

## Ruby-Collins, Inc. Terms of Service

### Terms of Service

Please read this terms-of-service agreement, which is a legal agreement between you and us that governs your use of the **Ruby-Collins, Inc. Application**, including any content, functionality, and services offered on or through the Service. You may access the Service only if you agree to this agreement.

Notice Regarding Dispute Resolution: **This agreement contains provisions that govern how claims you and us may have against each other are resolved, including an agreement to arbitrate disputes, which will require you to submit claims you have against us to binding arbitration. Please read the arbitration provision in this agreement as it affects your rights under this agreement.**

Minors Prohibited: Only individuals who are at least 18-years old may access our Service. We forbid all individuals who do not meet these age requirements from accessing our Service.

Neither we nor Pinxter Inc., a Virginia corporation, d/b/a Clowder ("**Clowder**") are liable for anything that you post or say while you are on the Service. We don't monitor the content posted to the Service, but if we do see, or someone tells us that you've posted, something that we consider inappropriate or offensive, we will remove it and may take appropriate action against you.

We may change this agreement on one or more occasions by updating this page. The top of this page will tell you when we last updated this agreement. Changes take effect on the "last updated" date stated on the top of this page. We will consider your continued use of the Service after we post the changes as your acceptance of the changes even if you do not read them. If you do not agree to the changes, your sole remedy is to cancel your account and stop accessing the Service.

We may withdraw or amend our Service, and any service or material provided on it, in our sole discretion without notice. Neither we nor Clowder will be liable if for any reason all or any part of the Service is unavailable at any time or for any period. From time to time, we or Clowder may restrict access to some parts of the Service, or the entire Service, to users, including registered users.

### Your Account

**Account.** To access the Service, you must have an account.

**Responsibility for Account.** You're responsible for keeping your password and account confidential. Further, you're responsible for all activities that occur under your account. You must promptly notify us of any unauthorized use of your account or any other security breach. You must not sell, rent, lease, share, or provide access to your account to anyone else, including charging anyone for access to administrative rights on your account. We may disable any username, password, or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any reason or no reason, including if, in our opinion, you have breached any part of this agreement.

**Liability for Account Misuse.** We will not be liable for any loss that you may incur because of someone else using your password or account, either with or without your knowledge. You could be held liable for losses incurred by us or another person because of someone else using your password or account.

**Use of Other Accounts.** You must not use anyone else’s account at any time.

**Account Security.** We care about the integrity and security of your personal information. But we cannot guarantee that unauthorized persons will never be able to defeat the Service’s security measures or use any personal information you provide to us for improper purposes. You acknowledge that you provide your personal information at your own risk.

### **Intellectual Property Rights**

**Ownership.** Clowder owns and operates the Service. All content, features, functionality, and other materials found on the Service, including all visual interfaces, graphics, information, software (including source code and object code), text, displays, images, photos, videos, and audio, and the design, selection, and arrangement of them (collectively, “**Materials**”) are owned by Clowder and the Company, and their licensors, or other providers of those Materials. United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws protect all Materials found on the Service.

**License Grant.** Clowder and the Company hereby grant you a limited, nonsublicensable license (i.e., a personal and limited right) to access and use the Service and the Materials for your personal, noncommercial use only. You must not reproduce, distribute, resell, modify, create derivative works of, publicly display, publicly perform, republish, download, store, or transmit any of the Materials on the Service.

**Trademarks.** Clowder’s and the Company’s name and logo; the Service’s logo; and all related names, domain names, logos, product and service names, designs, and slogans, as well as the Service’s look and feel, including all page headers, custom graphics, button icons, and scripts are trademarks or trade dress of Clowder or the Company, its affiliates, or licensors. You must not use those marks in whole or in part in connection with any product or service that is not ours, in any manner that is likely to cause confusion among consumers, or in any manner that disparages or discredits us, without first obtaining our prior written permission. Any use of these marks must be under any guidelines that we may provide you from time to time. All other service marks, trademarks, trade names, logos, product and service names, designs, and slogans on this Service are the marks of their respective owners. Reference on the Service to any products, services, processes, or other information, by trade name, trademark, manufacturer, supplier, or otherwise does not constitute or imply our endorsement, sponsorship, or recommendation or any other affiliation.

