

## DimensionX Terms of Use

Posted: September 7, 2022

**These Terms of Use contain an arbitration provision and class action waiver. Please review the Arbitration section for details.**

These DimensionX Terms of Use (the "**Terms**") are a legal agreement between Cryptulhu Studios, Inc. ("**Crypthulhu**," "**Company**," "**we**," "**our**," "**us**") and you, the user, governing your access to and use of: (a) all content and functionalities available at the dimensionxnft.com website (the "**Site**") and related services to which these terms are applied (collectively, the "**Services**").

**THIS IS A LEGALLY BINDING CONTRACT. BY ACCESSING OR USING THE SERVICES OR BY INDICATING YOUR ACCEPTANCE OF THESE TERMS, YOU ACKNOWLEDGE AND REPRESENT THAT YOU HAVE READ THESE TERMS, UNDERSTAND THEM, AND AGREE TO BE BOUND BY THEM. YOU ALSO REPRESENT AND WARRANT THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS CONTRACT AND ARE NOT PROHIBITED BY LAW FROM ACCESSING OR USING THE SERVICES. YOU DO NOT HAVE TO ENTER INTO THESE TERMS, BUT IF YOU DO NOT, YOU WILL NOT BE PERMITTED TO, AND YOU MAY NOT, USE THE SERVICES.**

1. **Overview.** The Site offers a free-to-play, play-to-earn strategic role playing game set in the Dimension X comic book universe. Certain features and aspects of the gameplay utilize NFTs (as such term is defined below) minted on a blockchain. To learn more about the specifics of the gameplay, and how certain choices you make with your characters and/or NFT(s) may affect your position in the game, please see the details set forth on the Site.

For clarity, "**NFTs**" are non-fungible tokens, ownership of which are registered on a blockchain. NFTs are associated with digital objects (which may include images and/or other digital works) ("**Digital Object(s)**"). Except as expressly set forth herein and in the Owner Agreement (defined below), the purchase or acquisition of an NFT does not grant the acquirer ownership, or any other rights, to the Digital Object(s). Any license to use the Digital Object is set forth in the Owner Agreement.

2. **Eligibility.** To use the Services, you must be the greater of: (i) 18 years old; or (ii) the age of majority in your state or jurisdiction of residence. Further, you represent and warrant that you (i) are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a terrorist-supporting country; or (ii) are not listed on any U.S. Government list of prohibited or restricted parties; or (iii) you are not subject to any prohibition from using or accessing our site pursuant to any applicable law, regulation or government designation; or (iv) you will comply with all applicable terms of any payment provider we select and you are not on a prohibited list preventing you from using such payment provider; or (v) you are not listed on any U.S. government list of prohibited or restricted parties, such as the U.S. Treasury Department's list of Specially Designated Nationals, and not located in a sanctioned country or territory under applicable laws; and (vi) you will not use our site for any purpose prohibited by law, including but not limited to counter-terrorism, sanctions or money laundering laws and regulations.

3. **Your Account.** Certain aspects of the Services may require you to create an account, including by: (i) setting up a Site approved wallet that is compatible with the appropriate blockchain ("**Wallet**") with all necessary legal authorization to use that Wallet; and/or (ii) completing a registration form and selecting a user ID and password (your "**Account**"). You agree that the information you provide as part of the registration process will be true, current and complete, and you agree to update such information as applicable so that it continues to be true, current and complete. Your Account is personal to you and may not be used by any other person, nor are you permitted to maintain multiple accounts ("**Multi-accounting**"). *Multi-accounting*, also often referred to as maintaining multiple accounts whether by an individual or a group of individuals, means creating and managing more than one account for Dimension X. You agree not to, or to authorize any third party on your behalf to, interact in the Services in a manner that is contrary to any rules or guidelines we may impose from time to time, or in a way that we

