



ICNET WIRELESS INTERNET SERVICES TERMS OF USE

These Terms of Use (the "Terms") govern your use of ICNet's WiFi service ("Service") and the ICNet Internet Services network ("Network"). Before using the Service, read the following Terms. Your use of the Service represents your agreement to these Terms. **These Terms contain disclaimers and other provisions that limit our liability to you. If you do not agree with these Terms, do not use the Service.** ICNet reserves the right to amend these Terms at any time. You can review the most current version of these Terms at www.icginfo.com and you are responsible for periodically reviewing these terms for any updates or changes. Your continued use of the Service following any updates or changes to these Terms constitutes your acceptance of the new Terms.

BY USING OR ACCESSING THE SERVICE, YOU ACKNOWLEDGE AND AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. YOU MAY NOT USE THE SERVICE AND MAY NOT ACCEPT THE TERMS OF THIS AGREEMENT IF (i) YOU ARE NOT OF LEGAL AGE TO FORM A BINDING CONTRACT WITH ICNET, OR (ii) YOU ARE A PERSON BARRED FROM RECEIVING THE SERVICES UNDER THE LAWS OF THE UNITED STATES OR OTHER COUNTRIES INCLUDING THE COUNTRY IN WHICH YOU ARE RESIDENT OR FROM WHICH YOU USE THE SERVICES. THIS AGREEMENT IS IN ADDITION TO OTHER POLICIES, TERMS, AND CONDITIONS, WHICH MAY BE FOUND ON OUR WEBSITE AT WWW.ICGINFO.COM. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN YOU ARE NOT PERMITTED TO ACCESS OR USE THE SERVICES.

1. DESCRIPTION OF THE SERVICES

ICNet will provide you with wireless access to the Internet through the provision of this Service. The Service includes providing end-users with appropriate WiFi technology access to certain high-speed Internet access points ("Locations") and, depending on your Service plan, certain roaming partner locations. ICNet may, but is not obligated to, extend its Locations through roaming agreements with other Internet Service Providers. If ICNet does extend its Locations and you access the Service of a roaming partner, you will be responsible for any applicable roaming charges.

2. GENERAL USE RESTRICTIONS

These Terms provide basic guidelines for your use of the ICNet network, and will be enforced in conjunction with other Terms of Use/Service or Agreements, if any, that govern ICNet products or services that you use or that you have purchased. In addition, all use of the ICNet network and this Service is governed by ICNet's policies and other guidelines for online activity, as determined solely by ICNet (collectively, the "Online Policies"), found at www.icginfo.com. ICNet can revise its Online Policies at any time without notice by updating this posting.

Subject to your acceptance of and compliance with these Terms, payment to ICNet for the Service and compliance with all ICNet Online Policies, you are hereby granted the right to use the Service through a non-exclusive, non-transferable and non-assignable limited license. The Service is provided for your use only (unless otherwise specifically stated) and you agree not to reproduce, duplicate, copy, sell, transfer, resell or exploit for any commercial purposes your subscription to or membership in the Service, any portion of the Service, use of the Service, or access to the Service. You have no right to resell, sublicense, assign or transfer your right to access the Service or use the Network. All information, documents, products, and software (the "Materials") provided with this Service were provided by or to ICNet by their respective manufacturers, authors, developers, licensees and vendors (the "Third Party Providers") and are the copyrighted work of ICNet and/or the Third Party Providers. Except as stated herein, none of the Materials may be copied, reproduced, resold, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or otherwise, without the prior express written permission of ICNet. You also may not, without ICNet's prior express written permission, "mirror" any Material provided with this Service on any other server.

Nothing provided with this Service shall be construed as conferring any license under any of ICNet's or any Third Party Provider's intellectual property rights, whether by estoppels, implication, or otherwise. You acknowledge sole responsibility for obtaining any such licenses. Any unauthorized use of any Materials provided with or through this Service may violate copyright laws, trademark laws, the laws of privacy and publicity, and communications regulations and statutes.

