

# Next Level Hearing Care Terms and Conditions

Last Updated: March 8, 2022.

PLEASE READ THIS AGREEMENT CAREFULLY. BY ACCESSING OR USING THIS SITE OR OTHERWISE AGREEING TO THIS AGREEMENT, YOU UNDERSTAND AND AGREE TO BE BOUND BY THIS AGREEMENT AND RECOGNIZE THAT YOU MAY BE WAIVING CERTAIN RIGHTS.

These Terms & Conditions apply to this site, provided by American Hearing Centers and its affiliates (collectively, “Company,” “we,” “us,” or “our”).

THIS AGREEMENT CONTAINS A BINDING ARBITRATION AGREEMENT WHICH LIMITS YOUR RIGHTS TO BRING AN ACTION IN COURT, BRING A CLASS ACTION, AND HAVE DISPUTES

DECIDED BY A JUDGE OR JURY, AS WELL AS PROVISIONS THAT  
LIMIT OUR LIABILITY TO YOU.

YOUR CONTINUED USE OF THIS SITE IS SUBJECT TO YOUR  
CONTINUED COMPLIANCE WITH THIS AGREEMENT. IF YOU DO  
NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT  
USE THIS SITE.

CONTINUED ACCESS AND USE OF ANY SITE AFTER CHANGES  
HAVE BEEN MADE TO THIS AGREEMENT CONSTITUTES YOUR  
ACCEPTANCE OF THE REVISED AGREEMENT THEN IN EFFECT.  
YOU AGREE THAT YOU WILL REVIEW THIS AGREEMENT  
PERIODICALLY AND THAT YOU SHALL BE BOUND BY THIS  
AGREEMENT AND ANY MODIFICATIONS TO IT.

We may make improvements and/or changes in any products or services  
described on the Sites, add new features, or terminate a Site at any time  
without notice.

We are committed to making Sites accessible for all users and will continue to take steps necessary to ensure compliance with applicable laws. If you have difficulty accessing any content, feature, or functionality of a Site, please [contact us](#).

## **What's Contained in This Agreement**

Click on the links below to jump to that section of the Agreement.

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## Complete Agreement

## Our Intellectual Property Rights

All names, logos, text, designs, graphics, trade dress, characters, interfaces, code, software, images, sounds, videos, photographs and other content appearing in or on the Sites (the “Content”) are protected intellectual property of, or used with permission or under license by, our Company. Such Content may be protected by copyright, trademark, patent or other proprietary rights and laws. This includes the entire Content of each Site, copyrighted and protected as a collective work. All intellectual property rights associated with the Sites, and related goodwill, are proprietary to us or our licensors. You do not acquire any right, title or interest in any Content by accessing or using the Sites. Any rights not expressly granted herein are reserved. Except as set forth below, the use of any Content available on a Site is strictly prohibited.

Subject to your compliance with this Agreement, we grant you a limited license to access and use the Sites and their Content for personal or informational purposes. No Content from the Sites may be copied, reproduced, republished, performed, displayed, downloaded, posted, transmitted, or distributed in any way without written permission of the rights owner.

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## Your Authorized Use Of Our Sites

While using a Site, you are required to comply with all applicable statutes, orders, regulations, rules and other laws. You may not use a Site for any fraudulent or unlawful purpose, and you may not take any action to interfere with a Site or any other party's use of a Site. In addition, we expect users of the Sites to respect the rights and dignity of others. For example, you may not do any of the following without our consent:

Post, upload, share, transmit, distribute, facilitate distribution of or otherwise make available to or through a Site any content that is unlawful, harmful, harassing, defamatory, threatening, intimidating, fraudulent, tortious, vulgar, obscene, hateful, pornographic, spam, discriminatory, violative of privacy or publicity rights, infringing of intellectual property or other proprietary rights, or otherwise objectionable in our sole discretion, including unauthorized or unsolicited advertising;

- Post, upload, share, transmit, distribute, facilitate distribution of or otherwise make available to or through a Site any content that is unlawful, harmful, harassing, defamatory, threatening, intimidating, fraudulent, tortious, vulgar, obscene, hateful, pornographic, spam, discriminatory, violative of privacy or publicity rights, infringing of intellectual property or other proprietary rights, or otherwise objectionable in our sole discretion, including unauthorized or unsolicited advertising;
- Post to or transmit through the Sites any sensitive personally identifiable information about yourself or third parties, such as social security, credit card or bank account numbers, health or medical information, or other information concerning personal matters, unless specifically requested by us;
- Reproduce, duplicate, copy, publicly display, frame, mirror, sell, resell or otherwise exploit for any commercial purposes, any portion of, use of, or access to a Site;
- Impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with any person or entity in connection with a Site, or express or imply that we endorse any statement you make;
- Violate, or attempt to violate, the security of a Site;
- Disseminate on a Site any viruses, worms, spyware, adware, or other malicious computer code, file or program that is harmful or invasive or

is intended to damage or hijack the operation of, or monitor the use of, any hardware, software or equipment;

