

## TERMS OF USE

**Last Updated: 10/5/2022**

BluMint Inc. (“**BluMint**,” “**we**,” “**us**,” or “**our**”) welcomes you. We invite you to access and use our website located at <https://www.blumint.com/> (the “**Website**”) and our Web3 gaming platform (“**Platform**”) that is provided to you through the Website, subject to the following terms and conditions (the “**Terms of Use**”).

BY VISITING THE WEBSITE AND/OR ACCESSING AND/OR USE THE PLATFORM, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS OF USE AND OUR PRIVACY POLICY (THE “**PRIVACY POLICY**”, TOGETHER WITH THE TERMS OF USE, THE “**AGREEMENT**”), WHICH IS HEREBY INCORPORATED BY REFERENCE, AND YOU REPRESENT AND WARRANT THAT YOU ARE AT LEAST 13 YEARS OLD OR OLDER. IF YOU ARE UNDER AGE 18 BUT ABOVE 13 YOU ACKNOWLEDGE THAT YOUR PARENT OR LEGAL GUARDIAN HAS REVIEWED THIS AGREEMENT AND YOU POSSESS THEIR CONSENT TO ACCESS AND USE THE WEBSITE AND THE PLATFORM. IF YOU DO NOT AGREE TO ANY OF THESE TERMS, DO NOT ACCESS OR USE THE WEBSITE AND THE PLATFORM.

**THE SECTIONS BELOW TITLED “BINDING ARBITRATION” AND “CLASS ACTION WAIVER” CONTAIN A BINDING ARBITRATION AGREEMENT, AND CLASS ACTION WAIVER. THEY AFFECT YOUR LEGAL RIGHTS. PLEASE READ THEM.**

If you accept or agree to this Agreement on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to the Agreement and, in such event, “you” and “your” will refer and apply to that company or other legal entity.

We reserve the right, at our sole discretion, to modify, discontinue, or terminate the Website and/or the Platform, or to modify the Agreement, at any time and without prior notice. If we modify the Agreement, we will post the modification on the Website and the Platform. By continuing to access or use the Website and/or the Platform after we have posted a modification on the Website and/or the Platform, you are indicating that you agree to be bound by the modified Agreement. If the modified Agreement is not acceptable to you, your only recourse is to cease using the Website and the Platform.

Capitalized terms not defined in these Terms of use shall have the meaning set forth in our Privacy Policy.

### **1. DISCLAIMER**

**You acknowledge and agree that playing online games may result in some health and safety risks. You should consult your physician before using the Platform, if you are pregnant, elderly, or suffer from a heart condition or other serious medical condition. You should stop using the Platform and contact your physician immediately if you feel any of the following symptoms: dizziness, nausea, motion sickness, seizures, disorientation, visual abnormalities, fatigue, discomfort or any symptoms similar to motion sickness. By accessing and using the Platform, you acknowledge that you are aware of, and assume these risks, and release BluMint from any and all liability, claims, or actions that arise from your use of the Platform.**

### **2. DESCRIPTION OF THE PLATFORM**

Our Platform is a Web3 gaming center that focuses on sociability, connecting players with their favorite Web3 games and friends. Depending on the games you play, you may be able to make in-game purchases

in the form of non-fungible tokens (“NFTs”) and other blockchain-based assets (collectively, the “**Digital Assets**”).

Transactions that take place on the Platform are managed and confirmed via the Ethereum Network. You understand that your Ethereum Network public address will be made publicly visible whenever you engage in a transaction on the Platform. Further, you understand that we have no control over payments or transactions occurring on the Ethereum Network, nor do we have the ability to reverse or refund any payments or transactions. We have no liability to you, or to any third party, for any claims or damages that may arise as a result of any payments or transactions that you engage in via the Platform, or any other payment or transactions that you conduct via the Ethereum Network.

There are certain risks associated with the use, purchase, and sale of Digital Assets. Please review Section 10 of these Terms of Use for more information about such risks.

