

**WEBSITE USER AND MEMBERSHIP  
TERMS AND CONDITIONS  
FOR  
WWW.TUBE.SCREW.COM**

**Effective Date: 12/09/08**

**Modified Date: 12/09/08**

These Terms and Conditions govern your use of, access to and/or membership in, the Website known as: www.Tube.Screw.com (collectively, the “Publisher”) and its network of member affiliates, (collectively, the “Network” or “we/our,” or individually, the “Site”). The member or user is sometimes referred to as “you” or “your.” For the purposes of this Agreement, all Members are Users, but not all Users are Members. This Agreement applies to all Users whether they are members or not. You become a User by accessing this Site in any way. You need not become a Member of the Site to make this Agreement apply to You.

**IMPORTANT! Nobody is authorized to access this Site unless they have signed this Agreement. Such signature does not need to be a physical signature, since this Agreement is intended to be governed by the Electronic Signatures in Global and National Commerce Act (E-Sign Act). You manifest your agreement to these Terms and Conditions by any act demonstrating your assent thereto, including clicking any button containing the words “I agree” or similar syntax. You should understand that this has the same legal effect as You placing Your physical signature on any other legal contract. You may submit a paper copy of this transaction and print this form for your personal records. You have the right to withdraw your consent to use the E-Sign Act by emailing us. Your consent to use the E-Sign Act is limited to providing the information on this form. Access to this electronic record requires a simple browser program such as Internet Explorer™ or Netscape™ and a computer.**

This Agreement is a legal contract between You and the Site. You should treat it as any other legal contract by reading its provisions carefully, as they will affect Your legal rights. By accessing the Site in any manner, You are affirmatively agreeing to be bound by all of the terms contained in this User Agreement. You may not pick and choose which terms apply to You. If You do not agree with all of the terms in this Agreement, You must cease all access and use of the Site and any other services provided by the Site.

You are solely responsible for obtaining access to the Site and that access may involve third party fees (such as Internet service provider or airtime charges). You are responsible for those fees, including those fees associated with the display or delivery of advertisements. In addition, you must provide and are responsible for all equipment necessary to access the Site (i.e., computers, modems, and software, including the most recent versions of Internet browsers, applications, and plug-ins).

## **REVISIONS TO THIS AGREEMENT**

- 1 From time to time, We may revise this Agreement. We reserve the right to do so, and You agree that We have this unilateral right. You agree that all modifications or changes to this Agreement in force and enforceable immediately upon posting. The updated or edited version supersedes any prior versions immediately upon posting, and the prior version is of no continuing legal effect unless the revised version specifically refers to the prior version and keeps the prior version or portions thereof in effect.
2. We agree that if we change anything in this Agreement, we will change the “last modified date” at the top of this Agreement. You agree to periodically re-visit this web page, and to use the “refresh” button on Your browser when doing so. You agree to note the date of the last revision to this Agreement. If the “last modified” date remains unchanged from the last time You reviewed this Agreement, then You may presume that nothing in the Agreement has been changed since the last time You read it. If the “last modified” date has changed, then You can be certain that something in the Agreement has been changed.
3. Waiver – if You fail to periodically review this Agreement to determine if any of the terms have changed, You assume all responsibility for such omission and You agree that such failure amounts to Your affirmative waiver of Your right to review the amended terms. We are not responsible for Your neglect of Your legal rights.

### **1. IMAGES AND CONTENT**

**A.** Our Site(s) contain images and content, including but not limited to text, software, images, graphics, data, messages, or any other information, and any other World Wide Website owned, operated, licensed, or controlled by the Publisher (collectively, “Materials”).

**B.** You acknowledge and stipulate that all of the Materials are expressive content that is fully protected by the First Amendment to the United States Constitution.

**C.** You acknowledge and understand that the Materials are erotic in nature – and that they contain graphic visual depictions of sexual activity and nudity, graphic audio portions of the same kind of content, and descriptions of sexually oriented and sexually explicit activities. You acknowledge that You are aware of the nature of the Materials provided

by the Publisher and that you are not offended by such Materials, and that you access the Site freely, voluntarily, and willingly, and for your own personal enjoyment.

