

# KAYU

## TERMS OF USE

**Last Revised:** February 26, 2018

Welcome to Kayu™! Kayu™ is a social network designed to help its users connect based on mutual interests and engage in social activities in the real world. The Kayu™ service, website and mobile application are collectively referred to as the “**Service**”.

The Service is a copyrighted work belonging to Prideland Technologies LLC (“**Company**”, “**us**”, “**our**”, and “**we**”). Certain features of the Service may be subject to additional guidelines, terms, or rules, which will be posted on the Service in connection with such features. All such additional terms, guidelines, and rules are incorporated by reference into these Terms.

THESE TERMS OF USE (THESE “**TERMS**”) SET FORTH THE LEGALLY BINDING TERMS AND CONDITIONS THAT GOVERN YOUR USE OF THE SERVICE. BY ACCESSING OR USING THE SERVICE, YOU ARE ACCEPTING THESE TERMS AND THE COMPANY’S **PRIVACY POLICY** (ON BEHALF OF YOURSELF OR THE ENTITY THAT YOU REPRESENT), AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ENTER INTO THESE TERMS (ON BEHALF OF YOURSELF OR THE ENTITY THAT YOU REPRESENT). YOU MAY NOT ACCESS OR USE THE SERVICE OR ACCEPT THE TERMS IF YOU ARE NOT AT LEAST 18 YEARS OLD. IF YOU DO NOT AGREE WITH ALL OF THE PROVISIONS OF THESE TERMS, DO NOT ACCESS AND/OR USE THE SERVICE.

THESE TERMS REQUIRE THE USE OF ARBITRATION (SECTION 10.2) ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

### 1. ACCOUNTS

**1.1 Account Creation.** In order to use certain features of the Service, you must register for an account (“**Account**”) and provide certain information about yourself as prompted by the account registration form (including but not limited to email address and a unique password). You represent and warrant that: (a) all required registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information; (c) you reside in the United States or, if you reside outside the United States, that your use of the Service will comply with applicable law in your jurisdiction. You may delete your Account at any time, for any reason, by following the instructions on the Service. Company may suspend or terminate your Account in accordance with Section 8.

**1.2 Account Responsibilities.** You are responsible for maintaining the confidentiality of your Account login information and are fully responsible for all activities that occur under your Account. You agree to immediately notify Company of any unauthorized use, or suspected unauthorized use of your Account or any other breach of security. Company cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

**1.3 Users Under 18 Years Old.** We do not permit use of the Service by users under 18 years old. By using the Service, or registering for an Account, you warrant to us that you are at least 18 years old.

**1.4 Third Party Authentication.** During or after registration for an Account, you may choose to use a third party authentication system (such as Facebook) to log into the Service. If you do so, you authorize us to access and use certain account information from the authorized third party authenticator. For example, this information may include, but is not limited to, your public profile and information about friends or interests you might have in common with other users of the Service. For more information about how we collect information from you, and how we use it, read our [Privacy Policy](#).

## **2. ACCESS TO THE SERVICE**

**2.1 License.** Subject to these Terms, Company grants you a non-transferable, non-exclusive, revocable, limited license to use and access the Service solely for your own personal, noncommercial use.

**2.2 Certain Restrictions.** The rights granted to you in these Terms are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Service, whether in whole or in part, or any content displayed on the Service; (b) you shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Service; (c) you shall not access the Service in order to build a similar or competitive website, product, or service; and (d) except as expressly stated herein, no part of the Service may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means. Unless otherwise indicated, any future release, update, or other addition to functionality of the Service shall be subject to these Terms. All copyright and other proprietary notices on the Service (or on any content displayed on the Service) must be retained on all copies thereof.

**2.3 Modification.** Company reserves the right, at any time, to modify, suspend, or discontinue the Service (in whole or in part) with or without notice to you. You agree that Company will not be liable to you or to any third party for any modification, suspension, or discontinuation of the Service or any part thereof.

