

swatchbook terms of use

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TERMS OF USE AGREEMENT

This Terms of Use Agreement (“Agreement”) constitutes a legally binding agreement made between you, whether personally or on behalf of an entity (“user” or “you”) and swatchbook, Inc. and its affiliated companies (collectively, “Company” or “we” or “us” or “our”), concerning your access to and use of the <http://www.swatchbook.us> website as well as any other media form, media channel, mobile website or mobile application related or connected thereto (collectively, the “Website”). The Website provides the following service: asset management solution, asset sync application, asset management apps, asset cloud hosting, server based protocols, visual asset shopping & exploration (“Company Services”). Supplemental terms and conditions or documents that may be posted on the Website from time to time, are hereby expressly incorporated into this Agreement by reference.

Company makes no representation that the Website is appropriate or available in other locations other than where it is operated by Company. The information provided on the Website 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 Company to any registration requirement within such jurisdiction or country. Accordingly, those persons who choose to access the Website from other locations do so on their own initiative and are solely responsible for compliance with local laws, if and to the extent local laws are applicable.

All users who are minors in the jurisdiction in which they reside (generally under the age of 18) are not permitted to register for the Website or use the Company Services.

YOU ACCEPT AND AGREE TO BE BOUND BY THIS AGREEMENT BY ACKNOWLEDGING SUCH ACCEPTANCE DURING THE REGISTRATION PROCESS (IF APPLICABLE) AND ALSO BY CONTINUING TO USE THE WEBSITE. IF YOU DO NOT AGREE TO ABIDE BY THIS AGREEMENT, OR TO MODIFICATIONS THAT COMPANY MAY MAKE TO THIS AGREEMENT IN THE FUTURE, DO NOT USE OR ACCESS OR CONTINUE TO USE OR ACCESS THE COMPANY SERVICES OR THE WEBSITE.

PURCHASES; PAYMENT

Company bills you through either an online billing account or by invoicing you directly for purchases of products and/or services. You agree to pay Company all charges at the prices then in effect for the products you or other persons using your billing account may purchase, and you authorize Company to charge your chosen payment provider for any such purchases. You agree to make payment using that selected payment method. If you have ordered a product or service that is subject to recurring charges then you consent to our charging your payment method on a recurring basis, without requiring your prior approval from you for each recurring charge until such time as you cancel the applicable product or service. Company reserves the right to correct any errors or mistakes in pricing that it makes even if it has already requested or received payment. Sales tax will be added to the sales price of purchases as deemed required by Company. Company may change prices at any time. All payments shall be in U.S. dollars.

REFUNDS AND CREDITS

PAYMENTS ARE NONREFUNDABLE AND THERE ARE NO REFUNDS OR CREDITS FOR PARTIALLY USED PERIODS. However, following the cancellation of any paid subscription, you will continue to have access to swatchbook's paid service through the end of your current billing cycle. All of the Company's products include a 100% satisfaction guarantee. If for any reason you are unhappy with services purchased from Company within the first 30 days of your subscription, contact Company for a full refund of all user license fees. Company will also refund all processing fees for up to 100 materials during that same time period.

USER REPRESENTATIONS

Regarding Your Registration

By using the Company Services, you represent and warrant that:

- A. all registration information you submit is truthful and accurate;
- B. you will maintain the accuracy of such information;
- C. you will keep your password confidential and will be responsible for all use of your password and account;
- D. you are not a minor in the jurisdiction in which you reside, or if a minor, you have received parental permission to use this Website; and
- E. your use of the Company Services does not violate any applicable law or regulation.

You also agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the Website's registration form and (b) maintain and promptly update registration data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or Company has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Company has the right to suspend or terminate your account and refuse any and all current or future use of the Website (or any portion thereof).

We reserve the right to remove or reclaim or change a username you select if we determine appropriate in our discretion, such as when the user name is obscene or otherwise objectionable or when a trademark owner complains about a username that does not closely relate to a user's actual name.

USER CONTENT

A. Ownership:

You maintain ownership of and responsibility for the following while using the Service: (1) your files, designs, models, data sets, images, documents, scripts, codes or similar material or information submitted or transmitted to, or stored or otherwise used in connection with the Service by you, and (2) your specific output generated by swatchbook's service, if any, based on any of the foregoing (collectively, "Content"). By creating, submitting or transmitting to, posting or otherwise making your Content available to swatchbook and/or others, you acknowledge and agree that (1) you have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of your Content, (2) you will evaluate and bear all risks associated with your Content, and (3) under no circumstances will swatchbook and/or its affiliates, agents and licensors and each of their respective officers, directors, and employees be liable in any way for your Content as you transmit or otherwise use it, including but not limited to any errors or omissions.

