provided by the Site, with or without prior notice to You.
- c) **Third Party Payment Processing – We utilize various third-party payment processors and gateways, and We reserve the right to contract with additional third-party payment processors and gateways in Our sole discretion to process any and all payments associated with the Site and/or Services. Such third party may impose additional terms and conditions governing payment processing. You are responsible for abiding by such terms. We further disclaim any liability associated with Your violation of such terms.**
- d) **Changes to Your Billing Information – You must promptly inform Our third-party billing agent of all changes, including, but not limited to, changes in Your address and changes in Your credit card used in connection with purchases made through the Site and/or payment for the Site and Services, if applicable. If You provide any information that is untrue, inaccurate, not current or incomplete, or if We or any of Our authorized agents have reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, We have the right to suspend or terminate Your account and refuse any and all current or future use of the Site and Services, as well as subjecting You to criminal and civil liability. You are responsible for any credit card charge backs, dishonored checks and any related fees that the Site incurs with respect to Your account, along with any additional fees and/or penalties imposed by Our third-party billing agent. If You fail to reimburse Us for any credit card chargebacks, dishonored checks, or related fees within thirty (30) days of Our initial demand for reimbursement, You agree that You will pay Us one hundred dollars (\$100) in additional liquidated damages as well as any costs incurred by Us for each fee incurred.**
- e) **Refunds – You understand and agree that purchases are considered final and nonrefundable at this time. We reserve the right to address any refund request in Our sole discretion.**
- f) **Billing Errors – If You believe that You have been erroneously billed for activity associated with the Site, please notify Our third-party billing agent immediately of such error. If You do not do so within thirty (30) days after such billing error first appears on any account statement, the fee in question will be deemed acceptable by You for all purposes, including resolution of inquiries made by or on behalf of Your banking institution. You release Us from all liabilities and claims of loss resulting from any error or discrepancy that is not reported within thirty (30) days of the bill being rendered to You. These terms shall supplement and be in addition to any terms required by third party billing**

entities We engage to provide billing services. You are responsible for review and compliance with such entity's terms in addition to those contained in this Agreement.

- g) Stolen Cards and Fraudulent Use of Credit Cards** – We take credit card fraud very seriously. Discovery that any user has used a stolen or fraudulent credit card will result in the notification of the appropriate law enforcement agencies and termination of such user's account.

4) ACCEPTABLE USE POLICY

The following are some—though not all—of the violations that may result in Our terminating Your access to the Site. While using the Site, You will not:

1. use the Site, Services, or Materials for any unlawful purpose or in any way that is prohibited by this Agreement, engage in any activity that is violative of any applicable law or regulation of any applicable governmental body, nor fail to comply with orders, judgments, or mandates from courts of competent jurisdiction;
2. use the Site for any purpose other than to access the Site as offered by the Site;
3. post, upload, or share content that is harmful, inaccurate, threatening, abusive, vulgar, violent, indecent, harassing, hateful, menacing, scandalous, inflammatory, blasphemous, racially or ethnically offensive, likely to cause annoyance, intimidation, alarm, embarrassment, distress, discomfort, or inconvenience, otherwise just plain nasty or objectionable, or any materials that, in the Site's sole discretion, is otherwise inappropriate;
4. post, upload, or share content that depicts, advertises, promotes, encourages, facilitates, or solicits (real, simulated, or implied) (i) nudity or sexual content of any kind; (ii) illegal or illicit drugs; (iii) suicide or self-harm; (iv) any other illegal behavior or behavior that may be considered obscene under applicable law;
5. post, upload, or share any employment ads or content which violates anti-discrimination laws;
6. post, upload, share, or collect, for any commercial purpose, the telephone numbers, street addresses, last names, email addresses, URLs, geographic location, or any other personal information about users or third parties without their consent or in a manner that is not expressly authorized in the Terms of Use;
7. use emojis, GIFs, or other media to communicate any activity that violates the Terms of Use;
8. impersonate another individual or entity, whether actual or fictitious; falsely claim an affiliation with any individual or entity; access or attempt to access the accounts of others without permission; misrepresent the source, identity, or content of information transmitted via the Site; or perform any other similar fraudulent activity;

