

# Terms of Use

## Acceptance of the Terms of Use

These terms of use are entered into by and between you and **Empire & Co., Inc. d/b/a Empire Office, Inc.** (“**Company**,” “**we**,” “**our**” or “**us**”). The following terms and conditions, together with any documents they expressly incorporate by reference (collectively, “**Terms of Use**”), govern your access to and use of our website located at <http://www.empireandco.com> (the “**Website**”) and any of the Company’s social media accounts and webpages (collectively, the “**Social Media Sites**”), including any content, functionality, and services offered thereon. As used in this Policy, the word “**Sites**” shall include the Company’s Website and Social Media Sites.

Please read these Terms of Use carefully before you start to use the Sites. By accessing the Sites, you accept and agree to be bound and abide by these Terms of Use, our Privacy Policy, located at <https://www.empireandco.com/privacy> (the “**Privacy Policy**”), as incorporated herein by reference. In addition, you agree to be bound by the terms and conditions, privacy policy and/or other terms and conditions (the “**Social Media Platform Rules**”) of any of the social media websites, platforms and applications on which the Company’s Social Media Sites reside. The Website is offered and available to users who are eighteen (18) years of age or older, and reside in the United States or any of its territories or possessions. By using the Website, you represent and warrant that you are of legal age to form a binding contract with the Company and meet all of the foregoing eligibility requirements. If you do not meet all of these requirements, you must not access or use the Website.

THESE TERMS OF USE REQUIRE THE USE OF ARBITRATION (ON AN INDIVIDUAL BASIS ONLY; I.E., CASE CONSOLIDATIONS AND CLASS ACTIONS ARE NOT PERMITTED) IN ORDER TO RESOLVE DISPUTES. If you do not agree to these Terms of Use or our Privacy Policy, you must not access or use the Sites. If you are dissatisfied with any of the Material or User Content (as such terms are defined in these Terms of Use) contained in the Company’s Sites, your sole and exclusive remedy is to discontinue accessing and using the Sites immediately.

## Changes to the Terms of Use

We may revise and update these Terms of Use from time to time in our sole discretion and without prior notice to you. All changes are effective immediately when we post them, and apply to all access to and use of the Sites thereafter. Your continued use of the Sites following the posting of revised Terms of Use means that you accept and agree to the changes. You are expected to check this page regularly to time so you are aware of any changes, as they are binding on you. These Terms of Use were last updated on May 4, 2023.

## **Changes to the Sites**

We reserve the right to withdraw, amend or otherwise edit the Sites, and any service or Material (hereinafter defined) we provide on the Sites, in our sole discretion without notice. We will not be liable if for any reason all or any part of the Sites are unavailable at any time or for any period. You are responsible for both making all arrangements necessary for you to have access to the Sites and ensuring that all persons who access the Sites through your Internet connection are aware of these Terms of Use and comply with them. It is a condition of your use of the Sites that all the information you provide on the Sites is correct, current, and complete.

## **Intellectual Property Rights**

The Sites and their entire contents, features, and functionality (including but not limited to all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof) (collectively, the “**Material**”) are owned by the Company, its licensors, or other providers of such Material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws. No right, title, or interest in or to the Sites or any Materials on the Sites is transferred to you.

These Terms of Use permit you to use the Sites for your personal, non-commercial use only. You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store, or transmit any of the Material on our Sites, except as follows:

- Your computer may temporarily store copies of such Materials in random access memory (RAM) incidental to your accessing and viewing those Materials.
- You may store files that are automatically cached by your Web browser for display enhancement purposes.

- You may print one copy of a reasonable number of pages of the Sites for your own personal, non-commercial use and not for further reproduction, publication, or distribution.
- If we provide desktop, mobile, or other applications for download, you may download a single copy to your computer or mobile device solely for your own personal, non-commercial use, provided you agree to be bound by our end user license agreement for such applications.
- If we provide features through our Sites, you may take such actions as are enabled by such features.

