

Last Revised January 19, 2022

## TERMS OF USE

THESE TERMS ESTABLISH AN AGREEMENT WITH YOU, AND YOU AGREE TO BE BOUND BY THESE TERMS UPON THE EARLIER OF: (A) VISITING THIS WEBSITE; (B) CLICKING THE “ACCEPT” OR “AGREE” SELECTOR; OR (C) ORDERING, PAYING FOR, RECEIVING OR USING ANY PRODUCTS OR SERVICES THAT WE MARKET THROUGH THIS WEBSITE. **NOTE: THESE TERMS INCLUDE A WAIVER OF THE RIGHT TO A JURY TRIAL.**

### 1. Introduction

**1.1 Us.** This website is owned and managed by Bickster LLC, a New York limited liability company (“our,” “us,” or “we”). These Terms of Use (“Terms”) apply to this website, our other Marketing Channels (defined below), and the transactions related to our products and services.

**1.2 Minimum Age Requirement.** All users of the Marketing Channels must be at least 13 years old. If any user is between 13 years and the Adult Age (defined below), the user’s parent or legal guardian (“Parent”) must review and agree to these Terms before the non-Adult user accesses the Marketing Channels. In these Terms, “Adult Age” will mean the age of majority, which is 18 years of age or older according to applicable law in the user’s state or jurisdiction.

**1.3 You.** These Terms are binding on: (a) the person who visits, accesses or uses any of our Marketing Channels, products or services; and (b) the person’s Parent if the person is under the Adult Age. In these Terms, the terms “you” and “your” will mean such person together with any such Parent.

**1.4 Binding.** By registering with, accessing or otherwise using our Marketing Channels, products or services, you hereby agree to be bound by these Terms set forth below.

**1.5 Our Third Party Associates.** We rely on our relationships with various Associates (defined below) to conduct our business. In these Terms, “Associates” will mean third parties with whom we conduct business for our business purposes, including:

(a) any affiliates that control us, that we control, or that are under common control with us, such as our parents, subsidiaries and sister entities;

(b) any third parties to whom we provide products, services or data, such as collaborators, advertisers and marketing agencies; and

(c) service providers who provide or license products, services or data to us, such as customer support providers, credit card and payment processors, order fulfillment providers, market and data analyzers, product developers, real estate owners and managers, event managers, publishers, website hosts, providers of communication systems (such as phone, text and email systems), providers of information technology systems (such as databases and data servers), online platform providers, information technology consultants, business advisors, auditors, accountants and attorneys.

**1.6 Our Marketing Channels.** We may use one or more Marketing Channels (defined below) to conduct our business, including marketing our products or services. In these Terms, “**Marketing Channels**” will mean the resources used by us or our Associates to receive or collect information, including the following resources:

- (a) www.bickster.com;
- (b) any other websites, ecommerce stores, servers, online portals, web portals, mobile applications and electronic user interfaces;
- (c) social media pages, email messages, text messages and direct messages;
- (d) phones, computers, web cameras and other communication devices operable to receive your written, text, oral, telephonic and video communications;
- (e) real time communications with our representatives, including interviews, discussions, conversations and conferences via in-person interaction or video, phone or other means;
- (f) any brick-and-mortar facilities (such as stores, offices, trade show buildings and convention centers) as well as any cameras, beacons, sensors and other tracking equipment located at such facilities;
- (g) any means for personal interaction or observation, such as the collection of survey results from you when you are located at such facilities; and
- (h) surveys, forms and other materials used to document your answers, feedback or behavior at such facilities.

**1.7 Additional Contracts.** You may be bound by additional contracts related to your relationship with us or any products or services that you receive from us (collectively, “**Additional Contracts**”). By way of a non-limiting example, the Additional Contracts will include: (a) our [App License Agreement](#); and (b) any other terms, conditions or agreements applicable to any other products or services you order by accessing the Marketing Channels. If any provisions of the Additional Contracts conflict with any provisions of these Terms, the provisions of these Terms will control and prevail.

