

# TERMS AND CONDITIONS TEMPLATE

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This TERMS OF SERVICE AGREEMENT (hereinafter referred to as the "Agreement") is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between:

## I. PARTIES

The Service Provider: \_\_\_\_\_ (hereinafter referred to as "Provider"), a  
\_\_\_\_\_ (State of Incorporation/Organization)  
\_\_\_\_\_ (Type of Entity, e.g., corporation, LLC) with its principal place of  
business located at \_\_\_\_\_.

The User: Any individual or entity accessing, browsing, or otherwise using the Website, Service, or Product (hereinafter referred to as "User").

## II. RECITALS

WHEREAS, Provider operates a website located at \_\_\_\_\_ (the "Website"),  
and/or offers certain services or products (the "Service");

WHEREAS, User desires to access and use the Website and/or Service;

WHEREAS, this Agreement sets forth the terms and conditions governing User's access to and use of the Website and Service, establishing the rules, obligations, and limitations for such use;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## III. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the meanings ascribed to them below:

- a. "**Agreement**" refers to this Terms of Service Agreement, including any schedules, exhibits, or amendments hereto.
- b. "**Content**" refers to any and all text, graphics, images, music, software, audio, video, information, or other materials accessible on or through the Website or Service.

c. **"Intellectual Property Rights"** refers to all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

d. **"Service"** refers to the website, platform, applications, products, and services provided by Provider, including but not limited to \_\_\_\_\_ .

e. **"User"** refers to any individual or entity that accesses or uses the Website or Service.

f. **"Website"** refers to the website located at \_\_\_\_\_ , owned and operated by Provider.

#### **IV. ACCEPTANCE OF TERMS**

By accessing or using the Website or Service, User acknowledges that User has read, understood, and agrees to be bound by these Terms of Service, as well as Provider's Privacy Policy, which is incorporated herein by reference. If User does not agree to these Terms of Service, User must not access or use the Website or Service. This Agreement applies to all visitors, users, and others who access or use the Service.

#### **V. MODIFICATION OF TERMS**

Provider reserves the right, at its sole discretion, to modify or replace these Terms of Service at any time. If a revision is material, Provider will provide at least \_\_\_\_\_ days' notice prior to any new terms taking effect. What constitutes a material change will be determined at Provider's sole discretion. By continuing to access or use the Website or Service after any revisions become effective, User agrees to be bound by the revised terms. If User does not agree to the new terms, User is no longer authorized to use the Website or Service.

#### **VI. DESCRIPTION OF SERVICE**

Provider offers the following services/products:

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Provider reserves the right to modify, suspend, or discontinue the Service (or any part thereof) with or without notice at any time. Provider will not be liable to User or to any third party for any modification, suspension, or discontinuance of the Service.

## **VII. USER REGISTRATION AND ACCOUNTS**

- a. **Account Creation:** To access certain features of the Service, User may be required to register for an account. User agrees to provide accurate, current, and complete information during the registration process and to update such information to keep it accurate, current, and complete.
- b. **Account Security:** User is responsible for safeguarding the password that User uses to access the Service and for any activities or actions under User's password. User agrees not to disclose User's password to any third party. User must notify Provider immediately upon becoming aware of any breach of security or unauthorized use of User's account. Provider cannot and will not be liable for any loss or damage arising from User's failure to comply with these security obligations.
- c. **Account Responsibility:** User is solely responsible for all activities that occur under User's account, whether or not User authorized such activity.

## **VIII. USER CONDUCT AND OBLIGATIONS**

- a. **Lawful Use:** User agrees to use the Website and Service only for lawful purposes and in a way that does not infringe the rights of, restrict, or inhibit anyone else's use and enjoyment of the Website or Service.
- b. **Prohibited Activities:** User agrees not to engage in any of the following prohibited activities:
  - i. Using the Service for any illegal purpose or in violation of any local, state, national, or international law.
  - ii. Impersonating any person or entity, or falsely stating or otherwise misrepresenting User's affiliation with a person or entity.
  - iii. Interfering with or disrupting the integrity or performance of the Service or data contained therein.
  - iv. Attempting to gain unauthorized access to the Service or its related systems or networks.
  - v. Uploading, posting, emailing, transmitting, or otherwise making available any Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically, or otherwise objectionable.
  - vi. Uploading, posting, emailing, transmitting, or otherwise making available any Content that infringes any patent, trademark, trade secret, copyright, or other proprietary rights of any party.
  - vii. Uploading, posting, emailing, transmitting, or otherwise making available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes,"

or any other form of solicitation.

viii. Uploading, posting, emailing, transmitting, or otherwise making available any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment.

c. **User Content:** User is solely responsible for any Content User submits, posts, or displays on or through the Service. By submitting, posting, or displaying Content, User grants Provider a worldwide, non-exclusive, royalty-free, transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the Content in connection with the Service and Provider's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels.