You must not modify copies of any Materials from the Sites or delete or alter any copyright, trademark, or other proprietary rights notices from copies of Materials from the Sites. You must not access or use for any commercial purposes any part of the Website or any services or materials available through the Website.

If you print, copy, modify, download, or otherwise use or provide any other person with access to any part of the Sites in breach of the Terms of Use, your right to use the Sites will stop immediately and you must, at our option, return or destroy any copies of the Materials you have made.

## User Content

The Sites may contain messaging features, personal web pages or profiles, fillable forms, forums and other interactive features that allow users to post, submit, publish, display, or transmit (hereinafter, “**Post**”) content or materials to the Company, to other users or to other persons, including without limitation posts, comments, reviews, text, images, videos and audio (collectively, “**User Content**”) on or through the Sites. All User Content must comply with the Content Standards set out in these Terms of Use. Any User Content you Post to the Sites will be considered non-confidential and non-proprietary. By providing any User Content on the Sites, you grant us and our subsidiaries, affiliates and service providers, and each of their and our respective licensees, successors, and assigns, a fully-paid, non-exclusive, royalty-free, worldwide, perpetual, sublicenseable and transferable license to use, post, reproduce, copy, advertise, promote, host, modify, perform, display, transmit, distribute, exploit, prepare derivative works based on, and otherwise deal with or disclose to third parties any such User Content, with or without attribution and for any lawful purpose.

You represent and warrant that:

- You own or control all rights in and to the User Content and have the right to grant the license granted above to us and our subsidiaries, affiliates and service providers, and each of their and our respective licensees, successors, and assigns.
- All of your User Content do and will comply with these Terms of Use.
- Your User Content does not infringe the copyright, other intellectual property right or any other right of any third party.
- None of the User Content shall be subject to any obligation on the part of the Company, whatsoever, including without limitation confidentiality, attribution or otherwise.
- You will maintain all copyright, trademark, other intellectual property and/or other proprietary or other notices embedded in or attached to any User Content that you Post on the Sites.

You understand and acknowledge that you are fully responsible for any User Content you Post, and you, not the Company, have full responsibility for such content, including its legality, reliability, accuracy, and appropriateness. We are not responsible or liable to any third party for the content or accuracy of any User Content posted by you or any other user of the Sites.

### **Prohibited Uses**

You are solely responsible for any and all acts and omissions that occur during or relating to your access and/or use of the Company's Sites. You may use the Sites only for lawful purposes and in accordance with these Terms of Use. Specifically and without limitation, you agree not to do or attempt to do any of the following things:

- Act in any way that violates any applicable federal, state, local, or international law, statute, regulation or guideline (including without limitation any applicable law, statute, regulation or guideline concerning anti-discrimination, export controls, false advertising, unfair competition or the export of data or software to and from the U.S. or other countries) (collectively, "Laws").
- For the purpose of exploiting, harming, or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise.
- Send, knowingly receive, upload, download, use, or re-use any material that does not comply with the Content Standards set out in these Terms of Use.
- Post, transmit, or procure the sending of, any advertising or promotional material, including any "junk mail," "chain letter," "spam," or any other similar solicitation.
- Impersonate or attempt to impersonate the Company, a Company employee, another user, or any other person or entity (including, without limitation, by using email addresses or online identifiers or names associated with any of the foregoing).

- Engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Sites, or which, as determined by us, may harm the Company or users of the Sites, or expose them to liability.
- Use the Sites in any manner that could disable, overburden, damage, or impair the site or interfere with any other party's use of the Sites, including their ability to engage in real time activities through the Sites.
- Use any robot, spider, or other automatic device, process, or means to access the Sites for any purpose, including monitoring or copying any of the Material on the Sites.
- Use any manual process to monitor or copy any of the Material on the Sites, or for any other purpose not expressly authorized in these Terms of Use, without our prior written consent.
- Use any device, software, or routine that interferes with the proper working of the Sites or otherwise attempt to interfere with the proper working of the Sites.
- Introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful (collectively, "**Viruses**") or attack the Sites via a denial-of-service attack or a distributed denial-of-service attack.
- Modify, adapt, sub-license, translate, sell, reverse engineer, decompile, re-create, and/or disassemble any portion of the Sites or their source codes or attempt to do any of the foregoing.
- Attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the Sites, the servers on which the Sites is stored, or any server, computer, or database connected to the Sites.
- Except as otherwise expressly permitted by the Company, frame, mirror or deep link any portion of any of the Sites on any other website, social media site, intranet, the Internet or any other computer network.
- Engage in data extraction and/or data mining or any similar activities on the Sites.
- Engage in any other activity that the Company determines in its sole discretion to be in conflict with the spirit and/or intent of these Terms of Use, the Privacy Policy, applicable Laws or otherwise.
- Otherwise attempt to interfere with the proper working of the Sites.

## Content Standards

These content standards apply to any and all User Content and use of the Sites. User Content must in their entirety comply with all applicable Laws. Without limiting the foregoing, User Content must not:

- Be abusive, obscene, indecent, defamatory, abusive, violent, inflammatory, harassing, offensive, vulgar, profane, threatening, malicious, unlawful, invasive of privacy or publicity rights, intended to be used for any unlawful purpose, or be fraudulent, false or misleading.
- Violate any Laws.

- Promote sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age.
- Infringe any patent, trademark, trade secret, copyright, or other intellectual property or other rights of any other person or entity including the Company.
- Violate the legal rights (including without limitation the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable Laws or that otherwise may be in conflict with these Terms of Use or our Privacy Policy.
- Be likely to deceive any person.
- Promote any illegal activity, or instruct, advocate, promote, or assist or any unlawful act.
- Cause annoyance, inconvenience, or needless anxiety or be likely to upset, embarrass, alarm, or annoy any other person.
- Impersonate any person, or misrepresent your identity or affiliation with any person or organization.
- Involve commercial activities or sales, such as contests, sweepstakes, other promotions, or advertising, unless expressly permitted by us.
- Give the impression that they emanate from or are endorsed by us or any other person or entity, if this is not the case.

## **Monitoring and Enforcement**

We have the right to:

- Remove or refuse to post any User Content for any or no reason in our sole discretion.
- Take any action with respect to any User Content that we deem necessary or appropriate in our sole discretion, including if we believe that such User Content violates the Terms of Use, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the Sites or the public, or could create liability for the Company.
- Disclose your identity or other information about you to any third party who claims that User Content or other material posted by you violates their rights, including without limitation their intellectual property rights or their right to privacy.
- Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the Sites.
- Terminate or suspend your access to all or part of the Sites for any or no reason, including without limitation, any violation of these Terms of Use.

Without limiting the foregoing, we have the right to cooperate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of

anyone posting any materials on or through the Sites. YOU WAIVE AND HOLD HARMLESS THE COMPANY AND ITS SUBSIDIARIES, AFFILIATES, LICENSEES, AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING, OR TAKEN AS A CONSEQUENCE OF, INVESTIGATIONS BY SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES.

We do not routinely monitor the Sites, Material, User Content or other information that is posted by any person or entity (other than the Company) to any and all sections of the Sites. However, we reserve the right to monitor the Sites, Material and User Content and to edit, modify, remove, redact, consolidate and/or clarify any Material, User Content and/or other information that we in our sole discretion consider to violate these Terms of Use, be unlawful and/or for any other reason whatsoever. The Company's exercise of such reserved rights shall not create any obligation whatsoever for the Company to continue any such monitoring, editing, modifying, removing, redacting, consolidating or clarifying.

The Company cannot review all material before it is Posted on the Sites, and cannot ensure prompt removal of objectionable material after it has been Posted. Accordingly, we assume no liability for any action or inaction regarding transmissions, communications, or Material provided by any user or third party. You understand that by accessing and using the Sites, including the Social Media Sites, you may be exposed to material, including without limitation User Content, that may offend you. In such event, your sole and exclusive remedy and recourse is to avoid such material by discontinuing your access to and use of the Sites. We have no liability or responsibility to anyone for performance or nonperformance of the activities described in this Monitoring and Enforcement section.

