

PROWEBSURFER, INC. TERMS OF SERVICE AGREEMENT

1. ACCEPTANCE OF TERMS

- 1.1. ProWebSurfer, Inc. ("PWS") welcomes you. PWS provides its service to you subject to the following Terms of Service, which may be updated by us from time to time without notice to you. You can review the most current version of the TERMS OF SERVICE at any time at our website. In addition, when using particular PWS owned or operated services, you and PWS shall be subject to any posted guidelines or rules applicable to such services, which may be posted from time to time. All such guidelines or rules (including but not limited to our Privacy Policy) are hereby incorporated by reference into the TERMS OF SERVICE.

2. DESCRIPTION OF SERVICE

- 2.1. PWS provides users with access to a rich collection of resources, including various communications tools, image upload and sharing services, ad replacement services, personalized content and programming through its network of properties and services which may be accessed through any various medium or device now known or hereafter developed (the "Service").
- 2.2. PWS provides users with multiple services to use, upload, email, store and edit images used in the Ad Replacement service. All images, content and art used by users in PWS services must be either owned by the user or used with explicit and documented permission by the copyright owner. All responsibility to ensure copyright is complied with and observed lies with the user and not with PWS.
- 2.3. Term (duration) of the agreement. This agreement starts when the user commences use of the service at the point of download or registration. The agreement ends when the user or PWS terminates this Agreement in writing, with or without cause or by the removal of user generated content by the user for the purpose of termination
- 2.4. Definition of Service. A storage limit of 10MB is placed on materials posted to the PWS Site by each user.
- 2.5. You understand and agree that the Service may include certain communications from PWS, such as service announcements, administrative messages and future PWS Newsletters, and that these communications are considered part of PWS membership although you may be able to opt out of receiving them. Unless explicitly stated otherwise, any new features that augment or enhance the current Service, including the release of new PWS properties, shall be subject to the TERMS OF SERVICE. You understand and agree that the Service is provided "AS-IS" and that PWS assumes no responsibility for the timeliness, deletion, mis-delivery or failure to store any user communications or personalization settings. You are responsible for obtaining access to the Service, 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 Service.

3. YOUR REGISTRATION OBLIGATIONS

- 3.1. In consideration of your use of the Service, you represent that you are of legal age to form a binding contract and are not a person barred from receiving services under the laws of the United States or other applicable jurisdiction. You also agree to:
 - 3.1.1. Provide true, accurate, current and complete information about yourself as prompted by the Service's registration form (the "Registration Data")
 - 3.1.2. Maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or PWS has reasonable grounds to suspect that such

information is untrue, inaccurate, not current or incomplete, PWS has the right to suspend or terminate your account and refuse any and all current or future use of the Service (or any portion thereof).

