

## TERMS OF USE BAILIWIK INC.

The Effective Date of these Terms of Use (“TOU”) is July 3, 2019

These TOU apply to the web Service available at <https://www.bailiwik.com>, which is operated by Bailiwik Inc. (“BAILIWIK,” “we,” “us” or “our”), and to interactive features, downloads, applications and widgets that post a link to these TOU, regardless of whether accessed via computer, mobile device or otherwise (collectively, the “Service”).

By accessing or using this Service, you agree to these TOU which constitute a legally binding contract between you and us. If you do not agree with these TOU, you should not register as a member on the Service and should leave the Service immediately.

Please also carefully review this Service’s [Privacy Policy](#), which governs the collection and use of information about you when you visit or become a member of the Service.

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### 1. INTELLECTUAL PROPERTY OWNERSHIP OF SERVICE MATERIALS

Unless otherwise explicitly specified, this Service and all materials that are included in or are otherwise a part of the Service (including present and future versions), including, without limitation, graphics, layout, text, instructions, images, books, periodicals, audio, videos, widgets, designs, advertising copy, compilations, and the trademarks, logos,

domain names, trade names, service marks and trade identities; any and all copyrightable material (including source and object code); the “look and feel” of the Service, the compilation, assembly and arrangement of the materials of the Service; and all other materials related to the Service (collectively, the “Materials”) are owned, controlled or licensed by BAILIWIK, its subsidiaries or affiliates and are protected from unauthorized use, copying and dissemination by copyright, trademark, patent, publicity and other laws, rules, regulations and international treaties.

The Materials may not be copied, reproduced, downloaded or distributed in any way, in whole or in part, without the express permission of BAILIWIK, unless and except as is expressly provided in these TOU. **Any unauthorized use of the Materials is prohibited.** You agree to abide by any and all additional copyright notices, information, or restrictions contained in any part of the Service.

## **2. YOUR LICENSE TO USE MATERIALS ON OUR SERVICE**

Subject to your strict compliance with these TOU, BAILIWIK grants you a limited, personal, non-exclusive, non-commercial, revocable, non-assignable and non-transferable license to download, view, display, use and/or play a single copy of the Materials (excluding source and object code) for your personal, non-commercial use only, provided that: (a) you keep intact all trademark, copyright and other proprietary notices contained in the Materials or any copy you may make of the Materials; (b) you do not use the Materials in a manner that suggests an association with any of our products, services or brands; (c) you make no modifications to the Materials; (d) you do not allow or aid or abet any third party (whether or not for your benefit): (i) to copy or adapt the source or object code of any of the Service’s software, HTML, JavaScript or other code; or (ii) reverse engineer, decompile, reverse assemble, modify or attempt to discover any source code that the Service uses to generate its web pages or any software or other products or processes accessible through the Service; and (e) you do not insert any code or product to manipulate the Materials in any way that affects any user’s experience.

You also agree that you will not: (a) use any robot, spider, rover, scraper, or any other data mining technology or automatic or manual process to monitor, cache, frame, mask, extract data from, copy or distribute the Materials (except as may be a result of standard search engine or activity or your use of a standard internet browser), nor will you (b) modify, frame, reproduce, archive, sell, lease, rent, exchange, create derivative works from, publish by hard copy or electronic means, publicly perform, display, disseminate, distribute, broadcast, retransmit, circulate to any third party or on any third-party web Service, or otherwise use the Materials in any way for any public or commercial purpose except as specifically permitted by these TOU or BAILIWIK.

## **3. INFORMATION/CONTENT YOU SUBMIT**

The Service may provide you and others with the opportunity to participate in forums, blogs, message boards, social networking, social communities and other

communication functionality and may provide you with the opportunity, through such features or otherwise, to submit, post, display, transmit, perform, publish, distribute or broadcast content and materials (collectively, "User Content") to the Service and other third parties.

Except as otherwise provided in this TOU, you or the owner of any content that you post to our services retain ownership of all rights, title, and interests in that content, provided, however, that by posting content on the Service, you grant us and our assigns, agents, and licensees the irrevocable, royalty-free, perpetual, worldwide right and license to use, reproduce, modify, display, remix, perform, distribute, redistribute, adapt, promote, create derivative works, and syndicate this content in any medium and through any form of technology or distribution. We own all rights, title, and interests in any compilation, collective work or other derivative work created by us using or incorporating your content (but not your original content). You agree that you either: (i) own the rights to the User Content you submit and the right to grant all of the rights and licenses in these TOU; or (ii) you have all necessary rights and licenses from the owner(s) of these rights to enter into these TOU and grant BAILIWIK these licenses. Upon BAILIWIK's request, you will furnish BAILIWIK any documentation, substantiation or releases necessary to verify your compliance with these TOU. You also acknowledge that the Internet may be subject to breaches of security and should be aware that submissions of User Content or other information may not be secure, and you should consider this before submitting or distributing any information, including, without limitation, User Content to the Service or other third parties.