### **Copyrights, Trademarks and Copyright Agent**

The Company name, Company logo, and all related names, logos, product and service names, descriptions, designs, and slogans are intellectual property of the Company or its subsidiaries, affiliates or licensors. You must not use such intellectual property without the prior written permission of the Company. All other names, logos, product and service names, descriptions, designs, and slogans on the Sites are the intellectual property of their respective owners. The Company's Sites and all Materials, including without limitation User Content, contained on and/or submitted to the Sites are protected by United States and international copyright and trademark laws and all other applicable Laws. Nothing contained in the Sites shall be construed as granting any license or any other rights to any copyright,

trademark, patent or other property of the Company or any other person or entity, whether by implication, laches, estoppel, explicit grant or otherwise.

The Company respects the intellectual property rights of others. Pursuant to Title 17, United States Code, Section 512, which is a part of the United States Digital Millennium Copyright Act (the “DMCA”), notifications of claimed copyright infringement on any of the Sites should be sent to the Company’s designated agent. If you believe that your User Content or other materials have been used in a way that may constitute copyright infringement, you should promptly furnish the following information by written notice to the Company’s designated agent:

- a. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- b. A description of the copyrighted work that you claim has been infringed;
- c. A description of the location on the Sites where the material that you claim is infringing is located;
- d. Your name, address, telephone number and email address;
- e. A written 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
- f. 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.

The Company’s designated agent for notice of claims of copyright infringement on any of the Sites is its general counsel, who may be reached as follows. Please include a reference to Copyright in the subject line of your correspondence.

General Counsel

Empire & Co., Inc.

654 Madison Avenue, 14<sup>th</sup> Floor

New York, New York 10065

[info@empireandco.com](mailto:info@empireandco.com)

If you fail to comply with all of the requirements of Section 512(c)(3) of the DMCA, your DMCA notification may not be effective. The Company has adopted and reasonably implemented a policy that provides for the termination in appropriate circumstances of users of the Sites who are repeat infringers of copyright.

## **Termination**

Your limited right to access and use the Sites is licensed to you by the Company and is subject to all of the terms and condition of these Terms of Use, the Privacy Policy, and applicable Laws. At the Company's sole discretion, this license shall immediately and automatically terminate without notice to you upon your breach and/or threatened or anticipated breach of these Terms of Use, the Privacy Policy, or applicable Laws. In addition, the Company may terminate said license immediately at any time, for any reason or no reason, and/or for the convenience of the Company. IF YOU DO NOT ABIDE BY THESE TERMS OF USE, THE PRIVACY POLICY, AND APPLICABLE LAWS, YOU ARE NOT AUTHORIZED TO ACCESS OR USE THE COMPANY'S SITES.

## **Reliance on Information Posted**

The Material on the Sites, including without limitation regarding any products or services, is made available solely for informational purposes. We do not warrant the accuracy, completeness, or usefulness of any such Material, or that any such Material indicates an endorsement or business relationship between the Company and any other individual or entity. Any reliance you place on such Material is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such Material by you or any other visitor to the Sites, or by anyone who may be informed of any of its contents.

The Sites may include Material provided by third parties, including without limitation Material provided by other users and third party licensors. All statements and/or opinions expressed in these Materials, other than Material directly provided by the Company, are solely the opinions and the responsibility of the person or entity providing those Materials. These Materials do not necessarily reflect the opinion of the Company. We are not responsible, or liable to you or any third party, for the content or accuracy of any Materials on the Sites provided by any third parties.

## **Linking to the Sites and Features**

You may link to our Website homepage, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it, but you must not establish a link in such a way as to

suggest any form of association, approval, or endorsement on our part without our express written consent.