- 3.2. PWS is concerned about the safety and privacy of all its users, particularly children. For this reason, parents of children under the age of 13 who wish to allow their children access to the Service must create a PWS Account on their behalf. By creating a child PWS Account, you give your child permission to access all areas of the Service. Please remember that the Service is designed to appeal to a broad audience. Accordingly, as the legal guardian, it is your responsibility to determine whether any of the Service areas and/or Content (as defined in Section 6 below) are appropriate for your child.
- 3.3. Ownership. Users who own their own images, photographs and other content ("Artist Materials") at all times retains all right, title and interest in and to the Artist Materials provided by user hereunder (including, without limitation, the copyrights in and to the Artist Materials), subject to the non-exclusive rights in the licenses granted to PWS under this Agreement. User is free to grant similar rights to others during and after the Term of this Agreement.
- 3.4. License To Use Artist Materials. As and when Artist Materials are uploaded to the PWS Site(s), user grants to PWS a worldwide, royalty-free, non-exclusive license to do the following things during the Term:
 - 3.4.1. To prepare and encode Artist Materials or any part of them for digital or analog transmission, manipulation and exhibition in any format and by any means now known or not yet known or invented;
 - 3.4.2. To display, copy, reproduce, exhibit, publicly perform, broadcast, rebroadcast, transmit, retransmit, distribute through any electronic means (including analog and digital) or other means, and electronically or otherwise publish any or all of the Artist Materials, including any part of them, and to include them in compilations for publication, by any and all means and media now known or not yet known or invented;
 - 3.4.3. To modify, adapt, change or otherwise alter the Artist Materials (e.g., change the size or aspect of images);
 - 3.4.4. The right to sublicense to any other person or company any of the licensed rights in the Artist Materials, or any part of them, subject to the terms and conditions of this Agreement.
 - 3.4.5. User acknowledges that the user will not have any right, title, or interest in any other materials with which Artist Materials may be combined or into which all or any portion of Artist Materials may be incorporated.
 - 3.4.6. During the Term, PWS's licenses under this Agreement include the right to use any part of the Artist Materials in the promotion, advertising or marketing of the PWS Sites.
 - 3.4.7. As used in this Agreement, the term "Artist Materials" means any content uploaded to the PWS Site(s) which may include without limitation Artist's name(s) (including professional names), trademarks, trade names, likenesses, photographs, biographical materials, artwork, liner notes, and other graphical or textual materials and any and all "skins," computer-generated images or other artwork or images that Artist submits to PWS.
- 3.5. Name and Likeness. User also grants to PWS:
 - 3.5.1. A worldwide, royalty-free, non-exclusive license to use user's name(s), group name, photograph and/or likeness(es) and biographical materials in connection with the distribution, exploitation, promotion, marketing and advertising of the Artist Materials, and the PWS Site(s) as described hereunder, during the Term;

- 3.5.2. User also agrees not to assert against PWS any privacy, publicity, moral or similar rights held by user and on behalf any other person(s) whose name(s), photographs and/or likeness(es) and/or performances are embodied in the Artist Materials. User also agrees that any persons other than user appearing recognizably or otherwise in Artist Materials will not assert of any privacy, publicity, moral or similar rights) under the laws of the United States and any other country in connection with the exploitation of the materials as described in this Agreement; and,
- 3.5.3. To the extent that the Artist Materials contain the name(s), group name, photograph and/or likeness(es) and biographical materials of any other person, user hereby grants to PWS a worldwide, royalty-free, non-exclusive license to use them in connection with the distribution, exploitation, promotion, marketing and advertising of the Artist Materials, as described in this Agreement, during the Term.

4. PWS PRIVACY POLICY

- 4.1. Registration Data and certain other information about you is subject to our Privacy Policy. For more information, see our full privacy policy on our website. You understand that through your use of the Service you consent to the collection and use (as set forth in the Privacy Policy) of this information, including the transfer of this information to the United States and/or other countries for storage, processing and use by PWS.

5. PWS PERFORMANCE.

- 5.1. User acknowledges and agrees that the operation of the PWS Site(s) may from time to time encounter technical or other problems and may not necessarily continue uninterrupted or without technical or other errors and PWS will not be responsible to user or others for any interruptions, errors or problems or even for an outright discontinuance of the PWS service. There are no assurances whatsoever that any of the Artist Materials or any part or element of Artist Materials will actually be used on the PWS Site or if used will continue to be available for any particular time. PWS has the right, in PWS's sole and absolute discretion, to remove from the PWS Site(s) at any time the Artist Materials or any part of them.
- 5.2. Notwithstanding the foregoing, PWS does not control the content of the Artist Materials and does not have any obligation to monitor the content of the Artist materials for any purpose or reason. User acknowledges that user is solely responsible for all content submitted to the PWS Site(s) by user. The PWS Site may be discontinued at any time, with or without reason and all Artist Materials uploaded to PWS may be removed and unavailable for recovery by any means. User and only user is responsible for maintaining at user expense and in facilities owned or controlled only by user any and all original materials or so-called back-up copies of all or any part of the Artist Materials.