B. Availability and Security: While swatchbook will use commercially reasonable efforts to provide you with continuous access to its service, and to enable you to export and download your Content in V-Ray, KeyShot, or other industry standard file formats, swatchbook does not guarantee that your Content will be available or useable by you following the termination of your subscription or

otherwise. Moreover, you are responsible to keep your content protected. Safeguard your password to the Service, and keep your account information current. Account credentials should not be shared, nor should others be given access to your account.

C. Availability and Security:swatchbook's Service enables you to specify the level at which access to and usability of your Content is permitted to other users. You are solely responsible for establishing the appropriate level of permissions to your Content.

D. swatchbook Access:swatchbook personnel will not access Content that you have not made publicly accessible except (1) as part of providing, maintaining, securing or modifying the Service for you and/or other users, (2) via automated tools intended to address or prevent a service, support or technical issue, (3) at your request or with your consent given to swatchbook's technical support team and/or other personnel as part of addressing or preventing a service, support or technical issue, (4) in connection with legal obligations or proceedings as described below, or (5) as otherwise described in swatchbook's Privacy Policy.

E. Confidentiality:swatchbook will consider your Content to constitute confidential information, with the exception of any such Content that (1) is or becomes generally known to the public without swatchbook's breach of this Agreement, (2) was known to swatchbook prior to its disclosure by you without breach of any obligation owed to you, (3) is received from a third party without breach of any obligation owed to you, or (4) was independently developed by swatchbook ("Confidential Information"). In hosting and otherwise using Confidential Information, swatchbook will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) and agrees (1) not to use any Confidential Information for any purpose outside the scope of this Agreement and the Privacy Policy, and (2) except as you otherwise permit in writing, to limit access to your Confidential Information to those of swatchbook's and swatchbook's affiliates' employees, contractors, service providers and agents who need such access for purposes consistent with this Agreement, and who are subject to confidentiality obligations with swatchbook containing protections no less stringent than those herein.

F. Legal Disclosure:swatchbook may disclose Confidential Information if it is compelled by law to do so, provided that we give you prior notice of such compelled disclosure (to the extent legally permitted). You agree and acknowledge that swatchbook may access and disclose your Content to comply with any legal obligations or governmental or regulatory body request (including subpoenas or court orders), as part of a legal proceeding involving swatchbook and/or its affiliates, agents, licensors and each of their respective officers, directors and employees, or at your request. If disclosure is made at your request, you may be responsible for the cost of compiling and providing access to such Content.

G. Intellectual Property:

a.

i. In your use of swatchbook's Service, you agree to respect others' intellectual property and other rights. In particular, you will not upload, submit or otherwise transmit any Content that:

ii. You do not have a right to transmit under any other law or contractual or fiduciary relationship (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or other nondisclosure agreements).

b. swatchbook permits you to publish your Content, including in the form of a Public Document.

i. If you choose to publish a Public Document other swatchbook users (and in some cases the general public) will be able to view, copy and transfer or save any such content, inside or outside swatchbook's service. Any such content, once published and/or posted, is non-confidential.

ii. When a document is Public, you will be deemed to have granted a worldwide, royalty- free and non-exclusive license to use the intellectual property contained in your Public Document without restriction, including without limitation the rights to use, copy, publish, and distribute the Document.

iii. You hereby grant swatchbook a worldwide, fully paid, royalty free, irrevocable and non-exclusive license to use, distribute, and publish any Public Document you author, solely for the purpose of displaying, distributing and otherwise promoting swatchbook and/or swatchbook's service offerings.

iv. swatchbook shall have no liability for any damages resulting from the use or misuse by any third party of your published Public Document or your postings. IF YOU CHOOSE TO MAKE A DOCUMENT AVAILABLE TO THE PUBLIC IN THESE WAYS OR OTHERWISE IN CONNECTION WITH YOUR USE OF SWATCHBOOK'S SERVICE, YOU DO SO AT YOUR OWN RISK.

v. swatchbook shall have the right to remove any Content you make publicly available that violates this Agreement or is otherwise objectionable.

H. Feedback: If you choose to provide swatchbook with ideas, suggestions, improvements, documents, proposals and/or other feedback with respect to swatchbook's Software, Service or Documentation (as defined below) (including but not limited to problems and errors encountered in using the Service, and ideas for enhancements of the Service), swatchbook shall be free to use such materials in any manner and for any purpose (including, without limitation, incorporation in swatchbook's products, services and advertising and marketing materials, and developing and marketing products and services) without liability or compensation to you or restriction of any kind. You hereby assign to swatchbook all right, title, and interest to all such information provided to swatchbook, and all enhancements resulting from such information, and all property rights therein including, without limitation, all patent, copyright, trade secret, trademark, moral right or other intellectual property rights.

