

Effective Date: The Terms of Use was last revised on November 13, 2015.

**PLEASE READ THIS AGREEMENT CAREFULLY. IT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR USE OF THE SERVICE.**

### **Introduction and Overview**

Welcome! You have arrived at an online service location (*e.g.*, website, mobile app or other service) that is owned and/or operated by KIK Custom Products Inc. and/or one or more of its Affiliates (as defined below) (collectively, “**KIK**” or “**we**,” “**our**” or “**us**”). These Terms of Use (“**Terms**”) govern your use of any online service location (*e.g.*, website or mobile app) that posts a link to these Terms (each a “**Site**”), and also applies to your use of interactive features, widgets, plug-ins, applications, content, downloads and other services that: (i) we own and control and make available through or interact with a Site; or (ii) that post a link to these Terms (collectively, the “**Service**”), regardless of how you access or use it, whether via computer, mobile device or otherwise. By using the Service, you acknowledge and accept the Service’s [Privacy Policy](#). By using the Service, you further agree that KIK may change, alter, or modify the settings or configurations on your Device (defined below) in order to allow for or optimize your use of the Service.

It’s important that you read these entire Terms; but to help facilitate your review, here are some of the more significant terms we want to bring to your initial attention that are further detailed below. The summaries of provisions and section headings are provided for convenience only and shall not limit the full Terms. The full provisions shall govern. Capitalized terms have the meanings given to them where defined in these Terms.

- Each time you use the Service, these Terms, and any applicable Additional Terms (defined below), then posted apply (subject to [Section 14](#)) so you should check back each time you return for any updates.
- Click here for a summary of each section of these Terms. You may click on the topic heading or the “More” link for full details.
- You may only use the Content (defined below) on the Service in connection with your permitted activities on the Service and not in an offline environment or in connection with another site or service. ([Section 1](#) and [Section 3](#)) You grant us a broad license to content you submit or post. ([Section 2](#))
- Except as set forth in the [Privacy Policy](#) that applies to the Service, you and we do not have a confidential, fiduciary, or any other special relationship by virtue of your use of the Service or your communications to us through or related to the Service. ([Section 2](#))
- You consent to our [Privacy Policy](#) and our practices detailed in it, including targeted advertising.
- Many types of disputes that may arise in connection with your access to and use of the Service are subject to mandatory arbitration – which includes your waiver of a right to a jury trial. ([Section 10](#))
- Carrier charges may apply to use of our mobile app. You may uninstall our mobile app at any time. Special terms apply to Apple iOS users. If you enable GPS, geo-location or other location-based features on our mobile app, your Device location will be tracked and may be shared with others. ([Section 9](#) and [Section 17](#))

- WE ARE PROVIDING THE SERVICE TO YOU ON AN “AS-IS” BASIS, WITHOUT ANY WARRANTY OF ANY KIND, AND OUR LIABILITY TO YOU IN CONNECTION WITH YOUR USE OF THE SERVICE IS VERY LIMITED. Many other limitations and disclaimers relate to your use of the Service. ([Section 11](#) and [Section 12](#))

### **If You Want to Use The Service,**

then carefully read these entire Terms (including all links to details), as they constitute a written agreement between you and us and they affect your legal rights and obligations. Each time you access and/or use the Service (other than to simply read these Terms), you agree to be bound by and comply with the Terms and any Additional Terms (defined below) then posted.

Therefore, ***do not use the Service if you do not agree***. The business realities associated with operating the Service are such that, without the limitations that are set forth in these Terms – such as your grants and waivers of rights, the limitations on our liability, your indemnity of us, and our arbitration of certain disputes – we would not make the Service available to you.

By accessing and/or using any part of the Service, you agree to be bound by these Terms. In some instances, both these Terms and separate guidelines, rules, or terms of service or sale setting forth additional or different terms and/or conditions that will be identified to you as applicable will apply to your use of the Service or to a service or product offered via the Service (in each such instance, and collectively “**Additional Terms**”). To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless the Additional Terms expressly state otherwise. Please also review the terms of the Service’s [Privacy Policy](#), which you accept by using the Service.

### **Linkable Table of Contents**

**It is important that you read and understand these entire Terms before using the Service. To ease review, each section below includes a brief introductory summary and a link to the full explanation. Please note that the complete provisions, and not the headings or summaries shall govern. You can click on the headings and “More” buttons to be taken to the full explanation.** Any capitalized terms have the meanings given to them where defined in the Terms.

1. **[Service Content, Ownership, Limited License, and Rights of Others](#)**: We only grant you a limited revocable license to use the Service for your own non-commercial use subject to rules and limitations. [More](#)
2. **[Content You Submit and Forum Usage Rules](#)**: You grant us a broad license, which we may sublicense, to the content you submit which you represent you have the right to allow us to use. You, however, retain ownership of and responsibility for, your content. Use of our Service is subject to Forum (defined below) usage rules and we have the right to manage our Service to keep its content appropriate. [More](#)
3. **[Service and Content Use Restrictions](#)**: Your use of our Service is subject to various restrictions designed to protect the Service and our users. We may change or discontinue our Service in whole or in part. [More](#)
4. **[Accounts](#)**: You may have the opportunity to open, revise and close your accounts, subject to certain rules. We may offer you the ability to make choices regarding how and to whom

some aspects of your account are used and seen, but these may not be completely effective. [More](#)

5. **Notices, Questions and Customer Service:** Click [here](#) to contact us for customer service or questions. You agree we may provide you notices, including of new terms and conditions, by posting notice on the home page, changing the “Last Updated” date at the beginning of these Terms or by other reasonable means that we may elect, such as to the e-mail address you provided. [More](#)
6. **Product-Related Matters:** Terms may change and errors may occur. Consult Additional Terms regarding each product. [More](#)
7. **Links By You to the Service:** You may link to our Service, subject to some basic rules. [More](#)
8. **Third-Party Sites; Advertisements; Dealings With Third Parties:** We are not responsible for third parties or their content, advertisement(s), apps, sites, products and/or services. We may make advertisements and third-party content or services available to you on or via our Service, which we do not control. Use caution when dealing with third parties. [More](#)
9. **Wireless and Location-Based Features:** Wireless carrier charges may apply to use of the Service via wireless networks or Devices and your geo-location details may be used for purposes such as connecting you with local retailers. [More](#)
10. **Dispute Resolution:** You agree to arbitrate most disputes and waive jury trial and class actions and to bring many types of claims within one year. [More](#)
11. **Disclaimer of Representations and Warranties:** We disclaim warranties to the extent permitted by applicable law, and provide the Service “As Is”. [More](#)
12. **Limitations of our Liability:** Our liability is greatly limited. [More](#)
13. **Waiver of Injunctive or Other Equitable Relief:** You waive equitable or injunctive relief. [More](#)
14. **Updates to Terms:** These Terms and Additional Terms posted on the Service at each time of use apply to that use, and the Terms may be prospectively updated as our Service evolves. Posting of new Terms is notice to you thereof. [More](#)
15. **General Provisions:** You agree to various other terms and conditions, which you should read here, including regarding (a) our control and discretion; (b) the law that governs these Terms; (c) your indemnity of us; (d) accessing the Service from outside of the United States and/or Canada; (e) restriction on the Service for those countries subject to United States export controls; (f) enforcement and interpretation of these Terms; (g) communications with us; (h) investigations, cooperation with law enforcement, termination and survival; (i) limit on assignment and delegation of rights and obligations; (j) how waivers may be made; (k) your responsibility for your connectivity and access; and (l) some special notices for residents of California. [More](#)
16. **Procedure For Alleging Copyright Infringement:** Users may not post content they do not own or control, and may be suspended or terminated if they do so. Copyright owners may give us notice of infringement by following specific instructions specifically addressed in this section. [More](#)
17. **Terms Applicable For Apple iOS:** There are some other things you should know if you are accessing or using the Service through an Apple Device. [More](#)