- Reverse engineer, disassemble, decompile, or otherwise attempt to derive the method of operation of the Sites;
- Build a competitive product or service using the Sites, build a product or service using similar ideas, features, functions, or graphics as the Sites or determine whether the Sites are within the scope of any patent;
- Interfere in any manner with the operation or hosting of the Sites or monitor the availability, performance, or functionality of the Sites;
- Use any data mining, bots, spiders, automated tools or similar data gathering and extraction methods, directly or indirectly, on a Site or to collect any information from a Site or any other user of a Site; or
- Assist or permit any persons in violating this Agreement or other applicable laws or rules governing the use of the Sites.

Linking: You may not create a link to this website from another website or document without our prior written consent.

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# Downloads

Sites may allow you to download certain Content, applications, software, and other information or materials. The Company makes no representation that such download will be error or malware free or fit for a particular purpose. Certain downloads may be subject to a separate agreement either with the Company or a third party.

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# Wifi Access

We may provide access to WiFi connections or similar network connections to you when you visit one of our locations (“WiFi”). BY USING WIFI, YOU ARE AGREEING TO THIS AGREEMENT. Your use of WiFi is subject to this Agreement and permitted only while you comply with this Agreement. We are under no obligation to provide WiFi to you, and may terminate or suspend your access at any time and for any reason. WiFi networks may be open wireless networks and in any case are not intended to be used for transmission of personal, financial, or sensitive information. No network

communication is 100% secure, and users should take care when using a generally available WiFi connection. We do not control and are not responsible for data or content that you access or receive via the WiFi. We are not a publisher of third-party content that can be accessed through the Service and are not responsible for any opinions, advice, statements, services or other information provided by third parties and accessible through the Service.

We reserve the right to monitor or store any transmission made through the WiFi, but we have no obligation to do so.

WIFI IS PROVIDED ON AN AS-IS BASIS AND WE MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE AVAILABILITY, FUNCTIONALITY, OR SECURITY OF WIFI.

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## Text Message Marketing

**By participating in a text message campaign, you are agreeing to the Disputes, Arbitration, and Class Action Waiver of this Agreement as well as the rest of the terms herein, including the Limitation of Liability . You may be able to sign up to a text message marketing campaign from a Site or through another method provided by us. You can opt out of any text message marketing program by replying STOP to the text message. You agree that this is the only means of opting out of such text messages. Message and data rates may apply to any text message marketing program, and consent to a program is not required for any purchase. Text message marketing programs send automated reoccurring texts. Neither the Company nor mobile carriers are liable for delayed or undelivered messages. You must notify us if you give up a telephone number that is subscribed to a text message marketing program or if the number is otherwise reassigned. To do so, or find out more information on our text message marketing programs, contact us . Our Privacy Policy applies to text message marketing programs.**

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# Accounts

Some of our Sites allow you to register for accounts specific to you for ordering and other purposes (“Account”).

Certain sections and features of some of the Sites are available only to users who have registered for an Account (“Registered Users”). We may reject, and you may not use, a user ID (or e-mail address) for any reason in our sole discretion. For example, we may reject a user ID (or e-mail address) that is already being used by someone else; that may be construed as impersonating another person; that belongs to another person; that violates the intellectual property or other rights of any person; or that is offensive. You may only have one active Registered User Account on each Site at any given time, and you may not allow other people to use your Account to access a Site.

If you are a Registered User, we expect you to accurately maintain and update any information about yourself that you have provided to us. You agree that you are responsible for all activities that occur under your Account, and for maintaining the confidentiality of your password and restricting access to your computer so others may not access a Site in violation of this

Agreement. In addition, you agree to sign out from your Account at the end of each session if you are using a device that is shared with other people.

You agree to notify us of any unauthorized use of your Registered User username, log-in ID, password or any other breach of security that you become aware of involving or relating to a Site by [contacting us](#) as soon as possible. We reserve the right to take any and all actions we deem necessary or reasonable to maintain the security of our Sites and your Account, including without limitation, terminating your Account, changing your password or requesting information to authorize transactions on your Account. WE EXPLICITLY DISCLAIM LIABILITY FOR ANY AND ALL LOSSES AND DAMAGES ARISING FROM YOUR FAILURE TO COMPLY WITH THIS SECTION.