RIGHT TO USE SERVICE; OWNERSHIP; ACCESS TO SERVICE

A. License:

Subject to your compliance with the terms of this Agreement, swatchbook hereby grants to you a non-exclusive, non- transferable, non-sublicensable, revocable right to use the Service.

Furthermore, with respect to any application accessed through or downloaded from the Apple App Store (an "Apple App Store Sourced Application"), you will only use the App Store Sourced Application (i) on an Apple-branded product that runs the iOS (Apple's proprietary operating system) and (ii) as permitted by the "Usage Rules" set forth in the Apple App Store Terms of Service.

B. Ownership:

You acknowledge that (i) all right, title, and interest in and to the Service, the Software, and the online or other documentation (including online videos) provided by swatchbook describing the Service and its use (the "Documentation"), and all patents, copyrights, trade secret rights, trademarks, trade names, and other proprietary rights embodied therein or associated therewith, are and shall remain with swatchbook and/or its third party licensors, including Siemens Product Lifecycle Management Software Inc.; (ii) this Agreement conveys no right or interest in the Service, the Software or Documentation other than a limited right to use the Service in accordance herewith; and (iii) the Service, Software, and Documentation are protected by the copyright laws of the United States and international treaties.

C. Hardware; Passwords:

You are responsible for obtaining and maintaining all of the hardware, software, Internet access, and other products and services that you may need to use the Service. You are responsible for

protecting and safeguarding any keys, certificates, passwords, access codes, user IDs or other login information (collectively, "Passwords ") that are provided to you or that are generated in connection with your use of the Service. You are the only person to whom the license described in Section A extends, and you therefore are not permitted to allow any other person to use your Passwords to access the Service. You are fully and solely responsible for all activities that occur on the Service under your Passwords.

D. Ease of access:

In order to provide you with ease of access to your account and to help administer the Service, swatchbook may implement and use technology that enables us to recognize you and provide you with direct access to your account without requiring you to retype any password or other user identification when you revisit the swatchbook service.

E. Testing:

We continually update the Service. In addition, we continually test various aspects of the Service, including swatchbook's website, user interfaces, service levels, plans, promotional features, delivery and pricing. We reserve the right to, and by using the swatchbook Service you agree that we may, include you in or exclude you from these tests without notice. We reserve the right in our sole and absolute discretion to make changes from time to time and without notice in how we offer and operate our service.

F. Suspension of Service:

Your access to, and use of, the Service may be suspended temporarily for the duration of any scheduled maintenance or unscheduled downtime or unavailability of any portion, or all, of the Service for any reason, including as a result of power outages, system, or Internet failures or other interruptions. swatchbook also reserves the right to suspend your subscription anytime with or without notification in order to protect swatchbook and you from what we believe to be fraudulent activity. swatchbook is not obligated to credit or discount a paid subscription for holds placed on it by either a representative of swatchbook or by our automated processes.

MOBILE APPLICATION LICENSE

USE License

If you are accessing the Company Services via a mobile application, then Company grants you a revocable, non-exclusive, non-transferable, limited right to install and use the application on wireless handsets owned and controlled by you, and to access and use the application on such devices strictly in accordance with the terms and conditions of this license. You shall use the application strictly in accordance with the terms of this license and shall not: (a) decompile, reverse engineer, disassemble, attempt to derive the source code of, or decrypt the application; (b) make any modification, adaptation, improvement, enhancement, translation or derivative work from the application; (c) violate any applicable laws, rules or regulations in connection with your access or use of the application; (d) remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of Company or its affiliates, partners, suppliers or the licensors of the application; (e) use the application for any revenue generating endeavor, commercial enterprise, or other purpose for which it is not designed or intended; (f) make the application available over a network or other environment permitting access or use by multiple devices or users at the same time; (g) use the application for creating a product, service or software that is, directly or indirectly, competitive with or in any way a substitute for the application; (h) use the application to send automated queries to any website or to send any unsolicited commercial e-mail; or (i) use any proprietary information or interfaces of Company or other intellectual property of Company in the design, development, manufacture, licensing or distribution of any applications, accessories or devices for use with the application.

