

## Terms of Use

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**This website, mobile application, web platform, and any online service location that posts a link to these Terms, and the data, services, information, tools, functionality, updates, and similar materials that we own, control, and which are delivered or provided thereby (collectively, the "Service") are supplied by Kiswe Mobile Inc. ("Kiswe", "us," "our," or "we") subject to your agreement to and compliance with the conditions set forth in this Terms of Use (the "Terms").** By accessing the Service, or creating an account to use the Service, you are creating a binding contract with Kiswe.

PLEASE NOTE THAT THERE IS AN ARBITRATION AGREEMENT AND CLASS ACTION WAIVER CONTAINED IN SECTION 18 BELOW. YOU AGREE TO THE ARBITRATION AGREEMENT AND CLASS ACTION WAIVER TO RESOLVE ANY DISPUTES WITH KISWE (EXCEPT FOR MATTERS THAT MAY BE TAKEN TO SMALL CLAIMS COURT).

The following additional terms (collectively, the "Additional Terms") are incorporated as if fully set forth herein:

- Privacy Policy

### **1. Updates to Terms**

We may revise or update any part of these Terms and any applicable Additional Terms without prior notice. You agree that we may notify you of any updated Terms and any applicable Additional Terms by posting an amended version through the Service, and/or sending you an email to the last e-mail address you provided to us (if applicable). All such changes are effective immediately when we post them, or such later date as may be specified in the notice of updated Terms and any applicable Additional Terms. Your use of the Service (or other acceptance method) following an update to these Terms or any applicable Additional Terms is considered acceptance of the updated Terms. If you do not accept the changes, your sole recourse is to stop using the Service.

### **2. Service Use**

#### **a. Content.**

The Service contains: (i) materials and other items relating to Kiswe and our web platforms and services, and similar items from our licensors and other third parties, including all layout, information, databases, articles, posts, text, data, files, images, scripts, designs, graphics, instructions, illustrations, photographs, sounds, pictures, videos, advertising copy, URLs, technology, software, interactive features, the “look and feel” of the Service, and the compilation, assembly, and arrangement of the materials of the Service and any and all copyrightable material; (ii) trademarks, logos, trade names, trade dress, service marks, and trade identities of various parties, including those of Kiswe and our licensors; and (iii) other forms of intellectual property (all of the foregoing, collectively “Content”). All right, title, and interest in and to the Service and the Content is the property of Kiswe or our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible.

#### **b. Limited License.**

As long as you are in strict compliance with these Terms and any applicable Additional Terms, we hereby grant you a limited, revocable, non-assignable, personal, non-transferable, non-sublicensable, non-exclusive license to use and access the Service on your personal computer, browser, laptop, tablet, mobile phone, connected TVs and smart TVs, or other internet-enabled computing device (“Device”) for personal, non-commercial use only. No rights not explicitly listed are granted. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. Any unauthorized use of the Content or Service for any purpose is prohibited.

If we suspect or determine, in our sole discretion, that you are using your account to violate copyright law by copying, downloading, re-transmitting, or re-distributing the Content we may immediately terminate your account, report you to law enforcement, and take any other action (including legal action) as we deem appropriate. If we terminate your account for this reason you will not receive a refund for any purchased content associated with your account, and you forfeit your right to view or receive any such content.

#### **c. Accounts.**

Certain features of the Service may require you to register an account. You may only register and use one account, unless you are registering an account for your child as a parent or guardian (in which case you agree to maintain full authority and control over your child’s account). When registering an account, you agree to: (i)

provide true, accurate, current, and complete information; (ii) maintain and update this information to keep it true, accurate, current, and complete; (iii) protect and prevent unauthorized access to your account; (iv) not transfer or share your account with any third party; and (v) immediately notify us of any suspected or actual unauthorized use of your account or breach of security. Please note that you are solely responsible for all activities that occur under your account, whether or not you authorized the activity, and we are not liable for any loss or damage to you or any third party arising from your failure to comply with any of the foregoing obligations.