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eCommerce

Some of our Sites may allow you to purchase products directly on them (“eCommerce Sites”). This section of the Agreement covers your use of any such eCommerce Sites.

Descriptions and graphic representations of products, which includes services, on Sites are for informational purposes only and may not completely reflect the current product or its packaging. We reserve the right to change product descriptions at any time, and we are not responsible for variations between a product description and the actual product.

Technological issues, such as your device settings, may alter how a product appears on an eCommerce Site.

## Orders

We: (a) reserve the right to change the products advertised or offered for sale through an eCommerce Site, the prices or specifications of such products, and any promotional offers at any time without any notice or liability to you or any other person; (b) cannot guarantee that products advertised or offered for sale on an eCommerce Site will be available when ordered or thereafter; (c) reserve the right to limit quantities sold or made available for sale; (d) do not warrant that information on an eCommerce Site (including without limitation

product descriptions, colors or photographs) is accurate, complete, reliable, current or error-free; and (e) reserve the right to modify, cancel, terminate or not process orders (including accepted orders) where the price or other material information on an eCommerce Site is inaccurate, where we have insufficient quantities to fulfill an order or for any other reason in our sole discretion. Some jurisdictions may not allow the exclusions and disclaimers of certain implied warranties, so some of the provisions of this section may not apply to you. Unless otherwise indicated, products sold on the eCommerce Sites are intended for end use in the United States and are not labeled or intended for international distribution.

Taxes: If we are legally required to collect sales tax on merchandise you order, the tax amount will be added automatically to your purchase price. On rare occasions an error in our tax database may cause the sales tax charge to be incorrect. If this happens, at any time up to two years from your date of purchase you may [contact us](#) for a refund of tax overcharges. This right to a refund is your exclusive remedy for sales tax errors.

Payment Processing: We may use a third-party payment processor to process your payment information, including your payment card data. Be aware that you may be subject to the third-party processor's terms and your information may be subject to their privacy practices.

## Returns

If you are not satisfied with any product that you purchased through an eCommerce Site, you may be able to return it subject to certain conditions and restrictions.

To request a return, you must contact our customer service department by following the instructions on the Site or in your order.

In your return request, you must indicate the specific product with which you are not satisfied, and include your order number, name, and contact information, as applicable, as well as the reason for your return or exchange request and the new product with which you would like to replace the returned product if you are requesting an exchange.

If we accept your return request, you must initiate the return of the applicable product within 30 days from the date of your original purchase. Products returned after the 30-day return period will not be accepted.



Products being returned must be in unused and original condition with all original packaging.

Please include the original order confirmation with your return.

Once the product(s) returned is/are received, the same payment card used for the original purchase will be credited.

Products returned within the allowable time will be refunded for the original sale price and applicable tax, not including any shipping charges for the original purchase or return.

To initiate the return of a product, you will need to use a return label that we provide you. Once you repackage the product that you are returning, securely affix the return label to you to your package and drop off your package at a local post office or courier office, your return will begin to be processed as soon as we have confirmed receipt of your return. We will not reimburse you for any shipping and handling fees that you incurred in returning any such product.

Please return the merchandise using the supplied return label to the address on the label.

Only items purchased online through our website may be returned. Items purchased through any wholesale partners must be returned to the place of purchase.

Return Restrictions Reply:

No shipping and handling costs for the original purchase are refundable for any reason.

Without a receipt or order confirmation, we are unable process your return and no refund will be issued.

Company is responsible for merchandise not received by the warehouse or other locations

Credit for Your Return:

Within 14 days of our receiving your return, you should expect a refund in the same form of payment originally used for purchase, less any shipping or handling charges or other applicable fees.

#### Damaged Or Defective Items:

In the case of defective items or items damaged during shipment, please immediately return items using “Defective” as the reason for return for a full refund. Items returned later than 30 days from date of original purchase shall not be eligible for a refund. However, even after 30 days, we encourage you to contact us if you are unsatisfied with a product and so our customer service can improve your experience, which may include providing an exception to this refund policy.

We reserve the right to only issue a refund, or require a return, in our sole discretion regardless of what an eCommerce Site may indicate. Refunds will not be issued for products that have not been purchased directly through the Site.

#### Shipping

Shipping fees vary by Site and can be found as calculated during the order completion process before checking out or may be added to your order total.

Unless otherwise indicated, we are only able to ship to one shipping address per order. If you'd like to ship to multiple addresses, please place separate orders for each unique address. Most products may be shipped to a P.O. Box or Military APO/FPO addresses, but some restrictions apply. Please make sure your address is correct. Once in transit, we cannot redirect shipments to a new or different address. If your order is returned for an invalid or incorrect address your order will be returned to stock and the order refunded less any shipping charges.