Terms Applicable to Apple and Android Devices

The following terms apply when you use a mobile application obtained from either the Apple Store or Google Play to access the Company Services. You acknowledge that this Agreement is concluded between you and Company only, and not with Apple Inc. or Google, Inc. (each an “App Distributor”), and Company, not an App Distributor, is solely responsible for the Company application and the content thereof. (1) SCOPE OF LICENSE: The license granted to you for the Company application is limited to a non-transferable license to use the Company application on a device that utilizes the Apple iOS or Android operating system, as applicable, and in accordance with the usage rules set forth in the applicable App Distributor terms of service. (2) MAINTENANCE AND SUPPORT: Company is solely responsible for providing any maintenance and support services with respect to the Company application, as specified in this Agreement, or as required under applicable law. You acknowledge that each App Distributor has no obligation whatsoever to furnish any maintenance and support services with respect to the Company application. (3) WARRANTY: Company is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. In the event of any failure of the Company application to conform to any applicable warranty, you may notify an App Distributor, and the App Distributor, in accordance with its terms and policies, may refund the purchase price, if any, paid for the Company application, and to the maximum extent permitted by applicable law, an App Distributor will have no other warranty obligation whatsoever with respect to the Company application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Company’s sole responsibility. (4) PRODUCT CLAIMS: You acknowledge that Company, not an App Distributor, is responsible for addressing any claims of yours or any third party relating to the Company application or your possession and/or use of the Company application, including, but not limited to: (i) product liability claims; (ii) any claim that the Company application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. (5) INTELLECTUAL PROPERTY RIGHTS: You acknowledge that, in the event of any third party claim that the Company application or your possession and use of the Company application infringes a third party’s intellectual property rights, the App Distributor will not be responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim. (6) LEGAL COMPLIANCE: You represent and warrant that (i) you are not located in a country that is subject to a U.S. government embargo, or that has been designated by the U.S. government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. government list of prohibited or restricted parties. (7) THIRD PARTY TERMS OF AGREEMENT: You must comply with applicable third party terms of agreement when using the Company application, e.g., if you have a VoIP application, then you must not be in violation of their wireless data service agreement when using the Company application. (8) THIRD PARTY BENEFICIARY: Company and you acknowledge and agree that the App Distributors, and their subsidiaries, are third party beneficiaries of this Agreement, and that, upon your acceptance of the terms and conditions of this Agreement, each App Distributor will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary thereof.

PROHIBITED ACTIVITIES

You may not access or use the Website for any other purpose other than that for which Company makes it available. The Website may not be used in connection with any commercial endeavors except those that are specifically endorsed or approved by Company. Prohibited activity includes, but is not limited to:

- A. attempting to bypass any measures of the Website designed to prevent or restrict access to the Website, or any portion of the Website
- B. attempting to impersonate another user or person or using the username of another user
- C. criminal or tortious activity

- D. deciphering, decompiling, disassembling or reverse engineering any of the software comprising or in any way making up a part of the Website
- E. deleting the copyright or other proprietary rights notice from any Website content
- F. engaging in any automated use of the system, such as using any data mining, robots or similar data gathering and extraction tools
- G. except as may be the result of standard search engine or Internet browser usage, using or launching, developing or distributing any automated system, including, without limitation, any spider, robot (or "bot"), cheat utility, scraper or offline reader that accesses the Website, or using or launching any unauthorized script or other software
- H. harassing, annoying, intimidating or threatening any Company employees or agents engaged in providing any portion of the Company Services to you
- I. interfering with, disrupting, or creating an undue burden on the Website or the networks or services connected to the Website
- J. making any unauthorized use of the Company Services, including collecting usernames and/or email addresses of users by electronic or other means for the purpose of sending unsolicited email, or creating user accounts by automated means or under false pretenses
- K. selling or otherwise transferring your profile
- L. systematic retrieval of data or other content from the Website to create or compile, directly or indirectly, a collection, compilation, database or directory without written permission from Company
- M. tricking, defrauding or misleading Company and other users, especially in any attempt to learn sensitive account information such as passwords
- N. using any information obtained from the Website in order to harass, abuse, or harm another person
- O. using the Company Services as part of any effort to compete with Company or to provide services as a service bureau
- P. using the Website in a manner inconsistent with any and all applicable laws and regulations
- Q. redistributing or reselling any of the content on the Company's servers without prior written consent
- R. screen capturing any of the web, mobile or workstation sessions and sharing it outside the organization which the user is subscribed to without prior written consent

INTELLECTUAL PROPERTY RIGHTS

The content on the Website ("Company Content") and the trademarks, service marks and logos contained therein ("Marks") are owned by or licensed to Company, and are subject to copyright and other intellectual property rights under United States and foreign laws and international conventions. Company Content, includes, without limitation, all source code, databases, functionality, software, website designs, audio, video, text, photographs and graphics. All Company graphics, logos, designs, page headers, button icons, scripts and service names are registered trademarks, common law trademarks or trade dress of Company in the United States and/or other countries. Company's trademarks and trade dress may not be used, including as part of trademarks and/or as part of domain names, in connection with any product or service in any manner that is likely to cause confusion and may not be copied, imitated, or used, in whole or in part, without the prior written permission of the Company.