**2.4 No Support or Maintenance.** You acknowledge and agree that Company will have no obligation to provide you with any support or maintenance in connection with the Service.

**2.5 Ownership.** Excluding any User Content that you may provide (defined below), you acknowledge that all the intellectual property rights, including copyrights, patents, trade and service marks, and trade secrets, in the Service and its content are owned by Company or Company's suppliers. You acknowledge that nothing herein shall be interpreted as restricting Company's rights to use your User Content in connection with the Service or to aggregate any User Content with other data for use by the Company. As between you and the Company all rights in and to the aggregated data belong to Company. Neither these Terms (nor your access to the Service) transfers to you or any third party any rights, title or interest in or to such intellectual property rights, except for the limited access rights expressly set forth in Section 2.1. Company and its suppliers reserve all rights not granted in these Terms. There are no implied licenses granted under these Terms.

## **3. USER CONTENT**

**3.1 Hosts and Hosted Responsibilities.** A portion of the Service is designed to facilitate interaction between those with vacant accommodations or unused tickets or other resources for a particular activity (each a **"Host"**) and those searching for the same (each a **"Hosted"**). By posting an accommodation, ticket or other resource or opportunity to the Service (each an **"Opportunity"**), you represent and warrant that you have the full legal right to post such Opportunity and that doing so will

not violate these Terms or any applicable law, regulation or third party right. By submitting an Opportunity to the Service, posting that you are in search of an Opportunity, or by responding to an Opportunity, you acknowledge and agree that we do not control, oversee, endorse or otherwise police interactions between users of the Service and that we have no responsibility for such interactions (all as set forth in more detail in Section 5.2, 5.3 and throughout these Terms.

**3.2 User Content.** “User Content” means any and all information and content that a user submits to, or uses with, the Service (e.g., content in the user’s profile or postings). You are solely responsible for your User Content. You assume all risks associated with use of your User Content, including any reliance on its accuracy, completeness or usefulness by others, or any disclosure of your User Content that personally identifies you or any third party. You hereby represent and warrant that your User Content does not violate our Acceptable Use Policy (defined in Section 3.3). You may not represent or imply to others that your User Content is in any way provided, sponsored or endorsed by Company. Because you alone are responsible for your User Content, you may expose yourself to liability if, for example, your User Content violates the Acceptable Use Policy. Company is not obligated to backup any User Content, and your User Content may be deleted at any time without prior notice. You are solely responsible for creating and maintaining your own backup copies of your User Content if you desire.

**3.3 License.** You hereby grant (and you represent and warrant that you have the right to grant) to Company an irrevocable, nonexclusive, royalty-free and fully paid, worldwide license to reproduce, distribute, publicly display and perform, prepare derivative works of, incorporate into other works, and otherwise use and exploit your User Content, and to grant sublicenses of the foregoing rights, solely for the purposes of including your User Content in the Service. You hereby irrevocably waive (and agree to cause to be waived) any claims and assertions of moral rights or attribution with respect to your User Content.

**3.4 Acceptable Use Policy.** The following terms constitute our “Acceptable Use Policy”:

**(a)** Kayu does not stand for objectionable content or abusive users, and we will aggressively inhibit any and all of the following criteria: You agree when you use the Service, not to use the Service to collect, upload, transmit, display, or distribute any User Content (i) that violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) that is unlawful, harassing, abusive, tortious, threatening, harmful, invasive of another’s privacy, vulgar, defamatory, false, fraudulent, counterfeit, intentionally misleading, trade libelous, pornographic, obscene, patently offensive, promotes racism, bigotry, hatred, or physical harm of any kind against any group or individual or is otherwise objectionable; (iii) that is harmful to minors in any way; (iv) that is in violation of any law, regulation, or obligations or restrictions imposed by any third party; or (v) that is intended to solicit any response or participation in any activity that would otherwise violate this Acceptable Use Policy or any applicable law or regulation.