### **Prohibited Uses**

You may use the Service only for lawful purposes under this agreement. You must not use the Service:

1. In any way that violates any applicable federal, state, local, or international law or regulation (including any laws about the export of data or software to and from the U.S. or other countries).
2. To send, knowingly receive, upload, download, use, or re-use any material which does not comply with the Content Standards stated in this agreement.

3. To transmit, or procure the sending of, any advertising or promotional material without our prior written consent, including any "junk mail," "chain letter," or "spam" or any other similar solicitation.
4. To impersonate or try to impersonate us, a Company employee, another user, or any other person or entity (including by using email addresses or usernames associated with any of the preceding).
5. To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Service, or which, as we decide, may harm us or our Service's users or expose them or us to liability.

Additionally, you must not:

1. Use the Service in any way that could disable, overburden, damage, or impair the Service or interfere with any other person's use of the Service, including their ability to engage in real-time activities through the Service.
2. Use any robot, spider, or other automatic device, process, or means to access the Service for any purpose, including monitoring or copying any of the Materials.
3. Use any manual process to monitor or copy any of the Materials or for any other unauthorized purpose without our prior written consent.
4. Use any device, software, or routine that interferes with the proper working of the Service.
5. Introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful.
6. Attempt to gain unauthorized access to, interfere with, damage, or disrupt any part of the Service, the server on which the Service is stored, or any server, computer, or database connected to the Service.
7. Attack the Service via a denial-of-service attack or a distributed denial-of-service attack.
8. Otherwise try to interfere with the Service's proper working.

### **User Contributions**

**In General.** The Service contains personal pages, live streaming, messaging, timelines, comment sections, and other interactive features (collectively, "**Interactive Services**") that allows users to post, submit, publish, display, or transmit to other users or other persons (collectively, "**post**") content or materials (collectively, "**User Contributions**") on or through the Service. All User Contributions must comply with the Content Standards set out in in this agreement. We and Clowder will consider nonconfidential and nonproprietary any User Contribution you post to the Service.

**License Grant.** By posting any User Contribution on the Service, you hereby grant us and our affiliates and service providers, and each of their and our respective licensees, successors, and assigns an unrestricted, worldwide, fully sublicensable, non-exclusive, fully paid-up, royalty-free, irrevocable license to (a) use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform, and display those User Contributions (including for promoting and redistributing any part of the Service (and derivative works of them)) in any form, format, media, or media channels now known or later developed or discovered; and (b) use the name, identity, likeness, and voice (or other biographical

information) that you submit with those User Contributions. In addition, you also hereby grant each other user of the Service a worldwide, nonexclusive, royalty-free license to access your User Contributions through the Service, and to use those User Contributions, including to reproduce, distribute, prepare derivative works, display, and perform it, only as enabled by a feature of the Service (such as video playback or embeds). This license does not grant any rights or permissions for a user to make use of your User Contributions independent of the Service. The licenses granted by you continue for a commercially reasonable period after you remove or delete your User Contributions from the Service. You understand, however, that we may retain, but not display, distribute, or perform, server copies of your User Contributions that have been removed or deleted.

**Representations and Warranties.** You state that the following facts are accurate about the User Contributions you post on or through the Service: (a) you own or control all rights in and to the User Contributions and have the right to grant the license granted above to us and our affiliates and service providers, and each of their and our respective licensees, successors, and assigns; (b) your User Contributions do not and will not infringe, violate, or misappropriate any third-party right, including any copyright, service mark, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right or defame any other person; (c) your User Contributions include no viruses, adware, spyware, worms, or other harmful or malicious code; and (d) your User Contributions otherwise comply with this agreement.

**Acknowledgments.** You acknowledge that you are responsible for any User Contribution you post, and you, not us, have full responsibility for that User Contribution, including its legality, reliability, accuracy, and appropriateness. Neither we nor Clowder are responsible or liable to any person for the content or accuracy of (or use of) any User Contribution posted by you or any other user. Neither we nor Clowder control or endorse any User Contributions and make no representation or warranties about User Contributions, including their content, completeness, truthfulness, or accuracy. You further acknowledge that your participation in the Service and submission of User Contribution is voluntary and that you will not receive financial compensation of any type associated with User Contributions or the licenses, waivers, and releases set forth herein (or our exploitation thereof). You acknowledge that neither we nor Clowder pre-screen User Contribution, but that we and Clowder and our designees will have the right (but not the obligation) in our sole discretion to refuse or remove any User Contribution that is available via the Service.