Company Content on the Website is provided to you "AS IS" for your information and personal use only and may not be used, copied, reproduced, aggregated, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever without the prior written consent of the respective owners. Provided that you are eligible to use the Website, you are granted a limited license to access and use the Website and the Company Content and to download or print a copy of any portion of the Company Content to which you have properly gained access solely for your personal, non-commercial use. Company reserves all rights not expressly granted to you in and to the Website and Company Content and Marks.

THIRD PARTY WEBSITES AND CONTENT

The Website contains (or you may be sent through the Website or the Company Services) links to other websites ("Third Party Websites") as well as articles, photographs, text, graphics, pictures, designs, music, sound, video, information, applications, software and other content or items belonging to or originating from third parties (the "Third Party Content"). Such Third Party Websites and Third Party Content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any Third Party Websites accessed through the Website or any Third Party Content posted on, available through or installed from the Website, including the content, accuracy, offensiveness, opinions, reliability, privacy practices or other policies of or contained in the Third Party Websites or the Third Party Content. Inclusion of, linking to or permitting the use or installation of any Third Party Website or any Third Party Content does not imply approval or endorsement thereof by us. If you decide to leave the Website and access the Third Party Websites or to use or install any Third Party Content, you do so at your own risk and you should be aware that our terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any website to which you navigate from the Website or relating to any applications you use or install from the Website. Any purchases you make through Third Party Websites will be through other websites and from other companies, and Company takes no responsibility whatsoever in relation to such purchases which are exclusively between you and the applicable third party.

SITE MANAGEMENT

Company reserves the right but does not have the obligation to:

- A. monitor the Website for violations of this Agreement;
- B. take appropriate legal action against anyone who, in Company's sole discretion, violates this Agreement, including without limitation, reporting such user to law enforcement authorities;
- C. in Company's sole discretion and without limitation, refuse, restrict access to or availability of, or disable (to the extent technologically feasible) any user's contribution or any portion thereof that may violate this Agreement or any Company policy;
- D. in Company's sole discretion and without limitation, notice or liability to remove from the Website or otherwise disable all files and content that are excessive in size or are in any way burdensome to Company's systems;
- E. otherwise manage the Website in a manner designed to protect the rights and property of Company and others and to facilitate the proper functioning of the Website.

PRIVACY POLICY

We care about the privacy of our users. Please review the Company Privacy Policy. By using the Website or Company Services, you are consenting to have your personal data transferred to and processed in the United States. By using the Website or the Company Services, you are consenting to the terms of our Privacy Policy.

DIGITAL MILLENNIUM COPYRIGHT ACT (DMCA) NOTICE AND POLICY

Notifications

If you believe that content available on or through our Website infringes one or more of your copyrights, please immediately notify our Designated Copyright Agent by mail, email or faxed notice ("Notification") providing the information described below, which Notification is pursuant to DMCA 17 U.S.C. § 512(c)(3). A copy of your Notification will be sent to the person who posted or stored the material addressed in the Notification. Please be advised that pursuant to federal law you may be held

liable for damages if you make material misrepresentations in a Notification. Thus, if you are not sure that content located on or linked to by our Website infringes your copyright, you should consider first contacting an attorney. Our Website has a policy of terminating repeat infringers in appropriate circumstances.

All Notifications should include the following:

- 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 copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online website are covered by a single notification, a representative list of such works at that website.
- C. Identification 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, and information reasonably sufficient to permit us to locate the material.
- D. Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
- 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.
- 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.

Notifications should be sent to our Designated Copyright Agent as follows:

Designated Copyright Agent

swatchbook, Inc ("Company")
100 Spectrum Center Drive, Suite 900
Irvine, CA 92618
Email: yazan@swatchbook.us
Phone: (949) 491-1303

We also will advise the alleged infringer of the DMCA statutory Counter Notification procedure described below by which the alleged infringer may respond to your claim and request that we restore this material.

