

# Terms of Service

Kikoff Inc., a Delaware corporation (“Kikoff”, the “Company,” “we,” “our,” or “us”), owns and operates the website at [www.Kikoff.com](http://www.Kikoff.com) (the “Site”) and a related mobile application (the “App”). By accessing or using the Site or App, you (the “User”, “you”, or “your”) agree that you have read, understand and agree to be bound by these terms of service (the “Terms of Service”). Please review these Terms of Service before using the Site or App. If you do not agree to these terms, you should not access the Site or App.

PLEASE READ THESE TERMS OF SERVICE CAREFULLY, AS THEY CONTAIN AN AGREEMENT TO ARBITRATE AND OTHER IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS. THE AGREEMENT TO ARBITRATE REQUIRES (WITH LIMITED EXCEPTION) THAT YOU SUBMIT CLAIMS YOU HAVE AGAINST US TO BINDING AND FINAL ARBITRATION, AND FURTHER (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AGAINST US ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, AND (2) YOU WILL ONLY BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS.

## Eligibility

The Site and App are intended solely for Users who are citizens or legal residents of the United States of America and are physically present in the United States of America at the time of such use. By using the Site or App, you represent and warrant that you agree to and will abide by all of the terms and conditions of these Terms of Service, and that you are not prohibited by applicable law from using the Site or App. If you violate any of these Terms of Service, the Company may delete your account and/or prohibit you from using or accessing the Site or App, at any time in its sole discretion, with or without notice.

## Revisions

We may make changes to these Terms of Service from time to time in our sole discretion. If we do make revisions, we will post the changed Terms of Service on the Site and will indicate at the top of this page the date these Terms of Service were last revised. You understand and agree that your continued use of the Site or App after we have made any such changes constitutes your acceptance of the immaterial changes to the Terms of Service.

## Specific Registration Consents

When you register as a member, you authorize us to create and maintain an account in your name using your account registration information and other information that may be collected about you in accordance with our Privacy Policy as part of providing our Services (collectively, such information is your “Member Profile.”). By registering, you also specifically consent to let us request and receive your consumer report data and other data about you from third parties to include in your Member Profile as follows:

I understand that I am providing written instructions in accordance with the Fair Credit Reporting Act and other applicable law for Kikoff or its affiliated companies to request and receive copies of consumer reports, scores and other information about me from third parties, including, but not limited to, Experian, TransUnion and Equifax. I understand that my instructions let Kikoff and affiliated companies obtain such information at any time for as long as I have a registered Kikoff account to use as described in the Terms of Service and Privacy Policy.

I authorize Kikoff to access and review my credit information in order to display it to me and to provide me with relevant financial recommendations and marketing offers. I also accept Kikoff's Terms of Service, E-Sign Consent, and Privacy Policy.

## **Proprietary Rights**

The Site and App and all content contained or otherwise accessible through them, including designs, text, graphics, pictures, video, information and their selection and arrangement (the “Content”), are the proprietary property of the Company with all rights, title, and interest reserved. No Content may be modified, copied, distributed, framed, reproduced, republished, downloaded, displayed, posted, transmitted, or sold in any form or by any means, in whole or in part, without the Company's prior written permission. You will not modify, publish, transmit, reverse engineer, participate in the transfer or sale, create derivative works, or in any way exploit any of the Company's services, including any Content. Unless explicitly stated in these Terms of Service, nothing in these Terms of Service will be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise. Company graphics, logos, designs, page headers, button icons, scripts and service names are registered trademarks, trademarks or trade dress of the Company in the U.S. and/or other countries. The Company's trademarks and trade dress may not be used, including as part of trademarks and/or as part of domain names, in connection with any product or service in any manner that is likely to cause confusion and may not be copied, imitated, or used, in whole or in part, without the prior written permission of the Company.

Provided that you are eligible to use the Site and App, you are granted a limited license to access and use the Site and App and to download or print a copy of any portion of the Content solely for your use of the Site or App, provided that you keep all copyright or other proprietary notices intact. You may not republish the Content or incorporate the Content in any other compilation, and any other use of the Content is strictly prohibited.