**1.8 Set of Online Documents.** These Terms include and incorporate our [Privacy Policy](#), which, in turn, includes and incorporates our [Privacy Notice](#) and [Cookie Policy](#).

**1.9 Non-Limiting Words.** In these Terms, we use the words “including,” “includes,” and “such as” in a non-limiting fashion.

**1.10 Updates.** We reserve the right to change these Terms from time to time without notice. You acknowledge and agree that it is your responsibility to review these Terms periodically to familiarize yourself with any changes. Your continued use of the Marketing Channels after such changes will constitute your acknowledgement of and agreement to the changed modified Terms.

## **2. Intellectual Property**

We or our Associates own all of the trademarks, service marks, marks, domain names, logos, slogans, symbols, designs, trade dress, works of authorship, software, graphical user interfaces, content, text, images, photos, audio recordings, videos, data, information and resources displayed

by or accessible within the Marketing Channels (collectively, “**Channel Resources**”). The Channel Resources are protected by United States and international copyright laws and other intellectual property laws. You will not use, copy, reproduce, perform, display, distribute, embed into any electronic medium, alter, reverse engineer, decompile, transfer, download, transmit, monetize, sell, market or commercialize any Channel Resources in any form without our prior written consent. We reserve all rights in and to the Channel Resources. Your violation of any of the restrictions in this Section may subject you to penalties and liabilities under copyrights laws, trademark laws, intellectual property laws, and civil and criminal statutes.

### **3. Idea Submission**

If you have any intellectual property (including concepts, ideas, inventions, works of authorship, information, suggestions and proposed product improvements) that you would like to present to us, you will not submit such intellectual property to us unless we have first signed a written agreement with you regarding the disclosure of such intellectual property to us. If you disclose any such intellectual property to us absent such written agreement, we will have a perpetual, irrevocable, worldwide, transferrable, sublicensable, royalty-free, paid-up, non-exclusive license to use, reproduce, distribute, perform, display, create derivatives of, modify, make, use, monetize, market, sell, offer for sale, import, export and commercialize such intellectual property. Such license will automatically become effective when you make such disclosure to us absent such written agreement.

### **4. Third Party Property**

4.1 In these Terms, “**Third Party Property**” will mean the portions of the Marketing Channels and Channel Resources that are owned by our Associates.

4.2 The Marketing Channels may provide you with access to Third Party Property. Also, the Marketing Channels may include links to Third Party Property that is accessible outside of the Marketing Channels. If we include a link in the Marketing Channels to any website of any Associate, we may take one or more of the following approaches to notify you that such link will direct you to the Associate’s website:

- (a) the link (or image or content associated with the link) will display or output the name, brand, trademark or logo of the applicable Associate; and/or
- (b) the Marketing Channels will display a popup message indicating that you will be departing the Marketing Channels.

4.3 We will not be responsible for any Third Party Property or for any changes or updates to any Third Party Property. You bear all risks associated with the access to, lack of access to, and use of, Third Party Property and any related third party services. Please review the terms and conditions of the applicable Associate.

### **5. Interruption**

You will not interrupt or attempt to interrupt the operation of the Marketing Channels in any way. You will not link the Marketing Channels to another website, nor will you link any other

website to the Marketing Channels. Notwithstanding the foregoing, you may forward the Marketing Channels addresses to others who may be interested in visiting the Marketing Channels.

## **6. Responsible Use and Conduct**

6.1 By visiting the Marketing Channels and accessing the Channel Resources, either directly or indirectly, you agree to use the Channel Resources only for the purposes intended and as permitted by these Terms, any Additional Contracts with us, the terms of our Associates, and applicable laws, regulations and generally accepted online practices and industry guidelines.

6.2 To access the Channel Resources, you may be required to provide certain information about yourself (such as your identification, contact details, etc.) as part of the registration process, or as part of your ability to use the Channel Resources. You agree that any information you provide will always be accurate, correct, and up to date.

6.3 Accessing, or attempting to access, any of the Channel Resources by any means other than through the means we provide, is strictly prohibited. You specifically agree not to access, or attempt to access, any of the Channel Resources through any robotic, automated, hacking, unethical or unconventional means.