#### **d. Eligibility.**

**You must be at least 17 years old to register an account with the Service.** If you are under 17, you must have a parent or guardian register an account for you. As a parent or guardian registering an account for a user under 17, by allowing your child to use the Service you are subject to these Terms, our Privacy Policy, any Children’s Privacy Policy we make available, and are fully responsible for your child’s activity on the Service.

You are not eligible to use the Service if doing so would violate any law or regulation, including but not limited to age or content restrictions and export controls or restrictions.

We may, in our sole discretion, refuse to offer the Service to any person or entity and change the eligibility criteria at any time, and if your account becomes ineligible based on then-current eligibility criteria, we may close your account without notice.

### **3. Important Notices: Availability**

While we make reasonable efforts to ensure that the Service remains generally available, we do not represent or warrant that access to the Service will be error-free or uninterrupted, or without defect, and we do not guarantee that users will be able to access or use the Service, or its features, at all times.

We reserve the right at any time and from time to time to modify or discontinue the Service, or any part thereof, temporarily or permanently, with or without notice or liability. The Service may contain typographical errors or inaccuracies and may not be complete or current. We reserve the right to correct any such errors, inaccuracies or omissions and to change or update information at any time without prior notice. You acknowledge that we are under no obligation to provide

compensation for issues that may arise as a result of any such errors, inaccuracies, or omissions.

#### **4. Rules of Conduct**

Your use of the Service is conditioned on your compliance with these Terms, including but not limited to these rules of conduct.

You agree that you will not:

- violate any applicable law or regulation in connection with your use of the Service or Content;
- use the Service or Content for any political or commercial purpose;
- circumvent, disable, fraudulently engage with, or otherwise interfere with any part of the Service (or attempt to do any of these things), including security-related features or features that (a) prevent or restrict the copying or other use of Content or (b) limit the use of the Service or Content;
- use a VPN or other means intended to obfuscate your location or circumvent our geographic content restrictions;
- engage in any activity in connection with the Service or Content that is unlawful, harmful, offensive, sexually explicit, obscene, violent, threatening, harassing, abusive, falsely representative of your persona, invasive of someone else's privacy, or otherwise objectionable to Kiswe;
- distribute, upload, make available or otherwise publish through the Service any suggestions, information, ideas, questions, proposals, opinions, or graphics, documents, notes, plans, drawings, text, information, links, profiles, audio, techniques, images, sounds, videos, brands, trademarks, service marks, comments, message or tags, or other content to us or other users through or relating to the Service (collectively, "User Content") that:
  - is unlawful or encourages another to engage in anything unlawful;
  - contains a virus or any other similar programs or software which may damage the operation of our or another's computer;
  - violates the rights of any party or infringes upon the patent, trademark, trade secret, copyright, or other intellectual property right of any party; or,
  - is libelous, defamatory, discriminatory, pornographic, obscene, lewd, indecent, inappropriate, invasive of privacy or publicity rights, abusing, harassing, threatening, bullying or otherwise objectionable.
- modify, adapt, translate, copy, reverse engineer, decompile or disassemble any portion of the Service;
- interfere with or disrupt the operation of the Service, including restricting or inhibiting any other person from using the Service by means of hacking or defacing;

- transmit to or make available in connection with the Service or Content any denial of service attack, virus, worm, Trojan horse or other harmful code or activity;
- attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization;
- take any action that imposes, or may impose, in our sole discretion, an unreasonable or disproportionately large load on our infrastructure;
- harvest or collect any information from the Service or Content, including, without limitation, the email address or other contact information of other users of the Service;
- misuse any reporting, flagging, complaint, dispute, or appeals process, including by making groundless, vexatious, or frivolous submissions;
- scrape or collect content from the Service or Content via automated means;
- submit, post or make available false, incomplete or misleading information to the Service, or otherwise provide such information to us; or,
- impersonate any other person or business, including Kiswe.

