

Terms of Service

Last Updated: March 25, 2022

Welcome, and thank you for your interest in Daydreamers Space, Inc. ("**Daydreamers**," "**we**," or "**us**") and our website at www.daydreamerspace.com, along with our related websites, applications, mobile applications, and other services provided by us (collectively, the "**Service**"). These Terms of Service are a legally binding contract between you and Daydreamers regarding your use of the Service.

PLEASE READ THE FOLLOWING TERMS CAREFULLY:

BY CLICKING "I ACCEPT," OR BY DOWNLOADING, INSTALLING, OR OTHERWISE ACCESSING OR USING THE SERVICE, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF THE SERVICE, YOU AGREE TO BE BOUND BY, THE FOLLOWING TERMS AND CONDITIONS, INCLUDING DAYDREAMERS' PRIVACY POLICY (TOGETHER, THESE "**TERMS**"). IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THE TERMS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE SERVICE. YOUR USE OF THE SERVICE, AND DAYDREAMERS' PROVISION OF THE SERVICE TO YOU, CONSTITUTES AN AGREEMENT BY DAYDREAMERS AND BY YOU TO BE BOUND BY THESE TERMS.

ARBITRATION NOTICE. Except for certain kinds of disputes described in Section 17, you agree that disputes arising under these Terms will be resolved by binding, individual arbitration, and BY ACCEPTING THESE TERMS, YOU AND DAYDREAMERS ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. (See Section 17.)

- 1. Daydreamers Service Overview.** Daydreamers is a creative wellbeing membership that empowers you to take proactive care of your wellbeing (e.g. physical, mental, emotional, interpersonal, etc.). Daydreamers offers a range of independent and guided wellbeing experiences through our platform available on desktop, iOS, and Android. Daydreamers employs or contracts individuals to provide wellbeing information and guide discussion sessions for general information purposes only (each a "**Coach**"). Users follow a journey based on specified tools focused on creative behaviors. Users may chat with a Coach for support on how to use their tools for specific goals. The Service is not intended to provide medical advice or diagnose or treat any disease, disorder, or medical condition.
- 2. Daydreamers is not a Healthcare Provider.** Daydreamers is not a medical or healthcare service provider. All information and content, including text, graphics, images and information, contained on or available through the Service is for general information purposes only and is not intended or implied to be a substitute for professional medical advice, diagnosis, treatment, or recommendations of any kind by Daydreamers. Daydreamers makes no representation and assumes no responsibility for the accuracy of information or content contained on or available through the Service, and such information and content is subject to change without notice. All such information and content provided by Daydreamers or in connection with any communications supported by Daydreamers is intended to be for general information purposes only, and is in no way intended to create a provider-patient relationship as defined by state or federal law. You are encouraged to confirm any information obtained from or through the Service with other sources

and review all information regarding any medical condition or treatment with your physician. You should always seek the advice of your qualified health care professionals with any questions or concerns you may have regarding your individual needs and any medical conditions. NEVER DISREGARD PROFESSIONAL MEDICAL ADVICE OR DELAY SEEKING MEDICAL TREATMENT BECAUSE OF SOMETHING YOU HAVE READ ON OR ACCESSED THROUGH THE SERVICE.

Daydreamers does not recommend, endorse or make any representation about the efficacy, appropriateness or suitability of any specific tests, practices, products, procedures, treatments, opinions, health care providers or other information that may be contained on or available through the Service. Your interactions with a Coach are not intended to replace your relationship with your regular healthcare practitioners or primary care physician. DAYDREAMERS IS NOT RESPONSIBLE NOR LIABLE FOR ANY ADVICE, COURSE OF TREATMENT, DIAGNOSIS OR ANY OTHER THIRD-PARTY INFORMATION, SERVICE OR PRODUCTS THAT YOU OBTAIN THROUGH THE SERVICE.

