

# RHONDA'S KISS

## TERMS OF USE

Effective Date: August 1, 2017.

**Introduction:** Thank you for visiting the Rhonda's Kiss website. Please read these Terms carefully before using our websites and any online services, software or apps provided by **Rhonda's Kiss** (collectively, "**Client**" or "**Charity**", "**we**", or "**us**" or "**our**") that post a link to these Terms (the "**Service**"). By visiting or otherwise using the Service in any manner, you agree to the then posted Terms and any applicable Additional Terms, to be bound by them, and that you have read and understood them. You also acknowledge, agree and consent to our data practices as described in our [privacy policy](#) on the Service.

These Terms affect your legal rights, responsibilities and obligations and govern your use of the Service, are legally binding, limit Charity's liability to you and require you to indemnify us and to settle certain disputes through arbitration. **If you do not wish to be bound by these Terms and any Additional Terms, do not use the Service and uninstall Service downloads and applications.**

**Additional Terms:** In some instances, additional or different terms, posted on the Service, apply to your use of certain parts of the Service (individually and collectively "**Additional Terms**"). To the extent there is a conflict between these Terms and any Additional Terms, these Terms will control unless the Additional Terms expressly state otherwise.

**Updates to these Terms and Additional Terms:** We may prospectively change these Terms and Additional Terms by posting new or changed terms on the Website and Service in accordance with terms and conditions set forth herein.

### 1. **Ownership AND YOUR Rights TO USE THE SERVICE AND CONTENT.**

**A. Ownership.** The Service and all of its content ("**Content**"), including all copyrights, patents, trademarks, service marks, trade names and all other intellectual property rights therein ("**Intellectual Property**"), are owned or controlled by Charity, our licensors, and certain other third parties. All right, title, and interest in and to the Content and Intellectual Property available via the Service is the property of Charity, our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible. Charity owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Service.

#### **B. Your Rights to Use the Service and Content.**

Your right to use the Service and content is subject to your strict compliance with these Terms and the Additional Terms. Your right to access and use the Service and the Intellectual Property shall automatically terminate upon any violations. These rights are non-exclusive, limited, and revocable by us at any time in our sole discretion without advance notice or liability. As your right to access and use the Service and the content is personal to you, you may not assign nor transfer your right; any attempt to do so is void. You may, for your personal, non-commercial, lawful use only (collectively, the following are the "**Charity Licensed Elements**"):

(1) Display, view, use, and play the content on a computer, mobile or other internet enabled or permitted device ("**Device**") and/or print one copy of the content (excluding source and object code in raw form or otherwise) as it is displayed to you;

(2) Stream the content using any of the widgets and/or other digital streaming internet video players, if any, provided on the Service (any such widget or other digital streaming Internet video player referred to as a "**Service Widget**");

(3) Cut and paste certain code expressly made available to you through the Service (whether such functionality is designated as "sharing" functionality or not) in order to embed, re-publish, maintain, and/or display the specific content to which such code relates on your own personal, customized social networking Web page(s), Web blog(s), or microblog(s) (collectively, your "**Personal Social Media**"), and/or, if the Service provides "widget grabbing and embedding" functionality, to "grab" a Service Widget and embed, re-publish, maintain, and/or display such Service Widget on your Personal Social Media;

(4) Cut and paste certain code expressly made available to you through the Service, and/or if the Service provides “widget grabbing and embedding” functionality, to “grab” a Service Widget, to forward, as applicable, such code and/or Service Widget to your friends, so that they can view the Service content contained therein, and/or if, they so desire, so that they themselves may embed the forwarded piece of code or Service Widget on their own Personal Social Media or re-forward it to their own friends; and

(5) If the Service includes a “Download” link next to a piece of content (including, without limitation, an image, an icon, a wallpaper, a music track, a video, a trailer, an RSS feed), you may only download a single copy of such content to a single Device.

