

## TERMS OF SERVICE

Effective Date: March 6<sup>th</sup>, 2014

**PLEASE READ THIS AGREEMENT CAREFULLY. IT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR USE OF THE SERVICE AND SERVICES AVAILABLE THROUGH THE SERVICE.**

### Introduction

Welcome! You have arrived at [www.movinganalytics.com](http://www.movinganalytics.com), [www.getmovn.com](http://www.getmovn.com) and/or are otherwise interacting with one of our mobile applications, such as Strides, which are all owned and operated by Moving Analytics, Inc. (collectively, “**Company**,” “**we**,” “**our**” or “**us**”). These Terms of Service (“**Terms**”) govern your use of any online service location (*e.g.*, website or mobile application) that posts or links to these Terms, and also applies to all features, widgets, plug-ins, content, downloads and other services that post or link to these Terms (collectively, the “**Service**”), regardless of how you access or use it, whether via computer, mobile device or otherwise. By using the Service, you acknowledge and accept the Service’s [Privacy Policy](#) and consent to the collection and use of your data in accordance with the [Privacy Policy](#). By using the Service, you further agree that Company may change, alter, or modify the settings or configurations on your Device (defined below) in order to allow for or optimize your use of the Service.

Please be aware that the company is concerned with the well-being and health of all of its users. However, the Service is provided as an informational service only, and we do **NOT** provide medical, mental or similar types of assistance or treatment services or similar advice. The Service is not intended to diagnose, treat, cure or prevent any disease and is not meant to be a substitute for any weight loss product, medical device, medicine, treatment or professional medical advice. The Service does not replace the relationship between you and your physician or other medical provider. In the event of medical or mental emergency, please contact emergency services (call 911 in the United States), a medical professional, or a trained counselor immediately. Company is providing this information only as a courtesy to its users. You should seek professional care and advice in making and decisions relating to your physical or mental well-being.

The tracking of movements and progressions provided by the Service are for educational and entertainment purposes only and are not to be interpreted as a recommendation for a specific treatment plan, product or course of action. Exercise is not without its risks, and engaging in physical activity may result in injury. These risks, include, but are not limited to, risk of injury, aggravation of a pre-existing condition, or adverse effect of over-exertion such as muscle strain, abnormal blood pressure, fainting, disorders of heartbeat, and very rare instances of heart attack. If the Service nudges you based on your pre-set movement goals and you do not have the ability to meet your goal, do not push yourself to exhaustion. To reduce the risk of injury, before beginning this or any exercise or movement program, please consult a healthcare provider for appropriate exercise prescription and safety precautions. The Service in no way intended as a substitute for medical consultation. We disclaim any liability from and in connection with this Service as further detailed below. As with any instance where you engage in physical activity, if at any point during your activity you begin to feel faint, dizzy, or have physical discomfort, you should stop immediately and consult a physician.

### If You Want to Use This Service,

then carefully read these entire Terms (including all links to details), as they constitute a written agreement between you and us and they affect your legal rights and obligations. Each time you access and/or use the Service (other than to simply read these Terms), you agree to be bound by and comply with these Terms and any Additional Terms (defined below) then posted. *Therefore, do not use the Service if you do not agree.*

The business realities associated with operating the Service are such that, without the conditions that are set forth in these Terms -- such as your grants and waivers of rights, the limitations on our liability, your indemnity of us, and arbitration of certain disputes – Company would not make the Service available to you.

By accessing and/or using the Service, you agree to be bound by these terms. In some instances, both these Terms and separate guidelines, rules, or terms of use or sale setting forth additional or different terms and/or conditions will apply to your use of the Service or to a service or product offered via the Service (in each such instance, and collectively “**Additional Terms**”). To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless the Additional Terms expressly state otherwise.

## **Full Details of Terms of Service**

### **1. Service Content, Ownership, Limited License and Rights of Others**

**A. Content.** The Service contains a variety of: (i) materials and other items relating to Company, and its mobile offerings, and similar items from our licensors and other third parties, including all layout, information, articles, posts, text, data, files, images, scripts, designs, graphics, button icons, instructions, illustrations, photographs, audio clips, music, sounds, pictures, videos, advertising copy, URLs, technology, software, interactive features, the “look and feel” of the Service, and the compilation, assembly, and arrangement of the materials of the Service and any and all copyrightable material (including source and object code); (ii) trademarks, trade dress, logos, trade names, service marks, and/or trade identities of various parties, including those of Company (collectively, “**Trademarks**”); and (iii) other forms of intellectual property (all of the foregoing, collectively “**Content**”).

**B. Ownership.** The Service (including past, present and future versions) and the Content are owned or controlled by Company and our licensors and certain other third parties. All right, title, and interest in and to the Content available via the Service is the property of Company or our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, patent, or other intellectual property rights and laws to the fullest extent possible. Company owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Service.