3. **Eligibility.** You must be at least 18-years old to use the Service. By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 18-years old; (b) you have not previously been suspended or removed from the Service; and (c) your registration and your use of the Service is in compliance with any and all applicable laws and regulations. If you are an entity, organization, or company, the individual accepting these Terms on your behalf represents and warrants that they have authority to bind you to these Terms and you agree to be bound by these Terms.
4. **Accounts and Registration.** To access features of the Service, you must register for an account. When you register for an account, you may be required to provide us with some information about yourself, such as your name, email address, or other contact information. You agree that the information you provide to us is accurate and that you will keep it accurate and up to date at all times. When you register, you will be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password, and you accept responsibility for all activities that occur under your account. If you believe that your account is no longer secure, then you must immediately notify us at hello@daydreamerspace.com.
5. **General Payment Terms.** Certain features of the Service may require you to pay fees. Before you pay any fees, you will have an opportunity to review and accept the fees that you will be charged. All fees are in U.S. Dollars and are non-refundable.
 - 5.1 **Price.** Daydreamers reserves the right to determine pricing for the Service. Daydreamers will make reasonable efforts to keep pricing information published on the website up to date. We encourage you to check our website periodically for current pricing information. Daydreamers may change the fees for any feature of the Service, including additional fees or charges, if Daydreamers gives you advance notice of changes before they apply. Daydreamers, at its sole discretion, may make promotional offers with different features and different pricing to any of Daydreamers' customers. These promotional offers, unless made to you, will not apply to your offer or these Terms.
 - 5.2 **Authorization.** You authorize Daydreamers to charge all sums for the orders that you make and any level of Service you select as described in these Terms or published by Daydreamers, including all applicable taxes, to the payment method specified in your account. If you pay any fees with a credit card, Daydreamers may seek pre-authorization of your credit card account prior to your purchase to verify that the credit card is valid and has the necessary funds or credit available to cover your purchase. Payment processing services for Daydreamers, including the processing and storing of credit card data,

are provided by Stripe Inc. ("**Stripe**") and are subject to the Stripe Services Agreement — United States available at www.stripe.com/legal ("**Stripe Services Agreement**"). By agreeing to these terms and continuing to use Daydreamers, you agree to be bound by the Stripe Services Agreement, as the same may be modified by Daydreamers from time to time. As a condition of Daydreamers enabling payment processing services through Stripe, you agree to provide Daydreamers accurate and complete information about you and your business, and you authorize Daydreamers to share with Stripe this information and transaction information related to your use of the payment processing services provided by Stripe, as further described in our Privacy Policy.

- 5.3 **Subscription Service.** The Service may include automatically recurring payments for periodic charges ("**Subscription Service**"). If you activate a Subscription Service, you authorize Daydreamers to periodically charge, on a going-forward basis and until cancellation of either the recurring payments or your account, all accrued sums on or before the payment due date for the accrued sums. The "**Subscription Billing Date**" is the date when you purchase your first subscription to the Service. For information on the "**Subscription Fee**," please see our sign up page. Your account will be charged automatically on the Subscription Billing Date all applicable fees and taxes for the next subscription period. The subscription will continue unless and until you cancel your subscription or we terminate it. You must cancel your subscription before it renews in order to avoid billing of the next periodic Subscription Fee to your account. We will bill the periodic Subscription Fee to the payment method you provide to us during registration (or to a different payment method if you change your payment information). You may cancel the Subscription Service by contacting us at hello@daydreamerspace.com. You may temporarily suspend your subscription once per calendar year for personal reasons for a minimum of one (1) month to a maximum of three (3) months. Billing for your Subscription Fee will be paused during this period (the "**FreezePeriod**").
- 5.4 **Delinquent Accounts.** Daydreamers may suspend or terminate access to the Service, including fee-based portions of the Service, for any account for which any amount is due but unpaid. In addition to the amount due for the Service, a delinquent account will be charged with fees or charges that are incidental to any chargeback or collection of any the unpaid amount, including collection fees.