### **3. USE OF PERSONAL INFORMATION**

Your use of the Website and the Platform may involve the transmission to us of certain personal information. Our policies with respect to the collection and use of such personal information are governed according to our Privacy Policy (located at [[Link](#)]), which is hereby incorporated by reference in its entirety.

### **2. RIGHT TO ACCESS AND USE THE PLATFORM**

Subject to the terms and conditions of this Agreement, BluMint grants you during the term of this Agreement a non-transferable, non-exclusive right, without the right to sublicense, to access and use the Platform for your personal purposes.

### **3. INTELLECTUAL PROPERTY**

The Website and the Platform contains material, such as software, text, graphics, images, and other material provided by or on behalf of us or our licensors (collectively referred to as the “**Content**”). The Content may be owned by us or third parties. The Content is protected under both United States and foreign laws. Unauthorized use of the Content may violate copyright, trademark, and other laws. Elements of the Website and the Platform are protected by trade dress, trademark, unfair competition, and other state and federal laws and may not be copied or imitated in whole or in part, by any means, including, but not limited to, the use of framing or mirrors. You must retain all copyright and other proprietary notices contained in the original Content. You may not sell, transfer, assign, license, sublicense, or modify the Content or reproduce, display, publicly perform, make a derivative version of, distribute, or otherwise use the Content in any way for any public or commercial purpose. The use or posting of the Content on any other website or in a networked computer environment for any purpose is expressly prohibited. We reserve the right to remove Content from the Website and the Platform at any time for any reason without any notice to you.

If you violate any part of this Agreement, your permission to access and/or use the Content, the Website and the Platform automatically terminates and you must immediately destroy any copies you have made of the Content.

The trademarks, service marks, and logos of BluMint (the “**BluMint Trademarks**”) used and displayed on the Website and the Platform are registered and unregistered trademarks or service marks of ours. Other company, product, and service names displayed on the Website and the Platform may be trademarks or service marks owned by others (the “**Third-Party Trademarks**,” and, collectively with the BluMint Trademarks, the “**Trademarks**”). Nothing herein should be construed as granting, by implication, estoppel, or otherwise, any license or right to use the Trademarks, without our prior written permission

specific for each such use. Use of the Trademarks as part of a link to or from any site is prohibited unless establishment of such a link is approved in advance by us in writing. All goodwill generated from the use of BluMint Trademarks inures to our benefit.

#### **4. FEEDBACK**

If you provide any suggestions, feedback, comments or other input related to the Website, the Platform or any enhancements or other improvements of the Website and the Platform (collectively, “**Feedback**”), you hereby assign us all right, title, and interest in and to such Feedback and agree that we may use or otherwise incorporate such Feedback into the Website, the Platform or our other products or services, and otherwise use the Feedback in any manner that we choose, without restriction or royalty or attribution of any kind to you or any third party.

#### **5. USER CONTENT; LICENSES**

Through the Platform, you may post and upload content such as, comments, reviews, messages to others, text, graphics, and other materials (collectively, “**User Content**”). You expressly acknowledge and agree that once you submit User Content for inclusion into the Platform, there is no confidentiality or privacy with respect to such User Content, including, without limitation, any personally identifying information that you may make available. **YOU, AND NOT BLUMINT, ARE ENTIRELY RESPONSIBLE FOR ALL YOUR USER CONTENT THAT YOU UPLOAD, POST, E-MAIL, OR OTHERWISE TRANSMIT VIA THE PLATFORM.** We are not obligated to publish any User Content on the Platform and can remove it in our sole discretion, with or without notice.

You retain all copyrights and other intellectual property rights in and to your own User Content. You do, however, hereby grant BluMint and our sublicensees a non-exclusive, royalty-free, freely sublicensable, perpetual license to modify, compile, combine with other content, copy, record, synchronize, transmit, translate, format, distribute, publicly display, publicly perform, and otherwise use or exploit (including for profit) your User Content and all intellectual property and moral rights therein throughout the universe, in each case, by or in any means, methods, media, or technology now known or hereafter devised.

