

PLEASE READ THESE **TERMS OF USE** (“AGREEMENT” OR “TERMS OF USE”) CAREFULLY BEFORE USING THE SERVICES OFFERED BY eM Client, INC. (“COMPANY”). THIS AGREEMENT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR USE OF THE VARIOUS WEBSITES OWNED AND OPERATED BY COMPANY, INCLUDING, WITHOUT LIMITATION, THE WWW.EMCLIENT.COM WEBSITE AND DOMAIN NAME (“SITES”), AND ANY OTHER FEATURES, CONTENT, OR APPLICATIONS OFFERED FROM TIME TO TIME BY THE COMPANY IN CONNECTION THEREWITH (COLLECTIVELY “SERVICE”). BY USING THE SITES OR SERVICE IN ANY MANNER, INCLUDING BUT NOT LIMITED TO VISITING OR BROWSING THE SITES, YOU AGREE TO BE BOUND BY THIS AGREEMENT. THIS AGREEMENT APPLIES TO ALL USERS OF THE SITES OR SERVICE, INCLUDING USERS WHO ARE ALSO CONTRIBUTORS OF CONTENT, INFORMATION, AND OTHER MATERIALS OR SERVICES ON THE SITES.

Acceptance of Terms

The Service is offered subject to acceptance without modification of all of the terms and conditions contained herein (the “Terms of Use”) and all other operating rules, policies and procedures that may be published from time to time on the Sites by Company. In addition, some services offered through the Service may be subject to additional terms and conditions promulgated by Company from time to time; your use of such services is subject to those additional terms and conditions, which are incorporated into these Terms of Use by this reference.

The Service is available only to individuals who are at least 13 years old. You represent and warranty that if you are an individual, you are at least 13 years old, you are of legal age to agree to these terms and conditions or you have your parents permission to do so, and that all registration information you submit is accurate and truthful. Company may, in its sole discretion, refuse to offer the Service to any person or entity and change its eligibility criteria at any time. This provision is void where prohibited by law and the right to access the Service is revoked in such jurisdictions.

Modification of Terms of Use

Company reserves the right, at its sole discretion, to modify or replace any of the Terms of Use, or change, suspend, or discontinue the Service (including without limitation, the availability of any feature, database, or content) at any time by posting a notice on the Sites or by sending you an email. Company may also impose limits on certain features and services or restrict your access to parts or all of the Service without notice or liability. It is your responsibility to check the Terms of Use periodically for changes. Your continued use of the Service following the posting of any changes to the Terms of Use constitutes acceptance of those changes.

Privacy

Company's current Sites privacy statement is located at <http://www.emclient.com> (the "Privacy Policy") and is incorporated into these Terms of Use. For inquiries in regard to the Privacy Policy, or to report a privacy-related problem, please contact [privacy \[at\] emclient.com](mailto:privacy[at]emclient.com).

Rules and Conduct

As a condition of use, you promise not to use the Service for any purpose that is prohibited by the Terms of Use. The Service (including, without limitation, any Content (as defined below)) is provided only for your own personal, non-commercial use. You are responsible for all of your activity in connection with the Service. For purposes of the Terms of Use, the term "Content" includes, without limitation, any advertisements, advice, suggestions, videos, audio clips, written forum comments, information, data, text, photographs, software, scripts, graphics, and interactive features generated, provided, or otherwise made accessible by Company or its partners on or through the Service.

By way of example, and not as a limitation, you shall not (and shall not permit any third party to) either (a) take any action or (b) upload, download, post, submit or otherwise distribute or facilitate distribution of any content on or through the Service, that:

- infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity;
- is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, or profane;
- constitutes unauthorized or unsolicited advertising, junk or bulk e-mail ("spamming");
- involves commercial activities and/or sales without Company's prior written consent such as contests, sweepstakes, barter, advertising, or pyramid schemes;
- contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password or other information of Company or any third party; or
- impersonates any person or entity, including any employee or representative of Company.

Additionally, you shall not: (i) take any action that imposes or may impose (as determined by Company in its sole discretion) an unreasonable or disproportionately large load on Company's (or its third party providers') infrastructure; (ii) interfere or attempt to interfere with the proper working of the Service or any activities conducted on the Service; (iii) bypass any measures Company may use to prevent or restrict access to the Service (or other accounts, computer systems or networks connected to the Service); (iv) run Maillist, Listserv, any form of auto-responder or "spam" on the Service; or (v) use manual or automated software, devices, or other processes to "crawl" or "spider" any page of the Sites.

You shall not (directly or indirectly): (i) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Service, except to the limited extent applicable laws specifically prohibit such restriction, (ii) modify, translate, or otherwise create derivative works of any part of the Service, or (iii) copy, rent, lease, distribute, or otherwise transfer any or all of the rights that you receive hereunder. You shall abide by all applicable local, state, national and international laws and regulations.

Company reserves the right to remove any Content from the Sites or Service at any time, for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if Company is concerned that you may have violated the Terms of Use), or for no reason at all.