## Restrictions

You may not use the Site or App in any manner that violates applicable law. Without our prior consent, you may not use the Site or App in any manner that violates these Terms of Service, or that could or is intended to damage, disable, overburden, or impair the Site or App or interfere with any other party's use and enjoyment of the Site or App. We may terminate, disable or throttle your access to, or use of, the Site or App any time without notice for any reason, with or without cause in our sole discretion.

You may not use any automated means to access the Site or App or collect any information from the Site or App; frame the Site, utilize framing techniques to enclose any Content or other proprietary information, place pop-up windows over the Content, or otherwise affect the display of the Content, engage in the practices of "screen scraping," "database scraping" or any other activity with the purpose of obtaining content or other information from the Site or App.

If you are blocked by us from accessing the Site or App (including by blocking your IP address), you agree not to implement any measures to circumvent such blocking (e.g., by masking your IP address or using a proxy IP address).

## Representations

You represent, warrant and agree that no materials of any kind submitted through the Site or App will violate or infringe upon the rights of any third party, or contain otherwise unlawful material. You further represent and agree that you will not use the Site or App in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Site or App.

## Use of the App

You agree to use the App in accordance with these Terms of Service and any applicable usage rules of any third-party mobile telephone, tablet or other device (each a "Mobile Device") or service provider or the third party from whom you are downloading the App (each an "App Store"). Supported App Stores include Apple App Store and Google Play; other App Stores are not supported. It is your responsibility to review the terms and conditions of any App Store and to determine what usage rules of such App Store apply to you depending on (1) your mobile device, (2) the method by which you downloaded the App, and (3) the App Store from which you downloaded the App (collectively, the "Usage Rules").

We may offer products and services to you through the App. You acknowledge and understand that certain products and services available to you through the App, including your ability to conduct financial transactions, schedule payments or view your account balances, require data access or wireless internet capability. You agree that

you are responsible for any such data access or wireless internet charges of your mobile device service provider. The App is designed to be accessible on multiple types of mobile devices and operating systems. We do not, however, make any representation or warranty that the App will be compatible with your mobile device or any specific operating system version of your mobile device or any other hardware, software, equipment or device installed on or used in connection with your mobile device. You agree that your functional use of the App may be affected by or dependent on your wireless connection and speed or your wireless service provider.

The functionality of the App could become disabled during times of poor connections or speeds from your wireless or internet service provider. You agree that it is your responsibility to verify the status of any attempted transaction by reviewing your account. You acknowledge and agree that the Company, and its affiliates, agents and licensors, will have no liability to you for any losses, financial or otherwise, suffered by you arising out of or resulting from compatibility or inoperability problems or the failure of or your failure to confirm any attempted transaction.

If you are accessing any agreements, disclosures, or other legally-required information we provide electronically on a mobile device, you must make sure that you have software on your mobile device that allows you to view, print and save the content presented to you. If you do not have these capabilities on your mobile device, please access our App and Site through a device that provides these capabilities.

You acknowledge, understand and agree that your use of the App and your access to your account through the App is also governed by any other agreement to which you have previously agreed to with the Company and each and every current and future affiliate of the Company in addition to these Terms of Service.

## **Customer Communications**

By accepting these Terms of Service, you expressly consent to be contacted by us or our affiliates at any telephone number, e-mail address, mailing address, account with the Company, or physical or electronic address you provide or at which you may be reached.

You agree we, our affiliates, agents, or service providers may contact you in any way, including by e-mail, SMS messages (including text messages) calls using prerecorded messages or artificial voice, and calls and messages delivered using automatic telephone dialing systems (auto-dialer) or an automatic texting system at any phone number you have provided to us, including any mobile phone number, as well as any address in our records or in public or nonpublic databases. You understand that you are not required to provide consent to marketing SMS messages as a condition to accessing the Company's services or products. You may withdraw your consent to SMS communications by replying STOP to the SMS message, or by contacting us at [help@Kikoff.com](mailto:help@Kikoff.com). In addition, we may contact other people who may provide employment, location or other contact information for you. Automated messages may

be played when the telephone is answered, whether by you or someone else. In the event that an agent or representative calls, he or she may also leave messages on your answering machine, voice mail, or send messages via text. You can revoke your consent at any time by contacting us at [help@Kikoff.com](mailto:help@Kikoff.com). You certify, warrant and represent that the telephone numbers that you have provided to us are your contact numbers. You represent that you are permitted to receive calls at each of the telephone numbers you have provided to us. You agree to promptly alert us whenever you stop using a particular telephone number. You are responsible for any and all charges, including fees associated with text messaging, imposed by your communications service provider.