6. Licenses

- 6.1 **Limited License.** Subject to your complete and ongoing compliance with these Terms, Daydreamers grants you, solely for your personal, non-commercial use, a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to: (a) install and use one object code copy of any mobile application associated with the Service obtained from a legitimate marketplace (whether installed by you or pre-installed on your mobile device by the device manufacturer) on a mobile device that you own or control; and (b) access and use the Service.
- 6.2 **License Restrictions.** Except and solely to the extent such a restriction is impermissible under applicable law, you may not: (a) reproduce, distribute, publicly display, or publicly perform the Service; (b) make modifications to the Service; or (c) interfere with or circumvent any feature of the Service, including any security or access control mechanism. If you are prohibited under applicable law from using the Service, you may not use it.

6.3 Feedback. If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Service ("**Feedback**"), then you hereby grant Daydreamers an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Service and create other products and services.

7. Ownership; Proprietary Rights. The Service is owned and operated by Daydreamers. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Service ("**Materials**") provided by Daydreamers are protected by intellectual property and other laws. All Materials included in the Service are the property of Daydreamers or its third-party licensors. Except as expressly authorized by Daydreamers, you may not make use of the Materials. Daydreamers reserves all rights to the Materials not granted expressly in these Terms.

8. Third-Party Terms

8.1 Third-Party Services and Linked Websites. Daydreamers may provide tools through the Service that enable you to export information, including User Content (defined below), to third-party services. By using one of these tools, you agree that Daydreamers may transfer that information to the applicable third-party service. Third-party services are not under Daydreamers' control, and, to the fullest extent permitted by law, Daydreamers is not responsible for any third-party service's use of your exported information. The Service may also contain links to third-party websites. Linked websites are not under Daydreamers' control, and Daydreamers is not responsible for their content.

8.2 Third-Party Software. The Service may include or incorporate third-party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute those components ("**Third-Party Components**"). Although the Service is provided to you subject to these Terms, nothing in these Terms prevents, restricts, or is intended to prevent or restrict you from obtaining Third-Party Components under the applicable third-party licenses or to limit your use of Third-Party Components under those third-party licenses.

8.3 Coach Support. Participation in Coach support will require use of the Zoom video conferencing service (the "**Zoom Service**"). I acknowledge that my use of the Zoom Service is governed by the Zoom Terms of Service, available at <https://zoom.us/terms>. The Zoom Service is not provided by Daydreamers and Daydreamers is not liable for the Zoom Service.

9. User Content

9.1 User Content Generally. Certain features of the Service may permit users to upload content to the Service, including messages, reflections, photos, video, images, data, text, and other types of works ("**User Content**") and to publish User Content on the Service. You retain any copyright and other proprietary rights that you may hold in the User Content that you post to the Service.

9.2 Limited License Grant to Daydreamers. By providing User Content to or via the Service, you grant Daydreamers a worldwide, non-exclusive, irrevocable, royalty-free, fully paid right and license (with the right to sublicense) to host, store, transfer, display, perform, reproduce, modify for the purpose of formatting for display, and distribute your User Content, in whole or in part, in any media formats and through any media channels now known or hereafter developed.

9.3 Limited License Grant to Other Users. By providing User Content to or via the Service to other users of the Service, you grant those users a non-exclusive license to access and use that User Content as permitted by these Terms and the functionality of the Service.

9.4 User Content Representations and Warranties. Daydreamers disclaims any and all liability in connection with User Content. You are solely responsible for your User Content and the consequences of providing User Content via the Service. By providing User Content via the Service, you affirm, represent, and warrant to us that:

- a. you are the creator and owner of the User Content, or have the necessary licenses, rights, consents, and permissions to authorize Daydreamers and users of the Service to use and distribute your User Content as necessary to exercise the licenses granted by you in this Section, in the manner contemplated by Daydreamers, the Service, and these Terms;
- b. your User Content, and the use of your User Content as contemplated by these Terms, does not and will not: (i) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; or (iii) cause Daydreamers to violate any law or regulation; and
- c. your User Content could not be deemed by a reasonable person to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate.