**D.** If You are seeking information regarding any illegal activities, please leave this Site immediately. You acknowledge that you are aware of the community standards in your community, and You will only access the content on the Site if you believe that the content on the Site does not offend the community standards prevalent in Your community.

**E.** You agree not to use or access the Site if doing so would violate the laws of Your state, province, or country.

## **2. AGE OF MAJORITY AND MEMBERSHIP**

**A.** Age of Majority. You represent and warrant you are at least 18 or 21 years of age, depending on the age of majority in your jurisdiction, and that you have the legal capacity to enter into this Agreement. If you are not at least 18 or 21 years of age, depending on the age of majority in your jurisdiction, you must exit the Site immediately and may not use or access the Site and/or Network or print or download any Materials from it whatsoever. We specifically disclaim any responsibility or liability for any misrepresentations regarding a User's age.

**B.** You represent and warrant that You will not allow any minor access to this Site. Users should implement parental control protections, such as computer hardware, software, or filtering services, which may help users to limit minors' access to harmful material. You acknowledge that if Your computer can be accessed by a minor, that You will take all precautions to keep our Materials from being viewed by minors. You additionally acknowledge that if You are a parent, it is Your responsibility, and not Ours, to keep Our erotic content from being displayed to your children or wards.

**C.** Fraudulent Membership. Membership may not be transferred or sold to a third party. The Site and its affiliates disclaim any and all liability arising from fraudulent entry and use of the Site. If a user fraudulently obtains access, the Site may terminate membership immediately and take all necessary and appropriate actions under applicable federal, state, and international laws.

## **3. WE HAVE A ZERO TOLERANCE POLICY FOR CHILD PORNOGRAPHY AND A ZERO TOLERANCE POLICY REGARDING PEDOPHILES OR ANY PEDOPHILIC ACTIVITY.**

- 1.** You understand that all depictions of all persons on this Site and in all Materials produced or published by the Publisher are of persons over the age of 18 as of the date of the production of the depiction. We take great measures to ensure that no underage models appear in any of our Materials.

2. **If You seek any form of child pornography (including so-called “virtual” child pornography), you must exit this Site immediately. We do not provide this kind of material and We do not tolerate those who provide this kind of material nor do we tolerate consumers of this kind of material.**
3. **In order to further Our zero-tolerance policy, all Users agree that You will report any images, real or simulated, that appear to depict minors on our Site. If You see any images or other depictions that are questionable, You agree to report these images by emailing us at [compliance@screw.com](mailto:compliance@screw.com)**
4. **Include with your report any appropriate evidence, including the date and time of identification. All reports will immediately be investigated and the appropriate action will be taken.**
5. **We enthusiastically cooperate with any law-enforcement agency investigating child pornography. If you suspect other outside websites are participating in unlawful activities involving minors, please report them to <http://www.asacp.org>.**

#### **4. LEGAL COMPLIANCE**

You shall comply with all applicable domestic and international laws, statutes, ordinances and regulations regarding your use of our service. You are solely responsible for your actions. **IF WE DETERMINE THAT YOU INTEND TO USE THIS SITE FOR ANY ILLEGAL PURPOSES, WE EXPRESSLY RESERVE THE RIGHT TO TERMINATE YOUR MEMBERSHIP OR ACCESS TO THIS SITE IMMEDIATELY.**

#### **5. TRADEMARK INFORMATION**

**A.** Publisher and the aforementioned name of the Site is a service mark and/or trademark of the Site. The name of the Site and the name of the Publisher are considered trademarks owned by the Publisher. We aggressively defend our intellectual property rights.

**B.** Other manufacturers’ product and service names referenced herein may be trademarks and service marks of their respective companies and are the exclusive property of such respective owners, and may not be used publicly without the express written consent of the owners and/or holders of such trademarks and service marks.

**C.** All of the marks, logos, domains, and trademarks that You find on the Site may not be used publicly except with express written permission from Publisher, and may not be used in any manner that is likely to cause confusion among consumers, or in any manner that disparages or discredits Publisher.