You agree that we and our agents, representatives, affiliates or anyone calling on our behalf may contact you on a recorded or monitored line and that any incoming calls may also be recorded and monitored.

You also agree to receive alerts about your account activity, balances, payments, suspicious activities, and other matters involving your use of the Site or App or the Company's services through push notifications to your smartphone or other device. Receipt of push notifications may be delayed or prevented by factors beyond our control, including those affecting your internet/phone provider. The Company is not liable for losses or damages arising from non-delivery, delayed delivery, or the erroneous delivery of any push notification; inaccurate push notification content; or your use or reliance on the content of any push notification for any purposes. Each push notification may not be encrypted, and may include your name and information pertaining to your account or use of the Site or App. The Company may terminate your use of push notifications at any time without notice. You may choose to discontinue receiving push notifications by updating your preferences on your smartphone or device.

## **Mobile Identifiable Information**

You authorize your wireless operator to disclose your mobile number, name, address, email, network status, customer type, customer role, billing type, mobile device identifiers (IMSI and IMEI) and other subscriber and device details, if available, to Kikoff and service providers for the duration of the business relationship, solely for identity verification and fraud avoidance. See our [Privacy Policy](#) for how we treat your data.

## **Privacy**

Please review our [Privacy Policy](#), which explains how we treat your personal information when you use our Site or the App. By using the Site or App, you are also consenting to our Privacy Policy.

## **Your Account**

Your acceptance of the [E-Sign Policy](#) is required to create an Account.

You may be presented with the opportunity or requirement to create an account to use certain parts of the Site or App. When you create an account, you may be required to pick a user name, password, and/or other access credentials. You are responsible for maintaining the confidentiality of your account and access credentials and for restricting access to your computer and any other devices you use to access your account, and you agree to accept responsibility for all activities that occur under your account or access credentials. You may not assign or otherwise transfer your account to any other person. You acknowledge that the Company is not responsible for third party access to your account that results from theft or misappropriation of your account. The Company and its associates reserve the right, in our sole discretion, to refuse or cancel service, terminate accounts, or remove or edit Content. You agree to (1) immediately notify us of any unauthorized use of your access credentials or account or any other breach of security, and (2) ensure that you exit from your account at the end of each session when accessing the Site or App. We will not be liable for any loss or damage arising from your failure to comply with this section.

You may be presented with the opportunity to apply for a loan or other product through the Site or App. When applying for a loan on the Site or App, you agree to provide current, complete, and accurate information about yourself. If any information you provide is untrue, inaccurate, not current, or incomplete, the Company has the right to terminate your loan pre-registration and/or application and to decline to provide any and all future use of the Site or App. We reserve the right to decline your application for a loan or other product.

## Services

Our Services provide, among other things, credit building loans, a method for customers to access credit score information, information regarding financial literacy and education, credit alerts, and access to other financial products and services. The “Services” also include our mobile application.

The credit score and credit monitoring services are only available to customers who we are able to validate. While enrolling for the Services, we will ask you for your personal identification information and address. We may also ask you for other information, including contact information such as your phone number and e-mail address, and personal information to verify your identity and financial information (such as credit card number). This information is required in order to verify your identity, charge you the agreed upon fees for our Services, and to fulfill our obligations to provide our Services to you, including communicating with third parties as necessary to provide such Services, such as identity verification companies, consumer reporting agencies, credit bureaus, payment validation companies, law enforcement agencies, or others.