We are not liable for any lost shipments when USPS is selected as the shipping method.

### Coupons and Discounts

Certain Sites may allow you to use a coupon or other discount that provides a benefit to you when entered upon checkout. These cannot be applied to prior or completed transactions, they must be provided at the time of purchase.

Generally, coupons or other discounts cannot be combined with other offers and may not be able to be used on all products. Only consumers can use coupons, they cannot be used by resellers, wholesalers, practitioners, or the like. You may have no right to discounts, coupons, or offers that are expired or discontinued even if they remain visible on the Site.

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## **Descriptions, Testimonials, Opinions**

### **Descriptions, Testimonials, Opinions**

Sites may contain expert opinions. Information on ites identified as expert opinion, or accessed from this Site by hyperlink, represents the opinions of these respective experts, which are not necessarily those of the Company.

Certain Sites may also make statements related to medical products or services. **THOSE STATEMENTS SHOULD NOT BE TAKEN AS MEDICAL ADVICE OR STATEMENTS ABOUT A PRODUCT'S EFFECTIVENESS OR SUITABILITY FOR TREATMENT OF A MEDICAL CONDITION. YOU SHOULD ALWAYS CONSULT A**

## QUALIFIED PHYSICIAN FOR MATTERS RELATED TO YOUR HEALTH.

Some Sites may contain blogs or testimonials with information about how to use a product or statements about a product's effectiveness. Some of these statements are not written by us and do not represent our opinion. Other statements may be written by us but are not a representation or warranty about a product and should not be relied upon as such.

Similarly, Sites may present you with information on events, charitable causes, and the like. This is presented for informational purposes only and should not be considered our endorsement of same.

Sites may allow you to leave product reviews, opinions, or testimonials. If you leave a review on another Site, we may (but are not required to) reach out with a separate agreement to further define our rights in such content.

Descriptions and graphic representations of products, including services, on Sites are for informational purposes only and may not completely reflect the current product or its packaging. We reserve the right to change product

descriptions at any time, and we are not responsible for variations between a product description and the actual product. Technological issues, such as your device settings, may alter how a product appears on a Site.

**WE HEREBY DISCLAIM ANY REPRESENTATION OR WARRANTY CONTAINED IN ANY TESTIMONIAL, BLOG, DESCRIPTION, OR OPINION POSTED ON ANY SITE TO THE MAXIMUM EXTENT ALLOWED BY LAW. CLAIMS CONTAINED IN TESTIMONIALS, BLOGS, DESCRIPTIONS, OR OPINIONS HAVE NOT BEEN SUBSTANTIATED SCIENTIFICALLY. YOU UNDERSTAND THAT NONE OF OUR SITES PROVIDE MEDICAL ADVICE, MAKE CLAIMS ABOUT DRUG OR PRODUCT EFFECTIVENESS, OR DETAIL TREATMENTS FOR SPECIFIC ILLNESSES OR AILMENTS.**

Please view the [Disclaimer of Medical Advice](#) for more information.

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# Third-Party Content and Links

Any information, statements, opinions or other information provided by third parties and made available on our Sites are those of the respective author(s) and not us. We do not guarantee the validity, accuracy, completeness or reliability of any opinion, advice, service, offer, statement or other third party Content on our Sites.

We may provide on the Sites, solely as a convenience to users, links to websites, social media pages, mobile applications or other services operated by other entities. If you click these links, you will leave our Sites. If you decide to visit any external link, you do so at your own risk and it is your responsibility to take all protective measures to guard against viruses or other destructive elements. We do not make any warranty or representation regarding, or endorse or otherwise sponsor, any linked sites or the information appearing thereon or any of the products or services described thereon. Links do not imply that we are legally authorized to use any trademark, trade name, logo or copyright symbol displayed in or accessible through the links; or that any linked Site is authorized to use any of our trademarks, logos or copyright symbols.



We may maintain a presence on and link to social media websites, including Facebook, LinkedIn, Google Plus, Twitter, YouTube, Vine, TikTok, Pinterest and Instagram, and others (collectively, “**Social Media Pages**”), to provide a place for people to learn more about us and our products and to share experiences with our products. When you visit these Social Media Pages, you are no longer on our Site, but rather a website operated by a third party. All comments, visuals and other materials posted by visitors to our Social Media Pages do not necessarily reflect our opinions, values or ideas. All visitors to our Social Media Pages must comply with the respective social media platform’s terms of use.