**C. Limited License.** Subject to your strict compliance with these Terms and the Additional Terms, Company grants you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to download (temporary storage only), display, view, use, play, and/or print one copy of the Content (excluding source and object code in raw form or otherwise, other than as made available to access and use to enable display and functionality) on a personal computer, mobile phone or other wireless device, or other Internet enabled device (each, a “**Device**”) for your personal, non-commercial use only. The foregoing limited license: (i) does not give you any ownership of, or any other intellectual property interest in, any Content, and (ii) may be immediately suspended or terminated for any reason, in Company’s sole discretion, and without advance notice or liability. In some instances, we may permit you to have greater access to and use of Content, subject to certain Additional Terms.

**D. Rights of Others.** When using the Service, you must respect the intellectual property and other rights of Company and others. Your unauthorized use of Content may violate copyright, trademark, privacy, publicity, communications, and other laws, and any such use may result in your personal liability, including potential criminal liability.

### **2. Service and Content Use Restrictions**

**A. Service Use Restrictions.** You agree that you will not: (i) use the Service for any political or commercial purpose (including, without limitation, for purposes of advertising, soliciting funds, collecting product prices, and selling products); (ii) use any meta tags or any other “hidden text” utilizing any Trademarks;

(iii) engage in any activities through or in connection with the Service that seek to attempt to or do harm any individuals or entities or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party, or are otherwise objectionable to Company; (iv) reverse engineer, decompile, disassemble, reverse assemble, or modify any Service source or object code or any software or other products, services, or processes accessible through any portion of the Service; (v) engage in any activity that interferes with a user's access to the Service or the proper operation of the Service, or otherwise causes harm to the Service, Company, or other users of the Service; (vi) interfere with or circumvent any security feature of the Service or any feature that restricts or enforces limitations on use of or access to the Service, the Content, or the User-Generated Content (defined below); (vii) harvest or otherwise collect or store any information (including personally identifiable information about other users of the Service, including email addresses, without the express consent of such users); (viii) attempt to gain unauthorized access to the Service, other computer systems or networks connected to the Service, through password mining or any other means; or (ix) otherwise violate these Terms or any Additional Terms.

**B. Content Use Restrictions.** You also agree that, in using the Service: (i) you will not monitor, gather, copy, or distribute the Content (except as may be a result of standard search engine activity or use of a standard browser) on the Service by using any robot, rover, "bot", spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) you will not frame or utilize framing techniques to enclose any such Content (including any images, text, or page layout); (iii) you will keep intact all Trademark, copyright, and other intellectual property notices contained in such Content; (iv) you will not use such Content in a manner that suggests an unauthorized association with any of our or our licensors' products, services, or brands; (v) you will not make any modifications to such Content; (vi) you will not copy, modify, 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 or transfer to any third party or on any third-party application or website, or otherwise use or exploit such Content in any way for any purpose except as specifically permitted by these Terms or any Additional Terms or with the prior written consent of an officer of Company or, in the case of Content from a licensor, the owner of the Content; and (vii) you will not insert any code or product to manipulate such Content in any way that adversely affects any user experience.

**C. Availability of Service and Content.** Company may immediately suspend or terminate the availability of the Service and Content (and any elements and features of them), in whole or in part, for any reason, in Company's sole discretion, and without advance notice or liability.

**D. Reservation of All Rights Not Granted as to Content and Service.** These Terms and any Additional Terms include only narrow, limited grants of rights to Content and to use and access the Service. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. All rights not expressly granted to you are reserved by Company and its licensors and other third parties. *Any unauthorized use of any Content or the Service for any purpose is prohibited.*

### **3. Opening and Terminating Accounts**

In order to access or use some (or potentially all) of the features on the Service, you may first be required to register through our sign-up registration process. The Service's practices governing any resulting collection and use of your information are disclosed in its [Privacy Policy](#). If you register for any feature that requires a password and/or username (which we make available from time to time), then you will select your own password at the time of registration (or we may send you an email notification with a randomly generated initial password) and you agree that: (i) You will not use a username (or email address) that is already being used by someone else, may impersonate another person, belongs to another person, violates the intellectual property or other right of any person or entity, or is offensive. We may reject the use of any password, username, or email address for any other reason in our sole discretion; (ii) You will provide true, accurate, current, and complete registration information about yourself in connection with the registration process and, as permitted, to maintain

and update it continuously and promptly to keep it accurate, current, and complete; (iii) You are solely responsible for all activities that occur under your account, password, and username – whether or not you authorized the activity; (iv) You are solely responsible for maintaining the confidentiality of your password and for restricting access to your Device so that others may not access any password protected portion of the Service using your name, username, or password; (v) You will immediately notify us of any unauthorized use of your account, password, or username, or any other breach of security; and (vi) You will not sell, transfer, or assign your account or any account rights. We will not be liable for any loss or damage (of any kind and under any legal theory) to you or any third party arising from your inability or failure for any reason to comply with any of the foregoing obligations. If any information that you provide, or if we have reasonable grounds to suspect that any information that you provide, is false, inaccurate, outdated, incomplete, or violates these Terms, any Additional Terms, or any applicable law, then we may suspend or terminate your account. We also reserve the more general and broad right to terminate your account or suspend or otherwise deny you access to it or its benefits – all in our sole discretion, for any reason, and without advance notice or liability.