#### **6. COPYRIGHT**

**A.** The Materials accessible from the Site, and any other World Wide Website owned, operated, licensed, or controlled by Publisher, is the Publisher’s proprietary information and valuable intellectual property and We retain all right, title, and interest in the Materials.

**B.** The Materials may not be copied, distributed, republished, modified, uploaded, posted, or transmitted in any way without the prior written consent of Publisher, except that you may print out a copy of the Materials solely for Your personal use. In doing so, you may not remove or alter, or cause to be removed or altered, any copyright, trademark, trade name, service mark, or any other proprietary notice or legend appearing on any of the Materials.

**C.** Modification or use of the Content except as expressly provided in this User Agreement violates the Publisher's intellectual property rights.

**D.** Neither title nor intellectual property rights are transferred to You by access to the Site.

**E.** All Materials included on the Site, such as text, graphics, photographs, video and audio clips, music, soundtracks, button icons, streaming data, animation, images, downloadable materials, data compilations and software is the property of the Publisher or its content suppliers and is protected by United States and international copyright laws. The compilation of all Materials on the Site is the exclusive property of the Publisher or its content suppliers and protected by United States and international copyright laws, as well as other laws and regulations.

## **7. ACCESS TO NETWORK**

**A. Access.** To access the Site and its Network or some of the resources it has to offer, you may be asked to provide certain registration details or other information. It is a condition of your use of this Site that all information you provide will be correct, current, and complete. If the Site believes the information you provide is not correct, current, or complete, the Site has the right to refuse you access to the Site or any of its resources, and to terminate or suspend your access at any time. Subject to these Terms and Conditions and in consideration of using this Site, the Site hereby grants you a limited, nonexclusive, nontransferable personal license to access and use the Site and the Materials contained therein. Provided that you are a member in good standing to the Site, you may cache the Materials onto a single computer for your personal, non-commercial internal use only. All Materials on the Site shall be for private use only, and all other uses are strictly prohibited. No Material within the Site may be transferred to any other person or entity, whether commercial or noncommercial. You agree to prevent any unauthorized copying of any of the Site, or any of the Materials contained therein. Additionally, Materials may not be modified or altered. Any unauthorized use of the Site or any of the Materials contained therein is a breach of this Agreement and terminates this limited license effective immediately. This is a license to use and access the Site and its Network for its intended purpose and is not a transfer of title. Violators of this limited license may be prosecuted to the fullest extent under the applicable law. .

## **8. RESTRICTIONS ON USE OF SITE**

**A.** You agree that You will only use the Site for purposes expressly permitted and contemplated by this User Agreement. You may not use the Site for any other purposes without Our express prior written consent.

**B.** Without Our express prior written authorization, You may not:

1. Duplicate any part of the Site or the Materials contained therein (except as expressly provided elsewhere in this Agreement);
2. Create any derivative works based on the Site or any of the Materials contained therein, and You agree and stipulate that any and all derivative works are NOT “fair use”;
3. Use the Site or any of the Materials contained therein for any public display, public performance, sale or rental, and You hereby agree and stipulate that any and all such uses are NOT “fair use”;
4. Re-distribute the Site or any of the Materials contained therein, and You hereby agree and stipulate that any and all such uses are NOT “fair use”;
5. Remove any copyright or other proprietary notices from the Site or any of the Materials contained therein;
6. Frame or utilize any framing techniques in connection with the Site or any of the Materials contained therein;
7. Use any meta-tags or any other “hidden text” using the Site’s name or marks, and You hereby stipulate that any use of the Site’s name or marks, or any other marks owned by the Publisher is an infringement upon the Publisher’s trademark rights, and You stipulate to liquidated damages of \$5000 per such infringement, plus You agree to pay any and all fees incurred in the recovery of this amount, including attorney’s fees and all associated costs.
8. “Deep-link” to any page of the Site (including the homepage), or avoid agreement to the Site’s Terms & Conditions; you may only link to the main entry page;
9. Circumvent any encryption or other security tools used anywhere on the Site (including the theft of user names and passwords or using another person’s user name and password in order to gain access to a restricted area of the Site);
10. Use any data mining, bots, or similar data gathering and extraction tools on the Site;
11. Decompile, reverse engineer, modify or disassemble any of the software aspect of the Materials except and only to the extent permitted by applicable law;
12. Sell, rent, lease, license, sublicense, transfer, distribute, re-transmit, time-share, use as a service bureau or otherwise assign to any third party the Materials or any of Your rights to access and use the Materials as granted specifically by this Agreement; or
13. Bookmark any page of the Site beyond the registration log-in screen.