6. MEMBER ACCOUNT, PASSWORD AND SECURITY

- 6.1. You will receive a password and account designation upon completing the Service's registration process. You are responsible for maintaining the confidentiality of the password and account and are fully responsible for all activities that occur under your password or account. You agree to (a) immediately notify PWS of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you exit from your account at the end of each session. PWS cannot and will not be liable for any loss or damage arising from your failure to comply with this Section.

7. MEMBER CONDUCT

- 7.1. You understand that all information, data, text, software, music, sound, photographs, graphics, video, messages, tags, or other materials ("Content"), whether publicly posted

or privately transmitted, are the sole responsibility of the person from whom such Content originated. This means that you, and not PWS, are entirely responsible for all Content that you upload, post, email, transmit or otherwise make available via the Service. PWS does not control the Content posted via the Service and, as such, does not guarantee the accuracy, integrity or quality of such Content. You understand that by using the Service, you may be exposed to Content that is offensive, indecent or objectionable. Under no circumstances will PWS be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the Service.

- 7.2. You agree to not use the Service to:
- 7.2.1. Upload, post, email, transmit or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
 - 7.2.2. Harm minors in any way;
 - 7.2.3. Impersonate any person or entity, including, but not limited to, a PWS official, forum leader, guide or host, or falsely state or otherwise misrepresent your affiliation with a person or entity;
 - 7.2.4. Forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;
 - 7.2.5. Upload, post, email, transmit or otherwise make available any Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
 - 7.2.6. Upload, post, email, transmit or otherwise make available any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights ("Rights") of any party;
 - 7.2.7. Upload, post, email, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation, except in those areas (such as shopping) that are designated for such purpose;
 - 7.2.8. Upload, post, email, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
 - 7.2.9. Disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other users of the Service are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges;
 - 7.2.10. Interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service;
 - 7.2.11. Intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law;
 - 7.2.12. "Stalk" or otherwise harass another; and/or collect or store personal data about other users in connection with the prohibited conduct and activities set forth in paragraphs above.
- 7.3. You acknowledge that PWS may or may not pre-screen Content, but that PWS and its designees shall have the right (but not the obligation) in their sole discretion to pre-

screen, refuse, or remove any Content that is available via the Service. Without limiting the foregoing, PWS and its designees shall have the right to remove any Content that violates the TERMS OF SERVICE or is otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content. In this regard, you acknowledge that you may not rely on any Content created by PWS or submitted to PWS.

- 7.4. You acknowledge, consent and agree that PWS may access, preserve and disclose your account information and Content if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce the TERMS OF SERVICE; (c) respond to claims that any Content violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property or personal safety of PWS, its users and the public.
- 7.5. You understand that the technical processing and transmission of the Service, including your Content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.
- 7.6. You understand that the Service and software embodied within the Service may include security components that permit digital materials to be protected, and that use of these materials is subject to usage rules set by PWS and/or content providers who provide content to the Service. You may not attempt to override or circumvent any of the usage rules embedded into the Service. Any unauthorized reproduction, publication, further distribution or public exhibition of the materials provided on the Service, in whole or in part, is strictly prohibited.

8. INTERNATIONAL CONSIDERATIONS

- 8.1. Recognizing the global nature of the Internet, you agree to comply with all local rules regarding online conduct and acceptable Content. Specifically, you agree to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which you reside.

9. CONTENT SUBMITTED OR MADE AVAILABLE FOR INCLUSION ON THE SERVICE

- 9.1. PWS does not claim ownership of Content you submit or make available for inclusion on the Service. However, with respect to Content you submit or make available for inclusion on publicly accessible areas of the Service, you grant PWS the following worldwide, royalty-free and non-exclusive license(s), as applicable:

- 9.1.1.1. With respect to photographs, graphics, audio or video you submit or make available for inclusion on publicly accessible areas of the Service, the license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Service solely for the purpose for which such Content was submitted or made available. This license exists only for as long as you elect to continue to include such Content on the Service and will terminate at the time you remove or PWS removes such Content from the Service.