### **Monitoring and Enforcement; Termination**

We and Clowder may or may not monitor User Contributions. We and Clowder reserve the right to, and may:

1. Remove or refuse to post any User Contributions for any or no reason in our sole discretion.
2. Take any action concerning any User Contribution that we or Clowder consider necessary or appropriate in our sole discretion, including if we or Clowder believe that the User Contribution violates this agreement, including the Content Standards stated herein, infringes any intellectual property right or another right of any person or entity, threatens the personal safety of the Service's users or the public, or could create liability for Clowder or the Company.

3. Take appropriate legal action, including referral and disclosure of User Contribution to law enforcement, if we or Clowder believe in good faith that it is reasonably necessary to (i) satisfy any applicable law, regulation, legal process or governmental request (for example, subpoenas or warrants), (ii) enforce or administer our agreements with users (such as these terms), including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of Clowder or the Company, our users, others, or the public.
4. Terminate or suspend your access to all or part of the Service for any reason or no reason, including violation of this agreement.

We and Clowder will fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through the Service. You hereby waive and hold harmless Clowder and the Company and each of their respective affiliates, licensees, and service providers from any claims resulting from any action taken during, or taken as a consequence of, investigations by either Clowder, the Company or law enforcement authorities.

We and Clowder do not undertake to review material before it is posted on the Service and cannot ensure prompt removal of objectionable material after it has been posted. Accordingly, we and Clowder assume no liability for any action or inaction regarding transmissions, communications, or content provided by any user or third party. We and Clowder have no liability or responsibility to anyone for performance or nonperformance of the activities described in this Section.

**Content Standards.** These content standards apply to all User Contributions and the use of the Interactive Services. User Contributions must, in their entirety, comply with all applicable federal, state, local, and international laws and regulations. User Contributions must not:

1. Contain any material that is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful, inflammatory, or otherwise objectionable.
2. Promote violence or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age.
3. Infringe any copyright, patent, trademark, trade secret, or other intellectual property or other rights of any other person.
4. Violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with this agreement or our Privacy Policy.
5. Be likely to deceive any person.
6. Promote or solicit any illegal activity, or advocate, promote, or assist any unlawful act.
7. Cause annoyance, inconvenience, or needless anxiety or be likely to upset, embarrass, alarm, or annoy any other person.
8. Impersonate any person or misrepresent your identity or affiliation with any person or organization.

9. Involve commercial activities or sales, such as contests, sweepstakes, and other sales promotions, barter, or advertising.
10. Give the impression that they emanate from or are endorsed by us or any other person or entity, if that is not the case.
11. Contain viruses, worms, Trojan horses, or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, mobile device, or telecommunications equipment.
12. Depict private or personal information of any person without their written consent.
13. Request personal information from or share personal information with any user, including financial information, email address, telephone number, or mailing address.
14. Request money from, or otherwise defraud other Service users.

### **Third-Party Content**

In addition to the User Contributions, we may provide other third-party content on the Service (collectively, "**Third-Party Content**"). We and Clowder do not control or endorse any Third-Party Content and make no representation or warranties about the Third-Party Content, including its accuracy or completeness. We and Clowder do not create Third-Party Content, update it, or monitor it. Thus, we're not responsible for any Third-Party Content on the Service.

### **Copyright Infringement**

We respect the intellectual property of others, and we ask our users to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, or that your intellectual property rights have been otherwise violated, you should notify us of your infringement claim in accordance with the procedure set forth below.

We will process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act ("**DMCA**") and other applicable intellectual property laws with respect to any alleged or actual infringement. A notification of claimed copyright infringement should be emailed to our Copyright Agent at [appsupport@ruby-collins.com](mailto:appsupport@ruby-collins.com) (Subject line: "DMCA Takedown Request").

Please see 17 U.S.C. § 512(c)(3) for the requirements of a proper notification. You should note that if you knowingly misrepresent in your notification that the material or activity is infringing, you will be liable for any damages, including costs and attorneys' fees, incurred by us or the alleged infringer as the result of our relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing.