6.4 Engaging in any activity that disrupts or interferes with the Channel Resources, including the servers or networks that store or manage the Channel Resources, is strictly prohibited. Attempting to reverse engineer, decompile, modify, copy, duplicate, reproduce, publicly perform, publicly display, distribute, lease, sell, trade, resell or commercialize any of the Channel Resources is strictly prohibited.

## **7. Security**

You are responsible for all activities that occur under any user accounts provided by us. You may be required to choose a password and a user name. Access to and use of password-protected or secure areas of the Marketing Channels are restricted to authorized users only. You agree not to share your passwords, account information, or secured access to the Marketing Channels with any other person. You are responsible for maintaining the confidentiality of passwords and account information, and you are responsible for all activities that occur through the use of your passwords or accounts or as a result of your access to the Marketing Channels. You agree to notify us immediately of any use of your passwords or accounts that you did not authorize or that violates these Terms.

## **8. Content Posted by You**

We may provide various open communication tools on the Marketing Channels, such as blog comments, blog posts, public chat, forums, message boards, newsgroups, product ratings and reviews, various social media services, etc. You understand that it might not be feasible for us to pre-screen or monitor all content posted by users of these various communication tools, which means that if you choose to use these tools to submit any type of content to the Marketing

Channels, then it is your personal responsibility to use these tools in a responsible and ethical manner. By posting information or otherwise using any open communication tools as mentioned, you agree that you will not upload, post, submit, share, or otherwise distribute any content that:

(a) is illegal, threatening, defamatory, abusive, harassing, bullying, degrading, intimidating, fraudulent, deceptive, invasive, racist, sexist, hateful or offensive, or contains any type of suggestive, inappropriate, or explicit language or images;

(b) infringes on any trademark, patent, trade secret, copyright, or other proprietary right of any party;

(c) contains any type of unauthorized or unsolicited advertising; or

(d) impersonates any person or entity, including any of our employees or representatives.

## **9. Monitoring**

It might not be feasible for us to screen or monitor all content that you or others may share or submit on or through the Marketing Channels. However, we reserve the right to review the Marketing Channels and content and to monitor all use of, and activity on, the Marketing Channels, and to remove or reject any content in our sole discretion. We may remove confidential or proprietary content of a third party that has been uploaded or submitted without that third party's permission.

## **10. Copyright Infringement – Digital Millennium Copyright Act**

If the Marketing Channels enable you or others to share or submit content, we recognize the risk that such content could cause copyright infringement. The United States Copyright Act (“**Copyright Act**”) provides service providers like us with a limitation of liability regarding any such infringement. Accordingly, pursuant to 17 U.S.C. § 512 of the Copyright Act, we provide the information and procedures set forth below in this **Section 10**.

### **10.1 Designated Agent**

The following is the contact information of our designated agent (“**Designated Agent**”) to receive notices of copyright infringement:

Bickster LLC  
Legal Department  
60 Railroad Place  
Saratoga Springs, New York 12866  
Phone No.: 1-518-212-7312  
Email Address: legal@bickster.com

### **10.2 Infringement Notice**

If you or any other party (“**Complaining Party**”) concludes that the use or display of any materials or works on the Marketing Channels is infringing upon any copyrights, the Complaining Party may send a written notice to the Designated Agent (“**Infringement Notice**”).

The Infringement Notice, to be effective, must include the following:

- (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (b) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- (c) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate such material;
- (d) information reasonably sufficient to permit us to contact the Complaining Party, such as an address, telephone number, and, if available, an electronic mail address at which the Complaining Party may be contacted;
- (e) a statement that the Complaining Party has 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; and
- (f) a statement that the information in the notification is accurate, and under penalty of perjury, that the Complaining Party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

### **10.3 Takedown**

Upon receiving an Infringement Notice from a Complaining Party in accordance with **Section 10.2** above, we will respond expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

### **10.4 Notice of Takedown; Replacement**

If you are a subscriber of us and we remove or disable access to materials provided by you in accordance with **Section 10.3** above, we will:

- (a) take reasonable steps promptly to notify you that we have removed or disabled access to the material;
- (b) upon receipt of a counter notification from you (in accordance with **Section 10.5** below), promptly provide the applicable Complaining Party with a copy of the counter notification, and inform such Complaining Party that we will replace the removed material or cease disabling access to it within ten (10) business days; and
- (c) replace the removed material and cease disabling access to it not less than ten (10), nor more than fourteen (14), business days following receipt of the counter notice, unless the Designated Agent first receives notice from the applicable Complaining Party indicating that such Complaining Party filed an action seeking a court order to restrain you from engaging in infringing activity relating to the material on our system or network.

### **10.5 Counter Notice**

If you, as a subscriber of us, wish to provide a counter notification, you must provide the counter notification in writing to the Designated Agent. The counter notification, to be effective, must include substantially the following:

- (a) your physical or electronic signature;
- (b) identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
- (c) a statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled; and
- (d) your name, address, and telephone number, and a statement that you consent to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if your address is outside of the United States, for any judicial district in which we may be found, and that you will accept service of process from the applicable Complaining Party or an agent of such Complaining Party.

## **11. Termination of Use**

We may, in our sole discretion, at any time discontinue providing the Marketing Channels (or any portion thereof) or limit access to the Marketing Channels, any areas of the Marketing Channels or any Channel Resources. Also, we may, in our sole discretion, at any time, terminate or limit your access to, or use of, the Marketing Channels or any Channel Resources if we suspect that you have infringed upon the rights of a third party, violated these Terms, or engaged in any wrongdoing. You agree that we will not be liable to you or any third party for any termination or limitation of your access to, or use of, the Marketing Channels, any Channel Resources or any content that you may have shared.

## **12. Indemnification**

You agree to indemnify, defend and hold harmless, us, our Associates, and the parents, subsidiaries, affiliates, equity holders, officers, directors, employees and agents of us and our Associates, from and against any and all claims, liabilities, damages, losses and expenses, including reasonable attorneys' fees and costs, relating to or arising out of: (a) information, materials, works or content that you share or submit; (b) your violation of these Terms, any Additional Contracts or any other rules, guidelines or terms of use posted for a specific area of the Marketing Channels or any Channel Resources; (c) your violation of applicable law; or (d) your violation or infringement of any third party rights, including intellectual property rights and privacy rights. Upon our request before or after any court judgment, you will promptly reimburse us for our damages, losses, costs and expenses relating to or arising out of such claims. You will cooperate as fully as reasonably requested in our defense of any such claim. We reserve the right, at our own expense, to assume the exclusive defense and control of any claim otherwise subject to indemnification by you, and you will not in any event settle any claim without our prior written consent.

## **13. Disclaimers**

THE FOLLOWING PROVISIONS OF THIS **SECTION 13** WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:

13.1 ALL CHANNEL RESOURCES ACCESSED, DOWNLOADED OR OTHERWISE OBTAINED ON OR THROUGH THE MARKETING CHANNELS ARE USED AT YOUR SOLE DISCRETION AND RISK. WE WILL HAVE NO RESPONSIBILITY FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF ANY CHANNEL RESOURCES.

13.2 WE RESERVE THE RIGHT TO MAKE CHANGES OR UPDATES TO, AND MONITOR THE USE OF, THE MARKETING CHANNELS AND CHANNEL RESOURCES AT ANY TIME WITHOUT NOTICE.

#### **14. Warranty Waiver; Exclusion of Damages; Maximum Liability**

THE FOLLOWING PROVISIONS OF THIS SECTION 14 WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:

14.1 THE MARKETING CHANNELS AND ALL CHANNEL RESOURCES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT RELATING TO THE MARKETING CHANNELS, CHANNEL RESOURCES, OR OUR PRODUCTS AND SERVICES. WE MAKE NO WARRANTY THAT: (A) THE MARKETING CHANNELS, CHANNEL RESOURCES, OR OUR PRODUCTS OR SERVICES WILL MEET YOUR REQUIREMENTS; (B) THE MARKETING CHANNELS WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS; (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE MARKETING CHANNELS, ANY CHANNEL RESOURCES OR ANY OF OUR PRODUCTS OR SERVICES WILL BE ACCURATE OR RELIABLE; OR (D) THE QUALITY OF ANY PRODUCT OR SERVICE PURCHASED OR OBTAINED BY YOU WILL MEET YOUR EXPECTATIONS.