**(b)** In addition, you agree not to: (i) upload, transmit, or distribute to or through the Service any computer viruses, worms, or any software intended to damage or alter a computer system or data; (ii) send through the Service unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (iii) use the Service to harvest, collect, gather or assemble information or data regarding other users, including e-mail addresses, without their consent; (iv) interfere with, disrupt, or create an undue burden on servers or networks connected to the Service, or violate the

regulations, policies or procedures of such networks; (v) attempt to gain unauthorized access to the Service (or to other computer systems or networks connected to or used together with the Service), whether through password mining or any other means; (vi) harass or interfere with any other user's use and enjoyment of the Service; or (vi) use software or automated agents or scripts to produce multiple accounts on the Service, or to generate automated searches, requests, or queries to (or to strip, scrape, or mine data from) the Service (provided, however, that we conditionally grant to the operators of public search engines revocable permission to use spiders to copy materials from the Service for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials, subject to the parameters set forth in our robots.txt file).

(c) All real estate advertising is subject to Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended. The Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and handicap (disability). We will not knowingly accept any real estate advertising which is in violation of any applicable law. Users are hereby informed that all dwellings advertised on the Service are available on an equal opportunity basis. To complain of discrimination, call the department of Housing and Urban Development, toll-free, at 1-800-669-9777. The toll-free number for the hearing impaired is 1-800-927-9275. You acknowledge and agree that you will not submit or post any solicitation or advertisement to the Service which discriminates based on race, color, national origin, religion, sex, sexual orientation, familial status and /or handicap/disability.

**3.5 Ratings and Enforcement.** The Service allows users of the Service to rate one another on a scale from one to five stars based on their interactions through the Service (each a "**Rating**"). Each Rating will be saved and an aggregate average of the ratings will be calculated by the Service. An average Rating below a quality threshold set by us in our sole discretion, or two separate ratings below two stars may result in suspension or termination of your access to the service in accordance with Section 8. You agree to provide Ratings only for users with whom you have interacted and not to take any steps to fraudulently or artificially inflate your or any other Rating(s). We reserve the right (but have no obligation) to review any User Content, and to investigate and/or take appropriate action against you in our sole discretion if you violate the Acceptable Use Policy or any other provision of these Terms or otherwise create liability for us or any other person. Such action may include removing or modifying your User Content, terminating your Account in accordance with Section 8, and/or reporting you to law enforcement authorities.

**3.6 Feedback.** If you provide Company with any feedback or suggestions regarding the Service ("**Feedback**"), you hereby assign to Company all rights in such Feedback and agree that Company shall have the right to use and fully exploit such Feedback and related information in any manner it deems appropriate. Company will treat any Feedback you provide to Company as non-confidential and non-proprietary. You agree that you will not submit to Company any information or ideas that you consider to be confidential or proprietary.

**4. INDEMNIFICATION.** You agree to indemnify and hold Company (and its officers, employees, and agents) harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of (a) your use of the Service, (b) your violation of these Terms, (c) your violation of applicable laws or regulations or (d) your User Content. Company reserves 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. You agree not to settle any matter without the

prior written consent of Company. Company will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

## **5. THIRD-PARTY LINKS & ADS; OTHER USERS**

**5.1 Third-Party Links & Ads.** The Service may contain links to third-party websites and services, and/or display advertisements for third parties (collectively, “**Third-Party Links & Ads**”). Such Third-Party Links & Ads are not under the control of Company, and Company is not responsible for any Third-Party Links & Ads. Company provides access to these Third-Party Links & Ads only as a convenience to you, and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Links & Ads. You use all Third-Party Links & Ads at your own risk, and should apply a suitable level of caution and discretion in doing so. When you click on any of the Third-Party Links & Ads, the applicable third party’s terms and policies apply, including the third party’s privacy and data gathering practices. You should make whatever investigation you feel necessary or appropriate before proceeding with any transaction in connection with such Third-Party Links & Ads.