You grant to BAILIWIK the unrestricted, unconditional, non-exclusive, unlimited, worldwide, irrevocable, perpetual and royalty-free right and license to host, use, copy, distribute, reproduce, disclose, sell, re-sell, syndicate, sublicense, display, perform, transmit, publish, broadcast, modify, reformat, translate, archive, store, cache or otherwise exploit in any manner whatsoever, all or any portion of your User Content for any purpose whatsoever in all formats; on or through any media, software, formula or medium now known or hereafter developed; and with any technology or devices now known or hereafter developed and to advertise, market and promote the same. You further agree that BAILIWIK is free to use any ideas, concepts, know-how or techniques contained in any User Content you send to the Service, for any purposes whatsoever, including, without limitation, developing, manufacturing and marketing products and or services using such User Content; or creating informational articles based on or advertising our products and services, and without remuneration of any kind. You further perpetually and irrevocably grant us the unconditional right to use your name, persona and likeness included in any User Content and in connection with any User Content, without any obligation or remuneration to you. You also grant to BAILIWIK the right to sublicense and authorize others to exercise any of the rights granted to BAILIWIK under these TOU; and each such third party will be entitled to benefit from the rights and licenses granted to BAILIWIK under these TOU. You further authorize BAILIWIK to publish your User Content in a searchable format that may be accessed by users of the Service and other websites. Except as prohibited by law, you waive any moral rights you may have in any User Content you submit, even if such User Content

is altered or changed in a manner not agreeable to you. If you sign in to BAILIWIK through another web service or widget provided by a third party, such as Facebook or Twitter, your User Content posted on BAILIWIK may appear on those third party sites and other sites with whom you or they have access and share content.

You agree that BAILIWIK has no obligation to monitor or enforce your intellectual property rights to your User Content but has the right to protect and enforce its and its licensees' licensed rights to your User Content. You further acknowledge and agree that BAILIWIK may review, monitor, display, accept or exploit any User Content, and BAILIWIK may, in its sole discretion, delete, move, re-format, edit, distribute, block, alter, distort, remove or refuse to exploit User Content without notice or liability to you. BAILIWIK reserves the right to treat User Content on the Service, or on certain portions of the Service, as content stored at the direction of users for which BAILIWIK will not exercise editorial control except to enforce the rights of third parties and the content restrictions set forth below in our Community Rules when notice of such violations are brought to BAILIWIK's attention. We may remove user Content posted on the Service at any time, we may delete it at our discretion and you have no right to access or control any User Content that you provide. You understand that BAILIWIK is not obligated to use your User Content and that you will not receive any consideration or compensation for your User Content or for any exploitation of it.

#### **4. ACCEPTABLE USE POLICY: COMMUNITY RULES**

As a participant on the Service, you become a member of the Bailiwick community and you agree that these community rules ("Community Rules") are here to help you understand the conduct that is expected when you participate on the Service. Your participation in the Community is subject to all the TOU, including these Community Rules. Please follow these Community Rules when participating on the Service, including, without limitation, when you upload any User Content, send messages or other materials to other users, or participate in discussions on the Service:

**User Content must be yours.** All User Content must be original with you, not copied from someone else's work, and you must have the right to upload, distribute or embed (as applicable) the User Content on the Service and elsewhere. **You may choose to upload pictures of yourself in your Profile. If you choose to upload photos, videos or other content that features another person, do so with that person's express permission to submit it.**

**Though nudity is natural, not everyone wants to see it.** The same goes for hateful things, spam, and irrelevant photos. So steer away from naked people, meanness, grossness, and anything else that you wouldn't want to see when you're exploring.

**Don't upload, post or distribute third party materials.** Your User Content should not contain any visible logos, phrases or trademarks or other third party materials. Do not use any User Content that belongs to other people and pass it off as your own. This includes any content that you might have found elsewhere on the Internet.

**Do we hear music?** Your User Content may not contain any music unless the work and performance is original with you and/or you have all rights to the musical work (including any performances). No jingles, sampling or otherwise.