3. ACCEPTABLE USE OF SERVICES

- 3.1 ICNet does not exercise any editorial control over, or review over any the content of any Web site, electronic mail transmission, newsgroup, or other material created or accessible over or through the Services. ICNet is not responsible for any content, including information, opinions, advice, statements, or services that are provided by third parties, which may be accessible through the Services or any damages resulting therefrom. However, ICNet may remove, block, filter, or restrict by any and all means any material, content, or subject matter as ICNet sees fit and at ICNet's sole discretion. **YOU AGREE THAT BY USING THE SERVICES YOU MAY BE EXPOSED TO CONTENT THAT YOU MAY FIND OFFENSIVE, INDECENT, OR OBJECTIONABLE, AND THAT YOUR USE OF THE SERVICES IS AT YOUR OWN RISK.**
- 3.2 **Service Limitations** – The Services may not be available in all areas or at all times. Therefore, You acknowledge and agree that: (i) the Service is available only to devices within operating range of ICNet's network; and (ii) Services may be temporarily refused, interrupted, curtailed or otherwise limited because of transmission limitations caused by any factor, including without limitation atmospheric, environmental or topographical conditions, facility limitations or constraints, or facility changes, modifications, updates, relocations, repairs, maintenance or other similar activities necessary for the proper or improved operation of ICNet's facilities.
- 3.3 **PRIVACY** – Your privacy is important to us. ICNet will not sell, rent, loan or distribute your personal information to any third party. Any personal information that you provide will only be used by ICNet to the extent necessary to provide the Services to you. However, ICNet may disclose your information if so required by (i) operation of law; (ii) court order; (iii) law enforcement; (iv) or by demand of any government agency. For further details, please see ICNet's Privacy Policy by visiting www.icginfo.com.



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- 3.4 Violation of these Terms may result in the suspension or termination of (i) your User account; and/or (ii) access to the Services. You may also be charged additional fees.

You agree that you are responsible for the use of the Services attributed to your account or your device. You may not use or allow others to use the Services for any of the following purposes:

A. Illegal use: Using the Services to transmit any material (by email, uploading, posting, or otherwise) that, intentionally or unintentionally, violates any applicable local, state, national or international law, or any rules or regulations promulgated there under.

B. Harm to minors: Using the Services to harm, or attempt to harm, minors in any way.

C. Threats: Using the Services to transmit any material (by email, uploading, posting, or otherwise) that threatens or encourages bodily harm or destruction of property.

D. Harassment: Using the Services to transmit any material (by email, uploading, posting, or otherwise) that harasses another.

E. Fraudulent activity: Using the Services to make fraudulent offers to sell or buy products, items, or services or to advance any type of financial scam such as "pyramid schemes," "Ponzi schemes", unregistered sales of securities, securities fraud and "chain letters."

F. Forgery or impersonation: Adding, removing or modifying identifying network, message, or article header information in an effort to deceive or mislead is prohibited. Attempting to impersonate any person by using forged headers or other identifying information is prohibited.

G. Unsolicited commercial email/Unsolicited bulk email: Using the Services to transmit any unsolicited commercial email or unsolicited bulk email. Activities that have the effect of facilitating unsolicited commercial email or unsolicited bulk email, whether or not that email is commercial in nature, are prohibited. Using deliberately misleading headers in e-mails sent to multiple parties is prohibited.

H. Unauthorized access: Using the Services to access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of ICNet's or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in disruption of service or the corruption or loss of data.

I. Copyright or trademark infringement: Using the Services for any activity, or in manner, that constitutes or contributes to a violation or infringement of the intellectual property rights (including, but not limited to, copyrights, trademarks, patents, trade secrets, or any other proprietary rights) of any party, including, but not limited to, the unauthorized copying, distribution, or download of copyrighted material (i.e. the digitization and distribution of photographs from magazines, books, or other copyrighted sources; and the unauthorized transmittal or download of copyrighted software).

J. Collection of personal data: Using the Services to collect, or attempt to collect, personal information about third parties without their knowledge or consent.

K. Reselling the services: Reselling the Services without ICNet's authorization.

L. Network disruptions and unfriendly activity: Using the Services for any activity which adversely affects the ability of other people or systems to use ICNet Services or the Internet. This includes excessive consumption of network or system resources whether intentional or unintentional. This also includes "denial of service" (DoS) attacks against another network host or individual user. Interference with or disruption of other network users, network services or network equipment is prohibited. It is the User's responsibility to ensure that their system is configured, operated, and used in a manner to avoid excessive consumption of network or system resources. It is the User's responsibility to ensure that their system is configured in a secure manner. A User may not, through action or inaction, allow others to use their system for illegal or inappropriate actions. A User may not permit their system, through action or inaction, to be configured in such a way that gives a third party the capability to use their system in an illegal or inappropriate manner.