#### **4. Notices and Questions**

You agree that: (i) we may give you notices of new, revised or changed terms and other important matters by prominently posting notice on the homepage of the Service, or in another reasonable manner; and (ii) we may contact you by mail or email sent to the address provided by you. You agree to promptly notify us if you change your email or mailing address by updating your account information.

If you have a question regarding using the Service, you may contact us [here](#). You acknowledge that the provision of customer support is at Company's sole discretion and that we have no obligation to provide you with customer support of any kind.

#### **5. Links by You to the Service**

We grant you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to create hyperlinks to the Service, so long as: (a) the links only incorporate text, and do not use any Trademarks, (b) the links and the content on your website do not suggest any affiliation with Company or cause any other confusion, and (c) the links and the content on your website do not portray Company or its products or services in a false, misleading, derogatory, or otherwise offensive matter, and do not contain content that is unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party or are otherwise objectionable to Company. Company reserves the right to suspend or prohibit linking to the Service for any reason, in its sole discretion, without advance notice or any liability of any kind to you or any third party.

#### **6. Linked-To Websites; Advertisements; Dealings with Third Parties**

**A. Linked Services; Advertisements.** The Service may contain links, as part of third-party ads on the Service or otherwise, to or from third-party websites (“**Linked Services**”), including websites operated by advertisers, licensors, licensees, and certain other third parties who may have business relationships with Company. Company may have no control over the content, operations, policies, terms, or other elements of Linked Services, and Company does not assume any obligation to review any Linked Services. Company does not endorse, approve, or sponsor any Linked Services, or any third-party content, advertising, information, materials, products, services, or other items. Furthermore, Company is not responsible for the quality or delivery of the products or services offered, accessed, obtained by or advertised at such Services. Finally, Company will under no circumstances be liable for any direct, indirect, incidental or special loss or other damage, whether arising from negligence, breach of contract, defamation, infringement of copyright or other intellectual property rights, caused by the exhibition, distribution or exploitation of any information or content contained within these third-party Linked Services. Any activities you engage in connection with any of the

same are subject to the privacy and other policies, terms and conditions of use and/or sale, and rules issued by the operator of the Linked Services. Company disclaims all liability in connection therewith.

**B. Dealings with Third Parties.** Any interactions, correspondence, transactions, and other dealings that you have with any third parties found on or through the Service (including on or via Linked Services or advertisements) are solely between you and the third party (including issues related to the content of third-party advertisements, payments, delivery of goods, warranties (including product warranties), privacy and data security, and the like). Company disclaims all liability in connection therewith.

## **7. Feedback You Submit**

**A. General.** Company may now or in the future offer users of the Service the opportunity to create, post, upload, display, publish, distribute, transmit or otherwise make available on or submit through the Service, messages, text, files, comments, responses, information, content, ratings, reviews, suggestions, personally identifiable information, or other information or materials and the ideas contained therein (collectively, “**User-Generated Content**”). Company may allow you to do this through contact us, email, and other communications functionality. Subject to the rights and license you grant in these Terms, you retain whatever legally cognizable right, title, and interest that you have in your User-Generated Content and you remain ultimately responsible for it.

**B. Non-Confidentiality of Your User-Generated Content.** Except as otherwise described in the Service’s posted [Privacy Policy](#) or any Additional Terms, you agree that: (a) your User-Generated Content will be treated as non-confidential – regardless of whether you mark them “confidential,” “proprietary,” or the like – and will not be returned; and (b) Company does not assume any obligation of any kind to you or any third party with respect to your User-Generated Content. Upon Company’s request, you will furnish us with any documentation necessary to substantiate the rights to such content and to verify your compliance with these Terms or any Additional Terms. You acknowledge that the Internet and mobile communications may be subject to breaches of security and that you are aware that submissions of User-Generated Content may not be secure, and you will consider this before submitting any User-Generated Content and do so at your own risk. In your communications with Company, please keep in mind that we do not seek any unsolicited ideas or materials for products or services, or even suggested improvements to products or services, including, without limitation, ideas, concepts, inventions, or designs for websites, products or otherwise (collectively, “**Unsolicited Ideas and Materials**”). Any Unsolicited Ideas and Materials you post on or send to us via the Service are deemed User-Generated Content and licensed to us as set forth below. In addition, Company retains all of the rights held by members of the general public with regard to your Unsolicited Ideas and Materials. Company’s receipt of your Unsolicited Ideas and Materials is not an admission by Company of their novelty, priority, or originality, and it does not impair Company’s right to contest existing or future intellectual property rights relating to your Unsolicited Ideas and Materials.