## Full Details of Terms of Use

### 1. Service Content, Ownership, Limited License, and Rights of Others

- A. **Content**. The Service contains a variety of: (i) materials and other items relating to KIK and its products and services, and similar items from our licensors and other third parties, including all layout, information, articles, posts, text, data, files, images, scripts, designs, graphics, button icons, instructions, illustrations, photographs, audio clips, music, 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 (including source and object code); (ii) trademarks, logos, trade names, trade dress, service marks, and trade identities of various parties, including those of KIK (collectively, “**Trademarks**”); and (iii) other forms of intellectual property (all of the foregoing, collectively “**Content**”).
- B. **Ownership**. The Service (including past, present, and future versions) and the Content are owned or controlled by KIK, our licensors and/or certain other third parties. All right, title, and interest in and to the Content available via the Service is the property of KIK or our licensors or certain other third parties, and is protected by U.S., Canadian and international copyright, trademark, trade dress, patent, and/or other intellectual property and unfair competition rights and laws to the fullest extent possible. KIK owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Service.
- C. **Limited License**. Subject to your strict compliance with these Terms and the Additional Terms, KIK grants you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to download (temporary storage only), display, view, use, play, and/or print one copy of the Content (excluding source and object code in raw form or otherwise, other than as made available to access and use to enable display and functionality) on a personal computer, mobile phone or other wireless device, or other Internet enabled device (each, a “**Device**”) for your personal, non-commercial use only. The foregoing limited license: (i) does not give you any ownership of, or any other intellectual property interest in, any Content, and (ii) may be immediately suspended or terminated for any reason, in KIK’s sole discretion, and without advance notice or liability. In some instances, we may permit you to have greater access to and use of Content, subject to certain Additional Terms.
- D. **Rights of Others**. In using the Service, you must respect the intellectual property and other rights of KIK and others. Your unauthorized use of Content may violate copyright, trademark, privacy, publicity, communications, and other laws, and any such use may result in your personal liability, including potential criminal liability. KIK respects the intellectual property rights of others. If you believe that your work has been infringed by means of an improper posting or distribution of it via the Service, then please see [Section 16](#) below.

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## 2. Content You Submit and Forum Usage Rules

- A. **User-Generated Content.** KIK may now or in the future offer users of the Service the opportunity to create, build, post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available on or submit through the Service (collectively, “**submit**”) messages, text, files, images, graphics, photos, comments, responses, information, music, videos, content, ratings, reviews, data, questions, suggestions, personally identifiable information, or other information or materials and the ideas contained therein (collectively, “**User-Generated Content**”). KIK may allow you to do this through forums, message boards, “contact us” tools, e-mail, and other communications functionality (“**Forums**”). Subject to the rights and license you grant in these Terms, you retain whatever legally cognizable right, title, and interest that you have in your User-Generated Content and you remain ultimately responsible for it.
- B. **Non-Confidentiality of Your User-Generated Content.** Except as otherwise described in the Service’s posted [Privacy Policy](#) or any Additional Terms, you agree that (a) your User-Generated Content will be treated as non-confidential – regardless of whether you mark them “confidential,” “proprietary,” or the like – and will not be returned, and (b) KIK does not assume any obligation of any kind to you or any third party with respect to your User-Generated Content. Upon KIK’s request, you will furnish us with any documentation necessary to substantiate the rights to such content and to verify your compliance with these Terms or any Additional Terms. You acknowledge that the Internet and mobile communications may be subject to breaches of security and that you are aware that submissions of User-Generated Content may not be secure, and you will consider this before submitting any User-Generated Content and do so at your own risk.

In your communications with us, please keep in mind that we do not seek any unsolicited ideas or materials for products or services, or even suggested improvements to products or services (collectively, “**Unsolicited Ideas and Materials**”). Any Unsolicited Ideas and Materials you post on or send to us via the Service are deemed User-Generated Content and licensed to us as set forth below. In addition, KIK retains all of the rights held by members of the general public with regard to your Unsolicited Ideas and Materials. Your transmission of Unsolicited Ideas and Materials does not guarantee our receipt and/or access to same. Furthermore, KIK’s receipt of your Unsolicited Ideas and Materials is not an admission by KIK of their novelty, usefulness, priority, or originality, and it does not impair KIK’s right to contest existing or future intellectual property rights relating to your Unsolicited Ideas and Materials.

- C. **License to Us of Your User-Generated Content.** Except as otherwise described in any applicable Additional Terms (such as a contest official rules), which specifically govern the submission of your User-Generated Content, you hereby grant to us, and you agree to grant to us, the non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise use and exploit in any manner whatsoever, all or

any portion of your User-Generated Content (and derivative works thereof), for any purpose whatsoever in 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. The granted rights granted by the preceding sentence include the right to: (a) configure, host, index, cache, archive, store, digitize, compress, optimize, modify, reformat, edit, adapt, publish in searchable format, and remove such User-Generated Content and combine same with other materials, and (b) use any ideas, concepts, know-how, or techniques contained in any User-Generated Content for any purposes whatsoever, including developing, producing, and marketing products and/or services. In order to further effect the rights and license that you grant to us to your User-Generated Content, you also hereby grant to us, and agree to grant to us, the unconditional, perpetual, irrevocable right to use and exploit your name, persona, and likeness in connection with any User-Generated Content, without any obligation or remuneration to you. Except as prohibited by law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any User-Generated Content, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section 2.C.