**C.** You agree to cooperate with the Publisher in causing any unauthorized use to cease immediately. At any time, if the Publisher provides a service enabling users to share information or communicate with other users, You agree not to publish, disseminate, or submit any defamatory, or illegal material while using the Site or other services included on the Site. You are solely responsible for submitting any material that violates any

United States or International laws even if a claim arises after your service is terminated, and by doing so, Your actions shall constitute a material breach of this Agreement and the Site shall terminate all of Your rights under this Agreement.

**D. Interference.** Except where expressly permitted by law, You may not translate, reverse-engineer, decompile, disassemble, or make derivative works from any of the Publisher's Materials or any other Materials from Our Site. User hereby agrees not to use any automatic device or manual process to monitor or reproduce the Site or Materials, and will not use any device, software, computer code, or virus to interfere or attempt to disrupt or damage the Site or any communications on it. If You do not adhere to this provision of this Agreement, You hereby stipulate to and agree to pay liquidated damages of \$5000 plus any and all fees associated with recovery of these damages, including attorney's fees and costs.

## **9. MEMBERSHIP**

- A. Registration. You may access the non-public portion of the Network only by being a member in good standing to the Site. You may become a member of the Site by completing an online registration form. Upon submission of the online registration form, Site or its authorized agent will process the application. In connection with completing the online registration form, you agree to: (1) provide true, accurate, current and complete information about yourself as prompted by the registration form (such information being the "Registration Data") and (2) maintain and promptly update the Registration Data to keep it true, accurate, current and complete at all times while you are a member. If you provide any information that is untrue, inaccurate, not current or incomplete, or Site or any of its authorized agents have reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Site has the right to suspend or terminate your account and refuse any and all current or future use of the Site and/or Network.
- B. Fees: for Tube.Screw.com are as follows. 1 year Streaming Membership to Tube.Screw.com(Free) with 3 day Free trial subscription (\$0.00) to Pornking.com. Also included is a 1 Year Free Membership to www.SexKey.com. Please Note: If you do not want to continue your membership to PornKing.com, your membership must be cancelled within the trial period or it will be billed at the then current price presented to consumers during the Membership signup process . To cancel your trial or recurring membership, go to [www.ccbill.com](http://www.ccbill.com)(copy url into browser). Looking for Tube.Screw support please email [support@Screw.com](mailto:support@Screw.com) .

**. A Consumer may upgrade a Streaming Only Membership to a Full Membership at any time.**

Full Membership: Full Memberships are Recurring Monthly Subscriptions meaning that you will automatically be billed at the Full Membership rate

presented and disclosed during the signup process until you cancel your membership. Full Memberships provide UNLIMITED ACCESS to website functionality as disclosed during the signup process. Such UNLIMITED ACCESS includes but is not limited to the ability to stream and download any website content. Tube.Screw.Com employs an automatic rebill procedure to ensure continuity of service. Tube.Screw reserves the right to change any Membership fees at any time, with or without prior notice to you. Tube.Screw posts the current membership fees for the Site as part of the registration process.

