

## VELOCITY MASTER TERMS OF USE

Last updated: September 1, 2018

**NOTICE REGARDING ARBITRATION, WAIVER OF TRIAL BY JURY, AND CLASS ACTIONS.** THESE TERMS AND CONDITIONS CONTAIN AN AGREEMENT TO ARBITRATE ALL CLAIMS AND DISCLAIMERS OF WARRANTIES AND LIABILITY. THESE TERMS AND CONDITIONS ALSO ALLOW YOU TO PURSUE CLAIMS AGAINST US ONLY ON AN INDIVIDUAL BASIS, AND NOT AS PART OF ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, AND YOU MAY SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE AND DECLARATORY RELIEF) ONLY ON AN INDIVIDUAL BASIS.

We are pleased to provide you access to certain Velocity systems, programs, products, methods and other intellectual property, which include (i) websites (including, without limitation, the web pages, software, and, as applicable, social media platforms that we may provide or make available from time to time), applications (including mobile applications) and content that we may provide or make available from time to time; (ii) e-mail and network systems and accounts; (iii) rewards, certificate, gift card programs, benefits programs, contests and promotions; and (iv) notifications from us via e-mail and other mediums, or portions of such mediums (collectively, "Velocity Services").

These Velocity Master Terms of Use, which govern your access to and use of Velocity Services, are a contract between you and Velocity Solutions, LLC, a North Carolina limited liability company and each of its parents and affiliates ("Velocity", "we", "us" or "our"), or between you and any different service provider identified for a specific Velocity Service.

In addition to these Velocity Master Terms of Use, the Velocity Services, and your use of Velocity Services, are also governed by the other applicable terms and conditions, including our Privacy Policy available at the footer of this web page below, as well as any other policies or terms and conditions that are referenced below (collectively, with these Velocity Master Terms of Use, our "Terms and Conditions"), each of which are expressly incorporated by reference into these Velocity Master Terms of Use. To the extent that such incorporated terms conflict with these Velocity Master Terms of Use, such incorporated terms will apply and control.

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE USING ANY VELOCITY SERVICE. BY USING ANY VELOCITY SERVICE, OR BY CLICKING TO ACCEPT OR AGREE TO THESE TERMS AND CONDITIONS IF THIS OPTION IS MADE AVAILABLE TO YOU, YOU ACCEPT AND AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS, INCLUDING THE INCORPORATED TERMS. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, OR ANY PORTION OF THESE TERMS AND CONDITIONS (INCLUDING ANY PORTION OF THE INCORPORATED TERMS REFERENCED ABOVE), YOU MUST NOT ACCESS OR USE ANY VELOCITY SERVICE OR MAKE PURCHASES ON OR THROUGH ANY VELOCITY SERVICE. THESE TERMS AND CONDITIONS DESCRIBE THE LIMITED BASIS ON WHICH VELOCITY SERVICES ARE AVAILABLE AND, EXCEPT AS SET FORTH BELOW, OR UNLESS PARTY TO A SEPARATE WRITTEN AGREEMENT BETWEEN YOU AND US AS A PAYING CUSTOMER OF VELOCITY, SUPERSEDE PRIOR AGREEMENTS OR ARRANGEMENTS RELATED TO VELOCITY SERVICES.

WE MAY IMMEDIATELY TERMINATE YOUR ACCESS TO ANY VELOCITY SERVICE IF YOU FAIL TO COMPLY WITH ANY PROVISION OF THESE TERMS AND CONDITIONS.

### 1. Your Compliance with These Terms and Conditions

You acknowledge that our Terms and Conditions are supported by reasonable and valuable consideration, which you have received and which is adequate. Such consideration includes your ability to access, use or interact with any Velocity Service.

You represent that you have the capacity to be bound by our Terms and Conditions and are legally authorized to make all requests, purchases, or redemptions (or if you are acting on behalf of a company or other person or entity, that you have the authority to bind, and make such requests, purchases or redemptions on behalf of, such company, person or entity). To determine your compliance with our Terms and Conditions, we may monitor your access and use of each Velocity Service in accordance with our Privacy Policy.

## **2. Changes to These Terms and Conditions**

We may update, amend or change our Terms and Conditions at any time, in our sole discretion and without notice. Amendments will take effect immediately upon us posting such updates on Velocity Services. We encourage you to periodically check our Terms and Conditions for changes, as your continued access and use of any Velocity Service following the posting of any changes will automatically be deemed your acceptance of all changes. If you do not agree to any change to these terms and conditions, you must discontinue using Velocity Services. These Terms and Conditions replace all previous notices or statements with respect to this subject, and cannot be modified orally or in writing by any of our representatives or any other third parties.

## **3. Access and Use of Velocity Services by Minors**

You may only access and participate in Velocity Services if you are either (i) 18 years of age or older or have reached the age of majority by your respective state or territory of residence, if such age is greater than 18 years of age; or (ii) the parent or legal guardian of a minor at least 13 years of age and have the legal right to consent to and do hereby consent to our Terms and Conditions on behalf of that minor. Please see our Privacy Policy for how we collect, use and share information related to minors.

## **4. Your Access and Use of Velocity Services**

You are entitled to access and use Velocity Services only for lawful purposes and only pursuant to our Terms and Conditions. You are solely responsible for making all arrangements necessary for you to access Velocity Services, including, without limitation, obtaining internet access when necessary. Your right to access and use Velocity Services is personal to you and is not transferable by you to any other person or entity. Unless explicitly permitted by us in writing, you may not assign, transfer, re-market, resell or otherwise dispose of, Velocity Services (including our products) without obtaining our prior written consent, which may be withheld in our sole discretion.