You agree that you will use the credit score and credit reporting services provided by Equifax, Experian and TransUnion as part of the Services to protect against or prevent actual fraud, unauthorized transactions, claims or other liabilities.

We will report loan repayments made by you credit reporting agencies (“CRAs”), which in part is designed to assist parties in establishing a credit history.

We are not responsible for how any CRA may manage or use the information provided to them by us and you agree to hold us harmless against any such claims, with all being subject the Fair Credit Reporting Act. See such CRA for the terms and conditions of how they collect, store, manage, use, modify, disseminate and distribute such information. Once the information is transmitted from us to the CRA, that CRA will obtain an ownership interest in that data.

The Services are not intended to provide any credit repair, legal, tax or financial advice. We cannot guarantee any improvement in credit scores.

Once payment by a customer for a particular loan repayment has been reported to a CRA, the delinquency of a payment may negatively impact a customer’s credit history. Kikoff shall not be liable for any claims, charges, demands, damages or adverse impacts on a customer’s credit score or credit history if a customer does not complete a loan repayment or has default payments.

## **Purchase Policy**

Some of the Services we offer may only be available for a fee. You will only be charged for fee-based services after we obtain your consent to pay such fees. We reserve the right to change fees for access to the Services, or to change what features are available at different fee levels, at any time. You shall pay all fees incurred through your use of the Services at the rates in effect for the billing period in which such Services are delivered.

We may cancel use of the Services with or without cause at any time.

## **Refund Policy**

If a new tradeline from us appears on your credit report with any of the major credit reporting agencies (i.e. Experian, Equifax and TransUnion) within 45 days from the day of the purchase of the Services, no refund will be made.

If a tradeline does not appear within 45 days from the day of the purchase of the Services, you can request a full refund.

## **Disclaimers**

None of Company, its parent, any of its affiliates, subsidiaries, providers or their respective officers, directors, employees, agents, representatives, independent contractors or licensors guarantees the accuracy, adequacy, timeliness, reliability,

completeness, suitability, availability or usefulness of any of the Site, App and Content, for any purpose, and each of these persons disclaim liability for errors or omissions in the Site, App or Content.

Nothing on the Site or the App constitutes an offer to sell or a solicitation of an offer to buy or sell any security or to participate in any trading strategy. The Content is not intended to be relied upon as the basis for any investment decision. The Content is not to be construed as legal, business, or tax advice, and you should consult your own attorney, business advisor, and/or tax advisor in order to make an independent determination of the suitability and legal, business, and tax consequences of any action.

Your use of the Site or App is at your sole risk. To the maximum extent permitted by applicable law, the Site or App and all of the Content is provided “as is” and “as available,” without any warranty of any kind, either express or implied, including the implied warranties of merchantability, fitness for a particular purpose, non-infringement or title. Additionally, there are no warranties as to the results of your use of the Site, App or Content. The Company does not warrant that the Site or App is free of viruses or other harmful components. This does not affect those warranties which are incapable of exclusion, restriction or modification under applicable law.

The Site or App may be temporarily unavailable from time to time for maintenance or other reasons. The Company assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, User communications. The Company is not responsible for any problems or technical malfunction of any telephone network or lines, computer online systems, servers or providers, computer equipment, software or services on account of technical problems or traffic congestion on the Internet, Site or App. The Company further makes no warranty, express or implied, regarding the security of the Website, including with respect to the ability of unauthorized persons to intercept or access information transmitted by you through this Website.

The Company reserves the right to change or discontinue any and all Content at any time without notice.

Calculators and tools on the Site or App provide you with estimates of loan terms that are generally available. The availability of these terms may change at any time at our sole discretion and are subject to our underwriting criteria. The loan terms you receive may be different.

The Site or App may contain links to websites or applications maintained by non-affiliated third parties. Such websites or applications may have terms of use, privacy policies, or security practices that are different from those of the Company. We are not responsible for the contents of any such website or application. 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.

