

## ALICE Terms of Use

### 1. Existence of Contract

These Terms of Service ("the Agreement") constitute a binding agreement between FivePals, Inc and its affiliates and subsidiaries (collectively, "the Company") and you with respect to the use of the ALICE mobile platform and applications (the "Product") ordered, provided or otherwise accessible on or through the website, located at [www.aliceapp.com](http://www.aliceapp.com) (hereinafter, the "Site"), and your use of the Product and access to the Site. In this Agreement, "we", "us", "our" and other similar references mean the Company, and "you" and "your" and other similar references mean a specific user of the Product or visitor to the Site. This Agreement incorporates by reference in its entirety the Privacy Policy, located at [www.aliceapp.com](http://www.aliceapp.com), which is made a part of this Agreement.

IF YOU DO NOT AGREE TO THIS AGREEMENT (INCLUDING THE PRIVACY POLICY), THEN YOU SHOULD NOT ACCESS THE SITE OR USE THE PRODUCT. BY ACCESSING THE SITE AND/OR USING THE PRODUCT (OTHER THAN TO REVIEW THE TERMS AND CONDITIONS OF THIS AGREEMENT), YOU AGREE TO BE BOUND BY THIS AGREEMENT, AS THE SAME MAY BE AMENDED FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS BELOW. YOU SHOULD READ THIS AGREEMENT CAREFULLY BEFORE USING THE PRODUCT, BECAUSE THIS AGREEMENT AFFECTS YOUR LEGAL RIGHTS AND OBLIGATIONS. YOU SHOULD ALSO RETAIN A COPY OF THIS AGREEMENT (INCLUDING THE PRIVACY POLICY) FOR YOUR RECORDS. ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THIS AGREEMENT OR IN THE PRIVACY POLICY.

### 2. Ability to Accept the Terms of this Agreement

You represent and warrant that you have the legal power, authority and capacity to accept the terms of this Agreement. You represent and warrant that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations and warranties set forth in this Agreement and to abide by and comply with this Agreement. If you are a minor, then you represent and warrant that you are 13 years of age or older. You may not access this Site or use the Product if you are under the age of 13 years.

### 3. Intellectual Property Rights

You acknowledge and agree that the Company owns and shall own all right, title and interest, throughout the world, in and to the Site and the Product and all copyrights, trademarks, service marks and other intellectual property rights associated therewith. You shall not take any action that is inconsistent with our ownership of the Site or the Product. You further acknowledge and agree that nothing in this Agreement and no use of the Site or the Product shall cause to vest or be construed to vest in you any right, title or interest in or to the Site or the Product other than the express right to use the Site or the Product solely in accordance with the terms and conditions of this Agreement. Any rights not expressly granted herein are reserved.

## **4. Our Software**

Any software and/or software application references or otherwise accessible on the Site or through the use of the Product is a copyrighted work of the Company. Copying the software and/or any application to any other location for further reproduction or redistribution is expressly prohibited.

## **5. No Performance Warranty**

You acknowledge and agree that the Company owns and shall own all right, title and interest, throughout the world, in and to the Site and the Product and all copyrights, trademarks, service marks and other intellectual property rights associated therewith. You shall not take any action that is inconsistent with our ownership of the Site or the Product. You further acknowledge and agree that nothing in this Agreement and no use of the Site or the Product shall cause to vest or be construed to vest in you any right, title or interest in or to the Site or the Product other than the express right to use the Site or the Product solely in accordance with the terms and conditions of this Agreement. Any rights not expressly granted herein are reserved.

## **6. Registration**

Certain sections of the Site or use of the Product may require you to register. If registration is requested, you agree to provide us with accurate, complete registration information. It is your responsibility to inform us of any changes to that information by emailing [info@aliceapp.com](mailto:info@aliceapp.com) (see also our Privacy Policy). Each registration is for a single user only. We do not permit (a) any other person using the registered sections under your name or (b) access through a single name being made available to multiple users on a network. You are responsible for preventing such unauthorized use. We expressly disclaim any and all liability in connection with the registration, maintenance and security of your registration. If you believe there has been unauthorized use, you must notify us immediately by emailing [info@aliceapp.com](mailto:info@aliceapp.com).