**Please follow codes of social decency.** Express yourself with non-offensive individual self-expression. Be respectful of others' opinions and comments so we can continue to build a Community for everyone to enjoy. If you think your User Content might offend someone, chances are it probably will and doesn't belong on the Community. Cursing, flaming, harassing, stalking, posting insulting comments, personal attacks, gossip or similar actions are prohibited. Your User Content may not threaten, abuse or harm others. Your User Content may not include any negative comments that are connected to race, national origin, religion, gender, sexual orientation or physical handicap or that are defamatory, slanderous, indecent, obscene, pornographic or sexually explicit.

**Do not use the Community for commercial purposes.** Don't sell any harder than you would in a real life conversation with a neighbor. Don't be bummer or everyone will avoid you.. You may not use your User Content to raise money for anyone, primarily for commercial purposes or for a pyramid or other multi-tiered marketing scheme.

**Do not upload, post or distribute User Content that is illegal.** Your User Content may not promote any illegal activity. If you do upload, post or otherwise distribute User Content that promotes illegal conduct or is in violation of applicable law, we reserve the right to take action that we deem appropriate, in our sole discretion, including reporting you to the proper governmental authorities.

**No violence.** Your User Content may not promote violence or describe how to perform a violent act.

**Be honest and do not misrepresent yourself or your User Content.** Do not impersonate any other person, user or company by uploading, posting or distributing User Content that you know or suspect is false, fraudulent, deceptive, inaccurate, misleading or that misrepresents your identity or affiliation with a person or company.

**Others are watching.** We hope that you will use the Community to exchange information and User Content and have discussions with other members. Please remember that the Community is a public forum and User Content, including, without limitation, your photograph, username, bio and interests that you post on the Community will be accessible and viewable by anyone on the Internet, including those who have not registered as Community members. Think carefully about the information you choose to post.

**Don't share other people's personal information.** Your User Content should not reveal another person's address, phone number, email address, credit card number or any information that may be used to track, contact, or impersonate that individual or that is personal in nature.

**Don't damage the Service or anyone's computers.** User Content may not contain, and you are prohibited from uploading viruses, Trojan horses, spyware or any other technologies that could impact the operation of the Service or any computer system.

You understand and acknowledge that BAILIWIK may from time to time monitor or review the Community, provided, however, that BAILIWIK has no obligation to monitor the content of the Community and assumes no responsibility for libel, slander, omission, falsehood, obscenity, pornography, profanity, danger, illegality or inaccuracy contained in any information transmitted to or from any such locations on this Service. BAILIWIK reserves the right at all times to disclose any information as necessary to satisfy any law, regulation or governmental request, or to edit, refuse to send or to remove any information or materials, in whole or in part, that in its sole discretion are objectionable or in violation of these Community Rules.

Community Policing: As part of the Community, we hope you enjoy your experience and are comfortable with interacting and viewing the Service. There may be Community tools in effect that allow all Community members to "flag" content that they deem offensive or that makes them uncomfortable (for example, if offered, the Community tools may include a link with which a Community member can flag content as potentially offensive).

We reserve the right, in our sole discretion, to remove or disable content that is flagged or any content that we find, in our sole discretion, violates these Community Rules or any other terms of these TOU, or that we otherwise find objectionable.

We reserve the right to disable or otherwise terminate the accounts of users that we determine to be in violation of these Community Rules or any other of the terms set forth in these TOU, or that post content which is flagged.

## **5. MEMBERSHIP & REGISTRATION**

In order to participate actively on the Service, you will have to become a registered member or authenticate your account with a third party, such as Facebook or Twitter, and create a unique personal profile ("Profile"). When you become a registered member of the Service, you agree only to provide true, accurate, current and complete registration information and, if such information changes, you will promptly update the relevant registration information, including on your Profile. If you register with us, you agree to accept responsibility for all activities that occur under your account, if any. You are responsible for maintaining the confidentiality of your password, if any, and for restricting access to your computer (or other Internet access device, as applicable) so that others may not access the password protected portion of the Service using your username in whole or in part. BAILIWIK reserves the right to terminate your account or otherwise deny you access in its sole discretion without notice and without liability. You

agree to notify us immediately of any breach of security or unauthorized use of your account.

Your Profile may not include any form of prohibited User Content, as outlined above in the Community Rules **[Link]** or elsewhere on the Service. Despite this prohibition, information, materials, products or services provided by other users (for instance, in their Profiles) may, in whole or in part, be unauthorized, impermissible or otherwise violate these TOU, and we assume no responsibility or liability for this material. We do not review Profiles to determine if an appropriate party created them, and we are not responsible for any unauthorized Profiles that may appear on the Service.