If you submit User Content to us, each such submission constitutes a representation and warranty to BluMint that such User Content is your original creation (or that you otherwise have the right to provide the User Content), that you have the rights necessary to grant the license to the User Content under the prior paragraph, and that it and its use by us and our content partners as permitted by these terms, does not and will not infringe or misappropriate the intellectual property or moral rights of any person or contain any libelous, defamatory, or obscene material or content that violates our Community Guidelines.

#### **6. COMMUNITY GUIDELINES**

BluMint’s community, like any community, functions best when its people follow a few simple rules. By accessing and/or using the Website, and/or the Platform, you hereby agree to comply with these community rules and that:

- You will comply with all applicable laws in your use of the Website and the Platform and will not use the Website and the Platform for any unlawful purpose;

- You will not access or use the Website and the Platform to collect any market research for a competing business;
- You will not upload, transmit, or otherwise make available any content that:
  - infringes any copyright, trademark, right of publicity, or other proprietary rights of any person or entity; or
  - is defamatory, libelous, indecent, obscene, pornographic, sexually explicit, invasive of another's privacy, promotes violence or illegal activity, or contains hate speech (i.e., speech that attacks or demeans a group based on race or ethnic origin, religion, disability, gender, age, veteran status, and/or sexual orientation/gender identity); or
  - discloses any sensitive information about another person, including that person's e-mail address, postal address, phone number, credit card information, or any similar information.
- You will not impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;
- You will not interfere with, or attempt to interrupt the proper operation of, the Website and the Platform through the use of any virus, device, information collection or transmission mechanism, software or routine, or access or attempt to gain access to any content, data, files, or passwords related to the Website and the Platform through hacking, password or data mining, or any other means;
- You will not decompile, reverse engineer, or disassemble any software or other products or processes accessible through the Website and the Platform;
- You will not cover, obscure, block, or in any way interfere with any advertisements and/or safety features on the Website and the Platform;
- You will not use any robot, spider, scraper, or other automated means to access the Website for any purpose without our express written permission, except for Internet search engines (e.g., Google) and non-commercial public archives (e.g., archive.org) that comply with our robots.txt file;
- You will not take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our technical infrastructure;
- You will not allow anyone to access and use your account; and
- You will not remove or modify any proprietary markings or restrictive legends placed on the Website and the Platform.

We reserve the right, in our sole and absolute discretion, to deny you access to the Website and the Platform, or any portion thereof, without notice.

## **7. RESTRICTIONS**

The Website and the Platform are available only for individuals aged 13 years or older. If you are 13 or older, but under the age of majority in your jurisdiction, you should review this Agreement with your parent

or guardian to make sure that you and your parent or guardian understand it. By accessing and/or using the Website and/or the Platform, you represent and warrant that you at least 13 years old.

## **8. SIGN-IN NAME; PASSWORD; UNIQUE IDENTIFIERS**

You do not need to create an account to access and use the Platform. However, if you choose to create an account on the Platform, you will have to provide a unique sign-in name ("Sign-In Name"), password ("Password"), and perhaps certain additional information that will assist in authenticating your identity when you log-in in the future ("Unique Identifiers"). The Sign-In Name, Password and Unique Identifiers are collectively referred to herein as the "Account Credentials." When creating your account, you must provide true, accurate, current, and complete information. Each Sign-In Name and corresponding Password can be used by only by you. You are responsible for the confidentiality and use of your Sign-In Name, Password, and Unique Identifiers. You will promptly inform us of any need to deactivate a Password or Sign-In Name, or change any Unique Identifier. We reserve the right to delete or change your Password, Sign-In Name, or Unique Identifier at any time and for any reason.