## **7. Third Party Content and References**

Third party content may appear or be accessible through website links on or from the Site or through use of the Product. We shall not be responsible for and assume no liability for any mistakes, errors, inaccuracies, misstatements of law, defamation, slander, libel, omissions, falsehood, obscenity, pornography or profanity in the statements, opinions or other representations in any such third party content appearing on or accessible from the Site or through use of the Product. You acknowledge and agree that the information, views and opinions expressed in the third party content represent solely the thoughts of the author and are neither endorsed by nor do they reflect the belief of the Company. It is your responsibility to evaluate, assess and bear the risk associated with the use of or reliance on any such content. Any and all references to any product, recording, event, process, publication, service or offering of any third party by name, trade name, trademark or otherwise does not necessarily constitute or imply the endorsement or recommendation of such by the Company.

## **8. Links to Third Party Websites**

The Site or the Product may contain links to or be accessible through links on third party apps and websites, including Facebook and Twitter). Such third parties are not agents or representatives of the Company. We do not have responsibility for the content, availability, operation or performance of any third party app or website, nor do we author, edit or monitor any third party app or website. You acknowledge and agree that the Company is not responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with your use of or reliance on any content or other information available on any third party app or website.

## **9. DISCLAIMER**

THE SITE OR PRODUCT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, THE COMPANY SPECIFICALLY DISCLAIMS ALL RESPONSIBILITY FOR ANY LOSS, INJURY, CLAIM, LIABILITY OR DAMAGE OF ANY KIND RESULTING FROM, ARISING OUT OF OR IN ANY WAY RELATED TO (A) ANY THIRD PARTY APPLICATIONS OR WEBSITES OR CONTENT THEREIN DIRECTLY OR INDIRECTLY ACCESSED THROUGH LINKS IN THE SITE OR THE PRODUCT, INCLUDING BUT NOT LIMITED TO ANY ERRORS IN OR OMISSIONS THEREFROM, (B) THE UNAVAILABILITY OF THE SITE OR THE PRODUCT OR ANY PORTION THEREOF, (C) YOUR USE OF THE SITE OR THE PRODUCT AND (D) YOUR USE OF ANY EQUIPMENT OR SOFTWARE IN CONNECTION WITH THE SITE OR THE PRODUCT. THE COMPANY FURTHER SPECIFICALLY DISCLAIMS LIABILITY FOR ANY LOSS OF DATA STORED ON OR BY MEANS OF THE SITE OR USE OF THE PRODUCT AND FOR ANY LOSS OF DATA OR OTHER DAMAGE ARISING FROM SPYWARE, MALWARE OR OTHER THIRD-PARTY CAUSES. THE COMPANY FURTHER SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE SITE OR THE PRODUCT WILL BE UNINTERRUPTED, ACCURATE, ERROR OR DELAY FREE, SECURE OR FREE FROM BUGS, VIRUSES OR OTHER PROGRAM LIMITATIONS.

WHERE ANY JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES AS SET FORTH ABOVE IN A PARTICULAR CIRCUMSTANCE, THEN THE COMPANY SHALL BE ENTITLED TO THE BENEFIT OF SUCH DISCLAIMERS AND LIMITATIONS TO THE EXTENT PERMITTED BY SUCH APPLICABLE LAW IN SUCH PARTICULAR CIRCUMSTANCE.