**5.2 Other Users.** Your interactions with other Service users are solely between you and such users. You agree that Company will not be responsible for any loss or damage incurred as the result of any such interactions. We do not conduct criminal background checks or other screenings on our users. We do not take any action to verify the information provided by users of the Service. We make no representations or warranties as any statement made or content provided by any current or future user of the Service. Each Service user is solely responsible for any and all of its own User Content and any statements made by such user. Because we do not control User Content, you acknowledge and agree that we are not responsible for any User Content or any statement made by any user of the site, whether by you or by others. We make no guarantees regarding the accuracy, currency, suitability, or quality of any User Content or any statement made or information provided by any user of the site. We reserve the right to conduct criminal or other background checks or other screenings (including, for example, sex offender registry searches) on users of the Service at any time. If there is a dispute between you and any Service user, we are under no obligation to become involved.

**5.3 Release.** You hereby release and forever discharge the Company (and our officers, employees, agents, successors, and assigns) from, and hereby waive and relinquish, each and every past, present and future dispute, claim, controversy, demand, right, obligation, liability, action and cause of action of every kind and nature (including personal injuries, death, and property damage), that has arisen or arises directly or indirectly out of, or that relates directly or indirectly to, the Service (including any interactions with, or act or omission of, other Service users or any Third-Party Links & Ads). IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, WHICH STATES: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

## **6. DISCLAIMERS**

THE SERVICE IS PROVIDED ON AN “AS-IS” AND “AS AVAILABLE” BASIS, AND COMPANY (AND OUR SUPPLIERS) EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT.

WE (AND OUR SUPPLIERS) MAKE NO WARRANTY THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS, OR WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE, COMPLETE, LEGAL, OR SAFE. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SERVICE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF FIRST USE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

## **7. LIMITATION ON LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL COMPANY (OR OUR SUPPLIERS) BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THESE TERMS OR YOUR USE OF, OR INABILITY TO USE, THE SERVICE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF, THE SERVICE IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR COMPUTER SYSTEM, OR LOSS OF DATA RESULTING THEREFROM.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO A MAXIMUM OF FIFTY US DOLLARS (U.S. \$50). THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT. YOU AGREE THAT OUR SUPPLIERS WILL HAVE NO LIABILITY OF ANY KIND ARISING FROM OR RELATING TO THIS AGREEMENT.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

**8. TERM AND TERMINATION.** Subject to this Section, these Terms will remain in full force and effect while you use the Service. We may suspend or terminate your rights to use the Service (including your Account) at any time for any reason at our sole discretion, including for any use of the Service in violation of these Terms or an aggregate average or repeat Rating below what we consider to be a reasonable quality. Upon termination of your rights under these Terms, your Account and right to access and use the Service will terminate immediately. You understand that any termination of your Account may involve deletion of your User Content associated with your Account from our live databases. Company will not have any liability whatsoever to you for any termination of your rights under these Terms, including for termination of your Account or deletion of your User Content. Even after your rights under these Terms are terminated, the following provisions of these Terms will remain in effect: Sections 2.2 through 2.5, Section 3 and Sections 4 through 10.

## **9. COPYRIGHT POLICY.**

Company respects the intellectual property of others and asks that users of our Service do the same. In connection with our Service, we have adopted and implemented a policy respecting copyright law that provides for the removal of any infringing materials and for the termination, in appropriate circumstances,

of users of our online Service who are repeat infringers of intellectual property rights, including copyrights. If you believe that one of our users is, through the use of our Service, unlawfully infringing the copyright(s) in a work, and wish to have the allegedly infringing material removed, the following information in the form of a written notification (pursuant to 17 U.S.C. § 512(c)) must be provided to our designated Copyright Agent: (1) your physical or electronic signature; (2) identification of the copyrighted work(s) that you claim to have been infringed; (3) identification of the material on our services that you claim is infringing and that you request us to remove; (4) sufficient information to permit us to locate such material; (5) your address, telephone number, and e-mail address; (6) a statement that you have a good faith belief that use of the objectionable material is not authorized by the copyright owner, its agent, or under the law; and (7) a statement that the information in the notification is accurate, and under penalty of perjury, that you are either the owner of the copyright that has allegedly been infringed or that you are authorized to act on behalf of the copyright owner.