**C. License to Company of Your User-Generated Content.** Except as otherwise described in any applicable Additional Terms (such as a contest official rules), which specifically govern the submission of your User-Generated Content), you hereby grant to Company, and you agree to grant to Company, the non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise use and exploit in any manner whatsoever, all or any portion of your User-Generated Content (and derivative works thereof), for any purpose whatsoever in all formats, on or through any means 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. Without limitation, the granted rights include the right to: (i) configure, host, index, cache, archive, store, digitize, compress, optimize, modify, reformat, edit, adapt, publish in searchable format, and remove such User-Generated Content and combine same with other materials; and (ii) use any ideas, concepts, know-how, or techniques contained in any User-Generated Content for any purposes whatsoever, including developing,

producing, and marketing products and/or services. In order to further effect the rights and license that you grant to Company to your User-Generated Content, you also hereby grant to Company, and agree to grant to Company, the unconditional, perpetual, irrevocable right to use and exploit your name, persona, and likeness in connection with any User-Generated Content, without any obligation or remuneration to you. Except as prohibited by law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any User-Generated Content, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section 7(C).

## **8. Wireless and Location-Based Features**

**A. Wireless Features.** The Service may offer certain features and services that are available to you via your wireless Device. These features and services may include the ability to access the Service's features and upload content to the Service, receive messages from the Service, and download applications to your wireless Device (collectively, "**Wireless Features**"). Standard messaging, data, and other fees may be charged by your carrier to participate in Wireless Features. Fees and charges may appear on your wireless bill or be deducted from your pre-paid balance. Your carrier may prohibit or restrict certain Wireless Features and certain Wireless Features may be incompatible with your carrier or wireless Device. You should check with your carrier to find out what plans are available and how much they cost. Contact your carrier with questions regarding these issues.

**B. Terms of Wireless Features.** You agree that as to the Wireless Features for which you are registered for, we may send communications to your wireless Device regarding us or other parties. Further, we may collect information related to your use of the Wireless Features. If you have registered via the Service for Wireless Features, then you agree to notify Company of any changes to your wireless contact information (including phone number) and update your accounts on the Service to reflect the changes.

**C. Location-Based Features.** If you have enabled GPS, geo-location or other location-based features on any mobile app(s) or feature(s), you acknowledge that your Device location will be tracked and may be shared with others consistent with the [Privacy Policy](#). Some mobile app(s) or feature(s) allow for you to disable location-based features or manage preferences related to them. However, you can terminate Device location tracking by us by uninstalling any mobile app(s) or feature(s). The location-based services offered in connection with our mobile app(s) or feature(s) are for individual use only and should not be used or relied on as an emergency locator system, used while driving or operating vehicles, or used in connection with any hazardous environments requiring fail-safe performance, or any other situation in which the failure or inaccuracy of use of the location-based services could lead directly to death, personal injury, or severe physical or property damage. The location-based services are not suited or intended for family finding purposes, fleet tracking, or any other type of business or enterprise use – other products exist today that may be used specifically for these purposes.

## **9. Dispute Resolution**

Certain portions of this Section 9 are deemed to be a "written agreement to arbitrate" pursuant to the Federal Arbitration Act. You and Company agree that we intend that this Section 9 satisfies the "writing" requirement of the Federal Arbitration Act. This Section 9 can only be amended by mutual agreement.

**A. First – Try to Resolve Disputes and Excluded Disputes.** If any controversy, allegation, or claim arises out of or relates to the Service, the Content, your User-Generated Content, these Terms, or any Additional Terms, whether heretofore or hereafter arising (collectively, "**Dispute**"), or to any of Company's actual or alleged intellectual property rights (an "**Excluded Dispute**"), which includes those actions set forth in Section 9(D), then you and we agree to send a written notice to the other providing a reasonable description of

the Dispute or Excluded Dispute, along with a proposed resolution of it. Our notice to you will be sent to you based on the most recent contact information that you provide us. But if no such information exists or if such information is not current, then we have no obligation under this Section 9(A). Your notice to us must be sent to: Moving Analytics, Inc., 4676 Admiralty Way, Suite #503, Marina Del Ray, CA 90292 (Attn: Legal Department). For a period of sixty (60) days from the date of receipt of notice from the other party, Company and you will engage in a dialogue in order to attempt to resolve the Dispute or Excluded Dispute, though nothing will require either you or Company to resolve the Dispute or Excluded Dispute on terms with respect to which you and Company, in each of our sole discretion, are not comfortable.