M. High Volume, Server Hosting, and non-traditional end user activities: The Services are intended for an End-User's periodic active use of email, instant messaging, browsing the World Wide Web, and other typical end user activities. High volume data transfers, especially sustained high volume data transfers, are prohibited. Hosting a web server, IRC server, or any other server is prohibited. Accordingly, ICNet maintains the right to terminate any user's connection following the detection of any high volume data transfer, server hosting, or non-traditional end user activity as determined by ICNet.

The above list is intended to be illustrative and not exhaustive. Additional activities may be prohibited, as updated by ICNet from time to time. ICNet remains the sole and final arbiter of acceptable usage of its Services.

- 3.5 ICNet may take any one or more of the following actions, or other actions not listed, at ICNet's sole discretion in response to complaints or violations of these Terms:



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- issue warnings: written or verbal
- suspend the User's account
- terminate the User's account
- bring legal action to enjoin violations and/or to collect damages, if any, caused by violations.

3.6. ICNet reserves the right to revise, amend, or modify these Terms, and our other policies and agreements (collectively, "I.C.G. Policy") at any time and in any manner. Notice of any revision, amendment, or modification to I.C.G. Policy can be found at www.icginfo.com. If you use the Services after the date on which these Terms, or I.C.G. Policy have changed, then ICNet will treat your use as an acceptance of the updated policy.

4. CHARGES/BILLING/PAYMENT

You agree to pay all charges and fees specified when you order the Service, including any taxes, fees, surcharges or other assessments applicable to the Service. ICNet charges for the Service are billed in advance. The Service is provided on an hourly, daily, or monthly basis. The hourly, daily, and monthly charges are subject to change. Payment for the Service is due immediately.

5. OPERATIONAL LIMITS OF THE SERVICE

Provisioning of the Service is subject to the availability and the operational limitations of the requisite equipment and associated facilities. You understand and agree that temporary interruptions of the Service may occur as normal events in the provision of the Service and that ICNet will not be liable for such interruptions. You further understand and agree that ICNet has no control over third party networks you may access in the course of your use of the Service, and therefore, delays and disruptions of other network transmissions are beyond the control of ICNet.

6. REGISTRATION/CUSTOMER INFORMATION/PASSWORD SECURITY

All information that you provide to ICNet must be accurate, including your name, address, credit or charge card numbers and expiration dates and any Service payment information ("Registration Data"). You are responsible for keeping such information up-to-date and must provide changes promptly to ICNet. You agree to keep confidential your log-in ID and password and are solely responsible for any liability or damages resulting from your failure to maintain that confidentiality. You are also solely and fully responsible and liable for all activities that occur under your member ID. You agree to immediately notify ICNet if you suspect any breach of security such as loss, theft, or unauthorized disclosure or use of your member ID or password.

7. MODIFICATIONS TO THE SERVICE/UPDATES TO THE TERMS

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

8. THIRD PARTY CONTENT DISCLAIMER/LINKS TO THIRD PARTY SITES

Materials provided by Third Party Providers have not been independently authenticated in whole or in part by ICNet. ICNet does not provide, sell, license, or lease any of the Materials other than those specifically identified as being provided by ICNet. This Service may be linked to other websites which are not under the control of and are not maintained by ICNet. ICNet is not responsible for the content of those sites. ICNet is providing these links to you only as a convenience, and the inclusion of any link to such sites does not imply endorsement by ICNet of those sites.

9. SUBMISSIONS

Unless otherwise explicitly stated, any Materials provided by you in connection with this Service shall be deemed to be provided on a non-proprietary and non-confidential basis. ICNet shall have no obligation of any kind with respect to such Materials and shall be free to use or disseminate such Materials on an unrestricted basis for any purpose. You acknowledge that you are responsible for the Materials that you submit, and you, not ICNet, have full responsibility for the Materials, including their legality, reliability, appropriateness, originality and copyright.