In accordance with DMCA and other applicable law, we have adopted a policy of terminating, in appropriate circumstances and at our discretion, account holders who are deemed to be repeat infringers. We may also at our discretion limit access to the Service and/or terminate the accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

### **App Stores**

You acknowledge and agree that the availability of the Service is dependent on the third party from whom you received the Service license and related software (the “**App-Enabled Software**”), e.g., the Apple App Store or Google Play (each, an “**App Store**”). In order to use the Service, you must have access to a wireless network, and you agree to pay all fees associated with such access. You also agree to pay all fees (if any) charged by the App Store in connection with Service.

You agree to comply with, and your license to use the Service is conditioned upon your compliance with all terms of agreement imposed by the applicable App Store when using any Service. Accordingly, you acknowledge and agree as follows:

These Terms of Service are between you and us and not with the App Store. As between us and the App Store, we, and not the App Store, are solely responsible for the Service and the content thereof.

The license granted to you for use of the App-Enabled Software is limited to a non-transferable license to use the Service on any Apple or Google-branded products that you own or control and as permitted by the usage rules set forth in the relevant App Store Terms of Service, except that such Service may be accessed, acquired, and used by other accounts associated with you via Family Sharing or volume purchasing.

As between us and the App Store, we, and not the App Store, are solely responsible for and maintenance and support services with respect to the Service (as specified in these Terms of Service, or as required under applicable law). As between us and the App Store, we, and not the App Store, are solely responsible the warranty on the Service (whether express or implied) therefor. In the event of any failure of the Service to conform to any applicable warranty, you may notify the App Store, and the App Store will refund the purchase price, if any, for the App-Enabled Software to you; and that, to the maximum extent permitted by applicable law, the App Store will have no other warranty obligation whatsoever with respect to the Service, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty, if any, will be the sole responsibility of us.

As between us and the App Store, we, and not the App Store, are solely responsible for addressing any claims relating to the Service (e.g., product liability, legal compliance or intellectual property infringement).

As between us and the App Store, we, and not the App Store, are responsible for addressing any claims of you or any third party relating to the App-Enabled Software or your possession and/or use of that App-Enabled Software, including, but not limited to: (i) product liability claims; (ii) any claim that the App-Enabled Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

In the event of any third party claim that the App-Enabled Software or your or any other the end-user's possession and use of that App-Enabled Software infringes that third party's intellectual property rights, as between us and the App Store, we, and not the App Store, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

You represent and warrant that (i) 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; (ii) you are not listed on any U.S. Government list of prohibited or restricted parties; and (iii) you are not located in any other country or jurisdiction from which you would be barred from using the Service by applicable law.

If you have any questions, complaints or claims with respect to the App-Enabled Software, they should be directed to us as follows:

**appsupport@ruby-collins.com**

You may not use the Service or the App-Enabled Software in any manner in violation of or inconsistent with the usage rules for App-Enabled Software in, or otherwise be in conflict with, the App Store Terms of Service or any other applicable third-party terms and conditions.

You acknowledge that the App Store (and its affiliates) are third-party beneficiaries of these Terms of Service and that, upon your acceptance of the terms and conditions of these Terms of Service, the App Store will have the right (and will be deemed to have accepted the right) to enforce these Terms of Service against you with respect to the App-Enabled Software as a third-party beneficiary thereof. We may amend, terminate or rescind these Terms of Service without the consent of the App Stores or any such subsidiary.

## **Privacy**

We value your privacy. For information about how we collect, use, and share your personal information, please review our [Privacy Policy](#).

## **Acknowledgments and Warranty Disclaimers**

You acknowledge that we and Clowder cannot and do not state that files available for downloading from the Internet or the Service will be free from loss, corruption, attack, viruses or other destructive code, interference, hacking, or other security intrusions. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for antivirus protection and accuracy of data input and output, and for keeping a means external to the Service for any reconstruction of any lost data. We and Clowder will not be liable for any loss or damage caused by (a) a distributed denial-of-service attack, viruses, or other technologically harmful material that might infect your computer equipment, mobile device, computer programs, data, or other proprietary material because of your use of the Service or any services or items obtained through the Service; or (b) by your downloading of any material posted on the Service or on any website linked to it.