**B. Binding Arbitration.** If we cannot resolve a Dispute as set forth in Section 9 (or agree to arbitration in writing with respect to an Excluded Dispute) within sixty (60) days of receipt of the notice, then ANY AND ALL DISPUTES ARISING BETWEEN YOU AND COMPANY (WHETHER BASED IN CONTRACT, STATUTE, REGULATION, ORDINANCE, TORT— INCLUDING, BUT NOT LIMITED TO, FRAUD, ANY OTHER INTENTIONAL TORT OR NEGLIGENCE,—COMMON LAW, CONSTITUTIONAL PROVISION, RESPONDEAT SUPERIOR, AGENCY OR ANY OTHER LEGAL OR EQUITABLE THEORY), WHETHER ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THESE TERMS, MUST BE RESOLVED BY FINAL AND BINDING ARBITRATION. THIS INCLUDES ANY AND ALL DISPUTES BASED ON ANY PRODUCT, SERVICE OR ADVERTISING CONNECTED TO THE PROVISION OR USE OF THE SERVICE. The Federal Arbitration Act (“**FAA**”), not state law, shall govern the arbitrability of all disputes between Company and you regarding these Terms (and any Additional Terms) and the Service, including the “No Class Action Matters” Section below. BY AGREEING TO ARBITRATE, EACH PARTY IS GIVING UP ITS RIGHT TO GO TO COURT AND HAVE ANY DISPUTE HEARD BY A JUDGE OR JURY. Company and you agree, however, that State or federal law shall apply to and govern, as appropriate, any and all claims or causes of action, remedies, and damages arising between you and Company regarding these Terms and the Service, whether arising or stated in contract, statute, common law, or any other legal theory, without regard to State’s choice of law principles.

A Dispute will be resolved solely by binding arbitration in accordance with the then-current Commercial Arbitration Rules (“**Rules**”) of the American Arbitration Association (“**AAA**”), except as modified herein, and the arbitration will be administered by the AAA. If a party properly submits the Dispute to the AAA for formal arbitration and the AAA is unwilling to set a hearing then either party can elect to have the arbitration administered by the Judicial Arbitration and Mediation Services Inc. (“**JAMS**”) using JAMS’ streamlined Arbitration Rules and Procedures, or by any other arbitration administration service that you and an officer or legal representative of Company consent to in writing. If an in-person arbitration hearing is required, then it will be conducted in the “metropolitan statistical area” (as defined by the U.S. Census Bureau) where you are a resident at the time the Dispute is submitted to arbitration. You and we will pay the administrative and arbitrator’s fees and other costs in accordance with the applicable arbitration rules; but if applicable arbitration rules or laws require Company to pay a greater portion or all of such fees and costs in order for this Section 9 to be enforceable, then Company will have the right to elect to pay the fees and costs and proceed to arbitration. The arbitrator or arbitration panel, as the case may be, will apply and be bound by these Terms and any Additional Terms, and will determine any Dispute according to applicable law and facts based upon the record and no other basis, and will issue a reasoned award only in favor of the individual party seeking relief and only to the extent to provide relief warranted by that party’s individual claim. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration and class action waiver provisions are for the court to decide. This arbitration provision shall survive termination of these Terms or the Service. You can obtain AAA and JAMS procedures, rules, and fee information as follows: AAA: 800.778.7879 and <http://www.adr.org> and JAMS: 800.352.5267 and <http://www.jamsadr.com>.

**C. Limited Time to File Claims.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IF YOU OR WE WANT TO ASSERT A DISPUTE (BUT NOT A EXCLUDED DISPUTE) AGAINST THE OTHER, THEN YOU OR WE MUST COMMENCE IT (BY DELIVERY OF WRITTEN NOTICE AS SET FORTH IN SECTION 9(A)) WITHIN ONE (1) YEAR AFTER THE DISPUTE

ARISES -- OR IT WILL BE FOREVER BARRED. Commencing means, as applicable: (a) by delivery of written notice as set forth above in Section 9(A); (b) filing for arbitration with the AAA as set forth in Section 10(B); or (c) filing an action in state or Federal court.

**D. Injunctive Relief.** The foregoing provisions of this Section 9 will not apply to any legal action taken by Company to seek an injunction or other equitable relief in connection with, any loss, cost, or damage (or any potential loss, cost, or damage) relating to the Service, any Content, your User-Generated Content and/or Company's intellectual property rights (including such Company may claim that may be in dispute), Company's operations, and/or Company's products or services.