- D. **Our Exclusive Right to Manage our Service.** We may, but will not have any obligation to, review, monitor, display, post, store, maintain, accept, or otherwise make use of, any of your User-Generated Content, and we may, in our sole discretion, reject, delete, move, re-format, remove or refuse to post or otherwise make use of User-Generated Content without notice or any liability to you or any third party. Without limitation, we may do so to address content that comes to our attention that we believe is offensive, obscene, lewd, lascivious, filthy, violent, harassing, threatening, abusive, illegal or otherwise objectionable or inappropriate, or to enforce the rights of third parties or to enforce these Terms or any applicable Additional Terms. Such User-Generated Content submitted by you or others need not be maintained on the Service by us for any period of time and you will not have the right, once submitted, to access, archive, maintain, or otherwise use such User-Generated Content on the Service or elsewhere.
- E. **Representations and Warranties Related to Your User-Generated Content.** Each time you submit any User-Generated Content, you represent and warrant that you are at least the age of majority in the jurisdiction in which you reside and are the parent or legal guardian, or have all proper consents from the parent or legal guardian, of any minor who is depicted in or contributed to any User-Generated Content you submit, and that, as to that User-Generated Content: (a) you are the sole author and owner of the intellectual property and other rights to the User-Generated Content, or you have a lawful right to submit the User-Generated Content and grant us the rights to it that you are granting by these Terms and any Additional Terms, all without any obligation of KIK to obtain consent of any third party, and without creating any obligation or liability of KIK; (b) the User-Generated Content is accurate; (c) the User-Generated Content does not, and as to our permitted uses and

exploitation set forth in these Terms will not, infringe any intellectual property or other right of any third party; and (d) the User-Generated Content will not violate these Terms or any Additional Terms, or cause injury or harm to any person.

- F. **Enforcement.** KIK has no obligation to monitor or enforce your intellectual property rights to your User-Generated Content, but you grant us the right to protect and enforce our rights to your User-Generated Content, including by bringing and controlling actions in your name and on your behalf (at our cost and expense, to which you hereby consent and irrevocably appoint us as your attorney-in-fact, with the power of substitution and delegation, which appointment is coupled with an interest).
- G. **Forum Usage Rules.** As a user of the Service, these Forum Usage Rules (“**Rules**”) are here to help you understand the conduct that is expected of members of the Service’s Forums.
- i. **Nature of Rules.** Your participation in any Forum is subject to all of the Terms, including these Rules:
    - **Your User-Generated Content.** All of your User-Generated Content either must be original with you or you must have all necessary rights in it from third parties in order to permit you to comply with these Terms and any Additional Terms. Your User-Generated Content should not contain any visible logos, phrases, or trademarks that belong to third parties. Do not use any User-Generated Content that belongs to other people and pass it off as your own; this includes any content that you might have found elsewhere on the Internet. If anyone contributes to your User-Generated Content or has any rights to your User-Generated Content, or if anyone appears or is referred to in the User-Generated Content, then you must also have their permission to submit such User-Generated Content to KIK. (For example, if someone has taken a picture of you and your friend, and you submit that photo to KIK as your User-Generated Content, then you must obtain your friend’s and the photographer’s permission to do so.)
    - **Speaking of Photos: No Pictures, Videos, or Images of Anyone Other Than You and Your Friends and Family.** If you choose to submit photos to the Service, link to embedded videos, or include other images of real people, then make sure they are of you or of you and someone you know – and only if you have their express permission to submit it.
    - **Act Appropriately.** All of your Service activities must be venue appropriate, as determined by us. Be respectful of others’ opinions and comments so we can continue to build Forums for everyone to enjoy. If you think your User-Generated Content might offend someone or be embarrassing to someone, then chances are it probably will and it doesn’t belong on the Service. Cursing, bullying, harassing, stalking, insulting comments, personal attacks, gossip, and similar actions are prohibited. Your User-Generated Content must not threaten, abuse, or harm others, and it must not include any

negative comments that are connected to race, national origin, gender, sexual orientation, or physical handicap. Your User-Generated Content must not be defamatory, slanderous, indecent, obscene, pornographic, or sexually explicit.

- **Do Not Use for Commercial or Political Purposes.** Your User-Generated Content must not advertise or promote a product or service or other commercial activity, or a politician, public servant, or law.
- **Do Not Use for Inappropriate Purposes.** Your User-Generated Content must not promote any infringing, illegal, or other similarly inappropriate activity.
- **Be Honest and Do Not Misrepresent Yourself or Your User-Generated Content.** Do not impersonate any other person, user, or company, and do not submit User-Generated Content that you believe may be false, fraudulent, deceptive, inaccurate, or misleading, or that misrepresents your identity or affiliation with a person or company.
- **Others Can See.** We hope that you will use the Forums to exchange information and content and have venue appropriate discussions with other members. However, please remember that the Forums are public or semi-public and User-Generated Content that you submit on the Service within a Forum may be accessible and viewable by other users. Do not submit personally identifying information (*e.g.*, first and last name together, password, phone number, address, credit card number, medical information, e-mail address, or other personally identifiable information or contact information) on Forum spaces and take care when disclosing this type of information to others.
- **Don't Share Other Peoples' Personal Information.** Your User-Generated Content should not reveal another person's address, phone number, e-mail address, social security number, credit card number, medical information, financial information, or any other information that may be used to track, contact, or impersonate that individual, unless, and in the form and by the method, specifically requested by KIK.
- **Don't Damage the Service or Anyone's Computers or Other Devices.** Your User-Generated Content must not submit viruses, Trojan horses, spyware, or any other technologies or malicious code that could impact the operation of the Service or any computer or other Device.

If you submit User-Generated Content that KIK reasonably believes violates these Rules, then we may take any legally available action that we deem appropriate, in our sole discretion. However, we are not obligated to take any action not required by law. We may require, at any time, proof of the permissions referred to above in a form acceptable to us. Failure to provide

such proof may lead to, among other things, the User-Generated Content in question being removed from the Service.

2. **Your Interactions With Other Users; Disputes**. You are solely responsible for your interaction with other users of the Service, whether online or offline. We are not responsible or liable for the conduct or content of any user. We reserve the right, but have no obligation, to monitor or become involved in disputes between you and other users. Exercise common sense and your best judgment in your interactions with others (*e.g.*, when you submit any personal or other information) and in all of your other online activities.
3. **Alerting Us of Violations**. If you discover any content that violates these Terms, then you may report it to us at [TermsofUse@kikcorp.com](mailto:TermsofUse@kikcorp.com). For alleged infringements of intellectual property rights, see **Section 16** below.