10. LIMITED WARRANTY

UNLESS OTHERWISE EXPLICITLY STATED, THE MATERIALS AND THE SERVICE ARE PROVIDED "AS IS", AND ARE FOR PERSONAL USE ONLY. ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ARE DISCLAIMED, EXCEPT TO THE EXTENT THAT SUCH DISCLAIMERS ARE HELD TO BE LEGALLY INVALID. THE SERVICES ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF CONDITION, UNINTERRUPTED USE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF INFORMATION ACCESSED THROUGH THE SERVICES, OR NON-INFRINGEMENT. ICNET DOES NOT WARRANT OR GUARANTEE THAT THE SERVICES WILL OPERATE ERROR-FREE OR WITHOUT FAILURE OR INTERRUPTION. SERVICES ARE NOT AVAILABLE IN ALL AREAS. ICNET DOES NOT WARRANT OR GUARANTEE THE PRIVACY OR SECURITY OF ANY COMMUNICATIONS WHILE THE USER IS USING THE SERVICES. Except for express warranties stated in this contract, if any, the Services are provided with all faults, and the entire risk as to satisfactory quality, performance, accuracy, and effort remains with the User. Some states do not allow the exclusion or limitation of implied warranties, so the above limitations may not apply to you. ADDITIONALLY, ICNET MAKES NO REPRESENTATIONS, WARRANTIES, GUARANTIES AS TO THE QUALITY, SUITABILITY, TRUTH, ACCURACY OR COMPLETENESS OF ANY OF THE MATERIALS PROVIDED WITH THE SERVICE. ANY QUESTIONS REGARDING THE MATERIALS SHOULD BE DIRECTED TO THE PROVIDERS OF



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SUCH MATERIALS. HOWEVER, ICNET DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY ON ICNET'S BEHALF AND YOU MAY NOT RELY ON ANY STATEMENT OF WARRANTY BY A THIRD PARTY AS A WARRANTY OF ICNET.

11. LIMITATION OF ICNET LIABILITY

ICNET SHALL NOT BE LIABLE IN ANY WAY FOR ANY LOSS OR DAMAGE OF ANY KIND ARISING OUT OF THE SERVICES OR ANY USE OF THE SERVICES, INCLUDING WITHOUT LIMITATION LOSS OF DATA, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER DAMAGES OR LOSSES. ICNET SHALL NOT BE RESPONSIBLE FOR ANY INTERRUPTIONS OF SERVICE, INCLUDING WITHOUT LIMITATION ISP DISRUPTIONS, SOFTWARE OR HARDWARE FAILURES, OR ANY OTHER EVEN WHICH MAY RESULT IN A LOSS OF DATA OR DISRUPTION OF SERVICE. IN NO EVENT WILL ICNET BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL ICNET'S LIABILITY, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED (IN THE AGGREGATE) THE TOTAL FEES PAID BY YOU TO ICNET FOR THE SPECIFIC SERVICE THAT GAVE RISE TO THE DAMAGES. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

12. LIABILITY OF CUSTOMER

YOU HAVE SOLE RESPONSIBILITY FOR ADEQUATE PROTECTION AND BACKUP OF DATA AND/OR EQUIPMENT USED IN CONNECTION WITH THE SERVICE AND WILL NOT MAKE A CLAIM AGAINST ICNET FOR LOST DATA, RE-RUN TIME, INACCURATE OUTPUT, WORK DELAYS OR LOST PROFITS RESULTING FROM THE USE OF THE SERVICE AND MATERIALS.

13. INDEMNITY

YOU HEREBY AGREE TO DEFEND, INDEMNIFY AND HOLD ICNET HARMLESS FROM, AND YOU COVENANT NOT TO SUE ICNET FOR, ANY CLAIM, LIABILITY, LOSS, INJURY, DAMAGE, COST OR EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED BY ICNET ARISING OUT OF OR STEMMING FROM YOUR (OR ANY OTHER USER THROUGH YOUR ACCOUNT OR YOUR EQUIPMENT) USE OF THE SERVICE AND MATERIALS.

14. LOCAL LAWS; EXPORT CONTROL

ICNET and/or the applicable Third Party Provider control and operate this Service from its or their headquarters in various locations in the United States of America and makes no representation that these Materials or the Service are appropriate or available for use in other locations. If you use this Service or the Materials from other locations, you are responsible for compliance with applicable local laws including but not limited to the export and import regulations of other countries.

15. Equitable Remedies

You hereby agree that ICNet would be irreparably damaged if the terms of this Agreement were not specifically enforced, and therefore you agree that ICNet shall be entitled, without bond, other security, or proof of damages, to appropriate equitable remedies with respect to breaches of this Agreement, in addition to such other remedies as ICNet may otherwise have available to it under applicable laws. In the event any litigation is brought by either party in connection with this Agreement, the prevailing party in such litigation shall be entitled to recover from the other party all the costs, attorneys' fees and other expenses incurred by such prevailing party in the litigation.

16. Dispute Resolution

To expedite resolution and control the cost of any dispute, controversy or claim related to this Agreement ("Dispute"), you and ICNet agree to first attempt to negotiate any Dispute (except those Disputes expressly provided below) informally for at least 30 days before initiating any arbitration or court proceeding. Such informal negotiations commence upon written notice from one person to the other. ICNet will send its notice to your billing address and to your designated email address, if one was provided.