**C. Additional Terms for Usage Subscriptions.** Purchases of usage subscriptions (e.g., credits, points, and/or virtual currency) or any virtual items made available on the Service are nonrefundable, have no monetary value (i.e., are not a cash account or equivalent), and are purchases of only a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to use those items only, even if such came with a durational term (e.g., a monthly subscription). Any attempt to transfer, assign or otherwise sell or trade such subscription, regardless of manner or method, is null and void. Suspension or termination thereof results in the forfeit of the suspended or terminated subscription or items, except as may be noted in the applicable Additional Terms. As permitted by law, we are not responsible for repairing or reissuing any credit or refund or any other sum, as a result of our modification of any usage subscriptions or virtual item, or for loss or damage due to error, or any other reason.

**D. Rights of Others.** In using the Service, you must respect the intellectual property and rights of others and Charity. Your unauthorized use of content may violate the rights of others and applicable laws, and may result in your civil and criminal liability. If you believe that your work has been infringed via the Service, please see our Copyright Infringement & Take Down Procedures (need hyperlink).

**E. Reservation of all Rights Not Granted as to Content and Service.** These Terms and any applicable Additional Terms include only narrow, limited grants of rights to use and access the Service and content. 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 CHARITY AND ITS LICENSORS AND OTHER THIRD PARTIES. *Any unauthorized use of any content or the Service for any purpose is prohibited.*

## **2. CONTENT YOU SUBMIT.**

### **A. User-Generated Content.**

**(i) General.** Charity may now, or in the future, offer users of the Service the opportunity to create, build, post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available on or submit through the Service, or on or in response to our pages or posts on any third party platforms or in connection with any of our promotions by any media or manner, or otherwise submit to us (e.g., on our Facebook or other social media pages, in response to our tweets, through a sweepstakes or contest, or by mail) (collectively, “**submit**”) messages, text, illustrations, files, images, graphics, photos, comments, responses, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, personally identifiable information, or other information or materials and the ideas contained therein (collectively, but excluding Charity Licensed Elements included therein, “**User-Generated Content**” or “**UGC**”). You may submit UGC through your profile, forums, blogs, message boards, social networking environments, content creation tools, gameplay, social communities, contact us tools, email, and other communications functionality. Except to the extent of the rights and license you grant in these Terms and, subject to any applicable Additional Terms, you are responsible for and retain whatever legally cognizable right, title, and interest that you have in your UGC.

**(ii) Non-Confidentiality of Your User-Generated Content.** Except as otherwise described in the Service’s posted Privacy Policy Charity or any applicable Additional Terms, you agree that (a) your UGC will be treated as non-confidential and non-proprietary by us – regardless of whether you mark them “confidential,” “proprietary,” or the like – and will not be returned, and (b) to the maximum extent not prohibited by applicable law, Charity does not assume any obligation of any kind to you or any third party with respect to your UGC. Upon request, you will provide documentation necessary to authenticate rights to such content and verify your compliance with these Terms or any applicable Additional Terms. You acknowledge that the Internet and mobile communications may be insecure and subject to breaches of security; according, you acknowledge and agree that your UGC is submitted at your own risk.

In your communications with Charity, 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 music, websites, apps, books, scripts, screenplays, motion pictures, television

shows, theatrical productions, software or otherwise (collectively, “**Unsolicited Ideas and Materials**”). Any Unsolicited Ideas and Materials you submit are deemed UGC and licensed to us as set forth below. In addition, Charity retains all of the rights held by members of the general public with regard to your Unsolicited Ideas and Materials. Charity’s receipt of your Unsolicited Ideas and Materials is not an admission by Charity of their novelty, priority, or originality, and it does not impair Charity’s right to contest existing or future intellectual property rights relating to your Unsolicited Ideas and Materials.