9. circumvent, disable, damage, or otherwise interfere with the operations of the Site, any user's enjoyment of the Site, or the Site's security-related features or features that prevent, limit, or restrict use or copying of any materials or content, or features that enforce limitations on the use of the Site or the Content on it, by any means, including, but not limited to, posting, linking to, uploading or otherwise disseminating viruses, adware, spyware, worms, logic bombs, Trojan horses, worms, harmful components, corrupted data, or other malicious code, file, or program designed to interrupt, destroy, limit, or monitor the functionality of any computer software or hardware or any telecommunications equipment;
10. use the Site for making, obtaining, distributing, or otherwise accessing illegal copies of copyrighted, trademarked, or patented content;
11. delete indications or notices regarding the copyright or other proprietary rights on the Site, or any third-party content, or forge headers or otherwise manipulate identifiers in order to disguise the origin of any information You transmit;
12. make unsolicited offers, advertisements, proposals, or send junk mail or spam to other users, including unsolicited advertising, promotional materials, or other solicitation material, bulk mailing of commercial advertising, chain mail, information announcements, charity requests, and petitions for signatures;
13. display, collect, or attempt to collect, share, or reveal the telephone numbers, street addresses, last names, email addresses, URLs, geographic location, or any other personal information about users or third parties without their consent, or, except as expressly authorized in this Agreement, use materials, third-party content, or other content on the Site for any commercial use;
14. reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the Site or any part of it, except and only if that activity is expressly permitted by applicable law despite this limitation;
15. access or use any automated process (such as a robot, spider, scraper, or similar) to access the Site in violation of the Site's robot exclusion headers or to scrap all or a substantial part of the Site's Content (other than in connection with bona fide search engine indexing or as the Site may otherwise expressly permit);
16. modify, adapt, translate, or create derivative works based on the Site or any part of it, except and only if applicable law expressly permits that activity despite this limitation;
17. commercially exploit or make available the Site or its content to third parties including, but not limited to, any action or attempt to "frame" or "mirror" the Site;
18. take any action that imposes or may impose (in the Site's sole discretion) an unreasonable or disproportionately large load on the Site's technology infrastructure or otherwise make excessive demands on it; and

19. attempt to do any of the acts described in this section or assist or permit any person in engaging in any of the acts described in this section.

Section 4(1)–4(19) are each individually referred to as a “Prohibited Use” and collectively referred to as the “Prohibited Uses.” Engaging in any Prohibited Use will be considered a breach of this Agreement and may result in immediate suspension or termination of the user’s account and access to the Site or the platform without notice, in the Site’s sole discretion. The Site may pursue any legal remedies or other appropriate actions against the user if the user engages in any of the above Prohibited Uses or any unauthorized use of the Site, including civil, criminal, or injunctive relief, and cancellation of Your account. Any unauthorized use of the Site and Our computer systems violates the terms of this Agreement and certain international, foreign, and domestic laws. The Site will report any content that could be considered exploitative of children in any way to appropriate governmental or private agencies.

5) STIPULATED LIQUIDATED DAMAGES

In various provisions in this Agreement, We have outlined liquidated damages amounts to be applied as penalties against You if You violate these specific provisions. You specifically agree to pay these amounts. In agreeing to pay liquidated damages, You acknowledge that this amount is not a penalty, that the actual damages are uncertain and difficult to ascertain, but that this amount represents the parties’ reasonable estimate of the anticipated actual damages.

6) DISCLAIMERS/REPRESENTATIONS AND WARRANTIES

- a) **You expressly agree that use of the Site and Services, or any of the Materials contained therein is solely at Your own risk. You also understand and agree that any material and/or data downloaded or otherwise obtained through the use of the Site and Services or any of the Materials contained therein is done at Your own discretion and risk and that You will be solely responsible for any damage to Your computer system or loss of data that results from the download of such material and/or data.**
- b) **The Site and Services, and all Materials contained therein, are provided “as is” without warranty of any kind, either express or implied, including but not limited to, any implied warranties of merchantability, fitness for a particular purpose, title, or non-infringement.**
- c) **We make no representations or warranties that the Site and Services, or any Materials contained therein, will be uninterrupted, timely, secure, or error free; nor do We make any representations or warranties as to the quality, suitability, truth, usefulness, accuracy, or completeness of the Site and Services or any of the materials contained therein.**
- d) **You understand that We cannot and do not guarantee or warrant that files available for downloading from the Internet will be free of viruses, worms, Trojan**

horses, or other code that may manifest contaminating or destructive properties. We do not assume any responsibility or risk for Your use of the Internet.