## **9. IN-GAME PURCHASES**

You agree to pay all applicable fees associated with the in-game purchases you make through the Platform. We use a third party payment processor ("Third Party Payment Processor") to process your payment. You warrant and represent that you are the valid owner or an authorized user, of the credit card or payment account that you provide to such Third Party Payment Processor, and that all information you provide is accurate. If payment is not received from your credit card issuer or any other payment facility, you hereby agree to pay all amounts due upon demand. You agree to pay all costs of collection, including attorney's fees and costs, on any outstanding balance.

We reserve the right to change any of the fees that we charge, or to institute new or additional fees, at any time upon notice to you.

## **10. ASSUMPTION OF THE RISK RELATING TO DIGITAL ASSETS AND BLOCKCHAIN**

### **Volatility**

The prices of Digital Assets are extremely volatile and subjective. Digital Assets have no inherent or intrinsic value. Fluctuations in the price of other Digital Assets could materially and adversely affect the value of your Digital Assets, which may also be subject to significant price volatility. We cannot guarantee that any Digital Assets purchased using Platform will retain its original value, as the value of collectibles is inherently subjective and factors occurring outside of the Platform may materially impact the value and desirability of any particular Digital Asset.

### **Inherent Risks**

There are risks associated with using Digital Assets, including, but not limited to, the risk of hardware, software and Internet connections, the risk of malicious software introduction, and the risk that third parties may obtain unauthorized access to information stored within your wallet. The regulatory regime governing blockchain technologies, cryptocurrencies, and tokens is uncertain, and new laws, rules, regulations, or policies may materially adversely affect the potential utility or value of your Digital Assets. ANY PURCHASE OR SALE YOU MAKE, ACCEPT OR FACILITATE, WHETHER INSIDE OR OUTSIDE OF THE PLATFORM, OF A DIGITAL ASSET, WILL BE ENTIRELY AT YOUR RISK. BLUMINT

DOES NOT CONTROL OR ENDORSE PURCHASES OR SALES OF DIGITAL ASSETS OUTSIDE OF THE PLATFORM.

### **Use of Blockchain**

The Digital Assets exist only by virtue of the ownership record maintained on the blockchain in the Ethereum Network. We may store the Digital Assets on our own servers or those of our third party service providers. Any transfer of Digital Assets occur within the blockchain in the Ethereum Network, and not on the Platform. YOU ACCEPT AND ACKNOWLEDGE THAT WE WILL NOT BE RESPONSIBLE FOR ANY COMMUNICATION FAILURES, DISRUPTIONS, ERRORS, DISTORTIONS OR DELAYS YOU MAY EXPERIENCE WHEN USING THE ETHEREUM NETWORK, HOWEVER CAUSED. UPGRADES TO THE ETHEREUM NETWORK, OR A CHANGE IN HOW TRANSACTIONS ARE CONFIRMED ON THE ETHEREUM NETWORK MAY HAVE UNINTENDED, ADVERSE EFFECTS ON ALL BLOCKCHAINS USING THE ETHEREUM NETWORK.

WE ARE NOT RESPONSIBLE FOR LOSSES DUE TO BLOCKCHAINS OR ANY OTHER FEATURES OF THE ETHEREUM NETWORK, OR ANY ELECTRONIC WALLET, INCLUDING, BUT NOT LIMITED TO, LATE REPORT BY DEVELOPERS OR REPRESENTATIVES (OR NO REPORT AT ALL) OF ANY ISSUES WITH THE BLOCKCHAIN SUPPORTING THE ETHEREUM NETWORK, INCLUDING FORKS, TECHNICAL NODE ISSUES, OR ANY OTHER ISSUES HAVING FUND LOSSES AS A RESULT.