You use the Service, the Materials, and any services or items obtained through the Service at your own risk. We provide the Service, the Materials, and any services or items obtained through the Service “as is” and “as available,” without making any warranty, either express or implied. Neither we, Clowder nor any person associated with us is making any warranty with respect to the Service’s completeness, security, reliability, quality, accuracy, or availability. Neither we, Clowder nor anyone associated with us is making any warranty (1) that the Service, the Materials, or any services or items obtained through the Service will be accurate, reliable, error-free, or uninterrupted; (2) that defects will be corrected; (3) that the



Service or the server that makes it available are free of viruses or other harmful components; or (4) that the Service or any services or items obtained through it will otherwise meet your needs or expectations.

We and Clowder are not making any warranty about the Service, whether express, implied, statutory, or otherwise, including any warranties of merchantability, noninfringement, and fitness for a particular purpose. No advice or information, whether oral or written, obtained from Clowder, the Company, the Service, or elsewhere will create any warranty not expressly stated in this agreement.

### **Limitation of Liability; Release**

Clowder and the Company, and their respective members, managers, officers, employees, agents, subsidiaries, affiliates, licensors, content providers, and service providers will not be liable to you for any of the following:

1. Errors, mistakes, or inaccuracies of Materials (including User Contributions).
2. Personal injury or property damage resulting from your access to and use of the Service or the Materials (including User Contributions).
3. Materials (including User Contributions) or conduct that are infringing, inaccurate, obscene, indecent, offensive, threatening, harassing, defamatory, libelous, abusive, invasive of privacy, or illegal.
4. Unauthorized access to or use of our servers and any personal or financial information stored in them, including unauthorized access or changes to your account, submissions, transmissions, or data.
5. Interruption or cessation of transmission to or from the Service.
6. Bugs, viruses, Trojan horses, malware, ransomware, or other disabling code that may be transmitted to or through the Service by any person or that might infect your computer or affect your access to or use of the Service, your other services, hardware, or software.
7. Incompatibility between the Service and your other services, hardware, or software.
8. Delays or failures you might experience in starting, conducting, or completing any transmissions to or transactions with the Service.
9. Loss or damage incurred because of the use of any Materials (including User Contributions) posted, emailed, sent, or otherwise made available through the Service.

You hereby release Clowder, the Company, each of their respective members, managers, officers, employees, agents, subsidiaries, affiliates, licensors, content providers, and service providers from all liability arising out of your User Contributions or the conduct of other users or third parties, including disputes between you and one or more other users or third parties.

### **Exclusion of Damages; Exclusive Remedy**

Unless caused by its gross negligence or intentional misconduct, Clowder and the Company, and each of their members, managers, officers, employees, agents, subsidiaries, affiliates, licensors, content providers, and service providers will not be liable to you for any direct, indirect, special (including so-called consequential damages), statutory, punitive, or exemplary damages arising out of or relating to your access or your inability to access the Service or the Materials. This exclusion applies regardless

of the theory of liability and even if you told us about the possibility of those damages or we or Clowder knew or should have known about the possibility of those damages.

Clowder and the Company, each of their respective members, managers, officers, employees, agents, subsidiaries, affiliates, licensors, content providers, and service providers will not be liable to you for any damages for (1) personal injury, (2) pain and suffering, (3) emotional distress, (4) loss of revenue, (5) loss of profits, (6) loss of business or anticipated savings, (7) loss of use, (8) loss of goodwill, (9) loss of data, (10) loss of privacy, or (11) computer failure related to your access of or your inability to access the Service or the Materials. This exclusion applies regardless of the theory of liability and even if you told us about the possibility of those damages or we or Clowder knew or should have known about the possibility of those damages.

If you are dissatisfied with the Service or have any other complaint, your exclusive remedy is to terminate your account (if you have one) and stop using the Service. The maximum liability of Clowder and the Company and its members, managers, officers, employees, agents, subsidiaries, affiliates, licensors, content providers, and service providers to you for any claim will not exceed the greater of \$100 and the amount you have paid for the applicable purchase out of which liability arose even if the remedy fails of its essential purpose.

**Waiver of California Civil Code Section 1542—California Residents Only.** With respect to the releases of liability set out in this agreement, you acknowledge that you understand the consequences of entering into the general release and discharge of all known and unknown claims as stated in this agreement and that you are familiar with the provisions of section 1542 of the California Civil Code, which provides that: A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party. You waive all rights under section 1542 and any other federal or state statutes or laws of similar effect.