You are not licensed to access any portion of the Service or Content that is not intended to be accessed by our users, and you may not attempt to override any security measures in place on the Service or Content.

Notwithstanding the foregoing rules of conduct, our unlimited right to terminate your access to the Service and Content shall not be limited to violations of these rules of conduct.

## **5. Report A User**

To report a user for all violations of the Terms, please click the question mark (?) icon in the lower right and fill out the form. Include the username of the user you are reporting. We do not guarantee we will follow-up with you or take action based on your report.

## **6. Questions, Comments, and Feedback**

If you have any questions or comments or feedback please send to us by clicking the question mark (?) icon in the lower right and filling out the form or emailing us at [support@kiswe.com](mailto:support@kiswe.com). You acknowledge that the provision of support is at Kiswe's sole discretion and that we have no obligation to provide you with customer support of any kind.

## **7. User Content (Where Applicable)**

You are under no obligation to submit User Content to use the Service. Unless otherwise noted, we will not claim ownership of any User Content. If, however, you choose to submit any User Content to the Service, or otherwise make available any User Content through the Service, you hereby grant to us a perpetual, irrevocable, unlimited, transferable, sub-licensable through multiple tiers, non-exclusive, worldwide, royalty-free license to reproduce, use, modify, display, perform, distribute, translate, create derivative works from, monetize and otherwise fully exploit any such User Content in any manner determined by us, including without limitation distributing part or all of the User Content for any purpose whatsoever in any and all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same, as well as to commercially use the rights of publicity, persona, image and name of the individuals depicted in such User Content. You further irrevocably grant us the right, but not the obligation, to use your name, username, and/or handle in connection with your User Content. You also agree to waive any right of approval for our use of the rights granted herein and agree to waive any moral rights that you may have to the User Content, even if they are altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such moral rights in a manner that interferes with any exercise of the granted rights.

You understand that you will not receive any fees, sums, consideration, remuneration, or attribution for any of the rights granted herein. Our receipt of your User Content is not an admission of its novelty, priority, or originality, and it does not impair our right to existing or future intellectual property rights relating to your User Content. You waive any and all rights and claims in connection with our consideration, use, or development of any product, content, or other materials similar or identical to your User Content now or in the future. While we are not required to do so, we may access, review, screen, and delete your User Content at any time and for any reason, including if we think your User Content violates these Terms. You alone, though, remain responsible for the User Content you create, upload, post, send, or store through the Service.

By submitting any User Content to us, you hereby agree, warrant and represent that, unless we expressly state otherwise in writing:

- a) you are authorized to submit the User Content to us for republication through the Service, and you have secured any necessary licenses or permissions from rights owners relating to the User Content, including but not limited to copyright licenses or licenses to rights of publicity;
- b) we are entitled to modify and moderate the User Content in accordance with our and our partner content providers' community guidelines;
- c) we are not obligated to use or share the User Content;
- d) the User Content does not contain proprietary or confidential information;
- e) the provision of the User Content, and its use by us in connection with the Service, is not and will not be a violation of any third party's rights;

- f) all such User Content is accurate and true;
- g) we are not under any confidentiality obligation relating to the User Content;
- h) we shall be entitled to use or disclose the User Content in any way;
- i) you are not entitled to compensation in exchange for the User Content, and
- j) are not entitled to attribution relating to the User Content.

You acknowledge that we are under no obligation to maintain the Service, or any information, materials, User Content, or other matter you submit, post or make available to, or on, the Service. We reserve the right to withhold, remove, edit and/or discard any such material at any time.