- e) We make no warranty regarding any goods or services purchased or obtained through the Site and/or Services or any transaction entered into through the Site and/or Services, and We are not responsible for any use of confidential or private information by sellers or third parties.**
- f) The warranties and representations set forth in this Agreement are the only warranties and representations with respect to this Agreement, and are in lieu of any and all other warranties, written or oral, express or implied, that may arise either by agreement between the parties or by operation of law, including warranties of merchantability and fitness for a particular purpose. None of these warranties and representations will extend to any third person.**

7) LIMITATION OF LIABILITY

- a) In no event shall We (or Our licensors, agents, suppliers, resellers, service providers, or any other subscribers or suppliers) be liable to You, or any other third party for any direct, special, indirect, incidental, consequential, exemplary, or punitive damages, including without limitation, damages for loss of profits, loss of information, business interruption, revenue, or goodwill, which may arise from any person's use, misuse, or inability to use the Site, Services, or any of the materials contained therein, even if We have been advised of the probability of such damages. This is for any matter arising out of or relating to this Agreement, whether such liability is asserted on the basis of contract, tort or otherwise, even if We have been advised of the possibility of such damages.**
- b) You further discharge, acquit, and otherwise release Us, Our parent company, agents, employees, officers, directors, shareholders, attorneys, and affiliates, from any and all allegations, counts, charges, debts, causes of action, and claims by You or any third party, relating in any way to the use of, or activities relating to the use of the Site including claims relating to the following:**

Negligence, gross negligence, reckless conduct, intentional infliction of emotional distress, intentional interference with contract or advantageous business relationships, defamation, publicity rights, intellectual property infringement, misrepresentation, any financial loss not due to the fault of the Site, missed meetings, unmet expectations, false identities, fraudulent acts by others, invasion of privacy, release of personal information, failed transactions, purchases or functionality of the Site, unavailability of the Site, its functions and/or Services and any other technical failure that may result in inaccessibility to the Site, or any claim based on vicarious liability for torts committed by individuals

met on or through the Site and Services, including fraud, theft or misuse of personal information, theft, cheating, or perjury.

The above list is intended to be illustrative only, and not exhaustive of the types or categories of claims released by You. This release is intended by the parties to be interpreted broadly in favor of the Site, and thus any ambiguity will be interpreted in a manner providing release of the broadest claims. This release is intended to be a full release of claims, and the parties acknowledge the legally binding nature of this provision, and the nature of the rights given up in connection therewith.

- c)** We expressly disclaim any liability or responsibility to You for any of the following:
- i)** Errors, mistakes, or inaccuracies of content;
 - ii)** Personal injury or property damage of any nature resulting from Your access to and use of the Site or the Services;
 - iii)** Any third party's unauthorized access to or alterations of Your account, transmissions, or data;
 - iv)** Any interruption or cessation of transmission to or from the Site;
 - v)** Any bugs, viruses, malware, Trojan horses, or the like that may be transmitted to or through the Site by any person;
 - vi)** Any incompatibility between the Site and Your other services, hardware, or software;
 - vii)** Any delays or failures You may experience in initiating, conducting, or completing any transmissions to or transactions involving the Site; or
 - viii)** Any loss or damage of any kind incurred because of the use of any content posted, emailed, transmitted, or otherwise made available through the Site.
- d)** In no event shall Our maximum total aggregate liability hereunder for direct damages exceed one hundred dollars (\$100.00). Because some jurisdictions prohibit the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to You.