**(iii) License to Charity of Your UGC.** Except as otherwise described in any applicable Additional Terms (such as a promotion’s official rules), which specifically govern the submission of your UGC, you hereby grant Charity, 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 UGC (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: (a) configure, host, index, cache, archive, store, digitize, compress, optimize, modify, reformat, edit, adapt, publish in searchable format, and remove such UGC and combine same with other materials, and (b) use any ideas, concepts, know-how, or techniques contained in any UGC for any purposes whatsoever, including developing, producing, and marketing products and/or services. You understand that in exercising such rights metadata, notices and content may be removed or altered, including copyright management information, and you consent thereto and represent and warrant you have all necessary authority to do so. In order to further effect the rights and license that you grant to Charity to your UGC, you also hereby grant to Charity, and agree to grant to Charity, the unconditional, perpetual, irrevocable right to use and exploit your name, persona, and likeness in connection with any UGC, 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 UGC, 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 2.A(iii).

**(iv) Representations and Warranties Related to Your UGC.** Each time you submit any UGC, you represent and warrant that you are at least the age of majority in the jurisdiction in which you reside and are the parent or legal guardian, or have all proper consents from the parent or legal guardian, of any minor who is depicted in or contributed to any UGC you submit, and that, as to that UGC, (a) you are the sole author and owner of the intellectual property and other rights to the UGC, or you have a lawful right to submit the UGC and grant Charity the rights to it that you are granting by these Terms and any applicable Additional Terms, all without any Charity obligation to obtain consent of any third party and without creating any obligation or liability of Charity; (b) the UGC is accurate; (c) the UGC does not and, as to Charity’s permitted uses and exploitation set forth in these Terms, will not infringe any intellectual property or other right of any third party; and (d) the UGC will not violate these Terms or any applicable Additional Terms, or cause injury or harm to any person.

**(v) Enforcement.** Charity has no obligation to monitor or enforce your intellectual property rights to your UGC, but you grant us the right to protect and enforce our rights to your UGC, including initiating actions in your name and on your behalf (at Charity’s cost and expense, to which you hereby consent and irrevocably appoint Charity as your attorney-in-fact, with the power of substitution and delegation, which appointment is coupled with an interest).

**B. Appropriate content and Alerting Us of Violations.** We expect UGC to be appropriate for a general audience, but do not undertake to monitor it, and you consent to potentially encountering content you find offensive or inappropriate. We may include venue and content rules as Additional Terms. If you discover any content that violates these Terms or any applicable Additional Terms, then you may report it [insert email address or link to contact form].

### **3. RESTRICTIONS ON THE USE OF THE SERVICE AND CONTENT**

**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 Intellectual Property; (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 Charity; (iv) to the maximum extent not prohibited by applicable law, decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Service by any means whatsoever 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, Charity, or other users of the Service; (vi) interfere with or circumvent any security feature (including any digital rights management mechanism, device or other content protection or access control measure) of the Service or any feature that restricts or enforces limitations on use of or access to the Service, the content, or the UGC; (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 applicable Additional Terms.

**B. Content Use Restrictions.** You also agree that, in using the Service, you: (i) 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) will not frame or utilize framing techniques to enclose any such content (including any images, text, or page layout); (iii) will keep intact all Trademark, copyright, and other intellectual property notices contained in such content; (iv) 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) will not make any modifications to such content (other than to the extent of your specifically permitted use of the Charity Licensed Elements, if applicable); (vi) 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 applicable Additional Terms or with the prior written consent of an officer of Charity or, in the case of content from a licensor, the owner of the content; and (vii) 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.** Charity, in its sole discretion without advance notice or liability, may immediately suspend or terminate the availability of the Service and/or content (and any elements and features of them), in whole or in part, for any reason, in Charity's sole discretion, and without advance notice or liability.

#### **4. PROCEDURE FOR ALLEGING COPYRIGHT INFRINGEMENT**

If you are a copyright owner who would like to send us a notice pursuant to the Digital Millennium Copyright Act ("**DMCA**") to identify content or material posted on the Service that is infringing that you would like removed from our Service, or if you are a user whose work has been removed in response to such a notice of infringement and would like to file a DMCA counter-notice, you may submit such notice to us by following the notice instructions below.