**E. No Class Action Matters.** YOU AND COMPANY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING OR AS AN ASSOCIATION. Disputes will be arbitrated only on an individual basis and will not be joined or consolidated with any other arbitrations or other proceedings that involve any claim or controversy of any other party. There shall be no right or authority for any Dispute to be arbitrated on a class action basis or on any basis involving Disputes brought in a purported representative capacity on behalf of the general public, or other persons or entities similarly situated. But if, for any reason, any court with competent jurisdiction holds that this restriction is unconscionable or unenforceable, then our agreement in Section 9(B) to arbitrate will not apply and the Dispute must be brought exclusively in court pursuant to Section 9(F). Notwithstanding any other provision of this Section 9, any and all issues relating to the scope, interpretation and enforceability of the class action waiver provisions contained herein (described in this "No Class Action Matters" section), are to be decided only by a court of competent jurisdiction, and not by the arbitrator. The arbitrator does not have the power to vary these class action waiver provisions.

**F. Federal and State Courts in Middlesex County, Massachusetts.** Except where arbitration is required above or with respect to the enforcement of any arbitration decision or award, any action or proceeding relating to any Dispute or Excluded Dispute arising hereunder may only be instituted in state or Federal court in Middlesex County, Massachusetts. Accordingly, you and Company consent to the exclusive personal jurisdiction and venue of such courts for such matters.

**G. Small Claims Matters Are Excluded from Arbitration Requirement.** Notwithstanding the foregoing, either of us may bring qualifying claim of Disputes (but not Excluded Disputes) in small claims court of competent jurisdiction.

## **10. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

YOUR ACCESS TO AND USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS", "AS AVAILABLE", AND "WITH ALL FAULTS" BASIS. Therefore, to the fullest extent permissible by law, Company and its subsidiaries and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns (collectively, the "**Company Parties**") hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, as to:

- (a) the Service (including the Content and the User-Generated Content);
- (b) the functions, features, or any other elements on, or made accessible through, the Service;
- (c) any products, services, or instructions offered or referenced at or linked through the Service;
- (d) security associated with the transmission of your User-Generated Content transmitted to Company via the Service;

- (e) whether the Service or the servers that make the Service available are free from any harmful components (including viruses, Trojan horses, and other technologies that could adversely impact your Device);
- (f) whether the information (including any instructions) on the Service is accurate, complete, correct, adequate, useful, timely, or reliable;
- (g) whether any defects to or errors on the Service will be repaired or corrected;
- (h) whether your access to the Service will be uninterrupted;
- (i) whether the Service will be available at any particular time or location; and
- (j) whether your use of the Service is lawful in any particular jurisdiction.

EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED HEREIN OR IN ADDITIONAL TERMS PROVIDED BY A COMPANY PARTY, COMPANY PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, AND FREEDOM FROM COMPUTER VIRUS.

Some jurisdictions limit or do not allow the disclaimer of implied or other warranties so the above disclaimers may not apply to the extent such jurisdictions' laws are applicable.

## **11. LIMITATIONS OF OUR LIABILITY**

UNDER NO CIRCUMSTANCES WILL ANY COMPANY PARTIES BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND, including personal injury or death or for any direct, indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages that are directly or indirectly related to:

- (a) the Service (including the Content and the User-Generated Content);
- (b) your use of (including any physical activity in connection your use of the Service) or inability to use the Service, or the performance of the Service;
- (c) any action taken in connection with an investigation by Company Parties or law enforcement authorities regarding your access to or use of the Service;
- (d) any action taken in connection with copyright or other intellectual property owners or other rights owners;
- (e) any errors or omissions in the Service's technical operation; or
- (f) any damage to any user's computer, hardware, software, modem, or other equipment or technology, including 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, including losses or damages in the form of lost profits, loss of goodwill, loss of data, work stoppage, accuracy of results, or equipment failure or malfunction.

The foregoing limitations of liability will apply even if any of the foregoing events or circumstances were foreseeable and even if Company Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of the Service).

Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages of the sort that are described above, so the above limitation or exclusion may not apply to you.

**EXCEPT AS MAY BE PROVIDED IN ANY ADDITIONAL TERMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY PARTIES' TOTAL LIABILITY TO YOU, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH YOUR ACCESS TO AND USE OF THE SERVICE AND YOUR RIGHTS UNDER THESE TERMS, EXCEED AN AMOUNT EQUAL TO THE AMOUNT YOU HAVE PAID COMPANY IN CONNECTION WITH THE TRANSACTION(S) THAT UNDERLIE THE CLAIM(S); PROVIDED, HOWEVER, THIS PROVISION WILL NOT APPLY IF A TRIBUNAL WITH APPLICABLE JURISDICTION FINDS SUCH TO BE UNCONSCIONABLE.**

## **12. Waiver of Injunctive or Other Equitable Relief**

IF YOU CLAIM THAT YOU HAVE INCURRED ANY LOSS, DAMAGES, OR INJURIES IN CONNECTION WITH YOUR USE OF THE SERVICE, THEN THE LOSSES, DAMAGES, AND INJURIES WILL NOT BE IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR TO OTHER EQUITABLE RELIEF OF ANY KIND. THIS MEANS THAT, IN CONNECTION WITH YOUR CLAIM, YOU AGREE THAT YOU WILL NOT SEEK, AND THAT YOU WILL NOT BE PERMITTED TO OBTAIN, ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, USER-GENERATED CONTENT, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED OR CONTROLLED BY COMPANY (INCLUDING YOUR LICENSED USER-GENERATED CONTENT) OR A LICENSOR OF COMPANY.