determine, in our absolute discretion, to be cheating, farming, or otherwise acting in a manner that may negatively impact the enjoyment of others in connection with the Services. This includes, without limitation, using third party software (by injecting the software into the Services or otherwise) to give you or another user an unfair advantage, or to automate aspects of gameplay, Multi-Accounting, sharing your Account, and/or otherwise undermining, diminishing, or tarnishing the Services. Moving a hero to another account to load it up on tokens and then returning that hero to the original account ("**Token Swapping**"), for any reason is prohibited. At a minimum, we will remove the levels that were gained from swapping on those heroes and we reserve the right for further disciplinary action. Moving a hero to another account to give it a piece of gear and then returning that hero to the original account ("**Gear Swapping**"), for any reason is prohibited as well. At a minimum, we will remove the gear that was put on that hero and we reserve the right for further disciplinary action. For clarity, acting contrary to this clause will be considered a material breach of these Terms and may result in a temporary or permanent ban or any other action at Company's sole discretion. You alone are responsible for use of and access to your Account. You agree to contact us at [customersupport@crypthulhu.io](mailto:customersupport@crypthulhu.io) if you become aware of any unauthorized use of the Services on your Account or through your Wallet.

#### 4. **Gameplay Terms**

**NFT Owner Agreement.** As stated above, the purchase or acquisition of an NFT is subject to the "Owner Agreement." By purchasing or otherwise acquiring an NFT (e.g., through player rewards or otherwise) you are agreeing to the terms and conditions set forth in the Owner Agreement. As detailed in the Owner Agreement, while an acquirer may own the token corresponding to an NFT they shall have only a limited license to the Digital Object(s), subject to the terms and conditions set forth therein.

**Gameplay.** Gameplay information may be provided on the Site. NFT Owners may be able to upgrade, burn, or otherwise alter, transfer or destroy their NFT(s) through use of the Services. You understand and agree that taking certain actions with respect to your NFT, including without limitation, by participating in quests, may cause a transfer of ownership of your NFT, an alteration or degradation to your NFT, or may cause your NFT to cease to exist. To learn more about the specifics of the gameplay, and how certain choices you make with your NFT(s) may affect the availability or your ownership of the NFT(s), please see the details set forth on the Site.

**THUL Tokens.** You may be able to earn game tokens ("**THUL Tokens**") through the gameplay. THUL Tokens are the official currency of the Site and may be used to mint new NFTs. THUL Tokens cannot be redeemed for any real currency and Company is not obligated to exchange your THUL Tokens for anything else of value. Company reserves the right to change how THUL Tokens are earned (or otherwise allocated) at any time. Subject to your compliance with these terms, you are granted a limited, revocable license to use THUL Tokens only for your personal entertainment, in connection with the Services. If and when Company introduces the option to transfer THUL Tokens, this license may be transferrable to another user of the Site provided that: (i) your license has not expired or been terminated for any reason; (ii) the transfer takes place in accordance with the directions and procedures set forth on the Site, including without limitation, the acquiring user's acceptance of, and agreement to be bound by, these Terms. For clarity, Company does not guarantee that the THUL Tokens will be transferrable. Your license to use THUL Tokens automatically terminates if you transfer the THUL Tokens or if these Terms or your Account terminates for any reason. To learn more about the specifics of gameplay, and how you may earn, redeem, or transfer THUL Tokens, please see the details set forth on the Site.

**Other Rewards.** You may be able to earn other incentives or rewards through the gameplay, including, for example, power tokens or experience points (collectively, "**Rewards**"). These are "account bound" rewards, meaning that they remain with your Account and are generally not transferrable. That is, you cannot sell or trade individual Rewards. However, you may be able to redeem Rewards to "upgrade" your NFT(s), sidekicks or otherwise as explained on the Site. Once redeemed, Rewards will be deleted from your Account and associated with the applicable NFT(s), sidekick(s), or other. Any transfer of such NFT(s) will include the Reward(s). Subject to your compliance with these terms, you are granted a limited, non-transferable (except as specifically set out in this section), revocable license to use Rewards only for your personal entertainment, in connection with the Services. Your license to use Rewards

automatically terminates when these Terms or your Account terminates for any reason. To learn more about the specifics of gameplay, and how you may redeem other rewards, please see the details set forth on the Site.

**NFT Sales:** The Site does not include an NFT marketplace, but you may be able to sell your NFT(s) on a secondary marketplace (each, an “**NFT Marketplace**”) subject to the applicable NFT Marketplace’s terms and conditions. You understand and agree that the NFT Marketplace is a Third Party Platform (as such term is defined below) and Company is not responsible or liable to you for any transactions on such platform. Any sale(s) of the NFT(s) will be subject to a ten percent (10%) “**Resale Royalty**.” The smart contract that associated with the NFT is programmed to collect and automatically pay to us the Resale Royalty from the gross proceeds of any sale amount. Certain aspects of the gameplay may require you to “lock” an NFT to access or participate in certain gameplay features. You understand and agree that an NFT cannot be sold while it is actively locked. For more information on locking and selling your NFT, please refer to the Site.