WE WILL NOT BE RESPONSIBLE OR LIABLE TO YOU FOR ANY LOSSES YOU INCUR AS THE RESULT OF YOUR USE OF THE ETHEREUM NETWORK, OR YOUR ELECTRONIC WALLET, INCLUDING, BUT NOT LIMITED TO, ANY LOSSES, DAMAGES OR CLAIMS ARISING FROM: (I) USER ERROR, SUCH AS FORGOTTEN PASSWORDS, PRIVATE KEYS, OR INCORRECTLY CONSTRUED SMART CONTRACTS OR OTHER TRANSACTIONS; (II) SERVER FAILURE OR DATA LOSS; (III) CORRUPTED WALLET FILES; OR (IV) UNAUTHORIZED ACCESS OR ACTIVITIES BY THIRD PARTIES, INCLUDING, BUT NOT LIMITED TO, THE USE OF VIRUSES, PHISHING, BRUTE-FORCING, OR OTHER MEANS OF ATTACK AGAINST THE WEBSITE, PLATFORM, THE ETHEREUM NETWORK, OR ANY WALLET.

## **11. NO WARRANTIES; LIMITATION OF LIABILITY**

THE WEBSITE, THE PLATFORM AND THE CONTENT IS PROVIDED “AS IS” AND “AS AVAILABLE” AND NEITHER BLUMINT NOR ITS SUPPLIERS MAKE ANY WARRANTIES WITH RESPECT TO THE SAME OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, AND BLUMINT HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE DO NOT REPRESENT OR WARRANT THAT: (I) YOUR ACCESS TO OR USE OF THE PLATFORM, ANY GAMES OR ANY DIGITAL ASSETS WILL MEET YOUR REQUIREMENTS; (II) YOUR ACCESS TO OR USE OF THE PLATFORM, ANY GAMES OR ANY DIGITAL ASSETS WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR; (III) THE PLATFORM, ANY GAMES, OR ANY CONTENT OR FEATURES MADE AVAILABLE ON OR THROUGH THE PLATFORM, ARE FREE OF VIRUSES

OR OTHER HARMFUL COMPONENTS; OR (IV) ANY DATA THAT YOU DISCLOSE WHEN YOU USE THE PLATFORM WILL BE SECURE.

IN CONNECTION WITH ANY WARRANTY, CONTRACT, OR COMMON LAW TORT CLAIMS: (I) WE AND OUR LICENSORS SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION RESULTING FROM THE USE OR INABILITY TO ACCESS AND USE THE WEBSITE, AND/OR THE PLATFORM EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) ANY DIRECT DAMAGES THAT YOU MAY SUFFER AS A RESULT OF YOUR USE OF THE WEBSITE AND/OR THE PLATFORM SHALL BE LIMITED TO THE GREATER OF THE TOTAL MONIES YOU HAVE PAID US IN THE IMMEDIATELY PRECEDING THREE (3) MONTHS PRIOR TO THE DATE THAT GAVE RISE TO THE CLAIM OR ONE HUNDRED US DOLLARS (\$100).

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. THEREFORE, SOME OF THE ABOVE LIMITATIONS ON WARRANTIES IN THIS SECTION MAY NOT APPLY TO YOU. NOTHING IN THESE TERMS OF USE SHALL AFFECT ANY NON-WAIVABLE STATUTORY RIGHTS THAT APPLY TO YOU.

THE WEBSITE, THE PLATFORM AND/OR THE CONTENT MAY CONTAIN TECHNICAL INACCURACIES, TYPOGRAPHICAL ERRORS, OR OMISSIONS. WE RESERVE THE RIGHT TO MAKE CHANGES, CORRECTIONS, AND/OR IMPROVEMENTS TO THE WEBSITE, THE PLATFORM AND/OR THE CONTENT AT ANY TIME WITHOUT NOTICE.

## **12. EXTERNAL SITES**

The Website and the Platform may contain links to third-party websites (“External Sites”). These links are provided solely as a convenience to you and not as an endorsement by us of such External Sites. The content of such External Sites is developed and provided by others. You should contact the site administrator or webmaster for those External Sites if you have any concerns regarding such links or any content located on such External Sites. We are not responsible for the content of any linked External Sites and do not make any representations regarding the content or accuracy of materials on such External Sites. You should take precautions when downloading files from all websites to protect your computer from viruses and other destructive programs. If you decide to access linked External Sites, you do so at your own risk.