## **8. Copyright Infringement**

### **a. DMCA Notification.**

Kiswe responds to copyright notifications submitted under the Digital Millennium Copyright Act, 17 U.S.C. § 512 ("DMCA"). To submit a notice of claimed copyright infringement under U.S. law, provide our designated agent with the following written information:

- a) A physical or electronic signature of the copyright owner or a person authorized to act on his or her behalf;
- b) Identification of the copyrighted work claimed to have been infringed;
- c) Identification of the infringing material and information reasonably sufficient to permit us to locate that material;
- d) Your contact information, including your address, telephone number, and an e-mail address;
- e) A statement that you have a good faith belief that the use of the material in the manner asserted is not authorized by the copyright owner, its agent, or the law; and
- f) A statement that the information in the notification is accurate, and, under penalty of perjury, that you are authorized to act on behalf of the copyright owner.

Our designated agent is:

DMCA Agent  
Kiswe Mobile Inc.  
430 Mountain Ave, Suite 106  
New Providence, NJ 07974  
Email: legal@kiswe.com  
Phone: +1 (908) 280-2144

**You can obtain further information from the Copyright Office's website at <https://www.copyright.gov/dmca/>.**



We will respond to notifications of claimed copyright infringement in accordance with the DMCA.

#### **b. Counter Notification.**

If you believe that your material has been removed in error in response to a copyright notification, you may submit a counter notification to our designated agent with the following written information:

- a) A physical or electronic signature;
- b) 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 to it was disabled;
- c) A statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled; and
- d) Your name, address, and telephone number, and a statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which the address is located, or if your address is outside of the U.S., for any judicial district in which Kiswe may be found, and that you will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

We will respond to counter notifications in accordance with the DMCA.

### **9. Complaint Policy (Including Trademark and Privacy)**

If you believe in good faith that any material posted on the Service infringes any of your rights other than in copyright, or is otherwise unlawful, you must send a notice to legal@kiswe.com, containing the following information:

- a) Your name, physical address, e-mail address and phone number;
- b) A description of the material posted on the Service that you believe violates your rights or is otherwise unlawful, and which parts of said materials you believe should be remedied or removed;
- c) Identification of the location of the material on the Service;
- d) If you believe that the material violates your rights, a statement as to the basis of the rights that you claim are violated;
- e) If you believe that the material is unlawful or violates the rights of others, a statement as to the basis of this belief;
- f) A statement under penalty of perjury that you have a good faith belief that use of the material in the manner complained of is not authorized and that the information you are providing is accurate to the best of your knowledge and in good faith; and

g) Your physical or electronic signature.

If we receive a message that complies with all of these requirements, we will evaluate the submission, and if appropriate, in our sole discretion, we will take action. We may disclose your submission to the poster of the claimed violative material, or any other party.

## **10. Content Shared Through the Service**

The Service may make it possible for you to choose to share certain information with the public or other users of the Service. While we do not proactively share information about you with third parties without notifying you first, you understand that by sharing information through the Service you may be revealing information about yourself, including your identity and location. You further acknowledge that by sharing User Content with the Service, you may be enabling third parties to access, view, tag, edit, download, or otherwise use or interact with the User Content you share with the Service. You understand and acknowledge that you are fully aware and responsible for the impact of sharing such materials, and you agree that we shall not be held responsible for, and we shall be released and held harmless by you from, any liability or damages arising out of such conduct.

## **11. Enforcement and Termination Of Services**

We reserve the right to deny all or some portion of the Service to any user, or all users, in our sole discretion, at any time, without notice or liability. Upon suspension or termination of your access to the Service, or upon notice from us, all rights granted to you under these Terms or any applicable Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service and Content.

In addition, you may terminate this Agreement at any time by having your user account deleted on the Service and discontinuing use of any and all parts of the Service and Content. To request that your user account be deleted, contact us by clicking the question mark (?) icon in the lower right and filling out the form or by sending us an email at [support@kiswe.com](mailto:support@kiswe.com).

Without limiting the foregoing or assuming additional legal obligations, we have a policy of terminating repeat violators of the Copyright Act, in accordance with applicable law.