**Use of Bots Prohibited:** You agree not to use or launch any automated system, including without limitation, “bots” etc., that accesses or participates in our game or mint in any manner. You further agree that you will not use any deep-link, page-scrape, robot, crawl, index, spider, click spam, macro programs, Internet agent, or other automatic device, program, algorithm or methodology which does the same things, to use, access, copy, acquire information, input information, store information, search, generate searches, purchase items, or monitor any portion of gameplay. Additionally, you agree not to circumvent any measures we implement aimed at preventing violations of these terms.

## 5. Additional Terms

Some of our Services have additional terms and conditions (“**Additional Terms**”). Where Additional Terms apply to a Service, we will make them available for you to read through prior to your use of that Service. By using that Service, you agree to the Additional Terms. You may be required to accept the terms to use that Service.

## 6. Acceptable Use of the Site and Services

You may use the Site and Service for your personal use only. You are responsible for your use of the Site and Services, and for any use of the Services made using your Account or wallet. Our goal is to create a positive, useful, legal and safe user experience. To promote this goal, we prohibit certain kinds of conduct that may be harmful to other users or to us. When you use the Services, you may not:

- violate any law or regulation;
- violate, infringe, or misappropriate other people’s intellectual property, privacy, publicity, or other legal rights;
- post or share anything that is illegal, abusive, harassing, harmful to reputation, pornographic, indecent, profane, obscene, hateful, racist, or otherwise objectionable;
- send unsolicited or unauthorized advertising or commercial communications, such as spam;
- engage in spidering or harvesting, or participate in the use of software, including spyware, designed to collect data from the Services;
- transmit any viruses or other computer instructions or technological means whose purpose is to disrupt, damage, or interfere with the use of computers or related systems;
- stalk, harass, or harm another individual;

- impersonate any person or entity or perform any other similar fraudulent activity, such as phishing;
- use any means to scrape or crawl any Web pages contained in the Site;
- attempt to circumvent any technological measure implemented by us or any of our providers or any other third party (including another user) to protect the Services;
- attempt to decipher, decompile, disassemble, or reverse engineer any of the software or other underlying code used to provide the Services; or
- advocate, encourage, or assist any third party in doing any of the foregoing.

## 7. User Content

The Site and some of our Services allow you to upload, submit, store, send, or receive content and data (“**User Content**”). User Content includes, without limitation, any art, media or other creative works, including the Works. You retain ownership of any intellectual property rights that you hold in that User Content.

When you provide User Content to the Services, you give us permission under all of the rights in any copyright associated with the User Content to reproduce and use your User Content for all activities and purposes related to operating the Site and Services as they exist now and in the future. This license is for the limited purpose of operating, promoting, and improving the Site and Services, and to develop new Services. Our license to your User Content is non-exclusive, meaning you may use the User Content for your own purposes or let others use your User Content for their purposes. This license is fully-paid and royalty free, meaning we do not owe you anything for the right to use your User Content. You agree we may exercise our rights under this license anywhere in the world and in any media. The license is perpetual, meaning that our rights under this license continue even after you stop using the Site and Services.

You promise that:

- you own all rights to your User Content or, alternatively, that you have the right to give us the rights described above; and
- your User Content does not infringe the intellectual property rights, privacy rights, publicity rights, or other legal rights of any third party.

We may refuse to accept or transmit User Content for any reason. We may remove from the Services or disable access to any User Content for any reason.

**8. Ownership of the Services.** Other than the User Content, we (or our licensors) own all right, title, and interest in and to (a) the Site and Services, including all software, text, media, and other content available on the Site and Services (“**Our Content**”); and (b) our trademarks, logos, and brand elements (“**Marks**”). The Site and Services, Our Content, and Marks are all protected under U.S. and international laws. The look and feel of the Site and Services are copyright © Cryptulhu. All rights reserved. You may not duplicate, copy, or reuse any portion of the Site, including any HTML/CSS, Javascript, or visual design elements or concepts without express written permission from us.