Counter Notification

If you believe your own copyrighted material has been removed from our Website and/or our service as a result of mistake or misidentification, you may submit a written counter notification ("Counter Notification") to our Designated Copyright Agent pursuant to DMCA 17 U.S.C. § 512(g)(2) and (3). To be an effective Counter Notification under the DMCA, your Counter Notification must include substantially the following:

- A. Identification of the material that has been removed or disabled and the location at which the material appeared before it was removed or disabled.
- b. A statement that you consent to the jurisdiction of the Federal District Court in which your address is located, or if your address is outside the United States, for any judicial district in which our Company is located.
- c. A statement that you will accept service of process from the party that filed the Notification or the party's agent.
- D. Your name, address and telephone number.

- E. A statement under penalty of perjury that you have a good faith belief that the material in question was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.
- F. Your physical or electronic signature.

You may submit your Counter Notification to our Designated Copyright Agent by fax, mail, or email as set forth above.

If you send us a valid, written Counter Notification meeting the requirements described above, we will restore your removed or disabled material after ten (10) business days but no later than fourteen (14) business days from the date we receive your Counter Notification, unless our Designated Copyright Agent first receives notice from the party filing the original Notification informing us that such party has filed a court action to restrain you from engaging in infringing activity related to the material in question. Please note that if you materially misrepresent that the disabled or removed content was removed by mistake or misidentification, you may be liable for damages, including costs and attorney's fees. Filing a false Counter Notification constitutes perjury.

TERM AND TERMINATION

This Agreement shall remain in full force and effect while you use the Website or are otherwise a user or member of the Website, as applicable. You may terminate your use or participation at any time, for any reason, by following the instructions for terminating user accounts in your account settings, if available, or by contacting us using the contact information below.

WITHOUT LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, COMPANY RESERVES THE RIGHT TO, IN COMPANY'S SOLE DISCRETION AND WITHOUT NOTICE OR LIABILITY, DENY ACCESS TO AND USE OF THE WEBSITE AND THE COMPANY SERVICES, TO ANY PERSON FOR ANY REASON OR FOR NO REASON AT ALL, INCLUDING WITHOUT LIMITATION FOR BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT CONTAINED IN THIS AGREEMENT, OR OF ANY APPLICABLE LAW OR REGULATION, AND COMPANY MAY TERMINATE YOUR USE OR PARTICIPATION IN THE WEBSITE AND THE COMPANY SERVICES, DELETE YOUR PROFILE AND ANY CONTENT OR INFORMATION THAT YOU HAVE POSTED AT ANY TIME, WITHOUT WARNING, IN COMPANY'S SOLE DISCRETION.

In order to protect the integrity of the Website and Company Services, Company reserves the right at any time in its sole discretion to block certain IP addresses from accessing the Website and Company Services.

Any provisions of this Agreement that, in order to fulfill the purposes of such provisions, need to survive the termination or expiration of this Agreement, shall be deemed to survive for as long as necessary to fulfill such purposes.

YOU UNDERSTAND THAT CERTAIN STATES ALLOW YOU TO CANCEL THIS AGREEMENT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF COMPANY'S THIRD BUSINESS DAY FOLLOWING THE DATE OF THIS AGREEMENT, EXCLUDING SUNDAYS AND HOLIDAYS. TO CANCEL, CALL A COMPANY CUSTOMER CARE REPRESENTATIVE DURING NORMAL BUSINESS HOURS USING THE CONTACT INFORMATION LISTING BELOW IN THIS AGREEMENT OR BY ACCESSING YOUR ACCOUNT SETTINGS. THIS SECTION APPLIES ONLY TO INDIVIDUALS RESIDING IN STATES WITH SUCH LAWS.

If Company terminates or suspends your account for any reason, you are prohibited from registering and creating a new account under your name, a fake or borrowed name, or the name of any third party, even if you may be acting on behalf of the third party. In addition to terminating or suspending

your account, Company reserves the right to take appropriate legal action, including without limitation pursuing civil, criminal, and injunctive redress.

MODIFICATIONS

To Agreement

Company may modify this Agreement from time to time. Any and all changes to this Agreement will be posted on the Website and revisions will be indicated by date. You agree to be bound to any changes to this Agreement when you use the Company Services after any such modification becomes effective. Company may also, in its discretion, choose to alert all users with whom it maintains email information of such modifications by means of an email to their most recently provided email address. It is therefore important that you regularly review this Agreement and keep your contact information current in your account settings to ensure you are informed of changes. You agree that you will periodically check the Website for updates to this Agreement and you will read the messages we send you to inform you of any changes. Modifications to this Agreement shall be effective after posting.