## **6. WIDGETS AND MOBILE SERVICES**

a) The Service may provide certain Materials that you may choose to include on your personal web page, third party website or social networking site (“Personal Page”) by pasting the HTML or other code provided by us and labeled as an embed code (or similar identifying label) (a “Widget”) into your Personal Page. For any Widgets that we make available on the Service, we grant you a revocable permission, subject to the restrictions in these TOU, to include the Widget as provided by us (without editing) for inclusion only on your Personal Page and only on a site that: (i) permits you to post the Widget there; and (ii) does not have terms of use or other conditions that purport to give that site operator any interest or right in or to our Widget or Materials other than to obtain a limited, terminable right to host the Widget and permit its normal operation. Your use of the Widget may display our trademarks or trademarks and content licensed by us and contained on the Widget or Materials made available via the Widget, but we control the use thereof and all goodwill associated with such use inures exclusively to us. You agree that you will not embed or otherwise make available a Widget on a web page or other location in violation of the prior sentence or that contains content that is distasteful, unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another’s privacy, hateful, or racially, ethnically or otherwise objectionable (in our sole opinion). As described below in the “Disclaimer of Warranties” section, we make no specific warranties about Widgets and we may discontinue providing the services necessary for the Widgets to operate at any time for any reason without any liability to you. In addition, we may disable Widgets that you include on your Personal Page(s) if you violate these TOU (as determined by us in our sole discretion), or for any or no reason, without any liability to you. You agree that our permission to you to use Widgets on your Personal Page does not provide you (or any third party) with any intellectual property rights, including copyrights, in or to the Widget or the Materials made available via any Widget. You agree not to make any commercial use of any Widget or the Materials made available in a Widget, in whole or in part, nor to sell, lease, reverse engineer, transfer, license, encumber or otherwise exploit a Widget or the Materials, in whole or in part, or purport to give any third party permission to do so. This includes a prohibition on you or a third party overlaying or otherwise associating advertising with the Widget or Materials. You agree to include, and not remove or alter, the trademark, copyright or other proprietary rights notices, as provided by us on a Widget, Widget code or Materials made available via a Widget and you

agree to comply with Widget-usage guidelines that may be provided by us from time to time. You agree not to circumvent (or in any way attempt to circumvent) the security or rights management features in a Widget or any component of a Widget that are designed to prevent users from copying, manipulating or retaining the Materials made available via a Widget. You also agree not to use (or attempt to use) any Widget, or any component of a Widget, to display content other than the specific Materials provided or intended by us to be displayed via a particular Widget.

**NOTICE TO THIRD PARTY SITES:** Any of our Materials made available in connection with your site, or otherwise, by our Widgets, third party widgets or otherwise is our exclusive property and no grant of any intellectual property rights is made by us. We retain the right to demand that you cease any use of our Materials upon notice.

#### **b) MOBILE SERVICES**

We currently provide our mobile services without charge, but please be aware that your carrier's normal rates and fees, such as text messaging fees and data charges, will still apply.

### **7. YOUR WARRANTIES**

You represent and warrant that: (i) all information you provide to BAILIWIK is accurate and complete; and (ii) you hold and will continue to hold all rights necessary to enter into and perform your obligations under these TOU. You also agree that you will be responsible for obtaining and maintaining all Internet access services, computer hardware and other equipment needed for access to and use of the Service and you will be responsible for all charges related thereto.

### **8. SHOPPING**

The Service may contain links to products or services that you can purchase from third party merchants or from members of the BAILIWIK community. You agree that BAILIWIK's and said seller's sole and exclusive maximum liability arising from any product sold via access to the Service shall be the price of the product ordered.

BAILIWIK EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO PRODUCTS LINKED TO BY THE SERVICE AND/OR SOLD VIA ACCESS TO THE SERVICE, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL BAILIWIK, ITS PARENT COMPANIES AND AFFILIATED ENTITIES OR THE DIRECTORS, OFFICERS, EMPLOYEES OR OTHER REPRESENTATIVES OF EACH OF THEM BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES RELATED TO ANY PRODUCT SOLD THROUGH OR IN CONNECTION WITH THIS SERVICE.



In the event a product is listed at an incorrect price or with incorrect information, the merchant offering such product shall have the right to refuse or cancel any orders placed for product listed at the incorrect price. Said merchant shall have the right to refuse or cancel any such orders whether or not the order has been confirmed and your credit card charged.