## **10. LIMITATION OF LIABILITY**

YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH THE COMPANY IS TO DISCONTINUE YOUR USE OF THE SITE OR THE PRODUCT. THE COMPANY SHALL NOT BE LIABLE FOR ANY LOSS, INJURY, CLAIM, LIABILITY OR DAMAGE OF ANY KIND RESULTING FROM YOUR USE OF THE SITE OR THE PRODUCT, INCLUDING ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) IN ANY WAY DUE TO, RESULTING FROM OR ARISING IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE SITE OR THE PRODUCT. TO THE EXTENT THIS LIMITATION ON LIABILITY IS PROHIBITED OR FAILS OF ITS ESSENTIAL PURPOSE, THE COMPANY'S SOLE OBLIGATION TO YOU FOR DAMAGES SHALL BE LIMITED TO THE AMOUNT PAID BY YOU UNDER THIS AGREEMENT OR \$100.00, WHICHEVER IS LESS.

THE LIMITATIONS SET FORTH HEREIN ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN YOU AND THE COMPANY. THE COMPANY WOULD NOT BE ABLE TO PROVIDE YOU WITH THE PRODUCT WITHOUT SUCH LIMITATIONS.

## **11. Indemnification**

You are solely liable for any content, messages or other information you transmit, provide or upload to the Site or through use of the Product. You agree to indemnify, defend and hold harmless the Company from any third party claim, action, demand, loss or damages (including attorney's fees and costs) arising out of or relating to (a) your violation of any term of this Agreement, (b) your access to the Site or use of the Product, (c) any improper, unauthorized or illegal uses of your profile and (d) your violation of any rights of a third party, including without limitation any property or privacy right.

## **12. Third Party Rights**

The provisions of this Agreement are for the benefit of the Company and its affiliates, officers, directors, employees, agents, representatives, vendors, licensors, licensees, suppliers and any third party information

providers to the Site or the Product. Each of these individuals or entities shall have the right to assert and enforce those provisions directly against you on his, her or its own behalf.

### **13. Remedies**

We reserve the right to terminate access to any user whose account shows no activity for a period of 6 months or longer, or who uses the Site or the Product in any manner that violates the terms of this Agreement and to delete any data stored in or on behalf of such user's account.

We further reserve the right to seek all additional remedies available at law and in equity for violations of this Agreement or otherwise arising from the use of the Site or the Product, including, but not limited to, injunctive relief and monetary damages.

### **14. Dispute Resolution by Arbitration/No Class Action**

You understand and agree that all claims, disputes or controversies between you and the Company, or its affiliates, or their respective directors, officers, employees, representatives and agents, arising under or related to this Agreement (including the Privacy Policy), the Site, the Product or the use or operation of the Site or the Product, including tort and contract claims, claims based upon any federal, state or local statute, law, order, ordinance or regulation, and the issue of arbitrability, shall be resolved by final and binding arbitration before the American Arbitration Association ("AAA"), in accordance with the rules of the AAA.

IT IS IMPORTANT THAT YOU READ THIS ARBITRATION CLAUSE. IT PROVIDES THAT YOU MAY BE REQUIRED TO SETTLE ANY CLAIM OR DISPUTE THROUGH ARBITRATION, EVEN IF YOU WOULD PREFER TO LITIGATE THE CLAIM IN COURT. YOU SHOULD CONSULT LEGAL COUNSEL TO DETERMINE WHETHER THIS ARBITRATION CLAUSE IS APPROPRIATE FOR YOU. YOU CAN OPT OUT OF THE ARBITRATION BY FOLLOWING THE INSTRUCTIONS IN THE LAST PARAGRAPH OF THIS ARBITRATION CLAUSE.