To Services

Company reserves the right at any time to modify or discontinue, temporarily or permanently, the Company Services (or any part thereof) with or without notice. You agree that Company shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Company Services.

DISPUTES

With Company

A. **Governing Law; Jurisdiction.** This Agreement and all aspects of the Website and Company Services shall be governed by and construed in accordance with the internal laws of the State/Commonwealth of California, without regard to conflict of law provisions. With respect to any disputes or claims not subject to informal dispute resolution or arbitration (as set forth below), you agree not to commence or prosecute any action in connection therewith other than in the state and federal courts located in USA County, State of California, and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in such state and federal courts. Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded from this Agreement. Additionally, application of the Uniform Computer Information Transaction Act (UCITA) is excluded from this Agreement. In no event shall any claim, action or proceeding by you related in any way to the Website or Company Services be instituted more than two (2) years after the cause of action arose.

B. **Informal Resolution.** To expedite resolution and control the cost of any dispute, controversy or claim related to this Agreement ("Dispute"), you and Company agree to first attempt to negotiate any Dispute (except those Disputes expressly provided below) informally for at least 30 days before initiating any arbitration or court proceeding. Such informal negotiations commence upon written notice from one person to the other.

C. **Binding Arbitration.** If you and Company are unable to resolve a Dispute through informal negotiations, either you or Company may elect to have the Dispute (except those Disputes expressly excluded below) finally and exclusively resolved by binding arbitration. Any election to arbitrate by one party shall be final and binding on the other. YOU UNDERSTAND THAT ABSENT THIS PROVISION, YOU WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA") and, where appropriate, the AAA's Supplementary Procedures for

Consumer Related Disputes ("AAA Consumer Rules"), both of which are available at the AAA website www.adr.org. The determination of whether a Dispute is subject to arbitration shall be governed by the Federal Arbitration Act and determined by a court rather than an arbitrator. Your arbitration fees and your share of arbitrator compensation shall be governed by the AAA Consumer Rules and, where appropriate, limited by the AAA Consumer Rules. If such costs are determined by the arbitrator to be excessive, Company will pay all arbitration fees and expenses. The arbitration may be conducted in person, through the submission of documents, by phone or online. The arbitrator will make a decision in writing, but need not provide a statement of reasons unless requested by a party. The arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. Except where otherwise required by the applicable AAA rules or applicable law, the arbitration will take place in USA County, State of California. Except as otherwise provided in this Agreement, you and Company may litigate in court to compel arbitration, stay proceedings pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator.

D. Restrictions. You and Company agree that any arbitration shall be limited to the Dispute between Company and you individually. To the full extent permitted by law, (1) no arbitration shall be joined with any other; (2) there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilize class action procedures; and (3) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

E. Exceptions to Informal Negotiations and Arbitration. You and Company agree that the following Disputes are not subject to the above provisions concerning informal negotiations and binding arbitration: (1) any Disputes seeking to enforce or protect, or concerning the validity of any of your or Company's intellectual property rights; (2) any Dispute related to, or arising from, allegations of theft, piracy, invasion of privacy or unauthorized use; and (3) any claim for injunctive relief. If this Section is found to be illegal or unenforceable then neither you nor Company will elect to arbitrate any Dispute falling within that portion of this Section found to be illegal or unenforceable and such Dispute shall be decided by a court of competent jurisdiction within the courts listed for jurisdiction above, and you and Company agree to submit to the personal jurisdiction of that court.

CORRECTIONS

Occasionally there may be information on the Website that contains typographical errors, inaccuracies or omissions that may relate to service descriptions, pricing, availability, and various other information. Company reserves the right to correct any errors, inaccuracies or omissions and to change or update the information at any time, without prior notice.

DISCLAIMERS

Company cannot control the nature of all of the content available on the Website. By operating the Website, Company does not represent or imply that Company endorses any blogs, contributions or other content available on or linked to by the Website, including without limitation content hosted on third party websites or provided by third party applications, or that Company believes contributions, blogs or other content to be accurate, useful or non-harmful. We do not control and are not responsible for unlawful or otherwise objectionable content you may encounter on the Website or in connection with any contributions. The Company is not responsible for the conduct, whether online or offline, of any user of the Website or Company Services.