9.5 User Content Disclaimer. We are under no obligation to edit or control User Content that you or other users post or publish and will not be in any way responsible or liable for User Content. Daydreamers may, however, at any time and without prior notice, screen, remove, edit, or block any User Content that in our sole judgment violates these Terms or is otherwise objectionable. You understand that, when using the Service, you will be exposed to User Content from a variety of sources and acknowledge that User Content may be inaccurate, offensive, indecent, or objectionable. You agree to waive, and do waive, any legal or equitable right or remedy you have or may have against Daydreamers with respect to User Content. If notified by a user or content owner that User Content allegedly does not conform to these Terms, we may investigate the allegation and determine in our sole discretion whether to remove the User Content, which we reserve the right to do at any time and without notice. For clarity, Daydreamers does not permit copyright-infringing activities on the Service.

9.6 Monitoring Content. Daydreamers does not control and does not have any obligation to monitor: (a) User Content; (b) any content made available by third parties; or (c) the use of the Service by its users. You acknowledge and agree that Daydreamers reserves the right to, and may from time to time, monitor any and all information transmitted or received through the Service for operational and other purposes. If at any time Daydreamers chooses to monitor the content, Daydreamers still assumes no responsibility or liability for content or any loss or damage incurred as a result of the use of content. During monitoring, information may be examined, recorded, copied, and used in accordance with our Privacy Policy (defined below).

10. Communications

10.1 **Push Notifications.** When you install our app on your mobile device, you agree to receive push notifications, which are messages an app sends you on your mobile device when the app is not on. You can turn off notifications by visiting your mobile device's "settings" page.

10.2 **Email.** We may send you emails concerning our products and services, as well as those of third parties. You may opt out of promotional emails by following the unsubscribe instructions in the promotional email itself.

11. Prohibited Conduct. BY USING THE SERVICE, YOU AGREE NOT TO:

- a. use the Service for any illegal purpose or in violation of any local, state, national, or international law;
- b. harass, threaten, demean, embarrass, bully, or otherwise harm any other user of the Service, including but not limited to by using slurs, intentional use of derogatory language, explicitly violent language, threats or implied threats to other users or Coaches, and disparaging comments toward or about any users or Coaches;
- c. share or display nudity in any form;
- d. violate, or encourage others to violate, any right of a third party, including by infringing or misappropriating any third-party intellectual property right;
- e. interfere with security-related features of the Service, including by: (a) disabling or circumventing features that prevent or limit use or copying of any content; or (b) reverse engineering or otherwise attempting to discover the source code of any portion of the Service except to the extent that the activity is expressly permitted by applicable law;
- f. interfere with the operation of the Service or any user's enjoyment of the Service, including by: (i) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (ii) making any unsolicited offer or advertisement to another user of the Service; (iii) collecting personal information about another user or third party without consent; or (iv) interfering with or disrupting any network, equipment, or server connected to or used to provide the Service;
- g. perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation, accessing any other Service account without permission, or falsifying your age or date of birth;
- h. record, photograph, or screen-capture any portion of a chat with a Coach;
- i. sharing any personal information about other users learned, including but not limited to names, locations, details from stories that jeopardize the anonymity of users, and any other identifying information;
- j. sell or otherwise transfer the access granted under these Terms or any Materials (as defined in Section 6) or any right or ability to view, access, or use any Materials; or

k. attempt to do any of the acts described in this Section 10 or assist or permit any person in engaging in any of the acts described in this Section 10.

12. **Safety.** We require safety and respect of and for all users and Coaches. To ensure safety and respect for all, inappropriate behavior is not permitted under any circumstance. Daydreamers reserves the right to remove any user and cancel their membership if they engage in inappropriate behavior, including but not limited to the Prohibited Conduct outlined in Section 11 above. Users who are removed for violating our safety and respect standards will not be issued a refund.