14.2 IN NO EVENT WILL WE BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES FOR LOSS OF PROFITS OR REVENUE, LOSS OF DATA, OR LOSS OF OR HARM TO PROPERTY OR DATA) INCURRED BY YOU OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, ARISING FROM YOUR ACCESS TO, OR USE OF, THE MARKETING CHANNELS OR ANY CHANNEL RESOURCES.

14.3 EXCEPT TO THE EXTENT ANY ADDITIONAL CONTRACT EXPRESSLY STATES OTHERWISE, OUR MAXIMUM LIABILITY TO YOU FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THE MARKETING CHANNELS, THE CHANNEL RESOURCES OR ANY PRODUCTS AND SERVICES MARKETED OR SOLD THROUGH THE MARKETING CHANNELS, REGARDLESS OF THE FORM OF LEGAL ACTION THAT IMPOSES LIABILITY (WHETHER IN CONTRACT, EQUITY, NEGLIGENCE, INTENDED CONDUCT, TORT OR OTHERWISE) WILL BE LIMITED TO THE TOTAL PRICE THAT YOU PAID TO US TO PURCHASE SUCH PRODUCTS OR SERVICES OR USE THE MARKETING CHANNELS. SUCH LIMIT WILL APPLY IN THE AGGREGATE



TO ALL OF YOUR CLAIMS, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE.

## **15. Privacy Policy and Accessibility Policy**

15.1 We take your privacy seriously and have developed a policy to address privacy concerns. For more information, please see our [Privacy Policy](#), which is a part of these Terms.

15.2 We are committed to making the content we provide through the Marketing Channels accessible to individuals with disabilities. If you have a disability and are unable to access any portion of the Marketing Channels or Channel Resources due to your disability (“**Incident**”), you agree to: (a) immediately give us written notice of the Incident in accordance with **Section 23** below; and (b) include a detailed description of the Incident in your notice. We will accept your notice through a writing submitted by your guardian, caretaker or agent on your behalf. After receiving your notice, we will: (i) promptly investigate the Incident; (ii) promptly resolve the issue causing the Incident if the issue is readily identifiable and resolvable in accordance with industry-standard information technology tools and techniques; and (iii) provide you with a reply, setting forth our remedial steps and findings.

## **16. Persons Under the Adult Age**

16.1 You must be at least 13 years old to use the Marketing Channels.

16.2 If you are over 13 years old but under the Adult Age, your Parent must also be a party to these Terms, and your Parent will be responsible and liable for all of your acts and omissions.

## **17. Export Restrictions/Legal Compliance**

You may not access, download, use or export the Marketing Channels, or the content provided on or through the Marketing Channels, in violation of U.S. export laws or regulations, or in violation of any other applicable laws or regulations. You agree to comply with all export laws, restrictions and regulations of any United States or applicable agency or authority, and to not directly or indirectly provide or otherwise make available any Channel Resources in violation of any such restrictions, laws or regulations, including laws, restrictions or regulations pertaining to the development, design, manufacture or production of nuclear, chemical or biological weapons or missile technology. As applicable, you will obtain and bear all expenses related to any necessary licenses, authorizations, and/or exemptions with respect to your own use of the Channel Resources outside the U.S. Neither the Channel Resources nor the underlying information or technology may be downloaded or otherwise provided or made available, either directly or indirectly, into any country subject to U.S. trade sanctions, to individuals or entities controlled by such countries, or to nationals or residents of such countries other than nationals who are lawfully admitted permanent residents of countries not subject to such sanctions. By agreeing to these Terms, you agree to the foregoing and represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

## **18. Availability of Products or Services**

Channel Resources and information in the Marketing Channels may reference our products, programs or services that might not be available in your location. Such references do not imply that we commit or plan to make such products, programs, or services available in your location.