#### **5. NOTICES, QUESTIONS AND CUSTOMER SERVICE**

You agree that we may give you notices or otherwise respond to you by mail or to your email (if we have it on file) or in any other manner reasonably elected by us. All legal notices to us must be sent to: Lucas Witters, BakerHostetler 127 Public Square, Suite 2000, Cleveland, OH 44114-1214 (Attn: Legal Department -- Notices). If you have a question regarding the Service, you may contact Customer Support by sending an email to [info@rhondaskiss.org](mailto:info@rhondaskiss.org) or calling us at 216-429-5402. You acknowledge that we have no obligation to provide you with customer support of any kind and that customer service personnel cannot change or waive Terms or applicable Additional Terms.

#### **6. THIRD-PARTY SERVICES; ADVERTISEMENTS; DEALINGS WITH THIRD PARTIES**

**A. Third-Party Content and Sites; Advertisements.** The Service may contain third party plug-ins, applications, ads, tools and/or other content, and/or links to third-party websites or other services that are not owned, controlled or operated by Charity, including services operated by advertisers, licensors, licensees, and certain other third parties who may have business relationships with Charity (collectively, "**Third-Party Services**"). We may also host our content, apps, and tools on Third-Party Services. Charity has no control over the content, operations, policies, terms, or other elements of Third-Party Services, and does not assume any obligation to review

them. Charity does not necessarily review, endorse, approve, or sponsor any Third-Party Services, or any third-party content, advertising, information, materials, products, services, or other items. Furthermore, Charity is not responsible for the quality or delivery of the products or services offered, accessed, obtained by or advertised at such Third-Party Services. CHARITY WILL UNDER NO CIRCUMSTANCES BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL OR CHARITYIAL 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 SERVICES. Any activities you engage in connection with Third-Party Services are subject to that Third-Party Services' privacy policy and terms of use which you should read before engaging in such activities.

**B. Dealings with Third Parties.** Any interactions, correspondence, transactions, or dealings you have with any third parties found on or through the Service (including on or via Third-Party 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). Charity disclaims all liability in connection therewith.

## **7. DISPUTES AND DISPUTE RESOLUTION**

**A. Forum Selection/Jurisdiction.** Jurisdiction and venue for any controversy, allegation, or claim arising out of or relating to the Service, the content, your UGC, these Terms, or any applicable Additional Terms, whether before the Effective Date of these Terms or after arising (collectively, "**Dispute**") shall be in Cleveland, Ohio. Each party submits to personal jurisdiction and venue in Cleveland, Ohio for any and all purposes.

**B. Pre-Arbitration Notification.** Charity and you agree that it would be advantageous to discuss and hopefully resolve any Disputes before formal proceedings are initiated; provided, however, that Charity need not do so in circumstances where its claims of intellectual property rights are concerned ("**IP Disputes**," with all other disputes referred to as "**General Disputes**"). The party making a claim – whether you or Charity – shall send a letter to the other side briefly summarizing the claim and the request for relief. If Charity is making a claim, the letter shall be sent, via email, to the email address listed in your Charity account, if applicable. If no such information exists or if such information is not current, then we have no notification or delay obligations under this Section 9.B. If you are making a claim, the letter shall be sent to 7007 Broadway Ave. Cleveland, OH 44105. If the Dispute is not resolved within sixty (60) days after notification, the claimant may proceed to initiate arbitration proceedings as set forth in this Section 9. Either you or Charity, however, may seek provisional remedies (such as preliminary injunctive relief, subject to Section 9.D) before the expiration of this sixty (60)-day period.