## **12. Third-Party Services**

The Service may contain content from, and hyperlinks to, websites, locations, platforms, and services operated and owned by third parties (“Third Party Services”). We may also integrate third party technologies and content into our Service and host our content on Third Party Services. These Third Party Services are not owned, controlled, or operated by us, and you acknowledge and agree that we are not responsible or liable for the information, content, products, technologies, or services on or available from such Third Party Services, or for the results to be obtained from using them. If you choose to access, transact with, or otherwise interact with any such Third Party Services, you do so at your own risk. For more information on Third Party Services, see our Privacy Policy.

### **13. Service Features**

#### **a. Wireless and Wired Device Features.**

The Service may offer features that are available to you via your wireless and wired Device accesses through your wireless or wired telecommunications network, including the ability to access the Service’s features and upload content to the Service (collectively, “Wireless/Wired Features”). By using the Service, you agree that we may collect information related to your use of the Wireless/Wired Features as described in our Privacy Policy, and may change, alter, or modify the settings or configurations on your Device in order to allow for or optimize your use of the Service. Data rates and other carrier fees may apply. You also agree that you are responsible for maintaining your wireless or wired services, and we are not responsible if your viewing of Content on our Services is interrupted due to issues with your wireless or wired network.

#### **b. Location-Based Features.**

If you have location-based features on your wireless Device, you acknowledge that your Device location will be tracked and shared consistent with the Privacy Policy. We use location-based features to ensure you are able to access content you purchase from us that is geo-restricted by our content provider partners, to receive supplemental material such as advertisements based on your location, or to access certain embedded applications that may have location-specific restrictions. You can turn off location tracking by us by adjusting the permissions in your Device or uninstalling our app. However, turning off location-based features may interfere with your ability to access certain content and applications on the Service. Location-based features are used at your own risk and location data may not be accurate.

### **c. Communications.**

**E-mails:** You can opt-out of receiving certain promotional e-mails from us at any time by following the instructions as provided in the e-mails that we may send you from time to time. Your opt-out will not affect nonpromotional e-mails, such as those about your account, transactions, servicing, or our ongoing business relations.

**Push Notifications:** You can opt-out of receiving push notifications from us at any time by adjusting the permissions in your Device or uninstalling our app.

Please note that any opt-out by you is limited to the e-mail address or Device used.

### **14. Wireless or Wired Device and Application Terms (where applicable)**

If you are using the Service via an app on a wireless or wired device downloaded through the device's app store, the following additional terms apply:

To the extent that you are accessing the Service through a wireless device, such as, but not limited to, an Apple, Samsung, Roku, or Google device, you acknowledge that these Terms are entered into between you and Kiswe and, that the device manufacturer or distributor is not a party to these Terms other than as third-party beneficiary as contemplated below. You may be subject to additional terms provided by the device manufacturer or distributor, or the app store from which you downloaded our app. Please read the device or distributor's terms before using our Service on your wireless or wired device.

- a) **The license granted to you in these Terms is subject to the permitted Usage Rules set forth in the respective device's app store terms of service,** and any third party terms of agreement applicable to the Service.
- b) You acknowledge that Kiswe, and not the device manufacturer or distributor, is responsible for providing the Service and Content thereof.
- c) You acknowledge that the device manufacturer or distributor has no obligation whatsoever to furnish any maintenance or any support services to you with respect to the Service.

d) To the maximum extent not prohibited by applicable law, the device manufacturer or distributor will have no other warranty obligation whatsoever with respect to the Service.

e) Notwithstanding anything to the contrary herein, and subject to the terms in these Terms, you acknowledge that, solely as between the device manufacturer or distributor and Kiswe, Kiswe, is responsible for addressing any claims you may have relating to the Service, or your possession and/or use thereof, including, but not limited, to: (a) product liability claims; (b) any claim that the Service fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation.

f) Further, you agree that if the Service, or your possession and use of the Service, infringes on a third party's intellectual property rights, you will not hold the device manufacturer or distributor responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claims.

g) When using the Service, you acknowledge and agree that the device manufacturer or distributor, and its subsidiaries, are third party beneficiaries of these Terms, and that, upon your acceptance of the terms and conditions of these Terms, the device manufacturer or distributor will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary thereof. You also agree to comply with any and all third-party terms that are applicable to any platform, website, technology, or service that interacts with the Service.