Your receipt of an electronic or other form of order confirmation does not signify BAILIWIK's or said merchant's acceptance of your order, nor does it constitute confirmation of said merchant's offer to sell. Merchants operating via Bailiwick reserve the right at any time after receipt of your order to accept or decline your order for any reason. Each such merchant reserves the right at any time after receipt of your order, without prior notice to you, to supply less than the quantity you ordered of any item. A merchant may require additional verifications or information before accepting any order. A merchant may automatically charge and withhold the applicable sales tax for orders. Otherwise, you are solely responsible for all sales taxes, or other taxes, on orders shipped to you.

## **9. USER INTERACTIONS AND DISPUTES**

You are solely responsible for your interaction with other users of the Service, whether online or offline. We are not responsible or liable for the conduct of any user. We reserve the right, but have no obligation, to monitor or become involved in disputes between you and other users. Exercise common sense and your best judgment in your interactions with others and in all other online activities

## **10. COPYRIGHTS AND OTHER INTELLECTUAL PROPERTY AND RELATED COMPLAINTS**

You may not use the Service for any purpose or in any manner that infringes the rights of any third party. BAILIWIK encourages you to report any content on the Service that you believe infringes your rights. Only the owner of the intellectual property or person authorized to act on behalf of the owner can report potentially infringing content. If you have a good faith belief that content on the Service infringes your copyright, trademark, or other intellectual property rights, please follow the procedures set forth below.

In accordance with the **Digital Millennium Copyright Act** of 1998 (the "DMCA"), BAILIWIK has a designated agent for receiving notices of copyright infringement and BAILIWIK follows the notice and take down procedures of the DMCA. If you believe that your work has been copied in a way that constitutes copyright infringement, please provide BAILIWIK's copyright agent the following information required by the Online Copyright Infringement Liability Limitation Act of the DMCA, 17 U.S.C. § 512: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) identification of the copyright work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site; (c) identification of the material that is claimed to be infringing or to be the subject of infringing activity and information reasonably sufficient to permit us to locate the

material; (d) information reasonably sufficient to permit us to contact the complaining party; (e) a statement that the complaining party has a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (f) a statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

It is often difficult to determine if your intellectual property rights have been violated or if the DMCA requirements have been met. We may request additional information before we remove any infringing material. If a dispute develops as to the correct owner of the rights in question, we reserve the right to remove your content along with that of the alleged infringer pending resolution of the matter.

We reserve the right to terminate the accounts of users whom we deem in our sole discretion to be infringers.

BAILIWIK will endeavor to provide you with notice if your materials have been removed based on a third-party complaint of alleged infringement of the third party's intellectual property rights.

BAILIWIK's copyright agent for notice of claims of copyright infringement on or regarding the Service can be reached as follows:

**Name:** Copyright Administrator  
**Mailing address:** Miller Korzenik Sommers Rayman LLP

1501 Broadway

New York, NY 10036

**Phone number:** (212) 752-9200

**E-mail address:** [copyright@Bailiwick.com](mailto:copyright@Bailiwick.com)

## 11. PROMOTIONS

The Service may contain or offer contests, sweepstakes or other promotions, which may be governed by a separate set of rules that describe the contest, sweepstakes or promotion and may have eligibility requirements, such as certain age or geographic area restrictions. It is your responsibility to read those rules to determine whether or not your participation, registration or entry will be valid and to determine the sponsor's requirements of you in connection with the applicable contest, sweepstakes or promotion.

## **12. THIRD PARTY LINKS AND CONTENT**

There may be links from the Service, or communications you receive from the Service, including, without limitation, from advertisers or sponsors, to third party web sites or our Service may include third party content that we do not control, maintain or endorse. Accessing those third party sites requires you to leave the Service and you expressly acknowledge and agree that we are in no way responsible or liable for any of those third party sites, including, without limitation, their content, policies, failures, promotions, products, services, actions and/or any damages, losses, failures or problems caused by, related to or arising from those third parties or their sites.

YOUR CORRESPONDENCE AND BUSINESS DEALINGS WITH OTHERS FOUND ON OR THROUGH THE SERVICE, INCLUDING, WITHOUT LIMITATION, THE PAYMENT AND DELIVERY OF PRODUCTS AND SERVICES, AND ANY TERMS, CONDITIONS, WARRANTIES AND REPRESENTATIONS ASSOCIATED WITH ANY SUCH DEALINGS, ARE SOLELY BETWEEN YOU AND THE THIRD PARTY. BAILIWIK ENCOURAGES YOU TO REVIEW ALL POLICIES, RULES, TERMS AND REGULATIONS, INCLUDING THE PRIVACY POLICIES AND TERMS OF USE OF EACH AND ANY THIRD PARTY SITE THAT YOU VISIT.