## **13. INDEMNIFICATION**

You agree to defend, indemnify, and hold us and our officers, directors, employees, agents, successors, licensees, licensors, and assigns (collectively, “BluMint Indemnitees”) harmless from and against any and all damages, liabilities, losses, expenses, claims, actions, and/or demands, including, without limitation, reasonable legal and accounting fees (collective, “Losses”) incurred by any BluMint Indemnitees in connection with a third-party claim, action, or proceeding (each a “Claim”) arising or resulting from: (i) your breach of this Agreement; (ii) your misuse of the Website, the Platform, or the Content; and/or (iii) your violation of any third-party rights, including without limitation any copyright, trademark, property, publicity, or privacy right. We shall provide notice to you of any such Claim, and shall provide reasonable assist you, at your expense, in defending any such Claim. We reserve the right to assume the exclusive defense and control (at your expense) of any matter that is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.

#### **14. COMPLIANCE WITH APPLICABLE LAWS**

The Website and the Platform are based in the United States. We make no claims concerning whether the Website, the Platform or Content may be downloaded, viewed, or be appropriate for use outside of the United States. If you access Website, the Platform or Content from outside of the United States, you do so at your own risk. Whether inside or outside of the United States, you are solely responsible for ensuring compliance with the laws of your specific jurisdiction.

#### **15. TERMINATION**

We reserve the right, in our sole discretion, to restrict, suspend, or terminate the Agreement and/or your access to all or any part of the Website and/or the Platform, at any time and for any reason without prior notice or liability. We reserve the right to change, suspend, or discontinue all or any part of the Website and/or the Platform at any time without prior notice or liability.

#### **16. DIGITAL MILLENNIUM COPYRIGHT ACT**

##### **Reporting Claims of Copyright Infringement**

We respect the intellectual property rights of others and attempt to comply with all relevant laws. We will review all claims of copyright infringement received and remove any content deemed to have been posted or distributed in violation of any such laws. Our designated agent under the Digital Millennium Copyright Act (the “Act”) for the receipt of any Notification of Claimed Infringement which may be given under that Act is as follows:

Copyright Agent: arend@blumint.io

If you believe that your work has been copied on the Website or the Platform in a way that constitutes copyright infringement, please provide our agent with notice in accordance with the requirements of the Act, including (i) a description of the copyrighted work that has been infringed and the specific location on the Website or the Platform where such work is located; (ii) a description of the location of the original or an authorized copy of the copyrighted work; (iii) your address, telephone number and e-mail address; (iv) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; (v) a statement by you, made under penalty of perjury, that the information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner’s behalf; and (vi) an electronic or physical signature of the owner of the copyright or the person authorized to act on behalf of the owner of the copyright interest.

##### **Counter-Notification Procedures**

If you believe that material you posted on the Website or the Platform was removed or access to it was disabled by mistake or misidentification, you may file a counter-notification with us (a “Counter-Notice”) by submitting written notification to our copyright agent (identified above).

Pursuant to the Act, the Counter-Notice must include substantially the following: (i) your physical or electronic signature; (ii) an identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access disabled; (iii)

adequate information by which we can contact you (including your name, postal address, telephone number, and, if available, email address); (iv) a statement under penalty of perjury by you that you have a good faith belief that the material identified above was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled; (v) a statement that you will consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located (or if you reside outside the United States for any judicial district in which the Website or the Platform may be found) and that you will accept service from the person (or an agent of that person) who provided the Website or the Platform with the complaint at issue.

The Act allows us to restore the removed content if the party filing the original notice does not file a court action against you within ten business days of receiving the copy of your Counter-Notice.

Please be aware that if you knowingly materially misrepresent that material or activity on the Website or the Platform was removed or disabled by mistake or misidentification, you may be held liable for damages (including costs and attorneys' fees) under Section 512(f) of the Act.