**C. Arbitration of Claims.** All actions or proceedings arising in connection with, touching upon or relating to this Agreement, the breach thereof and/or the scope of the provisions of this Section shall be submitted to JAMS for final and binding arbitration under its Comprehensive Arbitration Rules and Procedures if the matter in dispute is over \$250,000 or under its Streamlined Arbitration Rules and Procedures if the matter in dispute is \$250,000 or less, to be held in Cleveland, Ohio, before a single arbitrator in accordance with the American Arbitration Association Rules. The arbitrator shall be selected by mutual agreement of the parties or, if the parties cannot agree, then by striking from a list of arbitrators supplied by JAMS.] The arbitration shall be a confidential proceeding, closed to the general public; provided, however, that a party may disclose information relating to the arbitration proceedings to its and its affiliates' lawyers, insurance providers, auditors and other professional advisers. The fact that there is a dispute between the parties that is the subject of arbitration shall be confidential to the same extent. The arbitrator shall issue a written opinion stating the essential findings and conclusions upon which the arbitrator's award is based. Neither party shall be entitled or permitted to commence or maintain any action in a court of law with respect to any matter in dispute until such matter shall have been submitted to arbitration as herein provided and then only for the enforcement of the arbitrator's award; provided, however, that prior to the appointment of the arbitrator or for remedies beyond the jurisdiction of an arbitrator, at any time, either party may seek pendente lite relief (subject to the provisions of the Agreement waiving or limiting that relief) in a court of competent jurisdiction in Cleveland, Ohio or, if sought by Charity, such other court that may have jurisdiction over you, without thereby waiving its right to arbitration of the dispute or controversy under this Section; provided further, however, that the losing party shall have fifteen (15) business days after the issuance of the arbitrator's decision to fully comply with such decision, after which the prevailing party may enforce such decision by a petition to the Cuyahoga County Superior Court or, in the case of you, such other court having jurisdiction over you, which may be made ex parte, for confirmation and enforcement of the award.

**D. Limitation on Injunctive Relief.** AS PERMITTED BY APPLICABLE LAW 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 DEEMED IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR TO OTHER EQUITABLE RELIEF OF ANY KIND. THIS MEANS (WITHOUT LIMITATION) 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, UGC, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED, OR CONTROLLED BY ANY CHARITY PARTY (INCLUDING YOUR LICENSED UGC) OR A LICENSOR OF ANY CHARITY PARTY. Without limiting the generality of the forgoing, you hereby irrevocably waive any right or remedy to seek and/or obtain injunctive or other equitable relief or any order with respect to, and/or to enjoin or restrain or otherwise impair in any manner, the production, distribution, exhibition, or other exploitation of any motion picture, production or project related to Charity, its parents, subsidiaries, and affiliates, or the use, publication or dissemination of any advertising in connection with such motion picture, production, or project.

**E. Governing Law.** These Terms and any applicable Additional Terms, Dispute and IP Disputes, and any other claim brought by you against Charity or by Charity against you pursuant to this Section 7, or otherwise related to the Service, content, Charity Licensed Elements, UGC or other Charity products or services, will be governed by, construed, and resolved in accordance with, the laws of the State of Ohio, U.S.A., without regard to its conflicts of law provisions that might apply the laws of another jurisdiction. This Section 7 shall be governed solely by the Federal Arbitration Act, 9 U.S.C. §1, et seq., and not by the law of any state, and is enforceable pursuant to its terms on a self-executing basis. You and Charity agree that we intend that this Section 8 satisfies the “writing” requirement of the Federal Arbitration Act. This Section 7 can only be amended by the Charity.

**F. Class Action Waiver.** Both you and Charity waive the right to bring any Dispute as a class, consolidated, representative, collective, or private attorney general action, or to participate in a class, consolidated, representative, collective, or private attorney general action regarding any Dispute brought by anyone else. Notwithstanding any provision in the JAMS Comprehensive Arbitration Rules and Procedures to the contrary, the arbitrator shall not have the authority or any jurisdiction to hear the arbitration as a class, consolidated, representative, or private attorney general action or to consolidate, join, or otherwise combine the Disputes of different persons into one proceeding. Notwithstanding the arbitration provision set forth above, if the provision regarding waiver of class, collective, representative, and private attorney general claims of this Section 7 is found to be void or otherwise unenforceable, any such class, collective, representative, or private attorney general claims must be heard and determined through an appropriate court proceeding, and not in arbitration.