13. **Copyright and Intellectual Property Protection**

13.1 **DMCA Notification.** We comply with the provisions of the Digital Millennium Copyright Act applicable to Internet service providers (17 U.S.C. § 512, as amended). If you have an intellectual property rights-related complaint about material posted on the Service, you may contact our Designated Agent at the following address:

Daydreamers Space, Inc.
Attn: Legal Department (Copyright Notification)
Email: dupi@daydreamerspace.com

13.2 **Content of Notification.** Any notice alleging that materials hosted by or distributed through the Service infringe intellectual property rights must include 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 right being infringed;
- b. a description of the copyrighted work or other intellectual property that you claim has been infringed;
- c. a description of the material that you claim is infringing and where it is located on the Service;
- d. your address, telephone number, and email address;
- e. a statement by you that you have a good faith belief that the use of the materials on the Service of which you are complaining is not authorized by the copyright or intellectual property owner, its agent, or the law; and
- f. a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

13.3 **Repeat Infringers.** Daydreamers will promptly terminate the accounts of users that are determined by Daydreamers to be repeat infringers.

14. **Modification of Terms.** We reserve the right to change these Terms on a going-forward basis at any time upon 7 days' notice. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, we may require that you accept the modified Terms in order to continue to use the Service. Material modifications are effective upon the earliest of your receipt of notice or acceptance of the modified Terms. Immaterial modifications are effective upon publication. Except as expressly permitted in this Section 12, these Terms may be amended only by a written agreement signed by authorized representatives of the parties to these Terms. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose.

15. Term, Termination, and Modification of the Service

15.1 **Term.** These Terms are effective beginning when you accept the Terms or first download, install, access, or use the Service, and ending when terminated as described in Section 13.2.

15.2 **Termination.** If you violate any provision of these Terms, your authorization to access the Service and these Terms automatically terminate. In addition, Daydreamers may, at its sole discretion, terminate these Terms or your account on the Service, or suspend or terminate your access to the Service, at any time for any reason or no reason, with or without notice.

15.3 **Effect of Termination.** Upon termination of these Terms: (a) your license rights will terminate and you must immediately cease all use of the Service; (b) you will no longer be authorized to access your account or the Service; (c) you must pay Daydreamers any unpaid amount that was due prior to termination; and (d) all payment obligations accrued prior to termination and Sections 5.3, 6, 13.3, 14, 15, 16, 16.3 and 17.9 will survive.

15.4 **Modification of the Service.** Daydreamers reserves the right to modify or discontinue the Service at any time (including by limiting or discontinuing certain features of the Service), temporarily or permanently, without notice to you. Daydreamers will have no liability for any change to the Service or any suspension or termination of your access to or use of the Service.

16. **Indemnity.** To the fullest extent permitted by law, you are responsible for your use of the Service, and you will defend and indemnify Daydreamers, its affiliates and their respective shareholders, directors, managers, members, officers, employees, contractors, consultants, and agents (together, the "**Daydreamers Entities**") from and against every claim brought by a third party, and any related liability, damage, loss, and expense, including attorneys' fees and costs, arising out of or connected with: (a) your unauthorized use of, or misuse of, the Service; (b) your violation of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation; (c) your violation of any third-party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (d) any dispute or issue between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter

otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims.

17. Disclaimers; No Warranties

17.1 THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. DAYDREAMERS DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING: (a) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, RESULTS OR NON-INFRINGEMENT; AND (b) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. DAYDREAMERS DOES NOT WARRANT THAT THE SERVICE OR ANY PORTION OF THE SERVICE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND DAYDREAMERS DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

17.2 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE OR DAYDREAMERS ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE DAYDREAMERS ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE SERVICE AND YOUR DEALING WITH ANY OTHER SERVICE USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE SERVICE AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE SERVICE) OR ANY LOSS OF DATA, INCLUDING USER CONTENT.