YOU AGREE THAT YOUR USE OF THIRD-PARTY WEBSITES, APPLICATIONS, SERVICES AND RESOURCES, INCLUDING WITHOUT LIMITATION YOUR USE OF ANY CONTENT, INFORMATION, DATA, ADVERTISING, PRODUCTS, OR OTHER MATERIALS ON OR AVAILABLE THROUGH SUCH THIRD PARTIES, IS AT YOUR OWN RISK AND IS SUBJECT TO THE TERMS AND CONDITIONS OF USE APPLICABLE TO SUCH SITES AND RESOURCES.

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# Copyright Infringement Notices

It is our policy to expeditiously respond to notices of alleged copyright infringement that comply with the United States Digital Millennium Copyright Act (“DMCA”). This section describes the information that should be present in these notices and the take down procedure we follow with respect to allegedly infringing material. If we receive proper notification of claimed copyright infringement, our response to these notices may include removing or disabling access to the allegedly infringing material and/or terminating or suspending users. If we remove or disable access in response to such a notice, we will make a good-faith attempt to contact the provider of the allegedly infringing content so that they may make a counter notification pursuant to the DMCA. It is our policy to accommodate and not interfere with standard technical measures used by copyright owners to identify or protect their copyrighted works that we determine are reasonable under the circumstances.

If you believe that any Content on a Site infringes upon any copyright which you own or control, you may send a written notification to our designated copyright agent (the “**Designated Agent**”), identified below, with the following information:

1. A description of the copyrighted work or other intellectual property that you claim has been infringed, with sufficient detail so that we can identify the alleged infringing material;

2. The URL or other specific location on the Site that contains the alleged infringing material described in (a) above, with reasonably sufficient information to enable us to locate the alleged infringing material;

3. Your name, mailing address, telephone number and email address;

4. The electronic or physical signature of the owner of the copyright or a person authorized to act on the owner's behalf;

5. 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; and

6. A statement by you that the information contained in your notice is accurate and that you attest under penalty of perjury that you are the

copyright owner or that you are authorized to act on the copyright owner's behalf

Designated Agent : Brian Venuti

Email: [bvenuti@alpacaaudiology.com](mailto:bvenuti@alpacaaudiology.com)

Address: 1525 E Republic Rd. Suite B-135 Springfield, MO 65804

Phone: 888-557-9203

To notify the provider of the allegedly infringing material to which we have removed or disabled access, we may forward a copy of your infringement notice, including your name and email address to the provider of the allegedly infringing material.

We may terminate users who, in our sole discretion, are deemed to be repeat infringers. Knowingly misrepresenting in a notification that material is infringing can subject you to damages, including costs and attorneys' fees.

incurred by us or the alleged infringer. If you receive an infringement notification from us, you may file a counter notification pursuant with our Designated Agent pursuant to the DMCA. To file a counter notification, please provide our Designated Agent with the following information:

1. 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 was disabled;

2. Your name, mailing address, telephone number and email address;

3. The following statement: “I consent to the jurisdiction of Federal District Court for the ;

4. The following statement: “I will accept service of process from [insert the name of the person who submitted the infringement notification] or his/her agent”;

5. The following statement: “I swear, under penalty of perjury, that I have a good faith belief that the affected material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled”; and

6. Your signature, in physical or electronic form.

Upon receipt of valid counter notification, we will promptly provide the person who provided the original infringement notification with a copy of your counter notification and inform that person that we will replace the removed material or cease disabling access to it in 10 business days. Further, we will replace the removed material and cease disabling access to it not less than 10, nor more than 14, business days following receipt of your counter notice, unless Designated Agent first receives notice from the person who submitted the original infringement notification that such person has filed an action seeking a court order to restrain you from engaging in infringing activity relating to the material on the Site.

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# Updates to this Agreement

We may revise or otherwise change or update this Agreement from time to time. We will use reasonable efforts to notify you of such changes. However, please check the “Last Updated ” legend at the top of this page to see when this Agreement was last revised. When changes are made to this Agreement they will become immediately effective when published on this page unless otherwise noted. We encourage you to periodically review this Agreement—there may have been changes to our policies that may affect you. If you do not agree to the Agreement as modified, then you must discontinue your use of our Sites. Your continued use of a Site will signify your continued agreement to this Agreement as revised. We will make reasonable efforts to notify you of material changes to this Agreement. Such efforts might include posting notice on the Site, an email to the address we have on file, or a message in your Account.

We may assign this Agreement at any time with or without notice to you. You may not assign or sublicense this Agreement or any of your rights or obligations under this Agreement without our prior written consent.

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## **Other Policies**

This Agreement applies exclusively to your access to, and use of, the Sites and does not alter in any way the terms or conditions of any other agreement you may have with us for products, services, programs or otherwise.

Additional policies and terms may apply to use of specific portions of a Site and to the purchase of certain products or services whether they reference this policy or not.