Your access and use of Velocity Services may be interrupted from time to time for any of several reasons, including the malfunction of equipment, periodic updating, maintenance or repair of such Velocity Services or other actions that we may, in our sole discretion, elect to take. From time to time, we may suspend or discontinue, or otherwise restrict access by any user to, any Velocity Service or any portion or feature of any Velocity Service at any time, in our sole discretion and without prior notice to you. We will not be liable if, for any reason, any Velocity Service or any portion or feature of any Velocity Service is unavailable at any time or for any period.

## **5. Your Information and Security**

You Must Maintain the Integrity of Your Information. To access or use certain Velocity Services, you may be required to provide us with information about you, which may be of a confidential nature and may include personally identifiable information, information regarding products you have purchased or financial information (“Your Information”). If you provide Your Information to us, then you agree to provide true, current, complete and accurate information, and not to misrepresent your identity. You also agree to keep Your Information current and to update Your Information if any of Your Information

changes. Our collection, use and disclosure of Your Information are governed by our Terms and Conditions, including the terms of our Privacy Policy.

You Must Maintain the Security of Any Password Issued to You. If any Velocity Service requires you to create a password to use such Velocity Service or any portion thereof, or use a password that you have created with a third party, then it is your sole responsibility to maintain the security of that password. You acknowledge that your password and related account is personal to you and agree not to provide any other person with access to any Velocity Service or portions thereof using your user name, password or other security information. We will not be liable for any loss that you may suffer as a result of the authorized or unauthorized use of your password by a third party. We have the right to disable any user name, password or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our sole opinion, you have violated any provision of our Terms and Conditions.

You Must Notify Us of a Breach. You will immediately notify us of any unauthorized use of your password, any unauthorized use of any account that you may have with us, any violation of our Terms and Conditions, or any other breach of security known to you in connection with any product or service available on or through any Velocity Service by sending an e-mail to us at: [customerservice@myvelocity.com](mailto:customerservice@myvelocity.com).

You Must Comply with These Terms and Conditions and All Applicable Law. You will comply with our Terms and Conditions and all applicable local, state, national and international laws, regulations or rules. You will not submit on or through any Velocity Service any material that violates our Terms and Conditions, or is contrary to any applicable local, state, national and international laws, regulations or rules. Without limiting the foregoing, your access and use of Velocity Services (including any content you create or supply) must not:

- Contain or promote any material that is libelous, unlawfully threatening, unlawfully harassing, defamatory, obscene, explicit or vulgar, or otherwise injurious to us or third parties or that infringes on our or any third party's rights of publicity or privacy;
- Promote sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, age, color, pregnancy, national origin, handicap, marital status, veteran status, gender identity or expression, genetic information or any other characteristic protected by federal, state or local law;
- Infringe any patent, trademark, trade secret, copyright or other intellectual property or other rights of any other person (including our rights);
- Violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with our Terms and Conditions;
- Contain or promote any material that is false, inaccurate or misleading;
- Represent or promote a personal opinion as that of Velocity, or, to the extent you have an affiliation with us, represent or promote a personal opinion without disclosing your affiliation and including a disclaimer that your views do not represent our views (for instance, "the views in this posting reflect my personal views and do not represent the views of Velocity");
- Reveal, disclose or use proprietary or Confidential Information, including official Velocity information, employee information, personnel information or intellectual property without express written authorization from us;
- Circumvent user authentication or security of any host, network or account;
- Promote any illegal activity, or advocate, promote or assist any unlawful act;

- Involve, contain or cause advertisements or solicitations, including contests, sweepstakes, other sales promotions, fundraising, barter or advertising, without our prior written consent, which consent may be withheld in our sole discretion;
- Cause annoyance, inconvenience or needless anxiety or be likely to upset, embarrass, alarm or annoy any other person;
- Interfere with or disrupt any Velocity Service, or disobey any requirements, procedures, policies or regulations provided to you from time to time in connection with any Velocity Service (including our Terms and Conditions);
- Impersonate any person, or misrepresent your identity or affiliation with any person or organization;
- Involve or contain federally trademarked or copyrighted information without our prior written permission;
- Contain, constitute or transmit chain letters, mass mailings, political campaigning or any form of “spam”; or
- Contain, transmit or cause any viruses, worms, Trojan horses, trap doors, back doors, easter eggs, time bombs, cancelbots or other code or computer programming routines that encompass contaminating or destructive properties or that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

If you are unsure about the appropriateness of any access, use or content related to any Velocity Service, you must refrain from such access or use, or from posting or communicating any such content, until you receive explicit approval from us.

If you see content or conduct in connection with any Velocity Service that reflects poorly on us, our employees or other representatives, please notify [legal@myvelocity.com](mailto:legal@myvelocity.com) immediately.

## **6. Transmissions, Submissions and Postings to Velocity Services**

If you transmit, submit or post content to any Velocity Service that is not federally trademarked or copyrighted, you automatically grant us and our assigns the worldwide, fully-paid, royalty-free, exclusive right and license to use, copy, format, adapt, publish, distribute, create derivative works from, or incorporate any or all such content in any media whatsoever, including the Content (as defined below). Provided that you have obtained prior written permission from us to transmit, submit or post content to Velocity Services that is federally trademarked or copyrighted, you automatically grant us and our assigns the worldwide, fully-paid, royalty-free right to use, copy, format, adapt, publish, distribute, create derivative works from or incorporate any or all such content in any media whatsoever, including the Content. The above licenses granted by you are perpetual and irrevocable.

You are solely responsible for all your transmissions, submissions or postings (for example, your own content) and the consequences of transmitting, submitting or posting them. We assume no liability for any action or inaction regarding transmissions, submissions or postings by you or any other user or third party.

Although we do not regularly review your transmissions, submissions or postings, we may, at our sole discretion and at any time, (i) edit, refuse to post or remove your transmissions, submissions or postings; and (ii) review transmissions, submissions or postings made by you to determine, in our sole discretion, your compliance with our Terms and Conditions and applicable law.