## **17. BINDING ARBITRATION**

In the event of a dispute arising under or relating to this Agreement, the Website, the Platform, or any other products or services provided by us (each, a "Dispute"), such dispute will be finally and exclusively resolved by binding arbitration governed by the Federal Arbitration Act ("FAA"). NEITHER PARTY SHALL HAVE THE RIGHT TO LITIGATE SUCH CLAIM IN COURT OR TO HAVE A JURY TRIAL, EXCEPT EITHER PARTY MAY BRING ITS CLAIM IN ITS LOCAL SMALL CLAIMS COURT, IF PERMITTED BY THAT SMALL CLAIMS COURT RULES AND IF WITHIN SUCH COURT'S JURISDICTION. ARBITRATION IS DIFFERENT FROM COURT, AND DISCOVERY AND APPEAL RIGHTS MAY ALSO BE LIMITED IN ARBITRATION. All disputes will be resolved before a neutral arbitrator selected jointly by the parties, whose decision will be final, except for a limited right of appeal under the FAA. The arbitration shall be commenced and conducted by JAMS pursuant to its then current Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those rules, or, where appropriate, pursuant to JAMS' Streamlined Arbitration Rules and Procedures. All applicable JAMS' rules and procedures are available at the JAMS website [www.jamsadr.com](http://www.jamsadr.com). Each party will be responsible for paying any JAMS filing, administrative, and arbitrator fees in accordance with JAMS rules. Judgment on the arbitrator's award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitration may be conducted in person, through the submission of documents, by phone, or online. If conducted in person, the arbitration shall take place in the United States county where you reside. The parties may litigate in court to compel arbitration, to stay a proceeding pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator. The parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information) relevant to the Dispute immediately after commencement of the arbitration. As set forth in Section 19 below, nothing in these Terms of Use will prevent us from seeking injunctive relief in any court of competent jurisdiction as necessary to protect our proprietary interests.

## **18. CLASS ACTION WAIVER**

You agree that any arbitration or proceeding shall be limited to the Dispute between us and you individually. To the full extent permitted by law, (i) no arbitration or proceeding shall be joined with any other; (ii) there is no right or authority for any Dispute to be arbitrated or resolved on a class action-basis or to utilize class action procedures; and (iii) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons. YOU AGREE THAT YOU

MAY BRING CLAIMS AGAINST US ONLY IN YOUR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

**19. EQUITABLE RELIEF**

You acknowledge and agree that in the event of a breach or threatened violation of our intellectual property rights and confidential and proprietary information by you, we will suffer irreparable harm and will therefore be entitled to injunctive relief to enforce these Terms of Use. We may, without waiving any other remedies under these Terms of Use, seek from any court having jurisdiction any interim, equitable, provisional, or injunctive relief that is necessary to protect our rights and property pending the outcome of the arbitration referenced above.

**20. MISCELLANEOUS**

If the Agreement is terminated in accordance with the termination provision in Section 15 above, such termination shall not affect the validity of the following provisions of this Agreement, which shall remain in full force and effect: “Intellectual Property,” “Feedback,” “No Warranties; Limitation of Liability,” “Indemnification,” “Compliance with Applicable Laws,” “Termination,” “Binding Arbitration,” “Class Action Waiver,” “and “Miscellaneous.”

This Agreement and any action related thereto will be governed by the laws of the State of New York without regard to its conflict of laws provisions. Nothing in this Agreement shall be construed as making either party the partner, joint venturer, agent, legal representative, employer or employee of the other. Neither party shall have, or hold itself out to any third party as having, any authority to make any statements, representations or commitments of any kind, or to take any action that shall be binding on the other, except as provided for herein or authorized in writing by the party to be bound.

Our failure to act on or enforce any provision of this Agreement shall not be construed as a waiver of that provision or any other provision in this Agreement. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. Except as expressly agreed by us and you in writing, this Agreement constitutes the entire agreement between you and us with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between the parties with respect to the subject matter. The section headings are provided merely for convenience and shall not be given any legal import. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees.

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