8) INDEMNIFICATION

- a)** You agree not to engage in any activities that are illegal or wrongful. If We determine that You or any user has engaged in any illegal or wrongful activity, Your ability to use the Site and Services will be terminated immediately without any reimbursement of any payment You may have made to Us. We reserve the right to cooperate with law enforcement. We do hereby disclaim any liability for damages that may arise from any illegal or wrongful activity. You do hereby agree to defend, indemnify and hold Us

harmless from any liability that may arise for Us should You violate any law or the rights of third parties.

- b)** You also agree to defend and indemnify Us should any third party be harmed by Your illegal actions or should We be obligated to defend any claims including, without limitation, any civil, administrative, or criminal action initiated by any party based on Your use of the Site or the Services.
- c)** You agree to defend, indemnify, and hold harmless the Site, its officers, directors, shareholders, employees, independent contractors, attorneys, telecommunication providers, and agents, from and against any and all claims, actions, loss, liabilities, expenses, costs, or demands, including without limitation legal and accounting fees, for all damages directly, indirectly, and/or consequentially resulting or allegedly resulting from Your, or You under another person's authority including without limitation to governmental agencies, use, misuse, or inability to use the Site, Services, or any of the Materials contained therein, or Your breach of any of this Agreement. We shall promptly notify You by electronic mail of any such claim or suit and cooperate fully (at Your expense) in the defense of such claim or suit. We reserve the right to participate in the defense of such claim or suit at Our own expense, and choose Our own legal counsel, but are not obligated to do so.

9) THIRD-PARTY LINKS

- a)** Some websites which are linked to the Site are owned and operated by third parties. Because We have no control over such websites and resources, You acknowledge and agree that We are not responsible or liable for the availability of such external websites or resources, and do not screen or endorse them, and are not responsible or liable for any content, advertising, services, products, or other materials on or available from such websites or resources.
- b)** You further acknowledge and agree that We shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such third-party content, goods, or services available on or through any such website or resource. If You decide to access any such third-party website, You do so entirely at Your own risk and subject to any terms and conditions and privacy policies posted therein.
- c)** You further acknowledge that use of any website controlled, owned or operated by third parties is governed by the terms and conditions of use for those websites, and not by this Agreement or Our Privacy Policy.
- d)** Links to external websites or inclusions of advertisements do not constitute an endorsement by Us of such websites or the content, products, advertising, or other materials presented on such Site, but are for Your convenience.

- e) You hereby agree to hold Us harmless from any and all damages and liability that may result from the use of links that may appear on the Site or via the Services.

10) OUR INTELLECTUAL PROPERTY

- a) **Trademarks** – Abilities Workshop and SearchABLE are considered trademarks owned by Us. We aggressively defend Our trademark rights. Other manufacturers' product and service names referenced herein may be trademarks and service marks of their respective companies and are the exclusive property of such respective owners and may not be used publicly without the express written consent of the owners and/or holders of such trademarks and service marks. All of the marks, logos, domains, and trademarks that You find on the Site and Services may not be used publicly except with express written permission from Us and may not be used in any manner that is likely to cause confusion among consumers, or in any manner that disparages or discredits Us.
- b) **Copyrights** – The Materials accessible from the Site, Services, and any other Site owned, operated, licensed, or controlled by Us are Our proprietary information and valuable intellectual property and We retain all right, title, and interest in the Materials. The Materials may not be copied, distributed, republished, modified, uploaded, posted, or transmitted in any way without Our prior written consent. Modification or use of the Materials except as expressly provided in this Agreement violates Our copyrights. Neither title nor intellectual property rights are transferred to You by access to the Site and Services. All Materials included on the Site, such as text, graphics, photographs, video and audio clips, music, soundtracks, button icons, streaming data, animation, images, downloadable materials, data compilations and software are the property of Site or its content suppliers and is protected by United States and international copyright laws. The compilation of all Materials on the Site is the exclusive property of Site or its content suppliers and protected by United States and international copyright laws, as well as other laws and regulations.

11) EXPORT CONTROL

You understand and acknowledge that the software elements of the Materials on the Site may be subject to regulation by agencies of the United States Government, including the United States Department of Commerce, which prohibits export or diversion of software to certain countries and third parties. Diversion of such Materials contrary to United States' or international law is prohibited. You will not assist or participate in any such diversion or other violation of applicable laws and regulations. You warrant that You will not license or otherwise permit anyone not approved to receive controlled commodities under applicable laws and regulations and that You will abide by such laws and regulations. You agree that none of the Materials are being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals or be used for proscribed activities.