## **13. LINKING POLICY**

BAILIWIK grants you the revocable permission to link to the Service; provided, however, that your web Service, or any third party web sites that link to the Service: (a) must not frame or create a browser or border environment around any of the content on the Service or otherwise mirror any part of the Service without BAILIWIK's express written consent; (b) must not imply that BAILIWIK or the Service is endorsing or sponsoring it or its products, unless BAILIWIK has given its prior written consent; (c) must not present false information about, or otherwise, in BAILIWIK's sole opinion, harm BAILIWIK or its products or services; (d) must not use any BAILIWIK trademarks without the prior written permission from BAILIWIK; (e) must not contain content that in BAILIWIK'S sole opinion could be construed as distasteful, offensive or controversial or otherwise objectionable; and (f) must be owned and controlled by you or the person or entity placing the link, or otherwise permit you to enable such link subject to these TOU. By linking to the Service, you agree that you are now and will continue to be in compliance with BAILIWIK's linking requirements. Notwithstanding anything to the contrary contained in these TOU, BAILIWIK reserves the right to prohibit linking to the Service for any reason in our sole and absolute discretion even if the linking complies with the requirements described above.

## **14. DISCLAIMER OF WARRANTIES**

THE SERVICE, INCLUDING, WITHOUT LIMITATION, THE MATERIALS, ARE PROVIDED ON AN "AS IS" BASIS. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, BAILIWIK AND ITS PARENTS, SUBSIDIARIES AND AFFILIATES, AND EACH OF THEIR EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS, AGENTS,

VENDORS, AND CONTRACTORS (COLLECTIVELY, THE "BAILIWIK PARTIES") MAKE NO REPRESENTATIONS OR WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AS TO: (A) THE SERVICE; (B) THE MATERIALS ON OR PROVIDED THROUGH THE SERVICE; (C) THE WIDGETS AND OTHER DOWNLOADABLE ITEMS; (D) USER CONTENT; (E) THE FUNCTIONS MADE ACCESSIBLE ON OR THROUGH THE SERVICE; (F) ANY PRODUCTS, SERVICES OR INSTRUCTIONS OFFERED OR REFERENCED AT THE SERVICE; AND/OR (G) SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION TRANSMITTED TO BAILIWIK OR VIA THE SERVICE.

IN ADDITION, THE BAILIWIK PARTIES HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND FREEDOM FROM COMPUTER VIRUS. THE BAILIWIK PARTIES DO NOT REPRESENT OR WARRANT THAT THE SERVICE OR THE FUNCTIONS CONTAINED THEREIN WILL BE ERROR-FREE OR UNINTERRUPTED; THAT DEFECTS WILL BE CORRECTED; OR THAT THE SERVICE OR THE SERVER THAT MAKES THE SERVICE AVAILABLE IS FREE FROM ANY HARMFUL COMPONENTS, INCLUDING, WITHOUT LIMITATION, VIRUSES.

YOU ACKNOWLEDGE, BY YOUR USE OF THE SERVICE, THAT YOUR USE IS AT YOUR SOLE RISK. THE BAILIWIK PARTIES DO NOT WARRANT THAT YOUR USE OF THIS SERVICE IS LAWFUL IN ANY PARTICULAR JURISDICTION, AND THE BAILIWIK PARTIES SPECIFICALLY DISCLAIM SUCH WARRANTIES.

SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY TO THE EXTENT SUCH JURISDICTION'S LAW IS APPLICABLE TO THESE TOU.

BY ACCESSING OR USING THE SERVICE, YOU REPRESENT AND WARRANT THAT YOUR ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE SERVICE.

## **15. DISCLAIMERS/LIMITATION OF LIABILITY**

YOU UNDERSTAND AND AGREE THAT BAILIWIK LIMITS ITS LIABILITY IN CONNECTION WITH YOUR USE OF THE SERVICE AS SET FORTH BELOW: UNDER NO CIRCUMSTANCES WILL THE BAILIWIK PARTIES BE LIABLE TO YOU FOR ANY LOSS OR DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, FOR ANY DIRECT, INDIRECT, ECONOMIC, EXEMPLARY, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES THAT ARE DIRECTLY OR INDIRECTLY RELATED TO (A) THE SERVICE; (B) THE MATERIALS; (C) THE WIDGETS AND OTHER DOWNLOADABLE ITEMS; (D) USER CONTENT; (E) YOUR USE OF, INABILITY TO USE, OR THE PERFORMANCE OF THE SERVICE; (F) ANY ACTION TAKEN IN CONNECTION WITH AN INVESTIGATION BY THE BAILIWIK