17.3 Neither Daydreamers, nor any of its subsidiaries or affiliates or any third party who may promote the Service or provide a link to the Service, shall be liable for any information or advice obtained from a Coach via the Service, nor any information obtained on the Service. Daydreamers does not recommend or endorse any specific tests, physicians, medications, products, or procedures. You acknowledge that your reliance on any information delivered by a Coach via the Service is solely at your own risk and you assume full responsibility for all risks associated herewith. Daydreamers does not make any representations or warranties about the training or skill of any Coach who delivers services via the Service.

17.4 THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS IN THIS SECTION 15 APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. Daydreamers does not disclaim any warranty or other right that Daydreamers is prohibited from disclaiming under applicable law.

18. Limitation of Liability

18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE DAYDREAMERS ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY

DAYDREAMERS ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.

18.2 EXCEPT AS PROVIDED IN SECTION 17.6 AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE DAYDREAMERS ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE SERVICE OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE GREATER OF: (a) THE AMOUNT YOU HAVE PAID TO DAYDREAMERS FOR ACCESS TO AND USE OF THE SERVICE IN THE 12 MONTHS PRIOR TO THE EVENT OR CIRCUMSTANCE GIVING RISE TO THE CLAIM AND (b) US\$100.

18.3 EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 16 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

19. Dispute Resolution and Arbitration

19.1 **Generally.** In the interest of resolving disputes between you and Daydreamers in the most expedient and cost effective manner, and except as described in Section 17.2 and 17.4, you and Daydreamers agree that every dispute arising in connection with these Terms will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND DAYDREAMERS ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

19.2 **Exceptions.** Despite the provisions of Section 17.1, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law in aid of arbitration; or (d) to file suit in a court of law to address an intellectual property infringement claim.

19.3 **Opt-Out.** If you do not wish to resolve disputes by binding arbitration, you may opt out of the provisions of this Section 17 within 30 days after the date that you agree to these Terms by sending a letter to Daydreamers Space, Inc., Attention: Legal Department – Arbitration Opt-Out, dupi@daydreamerspace.com that specifies: your full legal name, the email address associated with your account on the Service, and a statement that you wish to opt out of arbitration ("**Opt-Out Notice**"). Once Daydreamers receives your Opt-Out Notice, this Section 17 will be void and any action arising out of these Terms will be resolved as set forth in Section 18.2. The remaining provisions of these Terms will not be affected by your Opt-Out Notice.

19.4 **Arbitrator.** Any arbitration between you and Daydreamers will be settled under the Federal Arbitration Act and administered by the American Arbitration Association ("**AAA**") under its

Consumer Arbitration Rules (collectively, “**AAA Rules**”) as modified by these Terms. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at +1-800-778-7879. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.

19.5 **Notice of Arbitration; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail (“**Notice of Arbitration**”). Daydreamers’ address for Notice is: Daydreamers Space, Inc., Attention: Legal Department, 11 Sloan Drive South, Valley Stream, NY 11580. The Notice of Arbitration must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“**Demand**”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or Daydreamers may commence an arbitration proceeding. All arbitration proceedings between the parties will be confidential unless otherwise agreed by the parties in writing. During the arbitration, the amount of any settlement offer made by you or Daydreamers not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the arbitrator awards you an amount higher than the last written settlement amount offered by Daydreamers in settlement of the dispute prior to the award, Daydreamers will pay to you the higher of: (a) the amount awarded by the arbitrator and (b) US\$1,000.

19.6 **Fees.** If you commence arbitration in accordance with these Terms, Daydreamers will reimburse you for your payment of the filing fee, unless your claim is for more than US\$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in New York, New York but if the claim is for US\$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Daydreamers for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator’s ruling on the merits.