Other types of agreements and policies that you may be subject to include, but are not limited to:

- Policies for retailers, distributors, and distributors
- Privacy policies
- Employment agreements



Other policies and agreements are typically found by navigating the Site, typically by checking Site headers and footers and by reviewing hyperlinked terms at the point of sale.

Any sweepstakes, contests, coupons, rebates or other promotions made available through a Site, if any, may be governed by specific rules that are separate from this Agreement. By participating in any such promotion, you will become subject to those rules, which may vary from the terms set forth herein and which, in addition to describing such promotion, may have eligibility requirements, such as certain age or geographic restrictions. It is your responsibility to read the applicable rules to determine whether your participation, registration, submission and/or entry are valid; you agree to read and abide by the applicable rules.

We have also adopted a [Privacy Policy](#) that you should refer to in order to fully understand how we use and collect information. To learn about our privacy practices, please refer to our [Privacy Policy](#).

Should we employ you, none of the materials provided on a Site constitute or should be considered part or of an employment contract or an offer for employment.

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## **Important LEGAL Terms**

### **Termination**

The Sites and this Agreement are in effect until terminated by you or us. We may terminate this Agreement by notifying you using any contact information we have about you or by posting such termination on a Site, including in your Account. You may terminate this Agreement by providing written notice of termination, including your detailed contact information and any Account information or other Site credentials, to us using the information in the [Contact Us](#) section. In addition to any right or remedy that may be available to us under applicable law, we may suspend, limit, or terminate all or a portion of your access to a Site or any of its features at any time with or without notice and with or without cause, including without limitation, if we believe that you have violated or acted inconsistently with the letter or spirit of this Agreement. We may be protected for liability from these actions under the Communications Decency Act, 47 U.S.C. § 230.

The provisions of this Agreement concerning protection of intellectual property rights, authorized use, user submitted content, disclaimers, limitations of liability, indemnity, and disputes, as well as any other provisions that by their nature should survive, shall survive any such termination.

Upon any such termination, (i) you must destroy all Content obtained from the Sites and all copies thereof; (ii) you will immediately cease all use of and access to the Sites; (iii) we may delete or disable access to any of your content at any time; (iv) and we may delete your Registered User Account at any time. You agree that if your use of a Site is terminated pursuant to this Agreement, you will not attempt to use that Site under any name, real or assumed, and further agree that if you violate this restriction after being terminated, you will indemnify and hold us harmless from any and all liability that we may incur therefore. Your use of a Site after termination will be a violation of this Section, which survives any termination.

Even after the termination of this Agreement or of your Account or access to a Site, any content you have posted or submitted may remain on a Site indefinitely.

## **Children**

Our Sites are not designed to appeal to minors, and we do not knowingly attempt to solicit or receive any information from children under 13. YOU MUST BE AT LEAST 13 TO ACCESS AND USE OUR SITES. If you are under the age of majority in your home state, which is 18 in most states, you may not establish a registered Account with us, and you should use our Sites only with the supervision of a parent or guardian who agrees to be bound by this Agreement. Additionally, certain Sites or sections of our Sites, as well as promotions, programs and commerce we may offer on a Site, may be explicitly limited to people over the age of majority. If you are not old enough to access our Sites or certain sections or features of our Sites, you should not attempt to do so.

## **Disclaimer of Medical Advice**

IN THE EVENT OF A MEDICAL EMERGENCY, CONTACT EMERGENCY SERVICES IMMEDIATELY.

THE CONTENT CONTAINED ON SOME OF OUR SITES MAY CONTAIN INFORMATION ABOUT PRODUCTS, INGREDIENTS, PROCESSES, AND/OR THERAPIES THAT ARE NOT EVALUATED OR REGULATED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION. OUR SITES MAY ALSO CONTAIN INFORMATION ABOUT MEDICAL CONDITIONS AND MEDICAL TREATMENTS. SUCH INFORMATION IS INTENDED AS AN EDUCATIONAL AID ONLY. IT IS NOT INTENDED AS MEDICAL ADVICE FOR INDIVIDUAL CONDITIONS OR TREATMENT. IT IS NOT A SUBSTITUTE FOR A PROFESSIONAL MEDICAL DIAGNOSIS, NOR DOES IT REPLACE THE NEED FOR SERVICES PROVIDED BY MEDICAL PROFESSIONALS.