Please note that, pursuant to 17 U.S.C. § 512(f), any misrepresentation of material fact (falsities) in a written notification automatically subjects the complaining party to liability for any damages, costs and attorney's fees incurred by us in connection with the written notification and allegation of copyright infringement.

The designated Copyright Agent for Company is:  
Designated Agent: CEO  
Address of Agent: 11 Mayflower Ct, Cameron NC, 28326  
Telephone: 808-348-5240  
Email: Dcma@kayuapp.com

## **10. GENERAL**

**10.1 Changes.** These Terms are subject to occasional revision, and if we make any substantial changes, we may notify you by sending you an e-mail to the last e-mail address you provided to us (if any), and/or by prominently posting notice of the changes on our Service. You are responsible for providing us with your most current e-mail address. In the event that the last e-mail address that you have provided us is not valid, or for any reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice. Any changes to these Terms will be effective upon the earlier of thirty (30) calendar days following our dispatch of an e-mail notice to you (if applicable) or thirty (30) calendar days following our posting of notice of the changes on our Service. These changes will be effective immediately for new users of our Service. Continued use of our Service following notice of such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes.

**10.2 Dispute Resolution.** *Please read this Arbitration Agreement carefully. It is part of your contract with Company and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.*

**(a) Applicability of Arbitration Agreement.** All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with the Terms or the use of any product or service provided by the Company that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement. Unless otherwise agreed to, all arbitration proceedings shall be held in English. This

Arbitration Agreement applies to you and the Company, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or goods provided under the Terms.

**(b)** *Notice Requirement and Informal Dispute Resolution.* Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute (“**Notice**”) describing the nature and basis of the claim or dispute, and the requested relief. A Notice to the Company should be sent to the Company attn.: Terms of Use Dispute at the address listed in Section 10.8 (or such other address as may be provided by the Company for this purpose. After the Notice is received, you and the Company may attempt to resolve the claim or dispute informally. If you and the Company do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

**(c)** *Arbitration.* You agree that any dispute, claim or controversy arising hereunder or relating in any way to these Terms and not informally resolved shall be settled by binding arbitration in Moore County, North Carolina, in accordance with the commercial arbitration rules of Judicial Arbitration and Mediation Services (“**JAMS**”). The arbitrator shall issue a written decision specifying the basis for the award made. The party filing a claim or counterclaim in the arbitration proceeding shall pay the deposit(s) determined by JAMS with respect to such claim or counterclaim. All other costs associated with the arbitration and imposed by JAMS shall be paid as determined by the arbitrator(s) and, in absence of such determination, equally by each party to the arbitration. In addition, unless the arbitrator awards payment of reasonable attorney and other fees to a party, each party to the arbitration shall be responsible for its own attorneys' fees and other professional fees incurred in connection with the arbitration. Determinations of the arbitrator will be final and binding upon the parties to the arbitration, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. The arbitrator shall apply the substantive law of the State of North Carolina, without giving effect to its conflict of laws rules.

**(d)** *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 under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and the Company in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND THE COMPANY WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

**(e)** *Waiver of Class or Consolidated Actions.* ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER.

**(f)** *Confidentiality.* All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent a party



from submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

**(g) Severability.** If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.

**(h) Right to Waive.** Any or all of the rights and limitations set forth in this Arbitration Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of this Arbitration Agreement.

**(i) Emergency Equitable Relief.** Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

**(j) Claims Not Subject to Arbitration.** Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark or trade secrets shall not be subject to this Arbitration Agreement.

**(k) Courts.** In any circumstances where the foregoing Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within Moore County, North Carolina, for such purpose

**10.3 Export.** The Service may be subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Company, or any products utilizing such data, in violation of the United States export laws or regulations.

