

# Terms of Service

**Date of Last Revision: August 11, 2021**

## **Welcome to Fireside!**

Fireside Chat Inc. (“Fireside,” “we,” “us,” “our”) provides its services (described below) to you through its website located at <https://firesidechat.com/> (the “Site”) and through its mobile applications and related services (collectively, such services, including any new features and applications, and the Site, the “Service” or “Services”), subject to the following Terms of Service (as amended from time to time, the “Terms of Service”). We reserve the right, at our sole discretion, to change or modify portions of these Terms of Service at any time. If we do this, we will post the changes on this page and will indicate at the top of this page the date these terms were last revised. We will also notify you, either through the Service user interface, in an email notification or through other reasonable means. Any such changes will become effective no earlier than fourteen (14) days after they are posted, except that changes addressing new functions of the Service or changes made for legal reasons will be effective immediately. Your continued use of the Service after the date any such changes become effective constitutes your acceptance of the new Terms of Service.

***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 FIRESIDE ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, (2) YOU WILL ONLY BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS, AND (3) YOU MAY NOT BE ABLE TO HAVE ANY CLAIMS YOU HAVE AGAINST US RESOLVED BY A JURY OR IN A COURT OF LAW.***

In addition, when using certain services, you will be subject to any additional terms applicable to such services that may be posted on the Service from time to

time, including, without limitation, the Privacy Policy located at [www.firesidechat.com/privacy-policy](http://www.firesidechat.com/privacy-policy). All such terms are hereby incorporated by reference into these Terms of Service.

## Access and Use of the Service

**Services Description:** The Service is designed to provide an audio and/or video-based live streaming and social networking platform. The Service allows users to create and monetize live audio and/or video broadcasts and digital art represented on non-fungible Ethereum-based tokens ("NFTs") that are generally available to all other users. Users who join an audio and/or video broadcast may be permitted by the host to participate in and contribute to the audio and/or video broadcast.

**Recording by Fireside:** Fireside records and saves all audio and/or video streams broadcasted through the Service. Fireside does this in order to improve its products and services, provide you with recommendations, and to ensure the security and integrity of its platform. If you are not comfortable with Fireside recording your broadcast or any contributions you may make to a broadcast, please do not contribute to the broadcast and/or disable your audio and/or video functionality.

**Media Export Requirements:** Fireside may make certain audio and/or video streams available for export to broadcasters and other authorized third parties. With respect to any audio and/or video exported from the Service, you agree to: (1) provide public attribution to Fireside when you share any content first created within the Service; (2) use and not modify the Fireside audio mark when distributing any such content to other platforms; and (3) allow Fireside to publish your content, unless you are bound by any exclusivity or other restrictions.

**Right to Participate:** If you plan to commercialize any audio and/or video content, NFTs or other works you first create using the Services ("Creator Works") with a third party or otherwise outside of the Services, you agree to first notify Fireside by email at [creators@firesidechat.com](mailto:creators@firesidechat.com).

**Your Registration Obligations:** You may be required to register with Fireside in order to access and use certain features of the Service. If you choose to register for the Service, you agree to provide and maintain true, accurate, current and complete information about yourself as prompted by the Service's registration form. Registration data and certain other information about you are governed

by our Privacy Policy. If you are under 16 years of age, you are not authorized to use the Service, with or without registering. In addition, if you are under 18 years old, you may use the Service, with or without registering, only with the approval of your parent or guardian.

**Member Account, Password and Security:** You are responsible for maintaining the confidentiality of your password and account, if any, and are fully responsible for any and all activities that occur under your password or account. You agree to (a) immediately notify Fireside of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you exit from your account at the end of each session when accessing the Service. Fireside will not be liable for any loss or damage arising from your failure to comply with this Section.

**Modifications to Service:** Fireside reserves the right to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. You agree that Fireside will not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

**General Practices Regarding Use and Storage:** You acknowledge that Fireside may establish general practices and limits concerning use of the Service, including without limitation the maximum period of time that data or other content will be retained by the Service and the maximum storage space that will be allotted on Fireside's servers on your behalf. You agree that Fireside has no responsibility or liability for the deletion or failure to store any data or other content maintained or uploaded by the Service. You acknowledge that Fireside reserves the right to terminate accounts that are inactive for an extended period of time. You further acknowledge that Fireside reserves the right to change these general practices and limits at any time, in its sole discretion, with or without notice.