PARTIES OR LAW ENFORCEMENT AUTHORITIES REGARDING YOUR USE OF THE SERVICE; (G) ANY ACTION TAKEN IN CONNECTION WITH COPYRIGHT OR OTHER INTELLECTUAL PROPERTY OWNERS; (H) ANY ERRORS OR OMISSIONS IN THE SERVICE'S TECHNICAL OPERATION; AND/OR (I) ANY DAMAGE TO ANY USER'S COMPUTER, HARDWARE, COMPUTER SOFTWARE, MOBILE DEVICE, MODEM OR OTHER EQUIPMENT OR TECHNOLOGY, INCLUDING, WITHOUT LIMITATION, DAMAGE FROM ANY SECURITY BREACH OR FROM ANY VIRUS, BUGS, TAMPERING, FRAUD, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER LINE OR NETWORK FAILURE OR ANY OTHER TECHNICAL OR OTHER MALFUNCTION, EVEN IF FORESEEABLE OR EVEN IF THE BAILIWIK PARTIES HAVE BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR TORT.

IN NO EVENT WILL THE BAILIWIK PARTIES BE LIABLE TO YOU OR ANYONE ELSE FOR LOSS, DAMAGE OR INJURY, INCLUDING, WITHOUT LIMITATION, DEATH OR PERSONAL INJURY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN NO EVENT WILL THE BAILIWIK PARTIES' TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION EXCEED U.S. \$10.

YOU AGREE THAT IN THE EVENT YOU INCUR ANY DAMAGES, LOSSES OR INJURIES THAT ARISE OUT OF BAILIWIK'S ACTS OR OMISSIONS, THE DAMAGES, IF ANY, CAUSED TO YOU ARE NOT IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION PREVENTING ANY EXPLOITATION OF ANY WEB SERVICE, PROPERTY, PRODUCT, SERVICE, OR OTHER MATERIALS OWNED OR CONTROLLED BY THE BAILIWIK PARTIES, AND YOU WILL HAVE NO RIGHTS TO ENJOIN OR RESTRAIN THE DEVELOPMENT, PRODUCTION, DISTRIBUTION, ADVERTISING, EXHIBITION OR EXPLOITATION OF ANY WEB SERVICE, PROPERTY, PRODUCT, SERVICE, OR OTHER MATERIALS OWNED OR CONTROLLED BY THE BAILIWIK PARTIES.

YOU ASSUME TOTAL RESPONSIBILITY FOR ESTABLISHING SUCH PROCEDURES FOR DATA BACK UP AND VIRUS CHECKING AS YOU CONSIDER NECESSARY.

BY ACCESSING THE SERVICE, YOU UNDERSTAND THAT YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY

HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

## **16. INDEMNIFICATION**

You agree to defend, indemnify and hold the BAILIWIK Parties harmless from and against any and all costs, claims, demands, investigations, liabilities, losses, damages, judgments, settlements and expenses, including attorneys' costs and fees, that directly or indirectly arise from or are otherwise directly or indirectly related to: (a) User Content; (b) your use of the Service or activities in connection with the Service; (c) your breach or anticipatory breach of these TOU; (d) your violation of any laws, rules, regulations, codes, statutes, ordinances or orders of any governmental and quasi-governmental authorities, including, without limitation, all regulatory, administrative and legislative authorities; (e) information or material transmitted through your computer, even if not submitted by you, that infringes, violates or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy or other right of any person or defames any person; (f) any misrepresentation made by you; and/or (g) the BAILIWIK Parties' use of your information. You will cooperate as fully required by the BAILIWIK Parties in the defense of any claim. Notwithstanding the foregoing, the BAILIWIK Parties retain the exclusive right to settle, compromise and pay any and all claims, demands, proceedings, suits, actions or causes of action that are brought against them under the terms and provisions of this Section. Further, the BAILIWIK Parties reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and you will not in any event settle any claim without the prior written consent of a duly authorized employee of the BAILIWIK Parties.

### **Hold Harmless of Service Provider**

A third-party service provider (the "Service Provider") may provide the technology and hosting for aspects of this Service. Anything in the foregoing to the contrary notwithstanding, by participating on this Service you agree to indemnify and hold harmless the Service Provider on all matters related to your interaction with others using this Service and participation with this Service. As such, the Service Provider is a third-party beneficiary to your agreement with these TOU.