**10.4 Electronic Communications.** The communications between you and Company use electronic means, whether you use the Service or send us emails, or whether Company posts notices on the Service or communicates with you via email. For contractual purposes, you (a) consent to receive communications from Company in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Company provides to you electronically satisfy any legal requirement that such communications would satisfy if it were be in a hardcopy writing. The foregoing does not affect your non-waivable rights.

**10.5 Entire Terms.** These Terms constitute the entire agreement between you and us regarding the use of the Service. Our failure to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. The word "including" means "including without limitation". If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Your relationship to Company is that of an independent contractor, and neither party is an agent or partner of the other. These Terms, and your rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by you without Company's prior written consent, and any attempted

assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. Company may freely assign these Terms. The terms and conditions set forth in these Terms shall be binding upon assignees.

**10.6 Copyright/Trademark Information.** Copyright © 2017 PRIDELAND TECHNOLOGIES LLC. All rights reserved. All trademarks, logos and service marks ("**Marks**") displayed on the Service are our property or the property of other third parties. You are not permitted to use these Marks without our prior written consent or the consent of such third party which may own the Marks.

**10.7 Third Party Device and Application Terms.** If you are accessing the Service via an application on a device provided by a third party (such as Google, Inc. ("**Google**"), Apple, Inc. ("**Apple**")) (each a "**Third Party Vendor**") or an application obtained through the Apple App Store, the Google Play Store or another third party marketplace (each an "**Application**"), the following shall apply:

(a) Both you and Company acknowledge that these Terms are concluded between you and Company only, and not with any Third Party Vendor, and that each Third Party Vendor is not responsible for the Application or the content therein;

(b) The Application is licensed to you on a limited, non-exclusive, non-transferrable, non-sublicensable basis, solely to be used in connection with the Service for your private, personal, non-commercial use, subject to all the terms and conditions of these Terms as they are applicable to the Application;

(c) You will only use the Application in connection with a Third Party Vendor device that You own or control and as permitted by the Usage Rules set forth in the App Store Terms of Service;

(d) Both you and Company acknowledge and agree that each Third Party Vendor has no obligation whatsoever to furnish any maintenance and support services with respect to the Application;

(e) In the event of any failure of the Application to conform to any applicable warranty, including those implied by law, you may notify the applicable Third Party Vendor of such failure, and the Third Party Vendor may refund the purchase price for the Application to you in accordance with the Third Party Vendor's terms of use; and to the maximum extent permitted by applicable law, each Third Party Vendor will have no other warranty obligation whatsoever with respect to the Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will, as between each Third Party Vendor and Company, be Company's sole responsibility;

(f) Both you and Company acknowledge that., as between Company and any Third Party Vendor, Company, not the Third Party Vendor, is responsible for addressing your claims or the claims of any third party relating to the Application or your possession and/or use of the Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation;

(g) Both you and Company acknowledge and agree that, in the event of any third party claim that the Application or your possession and use of the Application infringes that third party's intellectual property rights, Company, and not any Third Party Vendor, will be responsible for the investigation, defense, settlement and discharge of any such infringement claim;

(h) You represent and warrant that you are not located in a country subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country, and that you are not listed on any U.S. Government list of prohibited or restricted parties;

(i) Both you and Company acknowledge and agree that, in your use of the Application, you will comply with any applicable third party terms of agreement which may affect or be affected by such use; and

(j) Both you and Company acknowledge and agree that Apple and Apple’s subsidiaries are third party beneficiaries of these Terms, and that upon your acceptance of these Terms of Service, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms of Service against you as the third party beneficiary hereof.

(k) Apple, the Apple logo, iPhone and iPad are trademarks of Apple Inc., registered in the U.S. and other countries. App Store is a service mark of Apple Inc. Google, Android, the Google logo and the Android logo are trademarks of Google, Inc., registered in the U.S. and other countries.

#### **10.8 Contact Information:**

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