Without limiting the foregoing, we have the right to fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through any Velocity Service. YOU WAIVE AND HOLD US (AND OUR AFFILIATES, LICENSEES AND SERVICE PROVIDERS) HARMLESS FROM ANY CLAIMS RESULTING FROM ANY ACTION

TAKEN BY ANY OF THE FOREGOING PARTIES DURING OR AS A RESULT OF THEIR INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES.

## **7. Confidentiality and Proprietary Rights**

By accessing or using Velocity Services, you may have access to company and/or Program Sponsor (as defined below) information, technology, documents, reports, analyses, data, studies, samples, copyright, trademark and patent applications, projections, software, trade secrets, know-how, and observations, and other disclosures pertaining to, based on, or containing, directly or indirectly, in whole or in part, of the foregoing, that are secret, or generally not known to the public ("Confidential Information").

Our Confidential Information and all copies and manifestations of the Confidential Information, (i) are, and will remain at all times, as between you and us, our exclusive property or the property of our licensors or other third parties who have provided Confidential Information to us, as applicable; and (ii) are our special and unique assets or trade secrets as defined under the Florida Uniform Trade Secrets Act, created or obtained by us at considerable time and expense, from which we may, will or do derive independent economic value from not being generally known to the public or third parties. You must therefore treat Confidential Information accordingly and not jeopardize it through your access or use of any Velocity Service. If you are unsure whether you are permitted to disclose Confidential Information to particular individuals or how to safeguard our proprietary rights, please contact us at [legal@myvelocity.com](mailto:legal@myvelocity.com).

In addition to any other confidentiality obligations that you may have in connection with a separate confidentiality agreement or otherwise, you will not in any manner or at any time, either directly or indirectly, (i) use any part of the Confidential Information, except as may be explicitly authorized by us in writing; (ii) use any Confidential Information in any manner detrimental to us; or (iii) divulge, disclose, distribute, reproduce, reverse engineer or communicate to any person or entity any of the Confidential Information.

Upon our request, you will immediately return all Confidential Information to us in your possession, or under your care and control.

## **8. Intellectual Property Rights**

As between you and us, Velocity Services and their entire contents, features and functionality (including all information, text, software, displays, images, video, audio names, graphics, logos, page headers, button icons, scripts and service names, and the design, selection and arrangement of the foregoing) are owned by us, our licensors or other providers of such material and are protected by United States or international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws (collectively, the "Proprietary Marks"). You may not use the Proprietary Marks without our prior express written permission, which permission may be withheld in our sole discretion. We make no proprietary claim to any third-party names, trademarks or service marks appearing on or within any Velocity Service. Any third-party names, trademarks and service marks are property of their respective owners.

The information, advice, data, software and content viewable on, contained in or downloadable from each Velocity Service (collectively, the "Content"), including all text, graphics, charts, pictures, photographs, videos, images, line art, icons and renditions, are copyrighted or trademarked by, or otherwise licensed to, us or our Content suppliers. We also own a copyright of a collective work in the selection, coordination, arrangement, presentation, display and enhancement of the Content (the "Collective Work"). All software used on or within each Velocity Service is our property or the property of our software vendors and is protected by United States and international copyright laws. Viewing, reading, printing, downloading or otherwise using the Content or the Collective Work does not entitle you to any ownership or intellectual property rights to the Content (including the software) or the Collective Work.

You are solely responsible for any damages resulting from your infringement of our or any third-party's intellectual property rights regarding the Proprietary Marks, the Content (including the software), the Collective Work or any other harm incurred by us as a direct or indirect result of your copying, distributing, redistributing, transmitting, publishing or using the Proprietary Marks, the Content (including the software) or the Collective Work for purposes that are contrary to the terms and conditions of our Terms and Conditions.

## **9. Your Use of the Content**

Subject to your compliance with our Terms and Conditions, and subject to and without limiting any additional and applicable terms and conditions regarding the use of certain Content, we grant you a limited license to access, print, download or otherwise make personal use of the Content and the Collective Work in the form of: (i) one machine-readable copy; (ii) one backup copy; and (iii) one print copy, in each case solely for your non-commercial use; provided, however, that you will not delete any proprietary notices or materials with regard to the foregoing manifestations of the Content and the Collective Work. You may not (a) modify the Content or the Collective Work; (b) utilize the Content or the Collective Work for any commercial purpose or any other public display, performance, sale or rental; (c) decompile, reverse engineer or disassemble the Content or the Collective Work; or (d) transfer the Content or the Collective Work to another person or entity.

Except as otherwise permitted under the copyright laws of the United States, no other copying, distribution, redistribution, transmission, publication or use, other than the non-commercial use of the Content and the Collective Work as permitted by our Terms and Conditions, is permitted by you without our prior written permission, which may be withheld in our sole discretion. You may not use any meta tags or any other "hidden text" utilizing our name or trademarks, or provide links to or frame any Velocity Service, without our prior written permission, which may be withheld in our sole discretion.

## **10. Access and Interference**

You may not use any robot, spider, scraper, deep link or other similar automated data gathering or extraction tools, program, algorithm or methodology to access, acquire, copy or monitor any Velocity Service or any portion thereof or for any other purpose, without our prior written permission, which may be withheld in our sole discretion. Additionally, you may not: (i) take any action that imposes, or may impose, in our sole discretion, an unreasonable or disproportionately large load on our infrastructure; (ii) copy, reproduce, modify, create derivative works from, distribute or publicly display any Content or Collective Work (except for Your Information) from any Velocity Service without our prior written permission, which may be withheld in our sole discretion, and the permission of the appropriate third party, as applicable; (iii) interfere or attempt to interfere with the proper working of any Velocity Service or any activities conducted on any Velocity Service; or (iv) bypass any robot exclusion headers or other measures we may use to prevent or restrict access to any Velocity Service. We may, without prior notice to you, immediately disconnect your access to and use of any Velocity Service if you interfere or disrupt any Velocity Service.