- C. Notice Regarding Cross Selling: You may be asked to join one or more additional websites as a benefit of joining this Site. In the event you accept an invitation to join such additional websites after joining this Site, you thereby provide your express consent to any such websites accessing the information you provided when joining this Site.
- D. Member Account, Password and Security. As part of the registration process, you will be provided a unique user name and password which you must provide in order to gain access to the non-public portion of Tube.Screw.com. You represent and warrant that you will not disclose to any other person your unique user name and password and that you will not provide access to the Site and/or Network to anyone who is below the age of majority in your jurisdiction. You are solely responsible for maintaining the confidentiality of your user name and password and are fully responsible for all activities that occur under your user name and password. You agree to (1) immediately notify Site of any unauthorized use of your user name and password or any other breach of security, and (2) ensure that you exit from your account at the end of each session. You will remain liable for any unauthorized use of the service until such time as you notify the Site concerning a breach of security. Membership to the Site may not be assigned or transferred to another person or entity.

## **10. TERMINATION**

Without limiting other remedies, the Site may immediately issue a warning, temporarily suspend, indefinitely suspend or terminate your use of the Site and/or Network and refuse to provide our services to you, with or without advance notice, if: (a) if the Site believes that you have breached any material term of this Agreement or the documents it incorporates by reference; (b) if we are unable to verify or authenticate any information you provide to us; (c) if we believe that your actions may cause legal liability for you, our users or us; or (d) if the Site decides to cease operations or to otherwise discontinue any part of the Site and/or Network. Further, you agree that neither the Site nor any third party acting on our behalf shall be liable to you for any termination of your access to any of the Network. You agree that if your account is terminated by Tube.Screw, you will not attempt to re-register as a member without prior written consent from Tube.Screw.

## **11. NOTICE**

**A. Notice.** Any notice required to be given under this Agreement may be provided by email to a functioning email address of the party to be noticed, by a general posting on the Site, or personal delivery by commercial carrier such as Federal Express or Airborne. Notices by customers to Publisher shall be given by electronic messages unless otherwise specified in the Agreement.

**B. Change of Address.** Either party may change the address to which notice is to be sent by written notice to the other party pursuant to this provision of the Agreement.

**C. When Notice is Effective.** Notices shall be deemed effective upon delivery. Notices delivered by overnight carrier (e.g., United States Express Mail or Federal Express) shall be deemed delivered on the business day following mailing. Notices mailed by United States Mail, postage prepaid, registered or certified with return receipt requested, shall be deemed delivered five (5) days after mailing. Notices delivered by any other method shall be deemed given upon receipt. Notices by email and facsimile transmission, with confirmation from the transmitting machine that the transmission was completed, are acceptable under this Agreement provided that they are delivered one (1) hour after transmission if sent during the recipient's business hours, or 9:00 a.m. (recipient's time) the next business day. Either Party may, by giving the other Party appropriate written notice, change the designated address, fax number and/or recipient for any notice or courtesy copy, hereunder.

**D. Refused, Unclaimed, or Undeliverable Notice.** Any correctly addressed notice that is refused, unclaimed, or undeliverable, because of an act or omission of the Party to be notified shall be deemed effective as of the first date that said notice was refused or deemed undeliverable by the postal authorities, messenger, facsimile machine, email server, or overnight delivery service.

## **12. DISCLAIMER OF WARRANTY**

**A. You expressly agree that use of the Site or any of the Materials contained therein is at Your own and sole risk. You also understand and agree that any material and/or data downloaded or otherwise obtained through the use of the Site or any of the materials contained therein is done at Your own discretion and risk and that You will be solely responsible for any damage to your computer system or loss of data that results from the download of such material and/or data.**

**B. The Site and all materials contained therein are provided “as is” without warranty of any kind, either express or implied, including but not limited to, any implied warranties of merchantability, fitness for a particular purpose, title, or non-infringement.**

**C. Publisher makes no representations or warranties that the Site or any materials contained therein will be uninterrupted, timely, secure, or error free; nor does Publisher make any representations or warranties as to the quality, suitability,**

truth, usefulness, accuracy, or completeness of the Site or any of the materials contained therein.