## **19. Assignment**

You will not assign these Terms, in whole or in part, to any third party. Any purported assignment in violation of this Section will be null and void.

## **20. Waiver**

Our delay or failure to exercise or enforce any rights or provisions in these Terms will not prejudice or operate to waive such right or provision.

## **21. Severability**

If any part or provision of these Terms is found to be unenforceable under applicable law, such part or provision will be modified to make these Terms, as modified, legal and enforceable. The balance of these Terms will not be affected.

## **22. Dispute Resolution**

### **22.1 Definitions.** For the purposes of this **Section 22**:

(a) the term **“Dispute”** will mean any dispute, controversy, claim, or cause of action arising out of or relating to: (i) these Terms or any Additional Contract, the interpretation thereof, or the breach, termination, applicability or validity of these Terms or any Additional Contract; (ii) the Marketing Channels, the Channel Resources or any product or service marketed or sold through the Marketing Channels; or (iii) any other dispute arising out of or relating to the relationship between you and us;

(b) the term **"Our Group"** will mean us and our parents, subsidiaries, affiliates, stockholders, directors, officers, employees, agents, suppliers, beneficiaries, assignees, and successors in interest;

(c) the term **“Your Group”** will mean you and those in privity with you, such as your beneficiaries;

(d) the term **“Parties”** means you and us, and the term, **“Party”** means either you or us.

**22.2 Mediation.** If either Party seeks to initiate any legal action against the other Party arising from any Dispute, the Party seeking such legal action shall provide the other Party with written notice of such Dispute, specifying and describing the Dispute in detail. If the Parties fail to resolve such Dispute in writing within thirty (30) days of negotiations after the date of such notice, either Party may provide the other Party with a written decision to initiate such legal action (**“Decision Notice”**).

**22.3 Selection of Court of Law or Arbitration.** In the case of a Decision Notice provided by either Party, we will have the right to select, at our sole discretion, whether the legal action will occur through a court of law or through binding arbitration. If we do not provide you with our written notice of our selection within ten (10) business days after receiving your Decision Notice, you will have the right to resolve the Dispute solely through binding arbitration, not through a court of law.

**22.4 Court of Law.** If any Dispute is to be resolved by a court of law in accordance with **Section 22.3** above, the terms of this **Section 22.4** will apply. The governing law will be the laws of the State of New York, excluding its conflict of law principles. The State and Federal courts located in Albany County of New York will have sole and exclusive jurisdiction over such Dispute. Your Group and Our Group each hereby waives all claims of immunity from such jurisdiction. Venue for such Dispute will be in Albany County of New York. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH MEMBER OF YOUR GROUP AND OUR GROUP HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN SUCH DISPUTE. THIS WAIVER WILL BE IRREVOCABLE AND PERPETUAL; PROVIDED, HOWEVER, THAT IF WE INITIATE SUCH DISPUTE BASED ON THE INFRINGEMENT OF OUR INTELLECTUAL PROPERTY RIGHTS, WE WILL RETAIN THE RIGHT TO TRIAL BY JURY FOR SUCH DISPUTE. EACH OF YOU AND US UNDERSTANDS AND ACKNOWLEDGES THAT: (A) IN THE ABSENCE OF THIS **SECTION 22.4**, SUCH PARTY WOULD HAVE HAD A RIGHT TO LITIGATE ACTIONS THROUGH A JURY TRIAL; AND (B) THIS WAIVER IS A SUBSTANTIVE PROVISION BARGAINED BY YOU AND US AS CONSIDERATION FOR ENTERING INTO THESE TERMS.

**22.5 Arbitration.** If any Dispute is to be resolved by arbitration in accordance with **Section 22.3** above, the terms of this **Section 22.5** will apply.