Notwithstanding the foregoing, we grant the operators of public search engines permission to use spiders to copy materials from each Velocity Service for the sole purpose of, and solely to the extent necessary, creating publicly available search indices of the materials on or within Velocity Services, but not caches or archives of such materials. We may revoke these exceptions either generally or in specific cases. You may not collect or harvest any personally identifiable information, including account names, from any Velocity Service. You may not use any communication systems provided on any Velocity Service for any commercial or solicitation purposes. You may not solicit for commercial purposes any users of any Velocity Service via image, video, text or any other method without our prior written consent, which may be withheld in our sole discretion.

## **11. Products and Services**

In some cases, Velocity Services include the promotion and administration of a financial institution's reward program, where such financial institution is a customer of Velocity ("Program Sponsor") and has chosen Velocity to administer a rewards program to its account holders ("Rewards Program"). Through such Rewards Program, you may have the ability to obtain certain products, services, passes, rewards, certificates, gift cards, benefits and related coupons and discounts (collectively, "Products") on or through Velocity Services (a "Transaction"). All Transactions are governed by our Terms and Conditions, including the Rewards Program Terms incorporated into these Terms and Conditions. Advertised prices, certificate values, and available quantities are subject to change without notice and may vary by area or location. References to gender (e.g., male, female or other) within any Velocity Service are typically based on biological gender, and is no way intended to discriminate against any gender identity or gender expression in any manner whatsoever. Our ability to provide certain Product offerings may be limited by certain conditions applicable to you, including your physical anatomy, medical condition or legal capacity, and therefore, we may, subject to applicable law, limit, change or restrict our Product offerings to you at any time for any or no reason, including based on any of the aforementioned conditions. Velocity Services may contain technical inaccuracies and typographical or other errors in connection with the Products, including prices or available quantities applicable to a Transaction. We make no representations and assume no responsibility as to the completeness, accuracy or timeliness of any Content on or describing any Velocity Service (including any features, specifications, prices and available quantities). We may, in our sole discretion, honor Transactions or information affected by any errors, inaccuracies or omissions in connection with Velocity Services. We may make changes, corrections, cancellations or improvements to any Velocity Service, and to the related Products and programs described, at any time and without notice to you, including after confirmation of a Transaction.

## **12. Transactions**

If you wish to make a Transaction, you may be asked to supply certain relevant information, such as your name, your credit card number and its expiration date, your billing address, CVV number, and your shipping information. You represent and warrant that (i) you have the right to use any credit card that you submit in connection with a Transaction; and (ii) any information provided to us is true, accurate and complete. By submitting such information, you grant to us the right to provide such information to third parties for purposes of facilitating Transactions. Verification of information may be required prior to the acknowledgment or completion of any Transaction. By making a Transaction, you represent and warrant that the applicable Products will be used only in a lawful manner, and all Products purchased by you are for personal or gift use and not for commercial use or resale.

All Transactions are subject to acceptance by us. We may, in our sole discretion and without prior notice, (a) refuse to accept a Transaction for any or no reason; (b) limit the available quantity of or discontinue making available any Product; (c) impose conditions on the honoring of any coupon, certificate, discount or similar promotion; or (d) bar any user from making any Transaction or refuse to provide any user with any Product in accordance with our Terms and Conditions. Cancellations, refunds and exchanges are subject to our applicable cancellation, refund and exchange policies, including such policies set forth in our Terms and Conditions and any other terms that may be provided to you separately. You will pay all charges incurred by you or on your behalf through Velocity Services, at the prices in effect when such charges are incurred, including all shipping and handling charges. In addition, you are responsible for any taxes applicable to your Transactions.

We are not responsible for communication failures, errors, difficulties or other malfunctions or lost, stolen or misdirected transactions, transmissions, messages or entries on or in connection with any Velocity Service. We are not responsible for any incorrect information associated with any Transaction on or to

any Velocity Service regardless of whether such incident is the result of user error, system error or human error.

WE MAKE NO WARRANTY OR REPRESENTATION REGARDING THE CONFIDENTIALITY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED ON ANY VELOCITY SERVICE OR ANY LINKS ASSOCIATED WITH ANY VELOCITY SERVICE. SUBJECT TO APPLICABLE LAW, WE WILL NOT BE RESPONSIBLE OR LIABLE IN ANY WAY FOR ANY INJURY, LOSS OR DAMAGE TO YOUR COMPUTER, MOBILE PHONE OR OTHER DEVICE, OR INTERCEPTION OR USE OF CREDIT CARD INFORMATION OR OTHER PERSONALLY IDENTIFIABLE INFORMATION, RELATED TO OR RESULTING FROM USE OF ANY VELOCITY SERVICE OR ANY LINKS ASSOCIATED WITH ANY VELOCITY SERVICE.

### **13. Third-Party Materials**

There may be provided on or through any Velocity Service links or access to other websites, mediums, content or materials belonging to our advertisers, business partners, suppliers, affiliates and other third parties. Such links and access do not constitute our endorsement of those third parties, nor the products or services of those third parties. We are not responsible for the activities or policies of those third parties. We accept no responsibility for such third parties or for any loss or damage that may arise from your use of the third-party links or the products or services of those third parties. We do not guarantee that the terms, prices or other content offered by any particular advertiser, business partner, affiliate or other third party on or through Velocity Services are accurate or the best terms or lowest prices available in the market.