The Sites may provide certain features that enable you to cause limited portions of Material on the Sites to be displayed or appear to be displayed on your own or certain third-party websites. You may use these features solely as they are provided by us, solely with respect to the content they are displayed with, and otherwise in accordance with any additional terms and conditions we provide with respect to such features. Subject to the foregoing, you must not: (i) establish a link from any website or social media account or webpage that is not owned by you; (ii) cause the Sites or portions of it to be displayed on, or appear to be displayed by, any other website, social media account or webpage, for example, framing, deep linking, or in-line linking; or (iii) otherwise take any action with respect to the Materials on the Sites that is inconsistent with any other provision of these Terms of Use. You agree to cooperate with us in causing any unauthorized framing or linking immediately to stop. We may disable all or any features on the Sites and any links at any time without notice in our discretion.

It is your sole responsibility to read and comply with the Social Media Platform Rules. In no event shall the Company be responsible in any way for your violation of any of the Social Media Platform Rules. Your use of the Company's Social Media Sites shall be subject to all of the following: (1) these Terms of Use; (2) the Privacy Policy; and (3) the Social Media Platform Rules.

### **Links from the Sites**

The Company's Sites may provide hyperlinks to and/or other methods of viewing or accessing other web pages, websites, links, social media accounts, sites and platforms, applications and other resources that are available on the Internet (collectively, "**Third Party Content**"). This includes links contained in advertisements, including banner advertisements and sponsored links. The Company has no control over any Third Party Content that you access or use via such hyperlinks or otherwise. The Company expressly disclaims any and all responsibility for any Third Party Content or for the consequences of your access or use of any Third Party Content, or for any content, advertising, products, services, information or other materials on or available from such Third Party Content. The Company makes no covenants, warranties or representations whatsoever about any of the foregoing. All Third Party Content is provided to users on an "as is, where is" basis, solely as a convenience to our users. You acknowledge and agree that the Company shall not be responsible or liable for any damage or loss of any

kind whatsoever caused or alleged to have been caused in connection with your use of or reliance on any Third Party Content or any advertising, products, services, information or other materials that may be available on or through any such Third Party Content.

It is your sole responsibility to take any and all precautions that you deem necessary and/or appropriate to ensure that any Third Party Content that you may choose to access and use is safe, appropriate for you and/or any other person (including children) viewing such Third Party Content who is accompanying you and/or does not contain any inaccuracies, omissions, Viruses and/or other items of a destructive nature. If you decide to access any Third Party Content, you do so entirely at your own risk. The Company shall have no liability whatsoever for any of the foregoing matters.

### **Disclaimer of Warranties**

You understand that we cannot and do not guarantee or warrant that files available for downloading from the Internet or the Sites will be free of Viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to our Sites for any reconstruction of any lost data. **TO THE FULLEST EXTENT PROVIDED BY LAW, WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES, OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA, OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE SITES OR ANY PRODUCTS, SERVICES OR ITEMS OBTAINED THROUGH THE SITES OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON THEM, OR ON ANY WEBSITE LINKED TO THEM.**

YOUR USE OF THE SITES, THEIR MATERIAL, AND ANY PRODUCTS, SERVICES OR ITEMS OBTAINED THROUGH THE SITES IS AT YOUR OWN RISK. THE SITES, THEIR MATERIAL, AND ANY PRODUCTS, SERVICES OR ITEMS OBTAINED THROUGH THE SITES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER THE COMPANY NOR ANY PERSON ASSOCIATED WITH THE COMPANY MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE SITES. WITHOUT LIMITING THE FOREGOING, NEITHER THE COMPANY NOR ANY PERSON ASSOCIATED WITH THE COMPANY REPRESENTS OR WARRANTS THAT THE SITES, THEIR MATERIAL, OR ANY PRODUCTS, SERVICES OR ITEMS OBTAINED

THROUGH THE SITES WILL BE ACCURATE, RELIABLE, ERROR-FREE, OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT OUR SITES OR THE SERVERS THAT MAKE THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE SITES OR ANY PRODUCTS, SERVICES OR ITEMS OBTAINED THROUGH THE SITES WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

TO THE FULLEST EXTENT PROVIDED BY LAW, THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAWS.