YOU UNDERSTAND THAT UNLESS YOU EXERCISE THE RIGHT TO OPT-OUT OF ARBITRATION IN THE MANNER DESCRIBED BELOW, YOU AGREE THAT ANY DISPUTE WILL BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO HAVE A JURY, TO ENGAGE IN DISCOVERY (EXCEPT AS MAY BE PROVIDED IN THE ARBITRATION RULES) AND TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. IN ARBITRATION, A DISPUTE IS RESOLVED BY AN ARBITRATOR INSTEAD OF A JUDGE OR JURY. ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN COURT PROCEDURES. YOU ALSO AGREE THAT ANY ARBITRATION WILL BE LIMITED TO THE DISPUTE BETWEEN YOURSELF AND THE COMPANY AND WILL NOT BE PART OF A CLASS-WIDE OR CONSOLIDATED ARBITRATION PROCEEDING.

RIGHT TO OPT OUT: If you do not wish to be bound by this arbitration clause, you must notify the Company in writing within 60 days after such time you become bound by this Agreement as set forth above in Section 1 titled "Existence of Contract", or your rejection of arbitration will not be effective. You must send your request to us. Your request must include your telephone number(s) and a clear statement of your intent to opt out, such as "I reject the arbitration clause stated in the Terms of Service Agreement."

EVEN IF APPLICABLE LAW PERMITS CLASS ACTIONS OR CLASS ARBITRATIONS, THE DISPUTE RESOLUTION PROCEDURE SPECIFIED ABOVE APPLIES, AND WE AND YOU EACH WAIVE ANY RIGHT TO PURSUE DISPUTES ON A CLASSWIDE BASIS; THAT IS, TO EITHER JOIN A CLAIM WITH THE CLAIM OF ANY OTHER PERSON OR ENTITY OR ASSERT A CLAIM IN A REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE IN ANY LAWSUIT, ARBITRATION OR OTHER PROCEEDING.

### **15. Modifications to Terms of Service**

We reserve the right to change these Terms of Service at any time. Updated versions of the Terms of Service will appear on this Site and are effective immediately. You are responsible for regularly reviewing the Terms

of Service. Continued use of the Site or the Product after any such changes constitutes your consent to such changes.

## 16. Miscellaneous

Governing Law. This Agreement is governed by the laws of the State of New York, without regard to the conflicts of laws principles thereof.

Entire Agreement. This Agreement (including the Privacy Policy) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all other prior written or oral agreements between the Company and you regarding such subject matter.

Severing Invalid or Unenforceable Provisions. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction or as a result of future legislative action, such provision shall be deemed severable and shall not affect the enforceability of any other provisions contained in this Agreement, and the remaining portions of this Agreement shall continue in full force and effect.

No Construction Against Drafter. The terms of this Agreement shall not be construed against the Company by virtue of its having drafted them.

Survival. In the event of the termination of this Agreement, any obligation of the Company or you, which must by its nature survive such expiration or termination in order to be given full effect, shall survive such expiration or termination. In any event, all of the Company's rights under this Agreement (and to the extent applicable, all of the rights under this Agreement of its affiliates, its and its affiliates' directors, officers, employees, representatives, agents, licensees and licensors) shall survive any termination of this Agreement.

No Third Party Beneficiaries. Nothing in this Agreement is intended to confer on any third party (whether referred to in this Agreement by name, class, description or otherwise) any benefit or any right under any legislation in any country to enforce any provisions of this Agreement, except as expressly contemplated in this Agreement.

Shortened Statute of Limitations. ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SITE OR THE PRODUCT OR THE SUBJECT MATTER OF THIS AGREEMENT MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

Independent Contractors. You and the Company are independent contractors, and nothing in this Agreement creates a partnership, employment relationship or agency.

No Assignments or Transfers. You may not assign this Agreement or your rights and obligations hereunder, in whole or in part, to any third party without the Company's prior written consent (in its sole discretion), and any attempt by you to do so in violation hereof will be void and ineffective. The Company and its affiliates may assign their respective rights and obligations under this Agreement (in whole or in part) without your consent or notice to you.

Consent to Electronic Communications. The Company will generally communicate with its users by electronic means, such as email. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

Privacy. Your use of the Site is subject to our Privacy Policy, available through this [link](#).

Last Updated: October, 2013

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