ALWAYS SEEK THE ADVICE OF YOUR PHYSICIAN, PHARMACIST OR OTHER QUALIFIED HEALTH CARE PROVIDER WITH ANY QUESTIONS YOU MAY HAVE REGARDING A MEDICAL CONDITION OR TREATMENT OR A CHANGE IN YOUR PERSONAL CARE OR HEALTH CARE REGIME. NEVER DISREGARD PROFESSIONAL MEDICAL ADVICE OR DELAY IN SEEKING IT BECAUSE OF SOMETHING YOU HAVE READ ON A SITE. WE ARE NOT RESPONSIBLE FOR THE RESULTS OF YOUR USE OF THE CONTENT, INCLUDING, BUT NOT LIMITED TO, YOU CHOOSING TO SEEK OR NOT TO SEEK PROFESSIONAL MEDICAL CARE, OR YOU

CHOOSING OR NOT CHOOSING SPECIFIC TREATMENT BASED ON THE CONTENT.

THE RESULTS OF YOUR HEARING TEST ARE NOT MEDICAL ADVICE. THEY ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. YOU SHOULD HAVE A MEDICAL PROFESSIONAL DIAGNOSE ANY HEARING LOSS OR OTHER MEDICAL ISSUES.

### **Disclaimer of Warranty**

**WE DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE, VALIDITY, ACCURACY OR RELIABILITY OF THE CONTENT AVAILABLE ON A SITE OR ANY OTHER SITES LINKED TO OR FROM A SITE. WE DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE, VALIDITY, ACCURACY OR RELIABILITY OF ANY PRODUCT. DOWNLOADING OR OTHERWISE OBTAINING ANY CONTENT THROUGH A SITE IS DONE AT YOUR OWN RISK. THE CONTENT OF A SITE IS PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS, WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT POSSIBLE**

**UNDER APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.**

**Limitation of Liability**

**WE AND OUR AFFILIATES, SUBSIDIARIES, DIVISIONS AND RELATED COMPANIES AS WELL AS OUR AGENTS, SUPPLIERS, SERVICE PROVIDERS AND RETAILERS (COLLECTIVELY, THE “RELEASEES”) WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE USE OR THE INABILITY TO USE A SITE, A SITE’S CONTENT OR EXTERNAL LINKS, INCLUDING BUT NOT LIMITED TO DAMAGES CAUSED BY OR RELATED TO ERRORS, OMISSIONS, INTERRUPTIONS, DEFECTS, DELAY IN OPERATION OR TRANSMISSION, OR ANY COMPUTER VIRUS OR FAILURE.**

**RELEASEES WILL ALSO NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF DATA OR**

**PROFITS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. RELEASEES ALSO SHALL NOT HAVE ANY LIABILITY OR RESPONSIBILITY FOR ANY ACTS, OMISSIONS OR CONDUCT OF ANY USER OR OTHER THIRD PARTY.**

**SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.**

**REGARDLESS OF THE PREVIOUS SENTENCES, IF WE ARE FOUND TO BE LIABLE, OUR LIABILITY TO YOU OR TO ANY THIRD PARTY IS LIMITED TO THE GREATER OF THE ACTUAL TOTAL AMOUNT RECEIVED BY US FROM YOU OR THE LOWEST LIABILITY LIMITATION ALLOWED BY APPLICABLE LAW.**

**Indemnity**



You agree to indemnify, defend and hold us and the Releasees and all of our directors, officers, employees, agents, shareholders, successors, assigns, and contractors harmless from and against any and all claims, damages, suits, actions, liabilities, judgments, losses, costs (including without limitation reasonable attorneys' fees) or other expenses that arise directly or indirectly out of or from (i) your breach of any provision of this Agreement; (ii) your activities in connection with a Site; or (iii) the Content or other information you provide to us through a Site. We reserve the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. We will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it.

### **New Jersey Residents**

If you are a consumer residing in New Jersey, the following provisions of this Agreement do not apply to you (and do not limit any rights that you may have) to the extent that they are unenforceable under New Jersey law: (a) Disclaimer of Warranty; (b) Limitation of Liability; (c) Indemnity; and (d) under Disputes, the Arbitration and Class Action Waiver and the governing law provisions (solely to the extent that your rights as a consumer residing in New Jersey are required to be governed by New Jersey law). According to

N.J.S.A. 56:12-16, you may have additional rights if you are a New Jersey resident and other provisions of this Agreement are found to violate an established legal right.

### **Consent to Communication**

When you use a Site or send communications to us through a Site, you are communicating with us electronically. You consent to receive electronically any communications related to your use of a Site. We may communicate with you by email or by posting notices on the Site. You agree that all agreements, notices, disclosures and other communications that are provided to you electronically satisfy any legal requirement that such communications be in writing. All notices from us intended for receipt by you shall be deemed delivered and effective when sent to the email address you provide to us. Please note that by submitting content, creating a Registered User Account, or otherwise providing us with your email address, postal address or phone number, you are agreeing that we or our agents may contact you at that address or number in a manner consistent with our [Privacy Policy](#).