**E. You understand that Publisher cannot and does not guarantee or warrant that files available for downloading from the internet will be free of viruses, worms, Trojan horses, or other code that may manifest contaminating or destructive properties. Publisher does not assume any responsibility or risk for Your use of the internet.**

**F. Publisher makes no warranty regarding any goods or services purchased or obtained through the Site or any transaction entered into through the Site and is not responsible for any use of confidential or private information by sellers or third parties.**

**G. Publisher may change any of the information found on this Site at any time without notice including this User Agreement without notice. Site owner makes no commitment to update the information found at this Site. Site makes no commitment to update the materials.**

**H. The warranties and representations set forth in this Agreement are the only warranties and representations with respect to this Agreement, and are in lieu of any and all other warranties, written or oral, express or implied, that may arise either by agreement between the parties or by operation of law, including warranties of merchantability and fitness for a particular purpose. None of these warranties and representations will extend to any third person.**

### **13. LIMITATION OF LIABILITY**

**A. In no event shall Publisher (or its licensors, agents, suppliers, resellers, service providers, or any other subscribers or suppliers) be liable to You, or any other third party for any direct, special, indirect, incidental, consequential, exemplary, or punitive damages, including without limitation, damages for loss of profits, loss of information, business interruption, revenue, or goodwill, which may arise from any person's use, misuse, or inability to use the Site or any of the materials contained therein, even if Publisher has been advised of the probability of such damages. This is for any matter arising out of or relating to this Agreement, whether such liability is asserted on the basis of contract, tort or otherwise, even if Publisher has been advised of the possibility of such damages.**

**B. In no event shall Publisher's maximum total aggregate liability hereunder for direct damages exceed the total fees actually paid by You for use of a Site or Site for a period of no more than one (1) month from the accrual of the applicable cause or causes of action. Because some jurisdictions prohibit the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to You.**

## **14. INDEMNITY**

You agree to defend, indemnify, and hold harmless the Site, its officers, directors, shareholders, employees, independent contractors and agents, from and against any and all claims, actions, liabilities, costs, or demands, including without limitation legal and accounting fees, for all damages directly, indirectly, and/or consequentially resulting or allegedly resulting from your, or you under another person's authority including without limitation to governmental agencies, use, misuse, or inability to use the Site or any of the Materials contained therein, or your breach of any of these Terms and Conditions. The Site shall promptly notify you by electronic mail of any such claim or suit, and cooperate fully (at your expense) in the defense of such claim or suit. The Site may participate in the defense of such claim or defense at its own expense, and choose its own legal counsel, but is not obligated to do so.

## **15. LINKS**

**A.** Some websites which are linked to the Site are owned and operated by third parties. Because the Publisher has no control over such websites and resources, You acknowledge and agree that Publisher is not responsible or liable for the availability of such external websites or resources, and does not screen or endorse them, and is not responsible or liable for any content, advertising, services, products, or other materials on or available from such websites or resources.

**B.** You further acknowledge and agree that Publisher shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such third-party content, goods or services available on or through any such website or resource. If You decide to access any such third party website, you do so entirely at Your own risk and subject to any terms and conditions and privacy policies posted therein.

**C.** Users further acknowledge that use of any website controlled, owned or operated by third parties is governed by the terms and conditions of use for those websites, and not by this Site's User Agreement, Spam Policy, Webmaster Agreement, or Privacy Policy, which are incorporated into this Agreement by reference.

**D.** Links to external websites (including external websites that are framed by the Site) or inclusions of advertisements do not constitute an endorsement by the Publisher of such websites or the content, products, advertising, or other materials presented on such Site, but are for user's convenience.

**E.** All users do hereby agree to hold the Publisher harmless from any and all damages and liability that may result from the use of links that may appear on the Site. The Publisher reserves the right to terminate any link or linking program at anytime.

## **16. PRIVACY AND SPAM POLICIES**

Our Privacy Policy is hereby incorporated by reference. For more information about this Policy, review them online or contact us in writing.