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### 3. **Service and Content Use Restrictions**

- A. **Service Use Restrictions**. You agree that you will not: (i) aside from your purchase of goods or services offered for sale by KIK or our direct and indirect parents, subsidiaries and affiliates (“**Affiliate(s)**”), use the Service for any commercial purpose (including, without limitation, for purposes of advertising, soliciting funds, collecting product prices, and selling products); (ii) use any meta tags or any other “hidden text” utilizing any Trademarks; (iii) engage in any activities through or in connection with the Service that seek to, attempt to or actually harm any individuals or entities, or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party, or are otherwise objectionable to us; (iv) reverse engineer, decompile, disassemble, reverse assemble, or modify any Service source or object code or any software or other products, services, or processes accessible through any portion of the Service; (v) engage in any activity that interferes with a user’s access to the Service or the proper operation of the Service, or otherwise causes harm to the Service, KIK, or other users of the Service; (vi) interfere with or circumvent any security feature of the Service or any feature that restricts or enforces limitations on use of or access to the Service, the Content, or the User-Generated Content; (vii) harvest or otherwise collect or store any information (including personally identifiable information about other users of the Service, including e-mail addresses, without the express consent of such users); (viii) attempt to gain unauthorized access to the Service, other computer systems or networks connected to the Service, through password mining or any other means; or (ix) otherwise violate these Terms or any Additional Terms.
- B. **Content Use Restrictions**. You also agree that, in using the Service: (i) you will not monitor, gather, copy, or distribute the Content (except as may be a result of standard search engine activity or use of a standard browser) on the Service by using any robot, rover, “bot”, spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) you will not frame or utilize framing techniques to enclose any such Content (including any images, text, or page layout); (iii) you will keep intact all Trademark,

copyright, and other intellectual property notices contained in such Content; (iv) you will not use such Content in a manner that suggests an unauthorized association with any of our or our licensors' products, services, or brands; (v) you will not make any modifications to such Content; (vi) you will not copy, modify, reproduce, archive, sell, lease, rent, exchange, create derivative works from, publish by hard copy or electronic means, publicly perform, display, disseminate, distribute, broadcast, retransmit, circulate or transfer to any third party or on any third-party application or website, or otherwise use or exploit such Content in any way for any purpose except as specifically permitted by these Terms or any Additional Terms or with the prior written consent of an officer of KIK or, in the case of Content from a licensor, the owner of the Content; and (vii) you will not insert any code or product to manipulate such Content in any way that adversely affects any user experience.

- C. **Availability of Service and Content.** We may immediately suspend or terminate the availability of the Service and Content (and any elements and features of them), in whole or in part, for any reason, in our sole discretion, and without advance notice or liability.
- D. **Reservation of All Rights Not Granted as to Content and Service.** These Terms and any Additional Terms include only narrow, limited grants of rights to make use of Content and to use and access the Service. No other right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. All rights not expressly granted to you are reserved by KIK and/or its licensors or other third parties. *Any unauthorized use of any Content or the Service for any purpose is prohibited.*

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#### 4. **Accounts**

In order to access or use some (or potentially all) of the features on the Service including our mobile applications, you must first register through our online registration process at the time you download our mobile application. The Service's practices governing any resulting collection and use of your personal information are disclosed in our [Privacy Policy](#).

If you register for any feature that requires a password and/or username, then you will select your own password at the time of registration (or we may send you an e-mail notification with a randomly generated initial password) and you agree that: (i) You will not use a username (or e-mail address) that is already being used by someone else, may impersonate another person, belongs to another person, violates the intellectual property or other right of any person or entity, or is offensive. We may reject the use of any password, username, or e-mail address for any other reason in our sole discretion; (ii) You will provide true, accurate, current, and complete registration information about yourself in connection with the registration process and, as permitted, you will maintain and update it, continuously and promptly to keep it accurate, current, and complete; (iii) You are solely responsible for all activities that occur under your account, password, and username – whether or not you authorized the activity; (iv) You are solely responsible for maintaining the confidentiality of your password and for restricting access to your Device so that others may not access any password protected portion of the Service using your name, username, or password; (v)

You will immediately notify us of any unauthorized use of your account, password, or username, or any other breach of security; and (vi) You will not sell, transfer, or assign your account or any account rights.

We will not be liable for any loss or damage (of any kind and under any legal theory) to you or any third party arising from your inability or failure for any reason to comply with any of the foregoing obligations.

If any information that you provide, or if we have reasonable grounds to suspect that any information that you provide, is false, inaccurate, outdated, incomplete, or violates these Terms, any Additional Terms, or any applicable law, then we may suspend or terminate your account. We also reserve the more general and broad right to terminate your account or suspend or otherwise deny you access to it or its benefits – all in our sole discretion, for any reason, and without advance notice or liability.

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#### 5. **Notices, Questions and Customer Service**

You agree that: (i) we may give you notices of new, revised or changed terms and other important matters by prominently posting notice on the home page of the Service, or in another reasonable manner that we may elect; and (ii) we may contact you by mail or e-mail sent to the address provided by you. You agree to promptly notify us if you change your e-mail or mailing address.

If you have a question regarding these Terms or wish to send us a legal notice, you may contact us by sending an e-mail to [TermsofUse@kikcorp.com](mailto:TermsofUse@kikcorp.com). If you have a customer service inquiry, please visit the “Contact Us” section on the Service and follow the instructions posted to contact us about your inquiry. You acknowledge that the provision of customer support is at our sole discretion and that we have no obligation to provide you with customer support of any kind.

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#### 6. **Product-Related Matters**

We try to describe the products and/or services offered on this Service as accurately as possible. However, we are human, and therefore we do not warrant that product specifications, pricing, or other content on the Service is complete, accurate, reliable, current, or error-free. Additional Terms may apply. You should consult the Additional Terms for each product or service.

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#### 7. **Links By You to the Service**

We grant you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to create hyperlinks to the Service, so long as: (a) the links only incorporate text, and do not use any Trademarks, (b) the links and the content on your

website do not suggest any affiliation with KIK or cause any other confusion, and (c) the links and the content on your website do not portray KIK or its products or services in a false, misleading, derogatory, or otherwise offensive matter, and do not contain content that is unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party or are otherwise objectionable to us. We reserve the right to suspend or prohibit linking to the Service for any reason, in our sole discretion, without advance notice or any liability of any kind to you or any third party.

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## 8. **Third-Party Sites; Advertisements; Dealings With Third Parties**

- A. **Third-Party Content and Sites; Advertisements.** The Service may contain links to third-party sites, such as those of our retailers, that are not owned, controlled or operated by KIK, and the Service may also include third-party ads, tools and or other content on the Service that link to third-party sites (collectively, “**Third-Party Sites**”), including services operated by advertisers, our retailers, distributors and certain other third parties who may have business relationships with KIK. We may also host our content, apps and tools on Third-Party Sites. KIK may have no control over the content, operations, policies, terms, or other elements of Third-Party Sites, and KIK does not assume any obligation to review any Third-Party Sites. KIK does not endorse, approve, or sponsor any Third-Party Sites, or any third-party content, advertising, information, materials, products, services, or other items. Furthermore, KIK is not responsible for the quality or delivery of the products or services offered, accessed, obtained by or advertised at such sites. FINALLY, KIK will under no circumstances be liable for any direct, indirect, incidental, consequential, punitive or special loss or other damage, whether arising from negligence, breach of contract, defamation, infringement of copyright or other intellectual property rights, caused by the exhibition, distribution or exploitation of any information or content contained within Third-Party Sites. Any activities you engage in connection with any of the same are subject to the privacy and other policies, terms and conditions of use and/or sale, and rules issued by the operator of the Third-Party Sites. KIK disclaims all liability in connection therewith.
- B. **Dealings with Third Parties.** Any interactions, correspondence, transactions, and other dealings that you have with any third parties found on or through the Service (including on or via Third-Party Sites) are solely between you and the third party (including issues related to content, payments, delivery of goods, warranties (including product warranties), privacy and data security, and the like). KIK disclaims all liability in connection therewith.