You acknowledge and agree that we are not responsible for any third-party materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. All third-party materials and links are provided solely as a convenience to you. If you decide to access any of the third-party websites or mediums, you do so entirely at your own risk and subject to the terms and conditions of use of such third-party websites and mediums.

### **14. Electronic Communications**

As part of your access or use of Velocity Services, you may receive notifications, text messages, alerts, posts, notices, e-mails or other communications (including by regular mail). You agree to the receipt of such communications. You also agree that any electronic communication satisfies any legal requirement that such communication be in writing. You may control receipt of non-service related communications (e.g., communications other than those related to the completion of your registration, correction of user data, change of password or other similar communications essential to your Transactions and other interactions on or through Velocity Services) through your account settings or as otherwise described in our Privacy Policy. You are responsible for any messaging or data fees you may be charged for such communications.

### **15. Authorization to Contact You**

By using Velocity Services, you authorize us and our agents, representatives and independent contractors to contact you at any telephone number (including telephone numbers associated with mobile, cellular, wireless or similar devices) or e-mail address that you provide to us or from which you place a call to us or e-mail us (as applicable), or any telephone number or e-mail address at which we reasonably believe we may reach you, using any means of communication, including calls or text messages using an automatic telephone dialing system or prerecorded messages, even if you incur charges for receiving such communications.

### **16. Velocity Mobile Messaging**

From time to time, we or certain third-party service providers whom we engage, may send text messages that contain promotion alerts, special offers, and other information (e.g., SMS) (“Velocity Mobile Messaging”). Velocity Mobile Messaging is designed to be available on many wireless phone carriers, but may not be compatible with all cell phone models. Velocity Mobile Messaging is designed to be a recurring message program and is only valid in the United States. Velocity is not responsible for any delays upon sending or receiving any text messages. Messages sent via Velocity Mobile Messaging may not be delivered to you if your phone is not in range of a transmission site, or if sufficient network capacity is not available at a particular time. Even within a coverage area, factors beyond the control of your wireless carrier may interfere with message delivery, including a customer’s equipment, terrain, proximity to buildings, foliage, and weather.

## **17. Your Responsibility for Equipment and Related Costs**

You are solely responsible for obtaining and maintaining all telephone, computer hardware, Internet access services and other equipment or services needed to access and use Velocity Services, and all costs and fees associated with Internet access, long distance charges or carrier rates (including phone, data and text messaging rates) incurred with regard to your access and use of Velocity Services. Please note that to process your requests for Velocity Mobile Messaging, you may be charged a fee to send and receive messages based on the terms of your wireless carrier agreement. All charges are billed by and payable to your wireless carrier. You should consult with your wireless carrier if you have questions about your wireless plan.

## **18. Mobile Velocity Services**

Aspects of Velocity Services may include certain applications for your mobile device (collectively, the “Mobile Velocity Services”). By using the Mobile Velocity Services, you:

- acknowledge that our Terms and Conditions are between you and us and not with Apple, Inc., Google, Inc. or any other third-party;
- agree not to use or manipulate the Mobile Velocity Services on your mobile device while driving or operating any other heavy machinery;
- consent to the collection, use, sharing and onward transfer of Your Information and other data, including photos, voice and location data, as outlined in our Privacy Policy (location data may be from mixed sources and may not be accurate; please use this data at your own risk);
- acknowledge that certain parts of the Mobile Velocity Services require phone service, data access or text messaging capability; except as otherwise noted, carrier rates for phone, data and text messaging may apply; and
- acknowledge that we may, in our sole discretion and at any time, change, suspend, remove or disable access to content or other materials comprising part of the Mobile Velocity Services at any time without notice. In no event will we be liable for making these changes. We may also impose limits on the use or access of certain features or portions of the Mobile Velocity Services, in any case without notice or liability.

Any mobile application(s) made available by us (the “Apps”) are licensed, not sold, to you. Your license to the Apps is subject to your prior acceptance of our Terms and Conditions and you agree that our Terms and Conditions will apply to the Apps that you license. Your license to any Apps under our Terms and Conditions is granted by us. Any App that is subject to the license granted under our Terms and Conditions is referred to herein as a “Licensed Application.” We reserve all rights in and to any Licensed Applications not expressly granted to you under our Terms and Conditions.

Scope of License. This license granted to you for any Licensed Application is a limited, non-exclusive and nontransferable license to (i) download, install and use the Licensed Application for your personal use on

a single, compatible mobile device that you own or control (“Mobile Device”), as permitted by our Terms and Conditions and subject to any additional rules and restrictions imposed upon you by third parties, such as rules and restrictions imposed by your mobile device provider and your mobile application store provider (“Third-Party Rules”); and (ii) access, stream, download and use on such Mobile Device the Content and the Mobile Velocity Services made available in or otherwise accessible through the Licensed Applications, strictly in accordance with our Terms and Conditions. For the avoidance of doubt, this license does not allow you to use any Licensed Application on any Mobile Device that you do not own or control, and you may not distribute or make any Licensed Application available over a network where it could be used by multiple devices at the same time. You may not rent, lease, lend, sell, transfer, redistribute or sublicense any Licensed Application and, if you sell or otherwise transfer your Mobile Device to a third party, you must remove each Licensed Application from the Mobile Device before doing so. You may not copy (except as expressly permitted by this license and the Third-Party Rules), decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify or create derivative works of any Licensed Application, any Updates (as defined below), or any part of any Licensed Application or Update (except as and only to the extent that any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open-sourced components included in the Licensed Applications). Any attempt to do so is a violation of our rights and the rights of our licensors. If you breach this restriction, you may be subject to prosecution and damages.

The terms of this license will govern any Updates (as defined below), unless such Update is accompanied by a separate license in which case the terms of that license will govern.