YOU AGREE THAT YOUR USE OF THE WEBSITE AND COMPANY SERVICES WILL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE WEBSITE AND THE COMPANY SERVICES AND YOUR USE THEREOF, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE WEBSITE'S CONTENT OR THE CONTENT OF ANY WEBSITES LINKED TO THIS WEBSITE AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (A) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT AND MATERIALS, (B) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR WEBSITE, (C) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (D) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE WEBSITE OR COMPANY SERVICES, (E) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE WEBSITE BY ANY THIRD PARTY, AND/OR (F) ANY ERRORS OR OMISSIONS IN ANY CONTENT AND MATERIALS OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE WEBSITE. COMPANY DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE WEBSITE OR ANY HYPERLINKED WEBSITE OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND COMPANY WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

LIMITATIONS OF LIABILITY

IN NO EVENT SHALL COMPANY OR ITS DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT, LOST REVENUE, LOSS OF DATA OR OTHER DAMAGES ARISING FROM YOUR USE OF THE WEBSITE OR COMPANY SERVICES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, COMPANY'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO COMPANY FOR THE COMPANY SERVICES DURING THE PERIOD OF 1 YEAR PRIOR TO ANY CAUSE OF ACTION ARISING.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

INDEMNITY

You agree to defend, indemnify and hold Company, its subsidiaries, and affiliates, and their respective officers, agents, partners and employees, harmless from and against, any loss, damage, liability, claim, or demand, including reasonable attorneys' fees and expenses, made by any third party due to or arising out of your contributed content, use of the Company Services, and/or arising from a breach of this Agreement and/or any breach of your representations and warranties set forth above. Notwithstanding the foregoing, Company reserves the right, at your expense, to assume the exclusive

defense and control of any matter for which you are required to indemnify Company, and you agree to cooperate, at your expense, with Company's defense of such claims. Company will use reasonable efforts to notify you of any such claim, action, or proceeding which is subject to this indemnification upon becoming aware of it.

NOTICES

Except as explicitly stated otherwise, any notices given to Company shall be given by email to the address listed in the contact information below. Any notices given to you shall be given to the email address you provided during the registration process, or such other address as each party may specify. Notice shall be deemed to be given twenty-four (24) hours after the email is sent, unless the sending party is notified that the email address is invalid. We may also choose to send notices by regular mail.

USER DATA

Our Website will maintain certain data that you transfer to the Website for the purpose of the performance of the Company Services, as well as data relating to your use of the Company Services. Although we perform regular routine backups of data, you are primarily responsible for all data that you have transferred or that relates to any activity you have undertaken using the Company Services. You agree that Company shall have no liability to you for any loss or corruption of any such data, and you hereby waive any right of action against Company arising from any such loss or corruption of such data.

ELECTRONIC CONTRACTING

Your use of the Company Services includes the ability to enter into agreements and/or to make transactions electronically. YOU ACKNOWLEDGE THAT YOUR ELECTRONIC SUBMISSIONS CONSTITUTE YOUR AGREEMENT AND INTENT TO BE BOUND BY AND TO PAY FOR SUCH AGREEMENTS AND TRANSACTIONS. YOUR AGREEMENT AND INTENT TO BE BOUND BY ELECTRONIC SUBMISSIONS APPLIES TO ALL RECORDS RELATING TO ALL TRANSACTIONS YOU ENTER INTO RELATING TO THE COMPANY SERVICES, INCLUDING NOTICES OF CANCELLATION, POLICIES, CONTRACTS, AND APPLICATIONS. In order to access and retain your electronic records, you may be required to have certain hardware and software, which are your sole responsibility.

MISCELLANEOUS

This Agreement constitutes the entire agreement between you and Company regarding the use of the Company Services. The failure of Company to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. This Agreement operates to the fullest extent permissible by law. This Agreement and your account may not be assigned by you without our express written consent. Company may assign any or all of its rights and obligations to others at any time. Company shall not be responsible or liable for any loss, damage, delay or failure to act caused by any cause beyond Company's reasonable control. If any provision or part of a provision of this Agreement is unlawful, void or unenforceable, that provision or part of the provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions. There is no joint venture, partnership, employment or agency relationship created between you and Company as a result of this Agreement or use of the Website and Company Services. Upon Company's request, you will furnish Company any documentation, substantiation or releases necessary to verify your compliance with this Agreement. You agree that this Agreement will

not be construed against Company by virtue of having drafted them. You hereby waive any and all defenses you may have based on the electronic form of this Agreement and the lack of signing by the parties hereto to execute this Agreement.

CONTACT US

In order to resolve a complaint regarding the Company Services or to receive further information regarding use of the Company Services, please contact Company as set forth below or, if any complaint with us is not satisfactorily resolved, and you are a California resident, you can contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs in writing at 400 "R" Street, Sacramento, California 95814 or by telephone at 1-916-445-1254.

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