## **Limitation on Liability**

IN NO EVENT WILL THE COMPANY OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DAMAGES (INCLUDING DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES), INCLUDING FOR ANY LOST PROFITS OR LOST DATA, OR IN CONNECTION WITH ANY OTHER REMEDY RELATING TO OR ARISING FROM YOUR USE OF, OR A DELAY OR INABILITY TO USE, THE SITE OR APP OR ANY OF THE CONTENT OR OTHER SERVICES OR MATERIALS ON OR ACCESSED THROUGH THE SITE OR APP, EVEN IF THE COMPANY IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR OTHER REMEDY.

IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SITE, APP OR CONTENT, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SITE OR APP.

CERTAIN FEDERAL AND STATE LAWS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES OR LIMITATIONS ON IMPLIED WARRANTIES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

## **Governing Law; Venue and Jurisdiction**

By visiting or using the Site or App, you agree that the laws of the State of California, without regard to any principles of conflict of laws that would require or permit the application of the laws of any other jurisdiction, will govern these Terms of Service.

You agree that you will not use the Site, App or the Company's products or services in any unlawful manner or for any unlawful purpose. You may not use or otherwise export or re-export the Site, App or Content except as authorized by U.S law. You represent and warrant that you are not located in any country that is subject to U.S. country-wide sanctions, or that has been designated by the U.S. as a "terrorist supporting" country, and are not a party listed on any U.S. list of sanctioned, prohibited or restricted parties.

## **Indemnity**

You agree to indemnify and hold the Company, its subsidiaries and affiliates, and each of their directors, officers, representatives, agents, contractors, partners and employees, harmless from and against any losses, liabilities, claims, demands,

damages, judgments, settlements, penalties, fines, costs, fees and expenses, including reasonable attorney's fees, arising out of or in connection with your use of the Site, App or our services, your conduct in connection with the Site or App or with other Users of the Site or App, or any violation of these Terms of Service or of any applicable law or the rights of any third party.

## **DISPUTE RESOLUTION BY BINDING ARBITRATION; JURY TRIAL & CLASS ACTION WAIVER**

PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS YOUR RIGHTS.

This Dispute Resolution by Binding Arbitration section is referred to in this Terms of Service as the "Arbitration Agreement." You agree that any and all disputes or claims that have arisen or may arise between you and Company, whether arising out of or relating to this Terms of Service (including any alleged breach thereof), the Services, any advertising, any aspect of the relationship or transactions between us, shall be resolved exclusively through final and binding arbitration, rather than a court, in accordance with the terms of this Arbitration Agreement, except that you may assert individual claims in small claims court, if your claims qualify. Further, this Arbitration Agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, and such agencies can, if the law allows, seek relief against us on your behalf. You agree that, by entering into this Terms of Service, you and Company are each waiving the right to a trial by jury or to participate in a class action. Your rights will be determined by a neutral arbitrator, not a judge or jury. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement.

***YOU AND COMPANY AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH YOU AND COMPANY AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S), EXCEPT THAT YOU MAY PURSUE A CLAIM FOR AND THE ARBITRATOR MAY AWARD PUBLIC INJUNCTIVE RELIEF UNDER APPLICABLE LAW TO THE EXTENT REQUIRED FOR THE ENFORCEABILITY OF THIS PROVISION.***

Company is always interested in resolving disputes amicably and efficiently, and most customer concerns can be resolved quickly and to the customer's satisfaction by emailing customer support at [help@Kikoff.com](mailto:help@Kikoff.com). If such efforts prove unsuccessful, a party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to Company should be sent to Kikoff

Inc, 75 Broadway STE 226, San Francisco, CA 94111 (“Notice Address”). The Notice must (i) describe the nature and basis of the claim or dispute and (ii) set forth the specific relief sought. If Company and you do not resolve the claim within sixty (60) calendar days after the Notice is received, you or Company may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Company or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Company is entitled.