## **17. TERM AND TERMINATION**

BAILIWIK reserves the right to terminate your access to and use of the Service in its sole discretion, without notice and liability, including, without limitation, if BAILIWIK believes your conduct fails to conform with these TOU. BAILIWIK also reserves the right to investigate suspected violations of these TOU and any violation, or potential violation, of these TOU may be referred to law enforcement authorities.

## **18. LOCATION OF SERVICE AND TERRITORIAL RESTRICTIONS**

The Service is intended for U.S. residents. The information provided on the Service is not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject BAILIWIK to any registration requirement within such jurisdiction or country. BAILIWIK controls and operates the Service from offices located in the State of California, United States of America and makes no representations or warranties that the information, products or services contained on the Service are appropriate for use or access in any location outside of the United States. Anyone using or accessing the Service from other locations does so on his or her own initiative and is responsible for compliance with United States, and local laws regarding online conduct and acceptable content, if and to the extent such local laws are applicable. We reserve the right to limit the availability of the Service and/or the provision of any content, program, product, service or other feature to any person, geographic area, or jurisdiction, at any time and in our sole discretion.

**Special Provisions Applicable to Users Outside the United States:** We strive to create a global community with consistent standards for everyone, but we also strive to respect local laws. If you use the Service and reside out outside the United States, by using the Service you consent to having your personal data transferred to and processed in the United States.

Software related to or made available by this Service may be subject to United States export controls. Thus, no software from the Service may be downloaded, exported or re-exported (a) into (or to a national or resident of) Cuba, North Korea, Iran, Syria or any other country to which the United States has embargoed goods; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading any software related to this Service, you represent and warrant that you are not located in, under the control of, or a national or resident of, any such country or on any such list.

## **19. GOVERNING LAWS; JURISDICTION; COMMENCEMENT OF ACTIONS**

THESE TOU AND THE INTERPRETATION OF THESE TOU WILL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO ITS CONFLICTS OF LAWS PRINCIPLES, AND WILL SPECIFICALLY NOT BE GOVERNED BY THE UNITED NATIONS CONVENTIONS ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, IF OTHERWISE APPLICABLE.

YOU AGREE THAT JURISDICTION OVER YOU AND VENUE IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE SERVICE, THE USE OR ACCESS THEREOF, OR THESE TOU SHALL BE IN THE APPLICABLE STATE OR FEDERAL COURTS LOCATED IN LOS ANGELES, CA. YOU HEREBY CONSENT AND SUBMIT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE APPLICABLE FEDERAL AND STATE COURTS LOCATED IN LOS ANGELES, CALIFORNIA FOR ANY SUCH LEGAL PROCEEDING.

YOU AGREE THAT ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE WITH RESPECT TO THE SERVICE MUST BE COMMENCED WITHIN ONE YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION ARISES OR ELSE YOU AGREE YOU HAVE WAIVED ANY SUCH CLAIM.

## **20. ARBITRATION; WAIVER OF CLASS ACTIONS**

By your use of the Service, you agree that any dispute or claim arising out of or in connection with any provision of this TOU or your use of the Service will be finally settled by binding arbitration in Los Angeles, California in accordance with the rules of the American Arbitration Association by one arbitrator appointed in accordance with said rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this paragraph, without breach of this arbitration provision. Any claim or dispute between the parties shall be brought in a party's individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding.

## **21. MISCELLANEOUS**

The failure of BAILIWIK to act with respect to a breach of these TOU by you or others does not constitute a waiver and will not limit BAILIWIK's rights with respect to such breach or any subsequent breaches. No waiver by BAILIWIK of any of these TOU will be of any force or effect unless made in writing and signed by a duly authorized office of TOU. Neither the course of conduct between the parties nor trade practice will act to modify these TOU. BAILIWIK may assign its rights and duties under these TOU to any party at any time without any notice to you.

If any provision of these TOU is found to be unenforceable for any reason, then that provision will be deemed severable from these TOU and will not affect the validity and enforceability of any remaining provisions. BAILIWIK reserves the right to modify or add to these TOU at any time without prior notice. You agree that we may notify you of revisions to these TOU by posting them on this Service so that they are accessible via a link on the home page, and that your use of the Service after we have posted a revision constitutes your agreement to the revised TOU. Therefore, you should review this TOU before using the Service. The TOU will be effective as of the time of posting, or such later date as may be specified in a revised TOU, and will apply to your use of the Service from that point forward.