## **IX. INTELLECTUAL PROPERTY RIGHTS**

a. **Provider's Rights:** The Website, Service, and all Content, features, and functionality (including but not limited to all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof) are owned by Provider, its licensors, or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws.

b. **Limited License to User:** Subject to User's compliance with these Terms of Service, Provider grants User a limited, non-exclusive, non-transferable, non-sublicensable license to access and use the Service solely for User's personal, non-commercial use.

c. **Restrictions:** User must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store, or transmit any of the material on the Website or Service, except as generally and ordinarily permitted through the Service's functionality.

## **X. PRIVACY POLICY**

User's use of the Website and Service is also governed by Provider's Privacy Policy, located at \_\_\_\_\_, which is incorporated into this Agreement by this reference. By using the Website or Service, User consents to the collection and use of information as described in the Privacy Policy.

## **XI. DISCLAIMER OF WARRANTIES**

THE WEBSITE AND SERVICE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. PROVIDER HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF

MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE. NEITHER PROVIDER NOR ANY PERSON ASSOCIATED WITH PROVIDER MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE WEBSITE OR SERVICE. WITHOUT LIMITING THE FOREGOING, NEITHER PROVIDER NOR ANYONE ASSOCIATED WITH PROVIDER REPRESENTS OR WARRANTS THAT THE WEBSITE, SERVICE, ITS CONTENT, OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE OR SERVICE WILL BE ACCURATE, RELIABLE, ERROR-FREE, OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT THE WEBSITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE WEBSITE OR SERVICE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE OR SERVICE WILL OTHERWISE MEET USER'S NEEDS OR EXPECTATIONS.

## **XII. LIMITATION OF LIABILITY**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PROVIDER, ITS AFFILIATES, LICENSORS, AND SERVICE PROVIDERS, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, LICENSORS, SUPPLIERS, SUCCESSORS, AND ASSIGNS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH USER'S USE, OR INABILITY TO USE, THE WEBSITE, ANY WEBSITES LINKED TO IT, ANY CONTENT ON THE WEBSITE OR SUCH OTHER WEBSITES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

## **XIII. INDEMNIFICATION**

User agrees to defend, indemnify, and hold harmless Provider, its affiliates, licensors, and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating to User's violation of these Terms of Service or User's use of the Website or Service, including, but not limited to,

User's Content, any use of the Website's or Service's content, services, and products other than as expressly authorized in these Terms of Service, or User's use of any information obtained from the Website or Service.

#### **XIV. TERMINATION**

Provider may terminate or suspend User's access to all or part of the Website or Service immediately, without prior notice or liability, for any reason whatsoever, including without limitation if User breaches the Terms of Service. Upon termination, User's right to use the Service will immediately cease. If User wishes to terminate User's account, User may simply discontinue using the Service. All provisions of the Terms of Service which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitations of liability.

#### **XV. THIRD-PARTY LINKS AND SERVICES**

The Website or Service may contain links to third-party websites or services that are not owned or controlled by Provider. Provider has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third-party websites or services. User further acknowledges and agrees that Provider shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods, or services available on or through any such websites or services. Provider strongly advises User to read the terms and conditions and privacy policies of any third-party websites or services that User visits.

#### **XVI. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_, without regard to its conflict of law provisions. User agrees that any legal action or proceeding arising out of or relating to this Agreement shall be brought exclusively in the federal or state courts located in \_\_\_\_\_ County, \_\_\_\_\_ State.

#### **XVII. DISPUTE RESOLUTION**

Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association. The arbitration shall be conducted in \_\_\_\_\_ County, \_\_\_\_\_ State. The award rendered by the arbitrator(s) shall be final and binding upon the parties hereto.

## **XVIII. SEVERABILITY**

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, and the invalid or unenforceable provision shall be replaced by a valid and enforceable provision that most closely reflects the intent of the original provision.

## **XIX. ENTIRE AGREEMENT**

This Agreement, together with the Privacy Policy and any other legal notices published by Provider on the Website or Service, constitutes the entire agreement between User and Provider regarding the use of the Website and Service, superseding any prior agreements between User and Provider relating to User's use of the Website or Service.

## **XX. WAIVER**

No waiver by Provider of any term or condition set forth in these Terms of Service shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of Provider to assert a right or provision under these Terms of Service shall not constitute a waiver of such right or provision.

## **XXI. ASSIGNMENT**

User may not assign or transfer this Agreement, by operation of law or otherwise, without Provider's prior written consent. Any attempt by User to assign or transfer this Agreement, without such consent, will be null and of no effect. Provider may assign or transfer this Agreement, at its sole discretion, without restriction. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their successors, and permitted assigns.

## **XXII. HEADINGS**

The headings in this Agreement are for convenience only and shall not affect its interpretation.

## **XXIII. CONTACT INFORMATION**

All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered by email to \_\_\_\_\_ or by mail to \_\_\_\_\_.

IN WITNESS WHEREOF, the Provider has executed this Agreement as of the date first written above.

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**SERVICE PROVIDER**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Address: \_\_\_\_\_

**NOTARY PUBLIC ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

Notary Public: \_\_\_\_\_

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_