## **15. Disclaimer of Representations And Warranties**

YOU AGREE AND ACKNOWLEDGE THAT THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE", WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY. WE, OUR PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, EMPLOYEES AND SUPPLIERS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF TITLE, ACCURACY, SUITABILITY, APPLICABILITY, MERCHANTABILITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT AND FREEDOM FROM COMPUTER VIRUS, OR ANY OTHER WARRANTIES OF ANY KIND. NO ADVICE OR INFORMATION (ORAL OR WRITTEN) OBTAINED BY YOU FROM US SHALL CREATE ANY WARRANTY.

USE OF THE SERVICE IS AT YOUR SOLE RISK. WE DO NOT WARRANT THAT YOU WILL BE ABLE TO ACCESS OR USE THE SERVICE AT THE TIMES OR LOCATIONS OF YOUR CHOOSING; THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE; THAT DEFECTS WILL BE CORRECTED; THAT DATA TRANSMISSION OR STORAGE IS SECURE OR THAT THE SERVICE IS FREE OF INACCURACIES, MISREPRESENTATIONS, VIRUSES OR OTHER HARMFUL INFORMATION OR COMPONENTS.

BY ACCESSING OR USING THE SERVICE YOU REPRESENT AND WARRANT THAT YOUR ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE SERVICE.

NOTWITHSTANDING THE FOREGOING, THESE DISCLAIMERS HEREIN DO NOT EXCLUDE ANY PRODUCT LIABILITY CLAIMS, STATUTORY CONSUMER RIGHTS, DAMAGES ASSOCIATED WITH PERSONAL INJURY OR RESULTING FROM KISWE'S INTENTIONAL MISCONDUCT, RECKLESSNESS, FRAUD, OR GROSS NEGLIGENCE.

#### **16. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL WE OR OUR PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS, AND SUPPLIERS (COLLECTIVELY, THE "RELATED PARTIES") BE LIABLE TO YOU BASED ON OR RELATED TO THE SERVICE OR ANY CONTENT AVAILABLE ON OR THROUGH THE SERVICE OR THESE TERMS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WE SHALL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL DAMAGES, OR DAMAGES FOR SYSTEM FAILURE OR MALFUNCTION OR LOSS OF PROFITS, DATA, USE, BUSINESS OR GOOD-WILL, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ACCESS TO OR USE OF THE SERVICE OR ANY CONTENT AVAILABLE ON OR THROUGH THE SERVICE OR THESE TERMS, EVEN IF WE AND/OR RELATED PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, KISWE'S AND ITS RELATED PARTIES' TOTAL LIABILITY FOR ANY CLAIMS ARISING FROM OR RELATING TO THE SERVICE IS LIMITED TO USD \$500.

NOTWITHSTANDING THE FOREGOING, THESE DISCLAIMERS HEREIN DO NOT EXCLUDE ANY PRODUCT LIABILITY CLAIMS, STATUTORY CONSUMER RIGHTS, DAMAGES ASSOCIATED WITH PERSONAL INJURY OR RESULTING FROM KISWE'S INTENTIONAL MISCONDUCT, RECKLESSNESS, FRAUD, OR GROSS NEGLIGENCE.

#### **17. Indemnification**

You agree to defend, indemnify and hold us and the Related Parties harmless from all allegations, judgments, awards, losses, liabilities, costs and expenses, including but not limited to reasonable attorney's fees, expert witness fees, and costs of litigation arising out of or based on (a) User Content you submit, post to or transmit through the Service; (b) your use of the Service; (c) your violation or alleged violation of these Terms or any applicable Additional Terms; (d) your use of a Third Party Service; (e) any misrepresentation made by you; and (f) any conduct, activity or action which is unlawful or illegal under any state, federal or common law, or is violative of the rights of any individual or entity, engaged in, caused by, or facilitated in any way through the use of the Service.