19.7 **No Class Actions.** YOU AND DAYDREAMERS AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Daydreamers agree otherwise, the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a representative or class proceeding.

19.8 **Modifications to this Arbitration Provision.** If Daydreamers makes any future change to this arbitration provision, other than a change to Daydreamers’ address for Notice of Arbitration, you may

reject the change by sending us written notice within 30 days of the change to Daydreamers' address for Notice of Arbitration, in which case your account with Daydreamers will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.

19.9 **Enforceability.** If Section 17.7 or the entirety of this Section 17 is found to be unenforceable, or if Daydreamers receives an Opt-Out Notice from you, then the entirety of this Section 17 will be null and void and, in that case, the exclusive jurisdiction and venue described in Section 18.2 will govern any action arising out of or related to these Terms.

20. Miscellaneous

20.1 **General Terms.** These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and Daydreamers regarding your use of the Service. You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of Section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. Throughout these Terms the use of the word "including" means "including but not limited to." If any part of these Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.

20.2 **Governing Law.** These Terms are governed by the laws of the State of Delaware without regard to conflict of law principles. You and Daydreamers submit to the personal and exclusive jurisdiction of the state courts and federal courts located within New York, New York for resolution of any lawsuit or court proceeding permitted under these Terms. We operate the Service from our offices in New York, and we make no representation that Materials included in the Service are appropriate or available for use in other locations.

20.3 **Privacy Policy.** Please read the Daydreamers Privacy Policy [available on](#) Daydreamers' website (the "**Privacy Policy**") carefully for information relating to our collection, use, storage, and disclosure of your personal information. The Daydreamers Privacy Policy is incorporated by this reference into, and made a part of, these Terms.

20.4 **Additional Terms.** Your use of the Service is subject to all additional terms, policies, rules, or guidelines applicable to the Service or certain features of the Service that we may post on or link to from the Service (the "**Additional Terms**"). All Additional Terms are incorporated by this reference into, and made a part of, these Terms.

20.5 **Consent to Electronic Communications.** By using the Service, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.

- 20.6 **Contact Information.** The Service is offered by Daydreamers Space, Inc., located at 11 Sloan Drive South, Valley Stream, NY 11580. You may contact us by sending correspondence to that address or by emailing us at hello@daydreamerspace.com.
- 20.7 **Notice to California Residents.** If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at +1-800-952-5210 in order to resolve a complaint regarding the Service or to receive further information regarding use of the Service.
- 20.8 **No Support.** We are under no obligation to provide support for the Service. In instances where we may offer support, the support will be subject to published policies.
- 20.9 **International Use.** The Service is intended for visitors located within the United States. We make no representation that the Service is appropriate or available for use outside of the United States. Access to the Service from countries or territories or by individuals where such access is illegal is prohibited.
21. **Notice Regarding Apple.** This Section 19 only applies to the extent you are using our mobile application on an iOS device. You acknowledge that these Terms are between you and Daydreamers only, not with Apple Inc. ("**Apple**"), and Apple is not responsible for the Service or the content of it. Apple has no obligation to furnish any maintenance and support services with respect to the Service. If the Service fails to conform to any applicable warranty, you may notify Apple, and Apple will refund any applicable purchase price for the mobile application to you. To the maximum extent permitted by applicable law, Apple has no other warranty obligation with respect to the Service. Apple is not responsible for addressing any claims by you or any third party relating to the Service or your possession and/or use of the Service, including: (1) product liability claims; (2) any claim that the Service fails to conform to any applicable legal or regulatory requirement; or (3) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement, and discharge of any third-party claim that the Service and/or your possession and use of the Service infringe a third party's intellectual property rights. You agree to comply with any applicable third-party terms when using the Service. Apple and Apple's subsidiaries are third-party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary of these Terms. You hereby represent and warrant that: (a) you are not located in a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a "terrorist supporting" country; and (b) you are not listed on any U.S. Government list of prohibited or restricted parties.