## 9. Copyright and Intellectual Property Policy

We respond to notices of alleged copyright infringement and terminate Accounts of repeat infringers according to the process set out in the U.S. Digital Millennium Copyright Act. If you believe that your work

has been copied in a way that constitutes copyright infringement, please forward the following information to the Copyright Agent named below:

- Your address, telephone number, and email address.
- A description of the copyrighted work that you claim has been infringed.
- A description of where the alleged infringing material is located.
- A statement by you that you have a good faith belief that the disputed use is not authorized by you, the copyright owner, its agent, or the law.
- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest.
- A statement by you, made under penalty of perjury, that the above information is accurate and that you are the copyright owner or authorized to act on behalf of the copyright owner.

Copyright Agent:

Stephanie Ramos  
Crypthulhu Studios, Inc.  
PO Box 8737  
Spokane, WA 99203  
stephanie@crypthulhu.io

For clarity, only copyright infringement notices should go to our Copyright Agent. You acknowledge that if you fail to comply with all of the requirements of this Section your notice may not be valid.

If you believe the content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use such content, you may submit a counter-notice to the address listed above containing the following information:

- Your physical or electronic signature;
- Identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- A statement that you have a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content; and
- Your name, physical address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in the judicial district in which your physical address is located, or if your physical address is located outside of the United States, then to the federal court in Delaware, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

After we receive your counter-notification, we will forward it to the party who submitted the original claim of copyright infringement. Please note that when we forward the counter-notification, it includes your personal information. By submitting a counter-notification, you consent to having your information

revealed in this way. We will not forward the counter-notification to any party other than the original claimant.

After we send out the counter-notification, the claimant must then notify us within 10 days that he or she has filed an action seeking a court order to restrain you from engaging in infringing activity relating to the content that was removed or disabled. If we receive such notification, we will be unable to restore the material. If we do not receive such notification, we may reinstate the material.

## 10. Privacy

Your privacy is very important to us. Our [Privacy Policy](#) explains how we collect, use, protect, and when we share personal information and other data with others. You are responsible for maintaining the confidentiality of your Account information, including your private key. You are responsible for all activities that occur under your Account and you agree to notify us immediately of any unauthorized access or use of your Account. We are not responsible or liable for any damage or loss related to any unauthorized access or use of your Account.

## 11. Third Party Platforms and Links

The Site and Services may contain links to other websites and online resources solely for convenience. A link to a third party's website does not mean that we endorse it or that we are affiliated with it. We are not responsible or liable for any damage or loss related to the use of any third-party website. You should always read the terms and conditions and privacy policy of a third-party website before using it.

We do not provide, nor have custody or control over, any third party platforms you are interacting with, including without limitation, wallets, blockchains, NFT marketplaces, communication channels or other third party platforms or services (collectively, "**Third Party Platforms**"). You are solely responsible for any transaction you conduct using a Third Party Platform, and we are not responsible or liable for any action or inaction by the third party nor any damage or loss related to your use of any Third Party Platform. You should always read the terms and conditions and privacy policy of a Third Party Platform before using it. Please note that Third Party Platforms, including without limitation, blockchains, may charge fees associated with their respective services (e.g., gas fees).

## 12. Changes to the Services

We enhance and update the Site and Services often. We may change or discontinue the Services at any time, with or without prior notice to you.

## 13. Termination

We reserve the right to not provide the Services to any person. We also reserve the right to terminate any user's right to access the Services at any time, at our discretion. If you violate any of these Terms, your permission to use the Site and Services, and any license rights granted herein with respect to THUL Tokens or Rewards, automatically terminate.

## 14. Disclaimer and Limitations on Our Liability

YOU USE THE SITE AND SERVICES AT YOUR OWN RISK. THE SITE AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OUR COMPANY AND ITS OFFICERS, EMPLOYEES, DIRECTORS, SHAREHOLDERS, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS, CONSULTANTS, SUPPLIERS, AND LICENSORS ("**AFFILIATES**") DISCLAIM ALL WARRANTIES, CONDITIONS, AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING THOSE RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,

AND NON-INFRINGEMENT AND THOSE ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