We reserve the right to assume, at your expense, the exclusive defense and control of any matter subject to indemnification by you. You agree to cooperate with our defense of any claim. You will not in any event settle any claim without our prior written consent.

This provision does not require you to indemnify us for any unconscionable commercial practice by us or for our fraud, deception, false promise, misrepresentation or concealment, suppression, or omission of any material fact in connection with the Service.

## **18. Disputes, Governing Law, and Jurisdiction**

**PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT AND TO HAVE A JURY HEAR YOUR CLAIMS. IT CONTAINS PROCEDURES FOR MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.**

***We Both Agree to Arbitrate.*** You agree that any claim or dispute arising out of or relating in any way to your use of the Service or any service provided by us, will be resolved solely and exclusively by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify, and except to the extent you have in any manner violated or threatened to violate any intellectual property or other proprietary rights (for example, trademark, trade secret, copyright, or patent rights). Under such circumstances Kiswe may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the Service, or intellectual property infringement (for example, trademark, trade secret, copyright, or patent rights) without first engaging in arbitration or the informal dispute-resolution process described above.

**What is Arbitration.** Arbitration is more informal than a lawsuit in court and seeks to resolve disputes more quickly. Instead of a judge or a jury, the case will be decided by a neutral arbitrator who has the power to award the same damages and relief that a court can. If any provision of this arbitration agreement is found unenforceable, the unenforceable provision shall be severed, and the remaining arbitration terms shall be enforced.

**Arbitration Procedures.** The Federal Arbitration Act and federal arbitration law apply to this agreement. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to the following address: 430 Mountain Avenue, Suite 106 New Providence, NJ 07974. Arbitration under this Agreement will be conducted by the American Arbitration Association (AAA) under its rules then in effect. If there is a conflict between AAA's rules and the rules set forth in these Terms, the rules set forth in this Terms will govern. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. Each party will bear their own costs of arbitration unless the arbitrator directs that bearing such costs would be an undue burden and in that case, we will pay for your portion of the arbitration administrative costs (but not your attorneys' fees). Arbitration under this agreement shall be held in the United States in New York, New York under New York law without regard to its conflict of laws provisions. If travelling to New York, New York is a burden, you may participate in the arbitration by phone or via document submission to the fullest extent allowable by the arbitrator.

**Authority of Arbitrator.** There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages) and must follow the terms of these Terms as a court would. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the AAA rules then in effect, and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The award of the arbitrator is final and binding upon you and us.

**Waiver of Class Actions.** You and us agree that any dispute resolution proceedings will be conducted **only on an individual basis and not in a class, consolidated or representative action.** Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not allowed.



**Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration. Arbitration procedures are typically more limited, more efficient, and less costly than rules applicable in court and are subject to very limited review by a court. In the event any litigation should arise between you and Kiswe in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND US WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

YOU ACKNOWLEDGE THAT YOU HAVE BEEN ADVISED THAT YOU MAY CONSULT WITH AN ATTORNEY IN DECIDING TO ACCEPT THIS AGREEMENT TO ARBITRATE.

**Choice of Law/Forum Selection.** To the extent arbitration does not apply, you agree that these Terms shall be governed by and construed in accordance with the laws of the State of New York, excluding its conflict of law rules. You further expressly consent and agree that any dispute arising out of or relating to the Services, or to us, may be brought by you only in a state or federal court located in New York, New York. YOU HEREBY WAIVE ANY OBJECTION TO THIS VENUE AS INCONVENIENT OR INAPPROPRIATE AND AGREE TO EXCLUSIVE JURISDICTION AND VENUE IN NEW YORK.

## **19. General Provisions**

**Consent or Approval.** No consent or approval may be deemed to have been granted by us without being in writing and signed by an officer of Kiswe.