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## 9. **Wireless and Location-Based Features**

1. **Wireless Features.** The Service may offer certain features and services that are available to you via your wireless Device. These features and services may include the ability to access the Service’s features and upload content to the Service, receive messages from the Service, and download applications to your wireless Device

(collectively, “**Wireless Features**”). Standard messaging, data, and other fees may be charged by your carrier to participate in Wireless Features. Fees and charges may appear on your wireless bill or be deducted from your pre-paid balance. Your carrier may prohibit or restrict certain Wireless Features and certain Wireless Features may be incompatible with your carrier or wireless Device. You should check with your carrier to find out what plans are available and how much they cost. Contact your carrier with questions regarding these issues.

2. **Terms of Wireless Features**. You agree that as to the Wireless Features for which you are registered, we may send communications via such features or apps to your wireless Device regarding us or other parties. Further, we may collect information related to your use of the Wireless Features. If you have registered via the Service for Wireless Features, then you agree to notify us of any changes to your wireless contact information (including phone number) and update your account(s) on the Service to reflect the changes.
3. **Location-Based Features**. If you have enabled GPS, geo-location or other location-based features on any mobile app(s) or feature(s), you acknowledge that your Device location will be tracked and may be shared with others consistent with the [Privacy Policy](#). Some mobile app(s) or feature(s) allow for you to disable location-based features or manage preferences related to them. However, you can terminate Device location tracking by us by disinstalling any mobile app(s) or feature(s). The location-based services offered in connection with our mobile app(s) or feature(s) are for individual use only and should not be used or relied on as an emergency locator system, used while driving or operating vehicles, or used in connection with any hazardous environments requiring fail-safe performance, or any other situation in which the failure or inaccuracy of use of the location-based services could lead directly to death, personal injury, or severe physical or property damage. The location-based services are not suited or intended for family finding purposes, fleet tracking, or any other type of business or enterprise use.

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## 10. **Dispute Resolution**

If you reside in the U.S. (and as applicable to U.S. residents), certain portions of this Section 10 are deemed to be a “written agreement to arbitrate” pursuant to the Federal Arbitration Act. You and KIK agree that we intend that this Section 10 satisfies the “writing” requirement of the Federal Arbitration Act.

- A. **First – Try to Resolve Disputes and Excluded Disputes**. If any controversy, allegation, or claim arises out of or relates to the Service, the Content, your User-Generated Content, these Terms, or any Additional Terms, whether heretofore or hereafter arising (collectively, “**Dispute**”), or to any of KIK’s actual or alleged intellectual property rights (an “**Excluded Dispute**”), which includes those actions set forth in Section 10(D), then you and we agree to send a written notice to the other providing a reasonable description of the Dispute or Excluded Dispute, along with a proposed resolution of it. Our notice to you will be sent to you based on the most recent contact information that you provide us. But if no such information exists or if such information is not current, then we have no obligation under this

Section 10(A). Your notice to us must be sent via email to: [TermsofUse@kikcorp.com](mailto:TermsofUse@kikcorp.com). For a period of sixty (60) days from the date of receipt of notice from the other party, KIK and you will engage in a dialogue in order to attempt to resolve the Dispute or Excluded Dispute, though nothing will require either you or KIK to resolve the Dispute or Excluded Dispute on terms with respect to which you and KIK, in each of our sole discretion, are not comfortable.

- B. **Binding Arbitration**. If we cannot resolve a Dispute as set forth in Section 10(A) (or agree to arbitration in writing with respect to an Excluded Dispute) within sixty (60) days of receipt of the notice, then ANY AND ALL DISPUTES ARISING BETWEEN YOU AND KIK (WHETHER BASED IN CONTRACT, STATUTE, REGULATION, ORDINANCE, TORT— INCLUDING, BUT NOT LIMITED TO, FRAUD, ANY OTHER INTENTIONAL TORT OR NEGLIGENCE—COMMON LAW, CONSTITUTIONAL PROVISION, RESPONDEAT SUPERIOR, AGENCY OR ANY OTHER LEGAL OR EQUITABLE THEORY), WHETHER ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THESE TERMS, MUST BE RESOLVED BY FINAL AND BINDING ARBITRATION. THIS INCLUDES ANY AND ALL DISPUTES BASED ON ANY PRODUCT OR SERVICE PURCHASED THROUGH THE SERVICE OR ADVERTISING AVAILABLE ON OR THROUGH THE SERVICE. For U.S. residents, the Federal Arbitration Act (“**FAA**”), not state law, shall govern the arbitrability of all disputes between KIK and you regarding these Terms (and any Additional Terms) and the Service, including the “No Class Action Matters” Section below. BY AGREEING TO ARBITRATE, EACH PARTY IS GIVING UP ITS RIGHT TO GO TO COURT AND HAVE ANY DISPUTE HEARD BY A JUDGE OR JURY. KIK and you agree, however, that the applicable state, federal or provincial law, as contemplated in Section 10(H) below, shall apply to and govern, as appropriate, any and all claims or causes of action, remedies, and damages arising between you and KIK regarding these Terms and the Service, whether arising or stated in contract, statute, common law, or any other legal theory, without regard to any jurisdiction’s choice of law principles.

Any Dispute will be resolved solely by binding arbitration in accordance with the then-current Commercial Arbitration Rules (“**Rules**”) of the American Arbitration Association (“**AAA**”), except as modified herein, and the arbitration will be administered by the AAA. If a party properly submits the Dispute to the AAA for formal arbitration and the AAA is unwilling to set a hearing then either party can elect to have the arbitration administered by the Judicial Arbitration and Mediation Services Inc. (“**JAMS**”) using JAMS’ streamlined Arbitration Rules and Procedures, or by any other arbitration administration service that you and an officer or legal representative of KIK consent to in writing. If an in-person arbitration hearing is required and you are a U.S. resident, then it will be conducted in Gwinnett County, Georgia. If an in-person arbitration hearing is required and you are a Canadian resident, then it will be conducted in Toronto, Ontario and in the English language. You and we will pay the administrative and arbitrator’s fees and other costs in accordance with the applicable arbitration rules; but if applicable arbitration rules or laws require KIK to pay a greater portion or all of such fees and costs in

order for this Section 10 to be enforceable, then KIK will have the right to elect to pay the fees and costs and proceed to arbitration. The arbitration will be conducted by a single arbitrator who will apply and be bound by these Terms and any Additional Terms, and will determine any Dispute according to applicable law and facts based upon the record and no other basis, and will issue a reasoned award only in favor of the individual party seeking relief and only to the extent to provide relief warranted by that party's individual claim. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration and class action waiver provisions are for the court to decide. This arbitration provision shall survive termination of these Terms or the Service. You can obtain AAA and JAMS procedures, rules, and fee information as follows: AAA: 800.778.7879 and <http://www.adr.org> and JAMS: 800.352.5267 and <http://www.jamsadr.com>.