- 9.1.1.2. With respect to Content other than photographs, graphics, audio or video you submit or make available for inclusion on publicly accessible areas of the Service, the perpetual, irrevocable and fully sub-licensable license to use, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display such Content (in whole or in part) and to incorporate such

Content into other works in any format or medium now known or later developed.

10. INDEMNITY

- 10.1. You agree to indemnify and hold PWS and its subsidiaries, affiliates, officers, agents, employees, partners and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Content you submit, post, transmit or otherwise make available through the Service, your use of the Service, your connection to the Service, your violation of the TERMS OF SERVICE, or your violation of any rights of another.

11. NO RESALE OF SERVICE

- 11.1. You agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, any portion of the Service (including your PWS ID), use of the Service, or access to the Service.

12. GENERAL PRACTICES REGARDING USE AND STORAGE

- 12.1. You acknowledge that PWS may establish general practices and limits concerning use of the Service, including without limitation the maximum size of image files individually or in total that will be retained by the Service, the maximum disk space that will be allotted on PWS's servers on your behalf. You agree that PWS has no responsibility or liability for the deletion or failure to store any content and other communications maintained or transmitted by the Service. You acknowledge that PWS reserves the right to terminate accounts that remain inactive for an extended period of time. You further acknowledge that PWS reserves the right to modify these general practices and limits from time to time.

13. MODIFICATIONS TO SERVICE

- 13.1. PWS reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. You agree that PWS shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

14. TERMINATION

- 14.1. You agree that PWS may, under certain circumstances and without prior notice, immediately terminate your PWS account and access to the Service. Cause for such termination shall include, but not be limited to, (a) breaches or violations of the TERMS OF SERVICE or other incorporated agreements or guidelines, (c) a request by you (self-initiated account deletions), (d) discontinuance or material modification to the Service (or any part thereof), (e) unexpected technical or security issues or problems, (f) extended periods of inactivity, (g) engagement by you in fraudulent or illegal activities.

- 14.2. Termination of your PWS account includes (a) removal of access to all offerings within the Service, (b) deletion of your password and all related information, files and content associated with or inside your account (or any part thereof), and (c) barring of further use of the Service. Further, you agree that all terminations for cause shall be made in PWS's sole discretion and that PWS shall not be liable to you or any third party for any termination of your account, any associated email address, or access to the Service.

15. DISCLAIMER OF WARRANTIES

15.1. YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

- 15.1.1. YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. PWS AND ITS OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- 15.1.2. PWS AND ITS OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS MAKE NO WARRANTY THAT (i) THE SERVICE WILL MEET YOUR REQUIREMENTS; (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE; (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS; AND (v) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.
- 15.1.3. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
- 15.1.4. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM PWS OR THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS OF SERVICE.

16. LIMITATION OF LIABILITY

- 16.1. YOU EXPRESSLY UNDERSTAND AND AGREE THAT PWS AND ITS OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF PWS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (v) ANY OTHER MATTER RELATING TO THE SERVICE.

17. EXCLUSIONS AND LIMITATIONS

- 17.1. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

18. NOTICE

- 18.1. PWS may provide you with notices, including those regarding changes to the TERMS OF SERVICE.

19. GENERAL INFORMATION

- 19.1. Entire Agreement. The TERMS OF SERVICE constitutes the entire agreement between you and PWS and governs your use of the Service, superseding any prior agreements between you and PWS with respect to the Service. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other PWS services, affiliate services, third-party content or third-party software.
- 19.2. Choice of Law and Forum. The TERMS OF SERVICE and the relationship between you and PWS shall be governed by the laws of the State of California without regard to its conflict of law provisions. You and PWS agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Santa Clara, California.
- 19.3. Waiver and Severability of Terms. The failure of PWS to exercise or enforce any right or provision of the TERMS OF SERVICE shall not constitute a waiver of such right or provision. If any provision of the TERMS OF SERVICE is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the TERMS OF SERVICE remain in full force and effect.
- 19.4. Statute of Limitations. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the TERMS OF SERVICE must be filed within one (1) year after such claim or cause of action arose or be forever barred.