### **Limitation on Liability**

TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL THE COMPANY, ITS SUBSIDIARIES, AFFILIATES, AND ITS AND THEIR RESPECTIVE EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, MEMBERS, CONTRACTORS, LICENSORS, SERVICE PROVIDERS, SUPPLIERS, SUCCESSORS, AND ASSIGNS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE SITES, ANY WEBSITES LINKED TO THEM, ANY MATERIAL ON THE SITES OR CONTENT ON SUCH OTHER WEBSITES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, DEATH, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

### **Indemnification**

You agree to defend, indemnify, and hold harmless the Company, its subsidiaries, affiliates, and its and their respective officers, directors, members, employees, contractors, agents, licensors, service

providers, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating to: (a) your actual or alleged violation of these Terms of Use or the Privacy Policy; (b) your use of the Sites; (c) your User Content, including without limitation any claims of intellectual property infringement; (d) any use of the Sites' Material, products and services other than as expressly authorized in these Terms of Use, or (e) your use of any Material obtained from the Sites. The Company reserves the right to assume, at your sole expense, the exclusive defense and control of any matter that is subject to indemnification by you hereunder. In such event, you agree to cooperate fully at your sole expense with the Company in asserting, prosecuting or alleging any and all available defenses, counterclaims, cross-claims and any and all other pleadings, allegations or evidence and in all other respects at the Company's written request at any time.

### **Governing Law and Binding Arbitration**

All matters relating to the Sites and these Terms of Use shall be interpreted under and governed by the substantive laws of the United States of America and the State of New York, without regard to principles of conflict of laws. You and the Company have agreed to these Terms of Use within the State of New York for all purposes.

Subject to all applicable laws, you are agreeing to give up: (i) your right to litigate any claims that may arise hereunder in court or before a jury; and (ii) your right to consolidate any claim and/or participate in any class action claim that may arise hereunder in any manner or forum. Instead, any claim, dispute, or controversy of any kind or nature arising hereunder which cannot be amicably resolved by us shall be solely and finally settled by arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place before a panel of one arbitrator sitting in New York County, New York. The language of the arbitration shall be English. The arbitrator will be bound to adjudicate all disputes in accordance with the laws of the State of New York. The decision of the arbitrator(s) shall be in writing with written findings of fact and shall be final and binding on the parties. Each party shall bear all of its own costs, including but not limited to attorneys' fees, actually incurred in connection with any such arbitration proceedings; provided, however, that if Company is the prevailing party, then it shall be entitled to reimbursement for its reasonable attorneys' fees and related costs expended in connection with the arbitration. With respect

to any arbitration hereunder, as stated above, you hereby expressly waive any right to consolidate any claim and/or participate in any class-action claim of any kind or nature. This Governing Law and Binding Arbitration section provides your sole recourse for the settlement of any disputes arising out of, in connection with, or related to these Terms of Use.

## **General Terms**

These Terms of Use, the Privacy Policy, and any other terms or conditions posted on any of the Company's Sites, constitute the entire agreement between you and the Company with respect to the matters herein and therein and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, written and oral, between the Company and you. No action or inaction by the Company shall be construed as a waiver of these Terms of Use, the Privacy Policy, or any other terms or conditions posted on any of the Company's Sites. No waiver by the Company of any term or condition in these Terms of Use, the Privacy Policy, or any other terms or conditions posted on any of the Company's Sites shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition. If any of the provisions of these Terms of Use, the Privacy Policy, or any other terms or conditions posted on any of the Company's Sites are held to be invalid, unenforceable or illegal, such provision shall be eliminated or limited to the minimum extent such that the validity and enforceability of the remaining provisions of these Terms of Use, the Privacy Policy, and any other terms or conditions posted on any of the Company's Sites shall not be effected thereby and shall continue in full force and effect.