#### **Scope of Disclaimers, Exclusions, and Limitations.**

The disclaimers, exclusions, and limitations stated in this agreement apply to the greatest extent allowed by law, but no more. We do not intend to deprive you of any mandatory protections provided to you by law. Because some jurisdictions may prohibit the disclaimer of some warranties, the exclusion of some damages, or other matters, one or more of the disclaimers, exclusions, or limitations will not apply to you.

#### **Indemnification**

**In General.** You will pay Clowder and the Company, and their respective members, managers, officers, employees, agents, contractors, subsidiaries, affiliates, licensors, content providers, and service providers (collectively, "**Indemnified Parties**") for any loss of an Indemnified Party that is caused by any of the following: (a) your access of, or conduct on, the Service, including your User Contributions; (b) your conduct offline; (c) your breach of this agreement; (d) your dispute with any other user; (e) your violation of rights of any person, including intellectual property, publicity, and privacy rights; (f) your violation of any applicable law; (g) your tortious acts or omissions; or (h) your criminal acts or

omissions. But you are not required to pay if the loss was caused by the Indemnified Party's intentional misconduct.

**Definitions. "Loss"** means an amount that the Indemnified Party is legally responsible for or pays in any form. Amounts include, for example, a judgment, a settlement, a fine, damages, injunctive relief, staff compensation, a decrease in property value, and expenses for defending against a claim for a loss (including fees for legal counsel, expert witnesses, and other advisers). A loss can be tangible or intangible; can arise from bodily injury, property damage, or other causes; can be based on tort, breach of contract, or any other theory of recovery; and includes incidental, direct, and consequential damages. A loss is **"caused by"** an event if the loss would not have happened without the event, even if the event is not a proximate cause of the loss.

**Indemnified Party's Duty to Notify You.** If the Indemnified Party has your contact information, the Indemnified Party will notify you before the 30th day after the Indemnified Party knows or should reasonably have known of a claim for a loss that you might be compelled to pay. But the Indemnified Party's failure to give you timely notice does not end your obligation, except if that failure prejudices your ability to defend or mitigate losses.

**Legal Defense of a Claim.** The Indemnified Party has control over defending a claim for a loss (including settling it) unless the Indemnified Party directs you to control the defense. If the Indemnified Party directs you to control the defense, you will not settle any litigation without the Indemnified Party's written consent if the settlement (1) imposes a penalty or limitation on the Indemnified Party, (2) admits the Indemnified Party's fault, or (3) does not fully release the Indemnified Party from liability. You and the Indemnified Party will cooperate in good faith on a claim.

**No Exclusivity.** The Indemnified Parties' rights under this section do not affect other rights they might have.

### **Dispute Resolution**

**Jury Trial Waiver.** Each party waives its right to a jury trial in proceedings arising out of or relating to this agreement. Either party may enforce this waiver up to and including the first day of trial.

**Class Action Waiver.** All claims must be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding, and, unless we agree otherwise, the arbitrator will not consolidate more than one person's claims. Both parties acknowledge that each party is waiving the right to participate in a class action.

**Limitation on Time to Bring Claims.** A party will not file a claim arising out of or relating to the Service or this agreement more than one year after the cause of action arose. Any claim brought after one year is barred.

### **General**

**Force Majeure.** We and Clowder are not responsible for any failure to perform if unforeseen circumstances or causes beyond its reasonable control delays or continues to delay our performance, including (a) acts of God, including fire, flood, earthquakes, hurricanes, tropical storms, or other natural disasters; (b) war, riot, arson, embargoes, acts of civil or military authority, or terrorism; (c) fiber cuts; (d)

strikes, or shortages in transportation, facilities, fuel, energy, labor, or materials; (e) failure of the telecommunications or information services infrastructure; and (f) hacking, SPAM, or any failure of a computer, server, network, or software.

**Complaints**—California Residents Only. You may contact in writing the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs at 1020 North Street, #501, Sacramento, California 95814, or by telephone at +1 (916) 445-1254.

**Survival.** On termination of this agreement, any provision which, by its nature or express terms should survive, will survive the termination of this agreement.