**G. Jury Waiver.** THE PARTIES HEREBY WAIVE THEIR RIGHT TO JURY TRIAL WITH RESPECT TO ALL CLAIMS AND ISSUES ARISING UNDER, IN CONNECTION WITH, TOUCHING UPON OR RELATING TO THIS AGREEMENT, THE BREACH THEREOF AND/OR THE SCOPE OF THE PROVISIONS OF THIS SECTION, WHETHER SOUNDING IN CONTRACT OR TORT, AND INCLUDING ANY CLAIM FOR FRAUDULENT INDUCEMENT THEREOF.

**8. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.** AS PERMITTED BY APPLICABLE LAW, YOUR ACCESS TO AND USE OF THE SERVICE IS AT YOUR SOLE RISK AND THE SERVICE IS PROVIDED ON AN “AS IS”, “AS AVAILABLE”, AND “WITH ALL FAULTS” BASIS. To the fullest extent permissible by law, Charity and their direct and indirect parents, subsidiaries, affiliates, and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns (collectively, “**Charity Parties**”) hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, in connection with, or otherwise directly or indirectly related to, without limitation, the Service, content, Charity Licensed Elements, UGC or other Charity products or services.

## **9. LIMITATIONS OF OUR LIABILITY**

**A.** AS PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL ANY CHARITY 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 of any kind, including without limitation loss of profits, in connection with, or otherwise directly or indirectly related to, without limitation, the Service, content, Charity Licensed Elements, UGC or other Charity products or services, except for direct damages for personal injury caused by a physical product manufactured, sold or provided by Charity.

**B.** The foregoing limitations of liability will apply even if any of the events or circumstances were foreseeable and even if Charity 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).

**C.** AS PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL CHARITY 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 CHARITY IN CONNECTION WITH THE TRANSACTION(S) THAT UNDERLIE THE CLAIM(S).

## **10. UPDATES TO TERMS**

It is your responsibility to review the posted Terms and any applicable Additional Terms each time you use the Service (at least prior to each transaction or submission). 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 NEW 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 NEW TERMS FOR YOUR NEW USE AND TRANSACTIONS. Any new Terms or 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. 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 can reject any new, revised or additional terms by discontinuing use of the Service.

## **11. GENERAL PROVISIONS**

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

**B. Indemnity.** You agree to, and you hereby, defend (if requested by Charity), indemnify, and hold Charity 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 Charity 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 UGC; (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 applicable 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) Charity Parties' use of the information that you submit to us (including your UGC) (all of the foregoing, "**Claims and Losses**"). You will cooperate as fully required by Charity Parties in the defense of any Claim and Losses. Notwithstanding the foregoing, Charity Parties retain the exclusive right to settle, compromise, and pay any and all Claims and Losses. Charity 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 Charity Party.

**C. Operation of Service; Availability of Services; International Issues.** Charity controls and operates the Service from the U.S.A., and 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 responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply.

**D. Severability; Interpretation.** If any provision of these Terms, or any applicable 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 applicable Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the applicable Additional Terms. To the extent permitted by applicable law, you agree to waive and will waive, any applicable statutory and common law that may permit a contract to be construed against its drafter.

**E. Investigations; Cooperation with Law Enforcement; Termination; Survival.** Charity 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 applicable Additional Terms, (iii) investigate any information obtained by Charity in accordance with its privacy policy, (iv) involve and cooperate with law enforcement authorities in investigating any of the foregoing matters, (v) prosecute violators of these Terms and any applicable Additional Terms, and (vi) discontinue the Service, in whole or in part, or, 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 Charity under these Terms or any applicable Additional Terms. Upon suspension or termination of your access to the Service, or upon notice from Charity, all rights granted to you under these Terms or any applicable Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms and any applicable Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to Charity 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.

**F. Assignment.** Charity may assign its rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable 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 Charity.

**G. Complete Agreement; No Waiver.** These Terms, and any applicable Additional Terms, reflect our complete agreement regarding the Service and supersede any prior agreements, representations, warranties, assurances or discussion related to the Service. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by you or Charity 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 applicable Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.