(a) **No Lawsuit.** No member of Our Group or Your Group will submit the applicable Dispute to any court of law. Our Group and Your Group hereby forfeit their right to file and litigate a lawsuit in a court of law relating to such Dispute. You understand that, in the absence of this **Section 22.5**, you would have had a right to litigate disputes through a court, including the right, if any and subject to the rules of your jurisdiction, to litigate claims on a class-wide or class-action basis. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH MEMBER OF YOUR GROUP AND OUR GROUP HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THOSE RIGHTS AND ALL RIGHT TO TRIAL BY JURY IN CONNECTION WITH SUCH DISPUTE. EACH SUCH MEMBER AGREES TO RESOLVE SUCH DISPUTE SOLELY THROUGH BINDING ARBITRATION IN ACCORDANCE WITH THE PROVISIONS OF THIS **SECTION 22.5**. NO PART OF THE ARBITRATION WILL BE CONSOLIDATED WITH ANY OTHER ARBITRATION OR CONDUCTED ON A CLASS-WIDE OR CLASS ACTION BASIS. YOU AGREE AND ACKNOWLEDGE THAT SUCH WAIVER IS A SUBSTANTIVE PROVISION BARGAINED BY YOU AND US AS CONSIDERATION FOR ENTERING

INTO THESE TERMS. This arbitration provision will be governed by the Federal Arbitration Act, 9 U.S.C. Section 1, et seq.

**(b) American Arbitration Association.** The parties (you and us) may each provide one another with written notice of any intention to initiate arbitration with respect to any Dispute that is subject to arbitration in accordance with **Section 22.5(a)** above. If you do not amicably resolve or settle such Dispute with us in writing within thirty (30) days after such notice, the notifying party will have the right to submit such Dispute to the American Arbitration Association (“AAA”) for binding resolution. Any such Dispute will be resolved exclusively and finally by the AAA. You and us will agree upon another arbitration forum if AAA ceases all of its operations. The arbitration will be conducted before a single arbitrator and will be limited solely to the applicable Dispute between you and us.

**(c) Election of Arbitrator.** The parties (you and us) will confer after service of written notice of arbitration to select a single, agreed-upon arbitrator to arbitrate the applicable Dispute. If you are unable to agree with us upon an arbitrator within thirty (30) days after the date of such notice, the AAA will assign an arbitrator. Any decision or award rendered in such arbitration proceeding will be final and binding on Our Group and Your Group, and judgment may be entered thereon only in the State or Federal courts in Albany County of New York.

**(d) Substantive Law; Limitations on Award; Place; Language.** In the arbitration, the arbitrator will apply the laws of the State of New York, excluding its conflict of law principles. The arbitrator will not have the right to award treble damages, punitive damages or attorneys’ fees to the prevailing party. The location of the arbitration will be in Albany County of New York, and the arbitration will be conducted in the English language. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the applicable Dispute.

**(e) AAA Contact Information.** Information may be obtained from the AAA online at [www.adr.org](http://www.adr.org) or by calling the phone number or writing to the address specified at such website.

## **23. Judicial Modification**

If any court deems, in accordance with **Section 22.4** above, any provision of these Terms unenforceable because of its scope in terms of area, time, business activities or ownership, such court will have the power to modify such provision, through reductions or limitations thereon or to delete specific words or phrases. In its reduced form, such provision will then be enforceable and will be enforced under applicable law.

## **24. English Language**

This Agreement will be interpreted and construed exclusively in the English language. All notices and correspondence related to this Agreement will be written exclusively in the English language.

## **25. Contact Information**

You may contact us regarding these Terms through our contact page or by writing or emailing us at the following address:

Bickster LLC  
Legal Department  
60 Railroad Place  
Saratoga Springs, New York 12866  
Phone No.: 1-518-212-7312  
Email Address: [legal@bickster.com](mailto:legal@bickster.com)

## **26. Updates of these Terms**

As noted above, we may update these Terms from time to time. The date provided at the beginning of these Terms is the latest revision date of these Terms. To request a prior version of these Terms, please contact us.

End of Terms of Use

© 2022 Bickster LLC