- C. **Limited Time to File Claims.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IF YOU OR WE WANT TO ASSERT A DISPUTE (BUT NOT A EXCLUDED DISPUTE) AGAINST THE OTHER, THEN YOU OR WE MUST COMMENCE IT (BY DELIVERY OF WRITTEN NOTICE AS SET FORTH IN SECTION 10(A)) WITHIN ONE (1) YEAR AFTER THE DISPUTE ARISES — OR IT WILL BE FOREVER BARRED. Commencing means, as applicable: (a) by delivery of written notice as set forth above in Section 10(A); (b) filing for arbitration as set forth in Section 10(B); or (c) filing an action in state, Federal or provincial court.
- D. **Injunctive Relief.** The foregoing provisions of this Section 10 will not apply to any legal action taken by KIK to seek an injunction or other equitable relief in connection with, any loss, cost, or damage (or any potential loss, cost, or damage) relating to the Service, any Content, your User-Generated Content and/or KIK's intellectual property rights (including such KIK may claim that may be in dispute), KIK's operations, and/or KIK's products or services.
- E. **No Class Action Matters.** YOU AND KIK AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING OR AS AN ASSOCIATION. Disputes will be arbitrated only on an individual basis and will not be joined or consolidated with any other arbitrations or other proceedings that involve any claim or controversy of any other party. There shall be no right or authority for any Dispute to be arbitrated on a class action basis or on any basis involving Disputes brought in a purported representative capacity on behalf of the general public, or other persons or entities similarly situated. But if, for any reason, any court with competent jurisdiction holds that this restriction is unconscionable or unenforceable, then our agreement in Section 10(B) to arbitrate will not apply and the Dispute must be brought exclusively in court pursuant to Section 10(F). Notwithstanding any other provision of this Section 10, any and all issues relating to the scope, interpretation and enforceability of the class action waiver provisions contained herein (described in this "No Class Action Matters" section), are to be decided only by a court of competent jurisdiction, and not by the arbitrator. The arbitrator does not have the power to vary these class action waiver provisions.

- F. **Jurisdictional Issues.** Except where arbitration is required above or with respect to the enforcement of any arbitration decision or award, any action or proceeding relating to any Dispute or Excluded Dispute arising hereunder may only be instituted, if you are a resident of the U.S., in state or Federal court in State of Georgia in Gwinnett County, or if residing in Canada, in the Ontario Superior Court of Justice in Toronto, Canada. Accordingly, you and KIK consent to the exclusive personal jurisdiction and venue of such courts for such matters.
- G. **Small Claims Matters Are Excluded from Arbitration Requirement.** Notwithstanding the foregoing, either of us may bring qualifying claim of Disputes (but not Excluded Disputes) in small claims court of competent jurisdiction.
- H. **Governing Law.** These Terms and any Additional Terms will be governed by and construed in accordance with, and any Dispute and Excluded Dispute will be resolved in accordance with, if you reside in the United States, the laws of the State of Georgia, or if you reside in Canada, the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to its conflicts of law provisions.

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## 11. **DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

YOUR ACCESS TO AND USE OF THE SERVICE IS AT YOUR SOLE RISK.

THE SERVICE IS PROVIDED ON AN “AS IS”, “AS AVAILABLE”, AND “WITH ALL FAULTS” BASIS. Therefore, to the fullest extent permissible by law, KIK Custom Products Inc., its Affiliates, and each of their respective officers, employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns (collectively, “**KIK Parties**”) hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, as to:

- a. the Service (including the Content and the User-Generated Content);
- b. the functions, features, or any other elements on, or made accessible through, the Service;
- c. any products, services, or instructions offered or referenced at or linked through the Service;
- d. security associated with the transmission of your User-Generated Content transmitted to KIK or via the Service;
- e. whether the Service or the servers that make the Service available are free from any harmful components (including viruses, Trojan horses, and other technologies that could adversely impact your Device);
- f. whether the information (including any instructions) on the Service is accurate, complete, correct, adequate, useful, timely, or reliable;
- g. whether any defects to, or errors on, the Service will be repaired or corrected;
- h. whether your access to the Service will be uninterrupted;
- i. whether the Service will be available at any particular time or location; and
- j. whether your use of the Service is lawful in any particular jurisdiction.

EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED HEREIN OR IN ADDITIONAL TERMS PROVIDED BY A KIK PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, KIK PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, AND FREEDOM FROM COMPUTER VIRUS.

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## 12. **LIMITATIONS OF OUR LIABILITY**

TO THE EXTENT PERMITTED UNDER ANY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL ANY KIK PARTIES BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND, including personal injury or death or for any direct, indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages that are directly or indirectly related to:

- a. the Service (including the Content and the User-Generated Content);
- b. the products and services made available through the Service (including, without limitation, our water testing app service);
- c. your use of or inability to use the Service, or the performance of the Service;
- d. any action taken in connection with an investigation by KIK Parties or law enforcement authorities regarding your access to or use of the Service;
- e. any action taken in connection with copyright or other intellectual property owners or other rights owners;
- f. any errors or omissions in the Service's technical operation; or
- g. any damage to any user's computer, hardware, software, modem, or other equipment or technology, including damage from any security breach or from any virus, bugs, tampering, fraud, error, omission, interruption, defect, delay in operation or transmission, computer line, or network failure or any other technical or other malfunction, including losses or damages in the form of lost profits, loss of goodwill, loss of data, work stoppage, accuracy of results, or equipment failure or malfunction.

The foregoing limitations of liability will apply even if any of the foregoing events or circumstances were foreseeable and even if KIK Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of the Service).

Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages of the sort that are described above, so the above limitation or exclusion may not apply to you.