12) JURISDICTION/DISPUTES:

- a) **Governing Law** – This Agreement and all matters arising out of, or otherwise relating to, this Agreement shall be governed by the laws of the state of Florida, excluding its conflict of law provisions. The sum of this paragraph is that any and all litigation permitted under this Agreement must be, without exception, initiated in Orange County, Florida.
- b) **Venue** – All parties to this Agreement agree that all litigation permitted under this Agreement shall be tried and/or litigated exclusively in the state and federal courts located in Orange County, Florida.
- i) The parties agree to exclusive jurisdiction in, and only in, Orange County, Florida.
 - ii) The parties agree to exclusive venue in, and only in, Orange County, Florida.
 - iii) The parties additionally agree that this choice of venue and forum is mandatory and not permissive in nature, thereby precluding any possibility of litigation between the parties with respect to, or arising out of, this Agreement in a jurisdiction other than that specified in this paragraph.
 - iv) All parties hereby waive any right to assert the doctrine of *forum non-conveniens* or similar doctrines, or to object to venue with respect to any litigation permitted under this Agreement.
 - v) All parties stipulate that the state and federal courts located in Orange County, Florida shall have personal jurisdiction over them for the purpose of any litigation permitted under this Agreement that is not otherwise subject to the arbitration provisions
 - vi) Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it, as contemplated by this paragraph by registered or certified mail, Federal Express, proof of delivery or return receipt requested, to the parties address for the giving of notices as set forth in this Agreement.
 - vii) Any final judgment rendered against a party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law if such enforcement becomes necessary.
 - viii) Right to Injunctive Relief. Both parties acknowledge that remedies at law may be inadequate to provide an aggrieved party with full compensation in the event of the other party's breach, and that in any litigation permitted under this Agreement, an aggrieved party shall therefore be entitled to seek injunctive relief, in addition to seeking all other remedies available at law or in equity.

13) ARBITRATION PROVISIONS:

- a) If there is a dispute between the parties arising out of or otherwise relating to this Agreement, the parties shall confer and negotiate in good faith to attempt to resolve the dispute. If the parties are unable to resolve the dispute through direct negotiations, then, except as otherwise provided herein, either party must submit the issue to binding arbitration in accordance with the then-existing Commercial Arbitration Rules of the American Arbitration Association. Arbitral Claims shall include, but are not limited to, contract and tort claims of all kinds, and all claims based on any federal, state or local law, statute, or regulation, excepting only claims by Us under applicable worker's compensation law, unemployment insurance claims, intellectual property claims, actions for injunctions, attachment, garnishment, and other equitable relief. The arbitration shall be confidential. The arbitration shall be conducted in Orange County, Florida and conducted by a single arbitrator, knowledgeable in Internet and e-Commerce disputes. The arbitrator shall be willing to execute an oath of neutrality.
- b) The Arbitrator shall have no authority to award any punitive or exemplary damages; certify a class action; add any parties; vary or ignore the provisions of this Agreement; and shall be bound by governing and applicable law. The arbitrator shall render a written opinion setting forth all material facts and the basis of his or her decision within thirty (30) days of the conclusion of the arbitration proceeding.
- c) THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRAL CLAIMS. THE PARTIES HEREBY WAIVE ANY RIGHTS OR ABILITIES THEY MAY HAVE TO INITIATE OR PARTICIPATE IN ANY CLASS ACTION OR COLLECTIVE PROCEEDING.
- d) No waiver of right to arbitration. There shall be no waiver of the right to arbitration unless such waiver is provided affirmatively and in writing by the waiving party to the other party. There shall be no implied waiver of this right to arbitration. No acts, including the filing of litigation, shall be construed as a waiver or a repudiation of the right to arbitrate.