## **13. Updates to Terms**

These Terms (or if applicable Additional Terms), in the form posted at the time of your use of the applicable services to which it applies, shall govern such use (including transactions entered during such use). AS OUR SERVICE EVOLVES, THE TERMS AND CONDITIONS UNDER WHICH WE OFFER THE SERVICE MAY PROSPECTIVELY BE MODIFIED AND WE MAY CEASE OFFERING THE SERVICE UNDER THE TERMS OR ADDITIONAL TERMS FOR WHICH THEY WERE PREVIOUSLY OFFERED. ACCORDINGLY, EACH TIME YOU SIGN IN TO OR OTHERWISE USE THE SERVICE YOU ARE ENTERING INTO A NEW AGREEMENT WITH US ON THE THEN APPLICABLE TERMS AND CONDITIONS AND YOU AGREE THAT WE MAY NOTIFY YOU OF OTHER TERMS BY POSTING THEM ON THE SERVICE (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH WE ELECT), AND THAT YOUR USE OF THE SERVICE AFTER SUCH NOTICE CONSTITUTES YOUR GOING FORWARD AGREEMENT TO THE OTHER TERMS FOR YOUR NEW USE AND TRANSACTIONS. Therefore, you should review the posted terms of service and any applicable Additional Terms each time you use the Service (at least prior to each transaction or submission). The Additional Terms will be effective as to new use and transactions as of the time that we post them, or such later date as may be specified in them or in other notice to you. However, the Terms (and any applicable Additional Terms) that applied when you previously used the Service will continue to apply to such prior use (i.e., changes and additions are prospective only) unless mutually agreed. In the event any notice to you of new, revised or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. You should frequently check the home page for notices, all of

which you agree are reasonable manners of providing you notice. You can reject any new, revised or Additional Terms by discontinuing use of the Service and related services.

#### **14. General Provisions**

**A. Company's Consent or Approval.** As to any provision in these Terms or any Additional Terms that grants Company a right of consent or approval, or permits Company to exercise a right in its "sole discretion," Company may exercise that right in its sole and absolute discretion. No Company consent or approval may be deemed to have been granted by Company without being in writing and signed by an Officer of Company.

**B. Applicable Law.** These Terms and any Additional Terms will be governed by and construed in accordance with, and any Dispute and Excluded Dispute will be resolved in accordance with, the laws of the California, without regard to its conflicts of law provisions.

**C. Indemnity.** You agree to, and you hereby, defend, indemnify, and hold Company Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any Company Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with, whether occurring heretofore or hereafter: (i) your User-Generated Content; (ii) your use of the Service and your activities in connection with the Service; (iii) your breach or alleged breach of these Terms or any Additional Terms; (iv) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of the Service or your activities in connection with the Service; (v) information or material transmitted through your Device, 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 entity; (vi) any misrepresentation made by you; and (vii) Company Parties' use of the information that you submit to us (including your User-Generated Content) (all of the foregoing, "**Claims and Losses**"). You will cooperate as fully required by Company Parties in the defense of any Claim and Losses. Notwithstanding the foregoing, Company Parties retain the exclusive right to settle, compromise, and pay any and all Claims and Losses. Company Parties reserve the right to assume the exclusive defense and control of any Claims and Losses. You will not settle any Claims and Losses without, in each instance, the prior written consent of an officer of a Company Party.

**D. Operation of Service; Availability of Products and Services; International Issues.** Company controls and operates the Service from its U.S.-based offices in the U.S.A., and Company makes no representation that the Service is appropriate or available for use beyond the U.S.A. If you use the Service from other locations, you are doing so on your own initiative and are responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply. The Service may describe products and services that are available only in the U.S.A. (or only parts of it) and are not available worldwide. We reserve the right to limit the availability of the Service and/or the provision of any content, program, product, service, or other feature described or available on the Service to any person, entity, geographic area, or jurisdiction, at any time and in our sole discretion, and to limit the quantities of any content, program, product, service, or other feature that we provide. You and we disclaim any application to these Terms of the Convention on Contracts for the International Sale of Goods.