Fees and Payment

Company reserves the right to require payment of fees for certain features of the Service. Should you elect to subscribe to such features, you shall pay all applicable fees, as described on the Sites in connection with such features. Company reserves the right to change its price list and to institute new charges at any time, upon ten (10) days prior notice to you, which may be sent by email or posted on the Sites. Use of the Service by you following such notification constitutes your acceptance of any new or increased charges.

Third Party Sites

The Service may permit you to link to other websites or resources on the Internet, and other websites or resources may contain links to the Sites. When you access third party websites, you do so at your own risk. These other websites are not under Company's control, and you acknowledge that Company is not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any such link does not imply endorsement by Company or any association with its operators. You further acknowledge and agree that Company shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such Content, goods or services available on or through any such website or resource.

No Emergency Services

You expressly agree and understand that the Service is not intended to support or carry emergency or time-critical calls or communications to any type of hospital, law enforcement agency, medical care unit or any other kind of emergency or time-critical service ("Emergency Services"). Company, its affiliates or staff are in no way liable for such emergency calls or communications. By agreeing to these Terms of Use you understand that additional arrangements must be made to access Emergency Services. To access Emergency Services, you acknowledge and accept your responsibility to purchase, separately from the Service, traditional wireless or wireline telephone service and other means of communication intended for access to Emergency Services. You recognize and agree that Company is not required to offer Emergency Services or access thereto pursuant to any applicable local and or national rules, regulation or law. You further acknowledge that Company is not a replacement for your primary telephone service or any other means of communication.

Company and Site Content

You agree that the Service contains Content specifically provided by Company or its partners and that such Content is protected by copyrights, trademarks, service marks, patents, trade secrets or

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Termination

Company may terminate your access to all or any part of the Service at any time, with or without cause, with or without notice, effective immediately, which may result in the forfeiture and destruction of all information associated with your membership. If you wish to terminate your account, you may do so by following the instructions on the Sites. Any fees paid hereunder are non-refundable. All provisions of the Terms of Use which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

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SERVICE WILL MEET YOUR REQUIREMENTS. YOUR USE OF THE SERVICE IS SOLELY AT YOUR OWN RISK.

SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

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Indemnification

You shall defend, indemnify, and hold harmless Company, its affiliates and each of its, and its affiliates employees, contractors, directors, suppliers and representatives from all liabilities, claims, and expenses, including reasonable attorneys' fees, that arise from or relate to (i) your use or misuse of, or access to, the Sites, Service, Content (ii) your violation of the Terms of Use, or (iii) infringement by you, or any third party using the your account, of any intellectual property or other right of any person or entity. Company reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with Company in asserting any available defenses.

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By using the Service, you agree that Company shall not be responsible for (1) any Content, (2) any person's reliance on any such Content, whether or not correct, current and complete, or (3) the consequences of any action that you or any other person takes or fails to take based on any Content or otherwise as a result of your use of the Service.

Limitation of Liability

IN NO EVENT SHALL COMPANY, NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICE (INCLUDING, WITHOUT LIMITATION, ANY CONTENT) (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR

CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN), (III) FOR YOUR RELIANCE ON THE SERVICE OR (IV) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) ONE-HUNDRED U.S. DOLLARS (\$100.00). SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

International/Non-California Use

Company makes no representation that the Content is appropriate or available for use in locations outside of California, and accessing the Service is prohibited from territories where such Content is illegal. If you access the Service from other locations, you do so at your own initiative and are responsible for compliance with local laws.

Dispute Resolution

A printed version of the Terms of Use and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to the Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You and Company agree that any cause of action arising out of or related to the Service must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred.

The Terms of Use shall be governed by and construed in accordance with the laws of the State of California, excluding its conflicts of law rules, and the United States of America. Any dispute arising from or relating to the subject matter of this Agreement shall be finally settled by arbitration in San Francisco County, California, using the English language in accordance with the Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with the Arbitration Rules and Procedures of JAMS. The prevailing party in the arbitration shall be entitled to receive reimbursement of its reasonable expenses (including reasonable attorneys' fees, expert witness fees and all other expenses) incurred in connection therewith. Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for injunctive or other equitable relief pending a final decision by the arbitrator. For all purposes of this Agreement, the parties consent to exclusive jurisdiction and venue in the United States Federal Courts located in the Northern District of California. Use of the Service is not authorized in any jurisdiction that does not give effect to all provisions of the Terms of Use, including without limitation, this section.

Integration and Severability

The Terms of Use are the entire agreement between you and Company with respect to the Service and use of the Sites, and supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and Company with respect to the Sites. If any provision of the Terms of Use is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Terms of Use will otherwise remain in full force and effect and enforceable. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

Miscellaneous

Company shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond Company's reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation (including "line-noise" interference). The Terms of Use are personal to you, and are not assignable, transferable or sublicensable by you except with Company's prior written consent. Company may assign, transfer or delegate any of its rights and obligations hereunder without consent. No agency, partnership, joint venture, or employment relationship is created as a result of the Terms of Use and neither party has any authority of any kind to bind the other in any respect. In any action or proceeding to enforce rights under the Terms of Use, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under the Terms of Use will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service.

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