IN PARTICULAR, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OUR COMPANY AND ITS AFFILIATES MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE ACCURACY OR COMPLETENESS OF CONTENT AVAILABLE ON OR THROUGH THE SERVICES, OR THE CONTENT OF ANY WEBSITES OR ONLINE SERVICES LINKED TO OR INTEGRATED WITH THE SERVICES. OUR COMPANY AND ITS AFFILIATES WILL HAVE NO LIABILITY FOR ANY: (A) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (b) PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM YOUR ACCESS TO OR USE OF THE SERVICES; (c) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SERVERS OR OF ANY PERSONAL INFORMATION OR USER DATA; (d) ANY INTERRUPTION OF TRANSMISSION TO OR FROM THE SERVICES; (e) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED ON OR THROUGH THE SERVICES BY ANY THIRD PARTY; OR (f) ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED OR SHARED THROUGH THE SERVICES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY MAKES NO WARRANTY THAT THE SITE AND SERVICES WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. FURTHER, COMPANY MAKES NO WARRANTY REGARDING THE QUALITY, ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY INFORMATION OR CONTENT ON THE SERVICES.

YOU UNDERSTAND AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY MATERIAL OR INFORMATION DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT YOUR OWN RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE ARISING FROM DOING SO. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE.

THE NFTS ARE INTANGIBLE DIGITAL ASSETS. THEY EXIST ONLY BY VIRTUE OF THE OWNERSHIP RECORD MAINTAINED IN THE APPLICABLE BLOCKCHAIN NETWORK. ANY TRANSACTION THAT MIGHT OCCUR IN ANY UNIQUE DIGITAL ASSET OCCURS ON THE DECENTRALIZED LEDGER WITHIN SUCH BLOCKCHAIN NETWORK, WHICH COMPANY DOES NOT CONTROL. YOU UNDERSTAND AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WILL NOT BE RESPONSIBLE FOR ANY COMMUNICATION FAILURES, DISRUPTIONS, ERRORS, DISTORTIONS OR DELAYS YOU MAY EXPERIENCE WHEN EFFECTING NFT TRANSACTIONS, TO THE EXTENT CAUSED BY OR RELATED TO THIRD-PARTY TECHNOLOGY, PLATFORMS, SERVICES OR OTHER FUNCTIONALITY, INCLUDING WITHOUT LIMITATION ANY WALLETS, SMART CONTRACTS, BLOCKCHAINS OR FILE STORAGE SYSTEMS.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING FOR LOSS OF PROFITS, REVENUE, OR DATA) OR FOR THE COST OF OBTAINING SUBSTITUTE PRODUCTS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, HOWEVER CAUSED, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT WE'VE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OUR TOTAL CUMULATIVE LIABILITY TO YOU OR ANY THIRD PARTY UNDER THESE TERMS, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED ONE HUNDRED DOLLARS (\$100).

You understand and agree that we have set our fees and entered into these Terms with you in reliance upon the limitations of liability set forth in these Terms, which allocate risk between us and form the basis of a bargain between the parties.

## 15. Indemnification

To the maximum extent permitted by applicable law, you agree to indemnify and hold harmless our company and its Affiliates from and against any and all claims, costs, proceedings, demands, losses, damages, and expenses (including, without limitation, reasonable attorney's fees and legal costs) of any kind or nature, relating to, any actual or alleged breach of these Terms by you or anyone using your Account or wallet. If we assume the defense of such a matter, you will reasonably cooperate with us in such defense.

## 16. Arbitration Agreement & Waiver of Certain Rights

Except as set forth below, you and we agree that we will resolve any disputes between us (including any disputes between you and a third-party agent of ours) through binding and final arbitration instead of through court proceedings. You and we hereby waive any right to a jury trial of any Claim (defined below). All controversies, claims, counterclaims, or other disputes between you and us or you and a third-party agent of ours (each a "**Claim**") shall be submitted for binding arbitration in accordance with the Rules of the American Arbitration Association ("**AAA Rules**"). The arbitration will be heard and determined by a single arbitrator. The arbitrator's decision in any such arbitration will be final and binding upon the parties and may be enforced in any court of competent jurisdiction. You and we agree that the arbitration proceedings will be kept confidential and that the existence of the proceeding and any element of it (including, without limitation, any pleadings, briefs or other documents submitted or exchanged and any testimony or other oral submissions and awards) will not be disclosed beyond the arbitration proceedings, except as may lawfully be required in judicial proceedings relating to the arbitration, by applicable disclosure rules and regulations of securities regulatory authorities or other governmental agencies, or as specifically permitted by state law. The Federal Arbitration Act and federal arbitration law apply to this agreement. However, the Arbitrator, and not any federal, state, or local court or agency, shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of these Terms including, but not limited to, a claim that all or any part of these Terms is void or voidable.