Consent to Use of Data. You acknowledge that, when you download, install or use any Licensed Application, we may collect and use (i) automatic means (including, for example, cookies and web beacons) to collect information about your Mobile Device and about your use of the Licensed Application; and (ii) technical data and related information that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the Licensed Application. We may use this information to improve Velocity Services or to provide other products, services or technologies to you and as otherwise set forth in our Privacy Policy.

Termination. This license to use these Licensed Applications is effective until terminated by you or us. You may terminate this license by deleting the Licensed Application and all copies of such Licensed Application from your Mobile Device. We may terminate this license at any time for any or no reason without notice. Additionally, this license will terminate automatically without notice from us if you fail to comply with any term of our Terms and Conditions. Upon termination of this license, you will cease all use of such Licensed Application and destroy all copies, full or partial, of such Licensed Application. Any termination of this license will not limit any of our rights or remedies available at law or in equity.

Updates. We may, from time to time, in our sole discretion develop and provide Licensed Application updates, which may include upgrades, bug fixes, patches and other error corrections or new features (collectively, including related documentation, “Updates”). Updates may also modify or delete in their entirety certain features and functionality. You agree that we have no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Mobile Device settings, when your Mobile Device is connected to the Internet either:

- the Licensed Application will automatically download and install all available Updates; or
- you may receive notice of or be prompted to download and install available Updates.

You will promptly download and install all Updates. You hereby acknowledge and agree that the Licensed Application or portions of such Licensed Application may not properly operate should you fail to do so.

## **19. Export Regulation**

Velocity Services (including any Content and Licensed Application) may be subject to United States export control laws, including the US Export Administration Act and its associated rules, restrictions and regulations. You will not, directly or indirectly, export, re-export or release any Velocity Service (including any Content and Licensed Application) to, or make any Velocity Service (including any Content and Licensed Application) accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. You will comply with all applicable laws, restrictions, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making any Velocity Service (including any Content and Licensed Application) available outside of the United States (which excludes all United States territories and possessions).

## **20. International Users**

Velocity Services are controlled, operated and administered by us from our offices within the United States. We do not market to international persons or entities, and the Velocity Service is intended for use by parties located in the United States. We make no representations that any Velocity Service is permissible, appropriate or available for use in other jurisdictions. If you access any Velocity Service from a location outside the United States, then you do so by your own volition and you are solely responsible for compliance with all laws, regulations and rules (including local laws and any applicable United States export control laws). You will not use any Velocity Service or any Content in a manner prohibited by any applicable state, federal, international or local laws, rules, restrictions or regulations.

## **21. We Make No Representations or Warranties Regarding Velocity Services or the Content**

You expressly agree that your use of Velocity Services (including any Mobile Velocity Services and any Licensed Applications), the Content and all information, content, materials, products and services is at your sole risk. It is your sole responsibility to independently evaluate the accuracy, correctness or completeness of Velocity Services, the Content and all information, content, materials, products and services. **EXCEPT AS OTHERWISE EXPRESSLY STATED BY US IN WRITING AT THE TIME OF PURCHASE OR OTHERWISE, (I) VELOCITY SERVICES (INCLUDING ANY MOBILE VELOCITY SERVICES AND ANY LICENSED APPLICATIONS), THE CONTENT AND ALL INFORMATION, CONTENT, MATERIALS, PRODUCTS AND SERVICES INCLUDED ON OR ASSOCIATED WITH VELOCITY SERVICES ARE PROVIDED TO YOU ON AN "AS-IS" AND "AS AVAILABLE" BASIS; AND (II) WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THESE VELOCITY SERVICES (INCLUDING ANY MOBILE VELOCITY SERVICES AND ANY LICENSED APPLICATIONS), THE CONTENT OR THE INFORMATION, CONTENT, MATERIALS, PRODUCTS OR SERVICES INCLUDED ON OR ASSOCIATED WITH ANY VELOCITY SERVICE, INCLUDING THEIR ACCURACY, CORRECTNESS, COMPLETENESS, SAFETY, RELIABILITY, TITLE, TIMELINESS, NON-INFRINGEMENT, MERCHANTABILITY, CONFORMITY OR FITNESS FOR A PARTICULAR PURPOSE.**

Without limiting the foregoing, you acknowledge that we cannot guarantee the continuous operation of or access to any Velocity Service. You further acknowledge that operation of and access to any Velocity Service may be interfered with as a result of technical issues or numerous factors outside of our control. We make no representation, warranty or guarantee that any Velocity Service or the Content that may be available for downloading from any Velocity Service is free of infection from any viruses, worms, Trojan horses, trap doors, back doors, easter eggs, time bombs, cancelbots or other code or computer programming routines that contain contaminating or destructive properties or that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information. We will not be liable for any loss or damage caused by a distributed denial-of-service attack, viruses or other technologically harmful material that may infect your computer, device, data, programs or other equipment or material due to your use of any Velocity Service or items obtained

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The foregoing does not affect any warranties which cannot be excluded or limited under applicable law.