## **17. NOTICE OF CLAIMED INFRINGEMENT**

The Publisher respects the intellectual property of others, and we ask our users to do the same. We voluntarily observe and comply with the United States' Digital Millennium Copyright Act. If You believe that Your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide Publisher's Designated Copyright Agent the following information:

- A.** An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- B.** Description of the copyrighted work or other intellectual property that you claim has been infringed;
- C.** A description of where the material that you claim is infringing is located on a Site;
- D.** Your address, telephone number, and email address;
- E.** A statement by You that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- F.** A statement by You, made under penalty of perjury, that the above information in your Notice is accurate and that You are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.
- G.** You may send your Notice of Claimed Infringement to:

Lawrence G. Walters, Esquire  
Weston, Garrou, DeWitt & Walters  
781 Douglas Avenue  
Altamonte Springs, FL 32714  
**Phone:** (407) 389-4529  
**Fax:** (407) 774-6151  
[Notice@DMCANotice.com](mailto:Notice@DMCANotice.com)

Please do not send other inquires or information to our Designated Agent.

## **NOTICE AND TAKEDOWN PROCEDURES:**

The Publisher implements the following "notice and takedown" procedure upon receipt of any notification of claimed copyright infringement:

- A.** The Publisher reserves the right at any time to disable access to, or remove any material or activity accessible on or from the Site or any Materials claimed to be infringing or based on facts or circumstances from which infringing activity is apparent.

**B.** It is the firm policy of the Publisher to terminate the account of repeat copyright infringers, when appropriate, and the Publisher will act expeditiously to remove access to all material that infringes on another's copyright, according to the procedure set forth in 17 U.S.C. §512 of the Digital Millennium Copyright Act ("DMCA"). The Publisher's DMCA Notice Procedures are set forth in the preceding paragraph. If the notice does not comply with Paragraph 19 and §512 of the DMCA, but does comply with three requirements for identifying Site that is infringing according to §512 of the DMCA, the Publisher shall attempt to contact or take other reasonable steps to contact the complaining party to help that party comply with the notice requirements.

**C.** When the Designated Agent receives a valid notice, the Publisher will expeditiously remove and/or disable access to the infringing material and shall notify the affected user. Then, the affected user may submit a counter-notification to the Designated Agent containing a statement made under penalty of perjury that the user has a good faith belief that the material was removed because of misidentification of the material. After the Designated Agent receives the counter-notification, it will replace the material at issue within 10-14 days after receipt of the counter-notification unless the Designated Agent receives notice that a court action has been filed by the complaining party seeking an injunction against the infringing activity.

## **19. GENERAL PROVISIONS**

**A. Governing Law.** These Terms and Conditions and all matters arising out of or otherwise relating to these Terms and Conditions shall be governed by the laws of the State of New Jersey, excluding its conflict of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Terms and Conditions. The parties hereby submit to the personal jurisdiction of the state and federal courts of the State of New Jersey. Exclusive venue for any litigation or arbitration permitted under this Agreement shall be with the state and federal courts located in Monmouth County, New Jersey..

**B. Rights to Injunctive Relief.** Both parties acknowledge that remedies at law may be inadequate to provide an aggrieved party with full compensation in the event of the other party's breach, and that an aggrieved party shall therefore be entitled to seek injunctive relief in the event of any such breach, in addition to seeking all other remedies available at law or in equity.

**C. Arbitration.** If there is a dispute between the parties arising out of or otherwise relating to these Terms and Conditions, the parties shall meet and negotiate in good faith to attempt to resolve the dispute. If the parties are unable to resolve the dispute through direct negotiations, then, except as otherwise provided herein, either party may submit the issue to binding arbitration in accordance with the then-existing Commercial Arbitration Rules of the American Arbitration Association. Arbitral Claims shall include, but are not limited to, contract and tort claims of all kinds, and all claims based on any

federal, state or local law, statute, or regulation, excepting only claims under applicable worker's compensation law and unemployment insurance claims. The arbitration shall be conducted in Monmouth County, New Jersey, and conducted by a single arbitrator, knowledgeable in Internet and e-Commerce. The party bringing the action shall be responsible for paying all costs for arbitration, including the arbitrator's fees. Each party shall bear its own attorneys' fees (except if the matter is for the collection of a debt owed in which case the prevailing party shall be awarded its attorneys fees, all arbitration costs and the arbitrator fees (if applicable), in addition to all other applicable remedies). The arbitrator shall have no authority to award any punitive or exemplary damages; certify a class action; add any parties; vary or ignore the provisions of these Terms and Conditions; and shall be bound by governing and applicable law. The arbitrator shall render a written opinion setting forth all material facts and the basis of his or her decision within thirty (30) days of the conclusion of the arbitration proceeding. This Section shall not apply to any breach (or any allegation which if true would constitute a breach) of any matter relating to intellectual property. **THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRAL CLAIMS.**