If you demonstrate that the costs of arbitration will be prohibitive as compared to the costs of litigation, we will pay as much of the administrative costs and arbitrator's fees required for the arbitration as the arbitrator deems necessary to prevent the cost of the arbitration from being prohibitive. In the final award, the arbitrator may apportion the costs of arbitration and the compensation of the arbitrator among the parties in such amounts as the arbitrator deems appropriate.

Notwithstanding any other provision of this agreement, this arbitration agreement does not preclude either party from seeking action by federal, state, or local government agencies. You and we also have the right to bring qualifying claims in small claims court. In addition, you and we retain the right to apply to any court of competent jurisdiction for equitable or provisional relief, including pre-arbitral attachments or preliminary injunctions, and any such request shall not be deemed incompatible with these Terms, nor a waiver of the right to have disputes submitted to arbitration as provided in these Terms.

Neither you nor we may act as a class representative or private attorney general, nor participate as a member of a class of claimants, with respect to any Claim. Claims may not be arbitrated on a class or representative basis. The arbitrator can decide only your and/or our individual Claims. The arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated. The arbitrator may award in the arbitration the same damages or other relief available under applicable law, including injunctive and declaratory relief, as if the action were brought in court on an individual basis. Notwithstanding anything to the contrary in the foregoing or herein, the arbitrator may not issue a "public injunction" and any such "public injunction" may be awarded only by a federal or state court. If either party seeks a "public injunction," all other claims and prayers for relief must be adjudicated in arbitration first and any prayer or claim for a "public injunction" in federal or state court stayed until the arbitration is completed, after which the federal or state court can adjudicate the party's claim or prayer for "public



injunctive relief.” In doing so, the federal or state court is bound under principles of claim or issue preclusion by the decision of the arbitrator.

If any provision of this Section is found to be invalid or unenforceable, then that specific provision shall be of no force and effect and shall be severed, but the remainder of this Section shall continue in full force and effect. No waiver of any provision of this Section of the Terms will be effective or enforceable unless recorded in a writing signed by the party waiving such a right or requirement. Such a waiver shall not waive or affect any other portion of these Terms. This Section of the Terms will survive the termination of your relationship with us.

THIS SECTION LIMITS CERTAIN RIGHTS, INCLUDING THE RIGHT TO MAINTAIN A COURT ACTION, THE RIGHT TO A JURY TRIAL, THE RIGHT TO PARTICIPATE IN ANY FORM OF CLASS OR REPRESENTATIVE CLAIM, THE RIGHT TO ENGAGE IN DISCOVERY EXCEPT AS PROVIDED IN AAA RULES, AND THE RIGHT TO CERTAIN REMEDIES AND FORMS OF RELIEF. OTHER RIGHTS THAT YOU OR WE WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION.

**17. Other Provisions**

Under no circumstances will we be held liable for any delay or failure in performance due in whole or in part to any acts of nature or other causes beyond our reasonable control.

These Terms will be governed by and construed in accordance with the laws of the State of Delaware without giving effect to any conflict of laws, rules or provisions.

Without altering the arbitration requirement set forth above, in the event any action of whatever nature relating to these Terms, the Site, or Services must be filed in a court, we mutually agree that such action may only be filed in the state or federal courts located in Delaware. You consent and submit to the personal jurisdiction of such courts for the purposes of any such action and agree not to challenge the personal jurisdiction or convenience of the forum.

If any provision of these Terms is found to be unlawful or unenforceable, then that provision will be deemed severable from these Terms and will not affect the enforceability of any other provisions.

The failure by us to enforce any right or provision of these Terms will not prevent us from enforcing such right or provision in the future.

We may assign our rights and obligations under these Terms, including in connection with a merger, acquisition, sale of assets or equity, or by operation of law.

**18. Changes to these Terms**

From time to time, we may change these Terms. If we change these Terms, we will give you notice by posting the revised Terms on the Site. Those changes will go into effect on the Revision Date shown in the revised Terms. By continuing to use the Services, you are agreeing to the revised Terms. You may be required to indicate acceptance of the changed Terms to continue use of the Services.

**PLEASE PRINT A COPY OF THESE TERMS FOR YOU RECORDS AND PLEASE CHECK THE SITE FREQUENTLY FOR ANY CHANGES TO THESE TERMS.**