## **22. Limitations on Our Liability**

**EXCEPT AS OTHERWISE EXPRESSLY STATED BY US IN WRITING, IN NO EVENT ARE WE RESPONSIBLE OR LIABLE TO YOU OR ANY THIRD PARTY, WHETHER RESULTING, IN WHOLE OR IN PART, FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE) OR OTHERWISE, FOR ANY DAMAGES, INCLUDING SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT INCLUDE DAMAGES FOR ANY PERSONAL OR BODILY INJURY, EMOTIONAL DISTRESS, INJURIES TO PROPERTY AND LOSS OF PROFIT, REVENUE OR BUSINESS, AS A DIRECT OR INDIRECT RESULT OF: (I) YOUR BREACH OR VIOLATION OF ANY TERM OR CONDITION OF OUR TERMS AND CONDITIONS; (II) YOUR ACCESS AND USE OF ANY VELOCITY SERVICE (INCLUDING ANY MOBILE VELOCITY SERVICES OR LICENSED APPLICATIONS), THE USER GENERATED CONTENT OR THE CONTENT; (III) YOUR DELAY IN ACCESSING OR INABILITY TO ACCESS OR USE ANY VELOCITY SERVICE FOR ANY REASON; (IV) YOUR DOWNLOADING OR USE OF ANY OF THE CONTENT, THE COLLECTIVE WORK OR USER GENERATED CONTENT; (V) YOUR RELIANCE UPON OR USE OF ANY VELOCITY SERVICE, THE USER GENERATED CONTENT, THE CONTENT OR THE COLLECTIVE WORK; (VI) ANY TRANSACTION OR PROCESSING OF A TRANSACTION; (VII) ANY THIRD PARTY'S USE OF ANY VELOCITY SERVICE ON YOUR BEHALF; (VIII) THE BREACH OF OUR SECURITY AND UNAUTHORIZED DISCLOSURE OF YOUR INFORMATION; OR (IX) ANY INFORMATION, SOFTWARE, PRODUCTS OR SERVICES OBTAINED ON OR THROUGH ANY VELOCITY SERVICE, OR OTHERWISE ARISING OUT OF THE USE OF ANY VELOCITY SERVICE, EVEN IF WE, OUR PROGRAM SPONSORS, OR OUR AGENTS, REPRESENTATIVES, LICENSORS, VENDORS, SUPPLIERS OR ANY OTHER APPLICABLE THIRD PARTY HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. OUR LIABILITY AND THE LIABILITY OF OUR DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES, INDEPENDENT CONTRACTORS, SHAREHOLDERS, REPRESENTATIVES AND AGENTS ARISING OUT OF THESE TERMS AND CONDITIONS, EITHER JOINTLY OR SEVERALLY, WILL NOT EXCEED \$100.**

**YOU SPECIFICALLY ACKNOWLEDGE THAT WE WILL NOT BE LIABLE FOR USER GENERATED CONTENT OR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY THIRD PARTY, AND THAT THE RISK OF HARM OR DAMAGE FROM SUCH USER GENERATED CONTENT AND THIRD-PARTY CONDUCT RESTS ENTIRELY WITH YOU. IN ADDITION, YOU SPECIFICALLY ACKNOWLEDGE THAT WE WILL NOT BE LIABLE FOR ANY CONSEQUENCES OF ACTIONS YOU TAKE OR FAIL TO TAKE BASED ON USER GENERATED CONTENT, PHOTOGRAPHS OR RECORDINGS, INCLUDING DEATH, PERSONAL INJURY, PROPERTY DAMAGE OR EMOTIONAL DISTRESS, AND THAT THE RISK OF HARM OR DAMAGE FROM SUCH ACTIONS OR INACTIONS RESTS ENTIRELY WITH YOU.**

**YOU AND WE AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO ANY VELOCITY SERVICE MUST COMMENCE WITHIN 90 DAYS AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.**

Certain state laws do not allow limitations on implied warranties or the exclusion or limitation of certain damages. If these state laws apply to you, some or all of the above disclaimers, exclusions or limitations may not apply to you.

If any limitation on the period of time for bringing an action, claim, dispute or proceeding against us, located in this "Limitations on Our Liability" section, is determined or held to be inapplicable or unenforceable by any court, arbitration panel or other tribunal, then the statute of limitations for the State of Florida, including Florida Statutes Section 95, will apply to any such action, claim, dispute or proceeding referred to final or binding arbitration.

### **23. Your Indemnification of Us**

You will defend, indemnify and hold harmless us and our Program Sponsors, and each of us and their respective officers, directors, members, managers, shareholders, employees, independent contractors, agents and representatives from and against all claims and expenses, including attorneys' fees, arising out of or attributable to: (i) your breach or violation of our Terms and Conditions; (ii) your failure to provide accurate, complete and current information requested or required by us; (iii) your impermissible or unauthorized access or use of any Velocity Service or the Content; (iv) access or use of any Velocity Service under any password that may be issued to you; (v) your transmissions, submissions or postings (for example, your own content); or (vi) any personal injury, property damage or emotional distress caused by you.

### **24. Our Remedies**

You acknowledge that we may be irreparably damaged if our Terms and Conditions are not specifically enforced, and damages at law would be an inadequate remedy. Therefore, in the event of a breach or threatened breach of any provision of our Terms and Conditions by you, we will be entitled, in addition to all rights and remedies, to an injunction restraining such breach or threatened breach, without being required to show any actual damage or to post an injunction bond, or to a decree for specific performance of the provisions of our Terms and Conditions. For purposes of this "Our Remedies" section, you agree that any action or proceeding with regard to such injunction restraining such breach or threatened breach will be brought in the courts of record of Broward County, Florida, or the United States District Court, Southern District of Florida. You consent to the jurisdiction of such court and waive any objection to the laying of venue of any such action or proceeding in such court. Service of any court paper may be effected on such party by mail or in such other manner as may be provided under applicable laws, regulations, rules of procedure or local rules.

### **25. Legal Disputes**

You and we agree that any claim or dispute at law or equity that has arisen or may arise between us relating in any way to or arising out of our Terms and Conditions or your use of or access to Velocity Services will be resolved in accordance with the provisions set forth in this "Legal Disputes" section. **PLEASE READ THIS "LEGAL DISPUTES" SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS AND WILL HAVE A SUBSTANTIAL IMPACT ON HOW CLAIMS YOU AND WE HAVE AGAINST EACH OTHER ARE RESOLVED.**

Applicable Law. These Terms and Conditions are to be governed by and construed in accordance with the internal laws of the State of Florida, without regard for principles of conflicts of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

You agree that: (i) each Velocity Service will be deemed solely based in the State of Florida; and (ii) each Velocity Service will be deemed a passive Velocity Service that does not give rise to personal jurisdiction over us and our assigns, either specific or general, in jurisdictions other than the State of Florida.