Arbitration will be conducted by a neutral arbitrator in accordance with the American Arbitration Association’s (“AAA”) rules and procedures, including the AAA’s Consumer Arbitration Rules (collectively, the “AAA Rules”), as modified by this Arbitration Agreement. For information on the AAA, please visit its website, <http://www.adr.org>. Information about the AAA Rules and fees for consumer disputes can be found at the AAA’s consumer arbitration page, [http://www.adr.org/consumer\\_arbitration](http://www.adr.org/consumer_arbitration). If there is any inconsistency between any term of the AAA Rules and any term of this Arbitration Agreement, the applicable terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. The arbitrator must also follow the provisions of these Terms of Service as a court would. All issues are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability of this Arbitration Agreement. Although arbitration proceedings are usually simpler and more streamlined than trials and other judicial proceedings, the arbitrator can award the same damages and relief on an individual basis that a court can award to an individual under the Terms of Service and applicable law. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons.

Unless Company and you agree otherwise, any arbitration hearings will take place in a reasonably convenient location for both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, the determination shall be made by AAA. If your claim is for \$10,000 or less, Company agrees that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

Payment of all filing, administration, and arbitrator fees (collectively, the “Arbitration Fees”) will be governed by the AAA Rules, unless otherwise provided in this Arbitration Agreement. If the value of the relief sought is \$75,000 or less, at your request, Company will pay all Arbitration Fees. If the value of relief sought is more than \$75,000 and you are able to demonstrate to the arbitrator that you are economically unable to pay your portion of the Arbitration Fees or if the arbitrator otherwise determines for any reason that you should not be required to pay your portion of the Arbitration Fees, Company will pay your portion of such fees. In addition, if you demonstrate to the arbitrator that the costs of arbitration will be prohibitive as compared to the costs of litigation, Company will pay as much of the Arbitration Fees as the arbitrator deems

necessary to prevent the arbitration from being cost-prohibitive. Any payment of attorneys' fees will be governed by the AAA Rules.

All aspects of the arbitration proceeding, and any ruling, decision, or award by the arbitrator, will be strictly confidential for the benefit of all parties.

If a court or the arbitrator decides that any term or provision of this Arbitration Agreement (other than the subsection (b) titled "Prohibition of Class and Representative Actions and Non-Individualized Relief" above) is invalid or unenforceable, the parties agree to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Arbitration Agreement shall be enforceable as so modified. If a court or the arbitrator decides that any of the provisions of subsection (b) above titled "Prohibition of Class and Representative Actions and Non-Individualized Relief" are invalid or unenforceable, then the entirety of this Arbitration Agreement shall be null and void, unless such provisions are deemed to be invalid or unenforceable solely with respect to claims for public injunctive relief. The remainder of the Terms of Service will continue to apply.

Notwithstanding any provision in this Terms of Service to the contrary, Company agrees that if it makes any future change to this Arbitration Agreement (other than a change to the Notice Address) while you are a user of the Services, you may reject any such change by sending Company written notice within thirty (30) calendar days of the change to the Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this Arbitration Agreement as of the date you first accepted these Terms of Service (or accepted any subsequent changes to these Terms of Service).

For more information on the AAA, the Rules and Procedures, or the process for filing an arbitration claim, you may call the AAA at 888-778-7879 or visit the AAA website at <http://www.adr.org>.

**YOU AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO THE SERVICE OR THESE TERMS MUST BE FILED WITHIN 1 YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR IT WILL BE FOREVER BARRED.**

**Jury Trial Waiver:** If for any reason this Arbitration Agreement is found to be unenforceable, you and the Company expressly and knowingly WAIVE THE RIGHT TO TRIAL BY JURY. This means that a judge, rather than a jury, will decide disputes between you and the Company if, for any reason, the Arbitration Agreement is not enforced.

## **California Residents**

Pursuant to California Civil Code Section 1789.3, any questions about pricing, complaints, or inquiries about must be sent to Kikoff Inc., Attn: Complaints, 75 Broadway STE 226, San Francisco, CA 94111.

You may also contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

## **Other**

The failure of the Company to exercise or enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision in that or any other instance. If any provision of these Terms of Service is held invalid, the remainder of these Terms of Service will continue in full force and effect. If any provision of these Terms of Service will be deemed unlawful, void or for any reason unenforceable, then that provision will be deemed severable from these Terms of Service and will not affect the validity and enforceability of any remaining provisions.