14) MISCELLANEOUS PROVISIONS:

- a) **Notice** – Any notice required to be given under this Agreement may be provided by email to a functioning email address of the party to be noticed, by a general posting on the Site, or personal delivery by commercial carrier such as Federal Express. Notices by customers to Us shall be given by electronic messages unless otherwise specified in the Agreement.
- i) Change of Address. Either party may change the address to which notice is to be sent by written notice to the other party pursuant to this provision of the Agreement.
- ii) When Notice is Effective. Notices shall be deemed effective upon delivery. Notices delivered by commercial carrier shall be deemed delivered on the business day following mailing. Notices mailed by United States Mail, postage prepaid, registered or certified with return receipt requested, shall be deemed delivered five

(5) days after mailing. Notices delivered by any other method shall be deemed given upon receipt. Notices by email and facsimile transmission, with confirmation from the transmitting machine that the transmission was completed, are acceptable under this Agreement provided that they are delivered one (1) hour after transmission if sent during the recipient's business hours, or 9:00 a.m. (recipient's time) the next business day. Either party may, by giving the other party appropriate written notice, change the designated address, fax number and/or recipient for any notice or courtesy copy, hereunder.

- iii) Refused, Unclaimed, or Undeliverable Notice.** Any correctly addressed notice that is refused, unclaimed, or undeliverable, because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused or deemed undeliverable by the postal authorities, messenger, facsimile machine, email server, or overnight delivery service.
- b) No Agency Relationship** – Nothing in this Agreement shall be deemed to constitute, create, imply, give effect to, or otherwise recognize a partnership, employment, joint venture, or formal business entity of any kind; and the rights and obligations of the parties shall be limited to those expressly set forth herein.
- c) Communications Are NOT Private** – We do not provide any facility for sending or receiving private or confidential electronic communications. All messages transmitted to Us shall be deemed to be readily accessible to the general public. Visitors should not use this Site or Services to transmit any communication for which the sender intends only the sender and the intended recipient(s) to read. Notice is hereby given that all messages and other content entered into this Site or Services can and may be read by the agents and operators of the Site or Services, regardless of whether they are the intended recipients of such messages.
- d) Force Majeure** – We shall not be responsible for any failure to perform due to unforeseen circumstances or causes beyond Our reasonable control, including but not limited to: acts of God, such as fire, flood, earthquakes, hurricanes, tropical storms or other natural disasters; pandemics; war, riot, arson, embargoes, acts of civil or military authority, or terrorism; fiber cuts; strikes, or shortages in transportation, facilities, fuel, energy, labor or materials; failure of the telecommunications or information services infrastructure; hacking, data breach, SPAM, malware, or any failure of a computer, server or software, for so long as such event continues to delay the Site's or Services' performance.
- e) Assignment** – The rights and liabilities of the parties hereto will bind and inure to the benefit of their respective assignees, successors, executors, and administrators, as the case may be.
- f) Severability** – If for any reason a court of competent jurisdiction or an arbitrator finds any provision of this Agreement, or any portion thereof, to be unenforceable, that

provision will be enforced to the maximum extent permissible and the remainder of this Agreement will continue in full force and effect.

- g) California Residents** – You may file a complaint with the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs online at www.dca.ca.gov or call 800.952.5210 to have a complaint form mailed to You. You understand and agree that by assenting to this Agreement, You waive any applicability of California Civil Code §1542 as it may be applied to Your release of legal claims arising from Your use of the Services.
- h) No Waiver** – No waiver or action made by Us shall be deemed a waiver of any subsequent default of the same provision of this Agreement. If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from this Agreement.
- i) Headings** – All headings are solely for the convenience of reference and shall not affect the meaning, construction or effect of this Agreement.
- j) Complete Agreement** – This Agreement constitutes the entire agreement between the parties with respect to Your access and use of the Site, Services and the Materials contained therein, and Your use of the Site and Services, and supersede and replace all prior understandings or agreements, written or oral, regarding such subject matter.
- k) Other Jurisdictions** – We make no representation that the Site, Services or any of the Materials contained therein are appropriate or available for use in other locations outside the Site’s principal place of business, and access to them from territories where their content may be illegal or is otherwise prohibited. Those who choose to access the Site and Services from such locations do on their own initiative and are solely responsible for determining compliance with all applicable local laws.

Nothing more follows.