Agreement to Arbitrate. Any civil action, claim, dispute or proceeding arising out of or relating to this or any previous version of our Terms and Conditions, your use of or access to any Velocity Service or any products or services sold, offered or purchased on or through any Velocity Service, except for an injunctive action regarding a breach or threatened breach of any provision of our Terms and Conditions by you as provided above, will be resolved exclusively through final and binding arbitration, before a single arbitrator, rather than in court. The Federal Arbitration Act governs the interpretation and enforcement of this "Agreement to Arbitrate" section (this "Agreement to Arbitrate").

Arbitration is more informal than a lawsuit in court. There is no judge or jury in arbitration, and court review of an arbitration award is very limited. However, an arbitrator can award the same damages and

relief on an individual basis that a court can award to an individual. An arbitrator should apply the terms of our Terms and Conditions as a court would.

The arbitrator, and not any federal, state or local court or agency, will have exclusive authority to resolve any dispute arising out of or relating to the interpretation, applicability, enforceability or formation of this Agreement to Arbitrate, any part of it, or of our Terms and Conditions, including any claim that all or any part of the Agreement to Arbitrate or our Terms and Conditions is void or voidable.

The arbitration will be conducted by JAMS in Broward County, Florida, under the JAMS rules and procedures, as modified by this Agreement to Arbitrate. The JAMS rules, and a form for initiating arbitration proceedings, are available at <http://www.jamsadr.com>.

You and we will select the arbitrator, and if you and we are unable to reach agreement on selection of the arbitrator within 30 days after the notice of arbitration is served, then the JAMS will select the arbitrator. Arbitration will not commence until the party requesting arbitration has deposited U.S. \$1,000 with the arbitrator for the arbitrator's fees and costs. The party requesting arbitration will advance such sums as are required from time to time by the arbitrator to pay the arbitrator's fees and costs until the prevailing party is determined or the parties have agreed in writing to an alternate allocation of fees and costs.

The arbitrator will decide the substance of all claims in accordance with the laws of the State of Florida, including recognized principles of equity, and will honor all claims of privilege recognized by law. The arbitrator will not be bound by rulings in prior arbitrations involving our other users, but is bound by rulings in prior arbitrations involving the same user to the extent required by applicable law. Judgment upon any award rendered by the arbitrator is final, binding and conclusive upon you and us and your and our respective administrators, executors, legal representatives, successors and assigns, and may only be entered in the state or federal courts of record for Broward County, Florida.

**Prohibition of Class and Representative Actions and Non-Individualized Relief.** YOU AND WE AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS PART OF ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH YOU AND WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER USERS.

**THEREFORE, YOU DO NOT HAVE THE OPPORTUNITY TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS AND YOU GIVE UP YOUR RIGHT TO PARTICIPATE IN OR BRING CLASS ACTIONS. BY USING ANY VELOCITY SERVICE, YOU CONSENT TO THESE RESTRICTIONS.**

**Judicial Forum for Legal Disputes.** Unless you and we agree otherwise, in the event that the Agreement to Arbitrate above is found not to apply to you or to a particular claim or dispute as a result of a decision by the arbitrator or a court order, any claim or dispute that has arisen or may arise between you and us must be resolved exclusively by a state or federal court located in Broward County, Florida. You and we will submit to the personal jurisdiction of the courts located within Broward County, Florida for the purpose of litigating all such claims or disputes.

## **26. Miscellaneous**

If any provision of our Terms and Conditions is contrary to, prohibited by or deemed invalid under applicable law, such provision will be inapplicable and deemed omitted to the extent so contrary,

prohibited or invalid, but the remainder of our Terms and Conditions will not be invalidated thereby and will be given full force and effect so far as possible. If any provision of our Terms and Conditions may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision will have the meaning that renders it valid and enforceable.

For purposes of our Terms and Conditions, the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; and the word "or" is not exclusive. The headings contained in our Terms and Conditions are for convenience of reference only, are not to be considered a part of our Terms and Conditions, and will not limit or otherwise affect in any way the meaning or interpretation of our Terms and Conditions.

All covenants, agreements, representations and warranties made in our Terms and Conditions, as may be amended by us, from time to time, will survive your acceptance of our Terms and Conditions and the termination of our Terms and Conditions.

No failure to exercise, and no delay in exercising, any right or any power set forth in our Terms and Conditions by us will operate as a waiver of such right or power, nor will any single or partial exercise of any right or power under our Terms and Conditions by us preclude further exercise of that or any other right or power under our Terms and Conditions.

We may give, assign or transfer our rights or obligations under our Terms and Conditions to any person or entity at any time with or without your consent. You may not give, assign or transfer your rights or obligations under our Terms and Conditions to any person or entity. Any attempt to assign your rights or obligations under our Terms and Conditions without our consent will be void.

We will not be liable for any changes, delays, failures or problems out of our control, including any changes, delays, failures or problems caused by natural disasters, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, network infrastructure failures, strikes, shortage of transportation facilities, fuel, energy, labor or materials and other similar events.

You and we are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by our Terms and Conditions.

These Terms and Conditions (together, with any documents they expressly incorporate by reference, including all incorporated terms) represents the entire understanding and agreement between you and us regarding the subject matter of our Terms and Conditions, and supersede all other previous agreements, understandings or representations regarding our Terms and Conditions.

If you have questions, comments, concerns or feedback regarding our Terms and Conditions or any Velocity Service, please contact us via any of the methods set forth in the "Contact Us" link at the footer of this web page.