A. Binding Arbitration – If you and ICNet are unable to resolve a Dispute through informal negotiations, either you or ICNet may elect to have the Dispute (except those Disputes expressly excluded below) finally and exclusively resolved by binding arbitration. ANY ELECTION TO ARBITRATE BY ONE PARTY SHALL BE FINAL AND BINDING ON THE OTHER. YOU UNDERSTAND THAT ABSENT THIS PROVISION, YOU WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA") and, where appropriate, the AAA's Supplementary Procedures for Consumer Related Disputes ("AAA Consumer Rules"), both of which are available at the AAA website www.adr.org. The determination of whether a Dispute is subject to arbitration shall be governed by the Federal Arbitration Act and determined by a court rather than an arbitrator. Your arbitration fees and your share of arbitrator compensation shall be governed by the AAA Rules and, where appropriate, limited by the AAA Consumer Rules. The arbitration may be conducted in person, through the submission of documents, by phone or online. The arbitrator will make a decision in writing, but need not provide a statement of reasons unless requested by a party. The arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. Except as otherwise provided in this Agreement, you and ICNet may litigate in court to compel arbitration, stay proceeding pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator.

B. Restrictions – You and ICNet agree that any arbitration shall be limited to the Dispute between ICNet and you individually. To the full extent permitted by law: (1) no arbitration shall be joined with any other; (2) there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilize



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class action procedures, and (3) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

C. Exceptions to Informal Negotiations and Arbitration – You and ICNet agree that the following Disputes are not subject to the above provisions concerning informal negotiations and binding arbitration: (1) any Disputes seeking to enforce or protect, or concerning the validity of, any of your or ICNet's intellectual property rights; (2) any Dispute related to, or arising from, allegations of theft, piracy, invasion of privacy or unauthorized use; and (3) any claim for injunctive relief.

D. Location – Any arbitration will take place at a reasonable location in the State of California. You and ICNet agree that the exclusive venue and jurisdiction for any Dispute not subject to arbitration (other than claims proceeding in any small claims court), or where no election to arbitrate has been made, shall be in the state or federal courts within Orange County, California.

17. Governing Law

Except as expressly provided otherwise, this Agreement shall be governed by, and will be construed under, the Laws of the United States of America and the law of the State of California, without regard to choice of law principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

18. Trademarks

ICNet, the ICNet logo, ICNet Wi-Fi and the ICNet Wi-Fi logo, graphics and symbols on the ICNet website or Service, and all ICNet-based trademarks and logos, are trademarks or registered trademarks of ICNet in the United States and other countries.

19. Notices

All required notices shall be deemed validly given if transmitted in writing by overnight delivery, mail, facsimile or personal delivery to the address set forth below:

General Counsel
ICNet Internet Services
20992 Bake Parkway, Ste 110, Lake Forest, CA 92630
E-mail: Legal@icginfo.com
By Phone: (949) 916-5781
By Fax: (949) 334-1322

20. Force Majeure

ICNet will not be liable for any delay or failure to perform our obligations if such delay or nonperformance arises in connection with any cause or causes beyond its reasonable control. Such causes shall include, without limitation, any act of God, fire, flood, natural disaster, strike (or other labor dispute), unusually severe weather, vandalism, terrorism, or any act, law regulation or request of any governmental body.

21. Severability

You and ICNet agree that if any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

22. Termination

ICNet reserves the right to terminate this Agreement and the Services at any time (i) at its convenience, with or without cause; or (ii) if you breach any of the terms of this Agreement or any I.C.G. or ICNet policies. In the event that ICNet terminates this Agreement or the Services without cause, ICNet will provide a prorated refund of the Services, if applicable. In no event will ICNet provide a refund if this Agreement is terminated for cause, or for your breach of any terms of this Agreement or I.C.G. or ICNet policies.

23. Entire Agreement

This Agreement constitutes and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements, provided, however, that this Agreement shall coexist with all I.C.G. and ICNet policies, found on www.icginfo.com, and shall not supersede those terms. To the extent that the provisions of this Agreement conflict with the provisions of I.C.G. and ICNet policies, the conflicting provisions of the I.C.G. and ICNet policies shall govern.

I hereby acknowledge that I have read and understand the foregoing ICNet Wireless Internet Services End-User's Terms of Use and agree that by using the Services I am acknowledging my agreement to be bound by the terms and conditions of this Agreement. Before continuing, please print or save a copy of these Terms for your records.