**Survival.** The provisions of these Terms and any applicable Additional Terms, which by their nature should survive termination of your use of the Service, including sections on Service Use (except for the limited license), User Content, Copyright Infringement, Customer Support, Third Party Services, Service Features, Disputes, Governing Law and Jurisdiction, Disclaimer of Representations and Warranties, Limitation of Liability, Indemnification, Equitable Remedies, Updates to Terms, and General Provisions, will survive.

**Severability/Interpretation.** If any provision of these Terms and any applicable Additional Terms is found for any reason to be unlawful, void or unenforceable, then that provision will be given its maximum enforceable effect, or shall be deemed severable from these Terms or the Additional Terms and will not affect the validity and enforceability of any remaining provision. You hereby waive any applicable statutory and common law that may permit a contract to be construed against its drafter. The summaries of provisions and section headings are provided for convenience only and shall not limit the full Terms.

**No Partnership.** You agree that no joint venture, partnership, employment, or agency relationship exists between you and us as a result of this Agreement or your use of the Service.

**Assignment.** We may assign our rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any person or entity at any time without any notice and with or without your consent. You may not assign these Terms and any applicable Additional Terms, and you may not delegate your duties under them, without the prior written consent of an officer of Kiswe, and any unauthorized assignment by you shall be null and void.

**Attorneys' Fees.** In the event that we are the prevailing party in any litigation in connection with these Terms or any applicable Additional Terms, or your use of the Service, we shall be entitled to recover from the other party all the reasonable costs, attorneys' fees and other expenses incurred in the litigation.

**No Waiver.** Our failure to enforce any provision of this Agreement shall in no way be construed to be a present or future waiver of such provision, nor in any way affect the right of any party to enforce each and every such provision thereafter. The express waiver by us of any provision, condition or requirement of these Terms or any applicable Additional Terms shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement. No waiver or modification of any term of these Terms or any applicable Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

**Limitation on Legal Action.** YOU AND KISWE AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF, OR RELATED TO, THE SERVICES MUST COMMENCE, IF AT ALL, WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

**Notices.** All notices given by you or required under these Terms shall be in writing and addressed to: legal@kiswe.com. When you communicate with us electronically, you consent to receive communications from us electronically. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

**Equitable Remedies.** You hereby agree that we would be irreparably damaged if the terms of this Agreement were not specifically enforced, and therefore you agree that we shall be entitled, without bond, other security, or proof of damages, to appropriate equitable remedies with respect to breaches of this Agreement, in addition to such other remedies as we may otherwise have available to us under applicable laws.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU AGREE THAT YOU WILL NOT BE PERMITTED TO OBTAIN AN INJUNCTION OR OTHER EQUITABLE RELIEF OF ANY KIND, SUCH AS ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, WEB PLATFORM, CONTENT, USER CONTENT, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED OR CONTROLLED BY US OR ANY OF OUR LICENSORS.

***International Issues.*** Kiswe controls and operates the Service from the U.S., and Kiswe makes no representation that the Service is appropriate or available for use beyond the U.S. You agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms or to any sale of goods carried out as a result of your use of the Service. Software related to or made available by the Service may be subject to export controls of the U.S., and, except as authorized by law, you agree and warrant not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls or sanctions.

***Investigations; Cooperation with Law Enforcement.*** We reserve the right to investigate and prosecute any suspected breaches of these Terms, Additional Terms, or the Service. Kiswe may disclose any information as necessary to satisfy any law, regulation, legal process, or governmental request.

***Sections not Applicable.*** The sections on indemnity, limitation of liability, and disclaimer of representations and warranties do not apply to residents of jurisdictions in which these requirements or restrictions are unenforceable or prohibited by applicable law.

***Entire Agreement.*** These Terms and any applicable Additional Terms constitute the entire agreement between you and us with respect to the Service, and supersedes all prior or contemporaneous agreements, representations, warranties, assurances, discussion, or communications, whether electronic, oral or written.