**EXCEPT AS MAY BE PROVIDED IN ANY ADDITIONAL TERMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL KIK PARTIES' TOTAL LIABILITY TO YOU, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH YOUR ACCESS TO AND USE OF THE SERVICE AND YOUR RIGHTS UNDER THESE TERMS, EXCEED AN AMOUNT EQUAL TO THE AMOUNT YOU HAVE PAID KIK IN CONNECTION WITH THE TRANSACTION(S) THAT UNDERLIE THE CLAIM(S); PROVIDED, HOWEVER, THIS PROVISION WILL NOT APPLY IF A TRIBUNAL WITH APPLICABLE JURISDICTION FINDS SUCH TO BE UNCONSCIONABLE. FOR PURPOSES OF CLARITY, THE PRIOR SENTENCE DOES NOT EXPAND OR LIMIT ANY EXPRESS, WRITTEN PRODUCT WARRANTY THAT IS PROVIDED BY US.**

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**13. Waiver of Injunctive or Other Equitable Relief**

IF YOU CLAIM THAT YOU HAVE INCURRED ANY LOSS, DAMAGES, OR INJURIES IN CONNECTION WITH YOUR USE OF THE SERVICE, THEN THE LOSSES, DAMAGES, AND INJURIES WILL NOT BE IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR TO OTHER EQUITABLE RELIEF OF ANY KIND. THIS MEANS THAT, IN CONNECTION WITH YOUR CLAIM, YOU AGREE THAT YOU WILL NOT SEEK, AND THAT YOU WILL NOT BE PERMITTED TO OBTAIN, ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, USER-GENERATED CONTENT, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED OR CONTROLLED BY KIK (INCLUDING YOUR LICENSED USER-GENERATED CONTENT) OR A LICENSOR OF KIK.

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**14. Updates to Terms**

These Terms (or if applicable Additional Terms), in the form posted at the time of your use of the applicable services to which it applies, shall govern such use (including transactions entered during such use). AS OUR SERVICE EVOLVES, THE TERMS AND CONDITIONS UNDER WHICH WE OFFER THE SERVICE MAY PROSPECTIVELY BE MODIFIED AND WE MAY CEASE OFFERING THE SERVICE UNDER THE TERMS OR ADDITIONAL TERMS FOR WHICH THEY WERE PREVIOUSLY OFFERED. ACCORDINGLY, EACH TIME YOU SIGN IN TO OR OTHERWISE USE THE SERVICE YOU ARE ENTERING INTO A NEW AGREEMENT WITH US ON THE THEN APPLICABLE TERMS AND CONDITIONS AND YOU AGREE THAT WE MAY NOTIFY YOU OF OTHER TERMS BY POSTING THEM ON THE SERVICE (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH WE ELECT), AND THAT YOUR USE OF THE SERVICE AFTER SUCH NOTICE CONSTITUTES YOUR GOING FORWARD AGREEMENT TO THE OTHER TERMS FOR YOUR NEW USE

AND TRANSACTIONS. Therefore, you should review the posted terms of use and any applicable Additional Terms each time you use the Service (or at a minimum, at least prior to each transaction or submission). The Additional Terms will be effective as to new use and transactions as of the time that we post them, or such later date as may be specified in them or in other notice to you. However, the Terms (and any applicable Additional Terms) that applied when you previously used the Service will continue to apply to such prior use (*i.e.*, changes and additions are prospective only) unless mutually agreed. In the event any notice to you of new, revised or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. You should frequently check the home page and the e-mail you associated with your account for notices, and you agree that the means set forth in these Terms are all reasonable manners of providing you with notice. You can reject any new, revised or Additional Terms by discontinuing use of the Service and related services.

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## 15. **General Provisions**

- A. **Our Consent or Approval**. As to any provision in these Terms or any Additional Terms that grant KIK a right of consent or approval, or permits KIK to exercise a right in its “sole discretion,” KIK may exercise that right in its sole and absolute discretion. No KIK consent or approval may be deemed to have been granted by us without being in writing and signed by an officer of KIK.
- B. **Indemnity**. You agree to, and you hereby, defend, indemnify, and hold KIK Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys’ fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any KIK Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with, whether occurring heretofore or hereafter: (i) your User-Generated Content; (ii) your use of the Service and your activities in connection with the Service; (iii) your breach or alleged breach of these Terms or any Additional Terms; (iv) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of the Service or your activities in connection with the Service; (v) information or material transmitted through your Device, even if not submitted by you, that infringes, violates, or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (vi) any misrepresentation made by you; and (vii) KIK Parties’ use of the information that you submit to us (including your User-Generated Content) (all of the foregoing, “**Claims and Losses**”). You will cooperate as fully required by KIK Parties in the defense of any Claims and Losses. Notwithstanding the foregoing, KIK Parties retain the exclusive right to settle, compromise, and pay any and all Claims and Losses. KIK Parties reserve the right to assume the exclusive defense and control of any Claims and Losses. You will not settle any Claims and Losses without, in each instance, the prior written consent of an officer of a KIK Party.

- C. **Operation of Service; Availability of Products and Services; International Issues.** The Service is operated in the United States and Canada and is primarily intended for users located in these countries. KIK makes no representation that the Service is appropriate or available for use beyond the U.S.A or Canada. If you use the Service from other locations, you are doing so on your own initiative and are responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply. The Service may describe products and services that are available only in the U.S.A. and/or Canada (or only parts of these countries) and are not available worldwide. We reserve the right to limit the availability of the Service and/or the provision of any content, program, product, service, or other feature described or available on the Service to any person, entity, geographic area, or jurisdiction, at any time and in our sole discretion, and to limit the quantities of any content, program, product, service, or other feature that we provide. You and we disclaim any application to these Terms of the Convention on Contracts for the International Sale of Goods.
- D. **Export Controls.** Software related to or made available by the Service may be subject to export controls of the U.S.A. No software from the Service may be downloaded, exported, or re-exported: (i) into (or to a national or resident of) any country or other jurisdiction to which the U.S.A. has embargoed goods, software, technology or services (which, may include Cuba, North Korea, Iran, Sudan, and Syria), or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders, or (iii) to anyone on the U.S. Department of Commerce's Bureau of Industry and Security Entities List as published in the Export Administration Regulations (including entities engaged in weapons of mass destruction proliferation in various countries and persons and entities that are suspected of diverting U.S. origin items to embargoed countries or terrorist end-uses). You are responsible for complying with all trade regulations and laws both foreign and domestic. 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, including as set forth in subsections (i) – (iii) above.
- E. **Severability; Interpretation.** If any provision of these Terms, or any Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms or the Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the Additional Terms (which will remain in full force and effect). To the extent permitted by applicable law, you agree to waive, and you hereby waive, any applicable statutory and common law that may permit a contract to be construed against its drafter. Wherever the word "including" is used in these Terms or any Additional Terms, the word will be deemed to mean "including, without limitation". The summaries of provisions and section headings are provided for convenience only and shall not limit the full Terms.
- F. **Communications.** As permitted by applicable law, when you communicate with us electronically, such as via e-mail and text message, you consent to receive communications from us electronically. Please note that we are not obligated to

respond to inquiries that we receive. 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.