**E. Export Controls.** Software related to or made available by the Service may be subject to export controls of the U.S.A. No software from the Service may be downloaded, exported, or re-exported: (i) into (or to a national or resident of) any country or other jurisdiction to which the U.S.A. has embargoed goods, software, technology or services (which, as of the effective date of these Terms, includes Cuba, North Korea, Iran, Sudan, and Syria), or (ii) 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, or (iii) to anyone on the U.S. Department

of Commerce's Bureau of Industry and Security Entities List as published in the Export Administration Regulations (including entities engaged in weapons of mass destruction proliferation in various countries and persons and entities that are suspected of diverting U.S. origin items to embargoed countries or terrorist end-uses). You are responsible for complying with all trade regulations and laws both foreign and domestic. Except as authorized by law, you agree and warrant not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls, including as set forth in subsections (i) – (iii) above.

**F. Severability; Interpretation.** If any provision of these Terms, or any Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms or the Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the Additional Terms (which will remain in full force and effect). To the extent permitted by applicable law, you agree to waive, and you hereby waive, any applicable statutory and common law that may permit a contract to be construed against its drafter. Wherever the word “including” is used in these Terms or any Additional Terms, the word will be deemed to mean “including, without limitation.”

**G. Communications.** When you communicate with us electronically, such as via email and text message, you consent to receive communications from us electronically. Please note that we are not obligated to respond to inquiries that we receive. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

**H. Investigations; Cooperation with Law Enforcement; Termination; Survival.** Company reserves the right, without any limitation, to: (i) investigate any suspected breaches of its Service security or its information technology or other systems or networks, (ii) investigate any suspected breaches of these Terms and any Additional Terms, (iii) investigate any information obtained by Company in connection with reviewing law enforcement databases or complying with criminal laws, (iv) involve and cooperate with law enforcement authorities in investigating any of the foregoing matters, (v) prosecute violators of these Terms and any Additional Terms, and (vi) discontinue the Service, in whole or in part, or, except as may be expressly set forth in any Additional Terms, suspend or terminate your access to it, in whole or in part, including any user accounts or registrations, at any time, without notice, for any reason and without any obligation to you or any third party. Any suspension or termination will not affect your obligations to Company under these Terms or any Additional Terms. Upon suspension or termination of your access to the Service, or upon notice from Company, all rights granted to you under these Terms or any Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms and any Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to Company in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.

**I. Assignment.** Company may assign its rights and obligations under these Terms and any Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of Company.

**J. No Waiver.** Except as expressly set forth in these Terms or any Additional Terms, (i) no failure or delay by you or Company in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

**K. U.S. Government Restricted Rights.** If you are a government end user, then this provision applies to you. The Service provided in connection with these Terms has been developed entirely at private

expense, as defined in FAR section 2.101, DFARS section 252.227-7014(a)(1) and DFARS section 252.227-7015 (or any equivalent or subsequent agency regulation thereof), and is provided as “commercial items,” “commercial computer site” and/or “commercial computer site documentation.” Consistent with DFARS section 227.7202 and FAR section 12.212 and to the extent required under U.S. federal law, the minimum restricted rights as set forth in FAR section 52.227-19 (or any equivalent or subsequent agency regulation thereof), any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by these Terms and shall be prohibited except to the extent expressly permitted by these Terms.

**L. Connectivity.** You are responsible for obtaining and maintaining all Devices and other equipment and software, and all internet service provider, mobile service, and other services needed for your access to and use of the Service and you will be responsible for all charges related to them.

## **15. Terms Applicable For Apple iOS.**

If you are accessing or using the Service through an Apple Device, the following additional terms and conditions are applicable to you and are incorporated into the Terms by this reference:

- (i) To the extent that you are accessing the Service through an Apple Device, you acknowledge that these Terms are entered into between you and Company and, that Apple, Inc. (“**Apple**”) is not a party to these Terms other than as third-party beneficiary as contemplated below.
- (ii) The license granted to you in [Section 1](#) of these Terms is subject to the permitted Usage Rules set forth in the Service Store Terms of Service (see: <http://www.apple.com/legal/itunes/us/terms.html>) and any third party terms of agreement applicable to the Service.
- (iii) You acknowledge that Company, and not Apple, is responsible for providing the Service and Content thereof.
- (iv) You acknowledge that Apple has no obligation whatsoever to furnish any maintenance or any support services to you with respect to the Service.
- (v) To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Service.
- (vi) Notwithstanding anything to the contrary herein, and subject to the terms in these Terms, you acknowledge that, solely as between Apple and Company, Company, and not Apple is responsible for addressing any claims you may have relating to the Service, or your possession and/or use thereof, including, but not limited, to: (i) product liability claims; (ii) any claim that the Service fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- (vii) Further, you agree that if the Service, or your possession and use of the Service, infringes on a third party's intellectual property rights, you will not hold Apple responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claims.
- (viii) You acknowledge and agree that Apple, and Apple’s subsidiaries, are third-party beneficiaries of these Terms, and that, upon your acceptance of the terms and conditions of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary thereof.

- (ix) When using the Service, you agree to comply with any and all third-party terms that are applicable to any platform, website, technology or service that interacts with the Service.