### **Severability**

If any provision of this Agreement is held to be invalid or unenforceable, it shall be replaced in interpretation by a valid and enforceable term that most closely aligns with the intent of the original provision. If that is not possible, the provision shall be removed, and the rest of the Agreement will be enforceable.

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### **Disputes, Arbitration and Class Action Waiver**

**PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.**

ARBITRATION USES A NEUTRAL ARBITRATOR INSTEAD OF A JUDGE OR JURY, ALLOWS FOR MORE LIMITED DISCOVERY THAN IN COURT, AND IS SUBJECT TO VERY LIMITED REVIEW BY COURTS. YOU MAY CHOOSE TO BE REPRESENTED BY A LAWYER IN ARBITRATION OR PROCEED WITHOUT ONE. THIS

ARBITRATION PROVISION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

Any dispute, claim or controversy arising out of or relating to this Agreement, other agreements on the Site, or the Privacy Policy, or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be either determined by binding arbitration in Springfield, Missouri before one arbitrator or submitted to small claims court in the city of Springfield, Missouri. If the arbitrator finds this location to be unreasonably burdensome to you, a new location may be selected or arbitration may be conducted over the phone, using video conferencing, or similar. You may be entitled to an in-person hearing near your place of residence. Judgment on the 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. Any arbitration arising out of or related to this Agreement shall be conducted in accordance with the expedited procedures set forth in the JAMS Comprehensive Arbitration Rules and Procedures as those Rules exist on the effective date of this Agreement, including Rules 16.1 and 16.2 of those Rules.

*No Class Actions:* YOU AND WE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR OUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and we agree otherwise, the arbitrator may not consolidate more than one person's claims with your claims and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim.

*Seeking Arbitration:* If you elect to seek arbitration or file a small claim court action, you must first send to us, by certified mail, a written notice of your claim ("**Notice**"). The Notice to us must be addressed to: 1525 E Republic Rd. Suite B-135 Springfield, MO 65804. If we initiate arbitration, we will send a written Notice to an email address you have previously provided to us, if available. We may also use any other means to contact you, including a message in your Account. A Notice, whether sent by you or by us, must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("**Demand**"). If you and we do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or we

may commence an arbitration proceeding or file a claim in small claims court. Arbitration forms can be downloaded from [www.jamsadr.com](http://www.jamsadr.com). If you are required to pay a filing fee, after we receive Notice that you have commenced arbitration, we will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than US\$10,000 or the arbitrator determines the claims are frivolous, in which event you will be responsible for filing fees.

*Hearing:* If your claim is for US\$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic or video hearing, or by an in-person hearing as established by the JAMS Rules. If your claim exceeds US\$10,000, the right to a hearing will be determined by the JAMS Rules. In the event that the arbitration will be conducted solely on the basis of submitted documents, the arbitrator's decision and award will be made and delivered within six (6) months of the selection of the arbitrator, unless extended by the arbitrator. Except as expressly set forth herein, the payment of all filing, administration and arbitrator fees will be governed by the JAMS Rules.

*Award:* In the event arbitration awards you damages of an amount at least \$100 greater than our last documented settlement offer, we will pay your awarded damages or \$2,500, whichever is greater.

*Injunctive Relief:* Notwithstanding the foregoing, you and we both agree that you or we may sue in court to enjoin infringement or other misuse of intellectual property rights or in other scenarios where injunctive relief is appropriate. In the event a court or arbitrator having jurisdiction finds any portion of this Agreement unenforceable, that portion shall not be effective and the remainder of the Agreement shall remain effective. No waiver, express or implied, by either party of any breach of or default under this Agreement will constitute a continuing waiver of such breach or default or be deemed to be a waiver of any preceding or subsequent breach or default.

*Confidentiality:* The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

Governing Law and Rules: This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of Missouri, exclusive of conflict or choice of law rules. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16). In any arbitration arising out of or related to this Agreement, the arbitrator is not empowered to award punitive or exemplary damages, except where permitted by statute, and the parties waive any right to recover any such damages. In any arbitration arising out of or related to this Agreement, the arbitrator may not award any incidental, indirect or consequential damages, including damages for lost profits. The parties adopt and agree to implement the JAMS Optional Arbitration Appeal Procedure (as it exists on the effective date of this Agreement) with respect to any final award in an arbitration arising out of or related to this Agreement.

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**Contacting Us**



If you have questions about this Agreement, or if you have technical questions about the operation of a Site, please contact us through this [online form](#) or by writing us at 1525 E Republic Rd. Suite B-135 Springfield, MO 65804.

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