G. **Investigations; Cooperation with Law Enforcement; Termination; Survival.**

KIK reserves the right, without any limitation, to: (i) investigate any suspected breaches of its Service security or its information technology or other systems or networks, (ii) investigate any suspected breaches of these Terms and any Additional Terms, (iii) investigate any information obtained by KIK in accordance with its [Privacy Policy](#) in connection with reviewing law enforcement databases or complying with criminal laws, (iv) involve and cooperate with law enforcement authorities in investigating any of the foregoing matters, (v) prosecute violators of these Terms and any Additional Terms, and (vi) discontinue the Service, in whole or in part, or, except as may be expressly set forth in any Additional Terms, suspend or terminate your access to it, in whole or in part, including any user accounts or registrations, at any time, without notice, for any reason and without any obligation to you or any third party. Any suspension or termination will not affect your obligations to KIK under these Terms or any Additional Terms. Upon suspension or termination of your access to the Service, or upon notice from KIK, all rights granted to you under these Terms or any Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms and any Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to KIK in these Terms (including with respect to User-Generated Content), as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.

H. **Assignment.** KIK may assign its rights and obligations under these Terms and any Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of KIK.

I. **No Waiver.** Except as expressly set forth in these Terms or any Additional Terms, (i) no failure or delay by you or KIK in exercising any of rights, powers, or remedies hereunder will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced. For avoidance of doubt, nothing herein shall be construed to restrict KIK's right to amend these Terms or any Additional Terms as otherwise permitted in those agreements.

J. **Connectivity.** You are responsible for obtaining and maintaining all Devices and other equipment and software, and all internet service provider, mobile service, and other services needed for your access to and use of the Service and you will be responsible for all charges related to them.

K. **California Notices.** KIK and its Affiliates oppose any and all illegal and unethical treatment of individuals, including acts of slavery or human trafficking. In accordance with California's Transparency in Supply Chains Act of 2010, our notice

is available [here](#). Additionally, residents of California are entitled to the following specific consumer rights information: you may contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs by mail at: 400 R St., Suite 1080, Sacramento, California, 95814, or by telephone at (916) 445-1254. Their website is located at: <http://www.dca.ca.gov>.

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#### 16. **Procedure For Alleging Copyright Infringement**

- A. **DMCA Notice**. KIK will respond appropriately to notices of alleged copyright infringement that comply with the U.S. Digital Millennium Copyright Act (“DMCA”), as set forth below. If you own a copyright in a work (or represent such a copyright owner) and believe that your (or such owner’s) copyright in that work has been infringed by an improper posting or distribution of it via the Service, then you may send us a written notice that includes all of the following:
- i. a legend or subject line that says: “DMCA Copyright Infringement Notice”;
  - ii. a description of the copyrighted work that you claim has been infringed or, if multiple copyrighted works are covered by a single notification, a representative list of such works;
  - iii. a description of where the material that you claim is infringing or is the subject of infringing activity is located that is reasonably sufficient to permit us to locate the material (please include the URL of the Service on which the material appears);
  - iv. your full name, address, telephone number, and e-mail address;
  - v. a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
  - vi. a statement by you, made under penalty of perjury, that all the information in your notice is accurate, and that you are the copyright owner (or, if you are not the copyright owner, then your statement must indicate that you are authorized to act on the behalf of the owner of an exclusive right that is allegedly infringed); and
  - vii. your electronic or physical signature.

KIK will only respond to DMCA Notices that it receives by mail, e-mail, or facsimile at the addresses below:

By Mail: KIK Custom Products Inc., 1725 N. Brown Road, Lawrenceville, GA 30043 (Attn: Legal Department).

By E-Mail: [TermsofUse@kikcorp.com](mailto:TermsofUse@kikcorp.com)

By Facsimile: 678-389-8445

It is often difficult to determine if your copyright has been infringed. KIK may elect

to not respond to DMCA Notices that do not substantially comply with all of the foregoing requirements, and KIK may elect to remove allegedly infringing material that comes to its attention via notices that do not substantially comply with the DMCA.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

We may send the information that you provide in your notice to the person who provided the allegedly infringing work. That person may elect to send us a DMCA Counter-Notification.

Without limiting KIK's other rights, KIK may, in appropriate circumstances, terminate a repeat infringer's access to the Service and any other website owned or operated by KIK. See [Section 4](#), above.

- B. **Counter-Notification**. If access on the Service to a work that you submitted to KIK is disabled or the work is removed as a result of a DMCA Notice, and if you believe that the disabled access or removal is the result of mistake or misidentification, then you may send us a DMCA Counter-Notification to the addresses above. Your DMCA Counter-Notification should contain the following information:
- i. a legend or subject line that says: "DMCA Counter-Notification";
  - ii. a description 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 (please include the URL of the Service from which the material was removed or access to it disabled);
  - iii. 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;
  - iv. your full name, address, telephone number, e-mail address, and the username of your account;
  - v. a statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located (or, if the address is located outside the U.S.A., to the jurisdiction of the United States District Court for the Northern District of Georgia), and that you will accept service of process from the person who provided DMCA notification to us or an agent of such person; and
  - vi. your electronic or physical signature.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity was removed or disabled by mistake or misidentification may be subject to liability.

If we receive a DMCA Counter-Notification, then we may replace the material that we removed (or stop disabling access to it) in not less than ten (10) and not more

than fourteen (14) business days following receipt of the DMCA Counter-Notification. However, we will not do this if we first receive notice at the addresses above that the party who sent us the DMCA Copyright Infringement Notice has filed a lawsuit asking a court for an order restraining the person who provided the material from engaging in infringing activity relating to the material on the Service. You should also be aware that we may forward the Counter-Notification to the party who sent us the DMCA Copyright Infringement Notice.

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#### 17. **Terms Applicable For Apple iOS.**

If you are accessing or using the Service through a Device manufactured and/or sold by Apple, Inc. (“**Apple**”, with such a device herein referenced as an “**Apple Device**”),

- i. To the extent that you are accessing the Service through an Apple Device, you acknowledge that these Terms are entered into between you and KIK and, that Apple is not a party to these Terms other than as third-party beneficiary as contemplated below.
- ii. The license granted to you in [Section 1](#) of these Terms is subject to the permitted Usage Rules set forth in the App Store Terms and Conditions (see:<http://www.apple.com/legal/itunes/us/terms.html>) and any third party terms of agreement applicable to the Service.
- iii. You acknowledge that KIK, and not Apple, is responsible for providing the Service and Content thereof.
- iv. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance or any support services to you with respect to the Service.
- v. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Service.
- vi. Notwithstanding anything to the contrary herein, and subject to the terms in these Terms, you acknowledge that, solely as between Apple and KIK, KIK and not Apple 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: (i) product liability claims, (ii) any claim that the Service fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- vii. 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 Apple responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claims.
- viii. You acknowledge and agree that Apple, and Apple’s subsidiaries, are third-party beneficiaries of these Terms, and that, upon your acceptance of the terms and conditions of these Terms, Apple 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.
- ix. When using the Service, you 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.

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