D. Assignment. Neither these Terms and Conditions nor any rights granted hereunder may be sold, leased, assigned or otherwise transferred, in whole or in part by you.

E. Severability. If for any reason a court of competent jurisdiction or an arbitrator finds any provision of these Terms and Conditions, or any portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible and the remainder of these Terms and Conditions will continue in full force and effect.

F. No Waiver. Failure by either party to enforce any provision of these Terms and Conditions will not be deemed a waiver of future enforcement of that or any other provision, and no waiver of one breach will constitute a waiver of subsequent breaches of the same or of a different nature.

G. Complete Agreement. These Terms and Conditions constitute the entire agreement between the parties with respect to your access and use of the Network and the Materials contained therein, and your membership with any of the network, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter (except, to the extent applicable, any Download Agreement or similar contract governing the parties' rights and responsibilities in connection with any specific Materials downloadable from the Network). No amendment to or modification of these Terms and Conditions will be binding unless in writing and signed by a duly authorized representative of both parties.

H. Relationship Between the Parties. Site is an independent contractor; nothing in these Terms and Conditions shall be construed to create a partnership, joint venture or agency relationship between the parties.

I. Headings. Section and subsection headings of these Terms and Conditions are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

J. *Force Majeure*. Site shall not be responsible for any failure to perform due to unforeseen circumstances or to causes beyond its reasonable control, including but not limited to: acts of God, such as fire, flood, earthquakes, hurricanes, tropical storms or other natural disasters; war, riot, arson, embargoes, acts of civil or military authority, or terrorism; fiber cuts; strikes, or shortages in transportation, facilities, fuel, energy, labor or materials; failure of the telecommunications or information services infrastructure; hacking, SPAM, or any failure of a computer, server, network or software, including Y2K errors or omissions, for so long as such event continues to delay Site' performance.

K. Export. You understand and acknowledge that the software elements of the Materials may be subject to regulation by agencies of the U.S. Government, including the U.S. Department of Commerce, which prohibits export or diversion of software to certain countries and third parties. You will not assist or participate in any such diversion or other violation of applicable U.S. laws and regulations. You warrant that you will not license or otherwise permit anyone not approved to receive controlled commodities under applicable U.S. laws and regulations and that you will abide by such laws and regulations.

L. Government Rights. The software elements of the Materials have been developed at private expense and is "commercial computer software" or "restricted computer software" within the meaning of the FARs, the DFARS, and any other similar regulations relating to government acquisition of computer software. Nothing contained herein will be deemed to: (1) grant any government agency any license or other rights greater than are mandated by statute or regulation for commercial computer software developed entirely at private expense, or (2) restrict any government rights in any extensions or custom solutions provided hereunder and developed at government expense.

M. Other Jurisdictions. Site makes no representation that this Site or any of the Materials contained herein are appropriate or available for use in other locations, and access to them from territories where their content may be illegal or is otherwise prohibited. Those who choose to access this Site from such locations do on their own initiative and are solely responsible for compliance with all applicable local laws.

## **20. CONSUMER RIGHTS INFORMATION -- CALIFORNIA RESIDENTS ONLY**

The Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs may be contacted in writing at 1020 N. Street, #501, Sacramento, CA 95814, or by telephone at 1-916-445-1254 or (800) 952-5210.

Users who wish to gain access to the Site must be in good standing. Users may contact the Site through our customer service email: [support@Screw.com](mailto:support@Screw.com), in order to receive further information about the Site.

This document was prepared by Lawrence G. Walters, Esq., of  
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