**Mobile Services:** The Service includes certain services that are available via a mobile device, including (i) the ability to upload content to the Service via a mobile device, (ii) the ability to browse the Service and the Site from a mobile device and (iii) the ability to access certain features through an application downloaded and installed on a mobile device (collectively, the "Mobile Services"). To the extent you access the Service through a mobile device, your wireless service carrier's standard charges, data rates and other fees may apply. In addition, downloading, installing, or using certain Mobile Services may be prohibited or restricted by your carrier, and not all Mobile Services may work

with all carriers or devices. By using the Mobile Services, you agree that we may communicate with you regarding Fireside and other entities by SMS, MMS, text message or other electronic means to your mobile device and that certain information about your usage of the Mobile Services may be communicated to us. In the event you change or deactivate your mobile telephone number, you agree to promptly update your Fireside account information to ensure that your messages are not sent to the person that acquires your old number.

## Conditions of Use

**User Conduct:** You are solely responsible for all code, video, images, information, data, text, software, music, sound, photographs, graphics, messages or other materials (“content”) that you upload, post, publish or display (hereinafter, “upload”) or email or otherwise use via the Service. The following are examples of the kind of content and/or use that is illegal or prohibited by Fireside. Fireside reserves the right to investigate and take appropriate legal action against anyone who, in Fireside’s sole discretion, violates this provision, including without limitation, removing the offending content from the Service, suspending or terminating the account of such violators and reporting you to the law enforcement authorities. You agree to not use the Service to:

- a. email or otherwise upload any content that (i) infringes any intellectual property or other proprietary rights of any party; (ii) you do not have a right to upload under any law or under contractual or fiduciary relationships; (iii) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (iv) poses or creates a privacy or security risk to any person; (v) constitutes unsolicited or unauthorized advertising, promotional materials, commercial activities and/or sales, “junk mail,” “spam,” “chain letters,” “pyramid schemes,” “contests,” “sweepstakes,” or any other form of solicitation; (vi) is unlawful, harmful, threatening, abusive, harassing, tortious, excessively violent, defamatory, vulgar, obscene, pornographic, libelous, invasive of another’s privacy, hateful racially, ethnically or otherwise objectionable; or (vii) in the sole judgment of Fireside, is objectionable or which restricts or inhibits any other person from using or enjoying the Service, or which may expose Fireside or its users to any harm or liability of any type;
- b. interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service; or
- c. violate any applicable local, state, national or international law, or any regulations having the force of law;

- d. impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- e. solicit personal information from anyone under the age of 18; harvest or collect email addresses or other contact information of other users from the Service by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications;
- f. harvest or collect email addresses or other contact information of other users from the Service by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications;
- g. advertise or offer to sell or buy any goods or services for any business purpose that is not specifically authorized;
- h. further or promote any criminal activity or enterprise or provide instructional information about illegal activities; or
- i. obtain or attempt to access or otherwise obtain any materials or information through any means not intentionally made available or provided for through the Service.

**Fireside Code of Conduct:** Fireside aims to create a positive environment which fosters civil intelligent discourse, shared connected experiences and genuine relationship building through its platform in order to drive social impact. In order to protect the integrity of the platform, creators and the audience, and maintain the highest standard in terms of how we operate, we expect all of our users to know and follow the code as set forth in this section.

### **Guiding Principles / Values**

**Quality:** We are obsessed with sharing quality content with our audience and in helping our content creators develop the same. For us, quality content is developed with a specific purpose and/or intent, has depth, and is polished. We strive to create an environment which encourages productive engagement among content creators and audience members to increase understanding for all. Our platform is not intended to be used for the primary purpose of soliciting business or business development for personal or financial benefit. We believe excessive promotion or solicitation would detract from the quality of the content on this platform.

**Truth & Accountability:** We strive for truth and accuracy but are transparent when information cannot be corroborated. We aim to admit and correct any errors in our content and hold ourselves accountable. We are subject matter

experts in our areas of focus and refrain from making statements of fact on issues we are not qualified to speak on (e.g., giving medical advice/opinions without holding proper qualifications and/or education).

**Understanding & Empathy:** We build meaningful relationships with the internal and external Fireside community and engage in active listening throughout all of our interactions. We seek to increase understanding through approaching all conversations, shows and interactions from a place of empathy towards all points of view.

**Humanity:** We have the ability to respectfully disagree and engage in civil discourse with grace. We are mindful of the impact our words have on others.

**Inclusivity:** We believe in building a community that respects everyone's diversity - not only in terms of race, ethnicity, religion or socioeconomic status but also in terms of diversity of thought, opinions and ideas. We do not tolerate content which is divisive and aims to exclude certain groups or ideas. Content which breeds social detachment runs counter to our mission to create a positive and more inclusive world.

### **Prohibited Activity**

**Misrepresentation / Fraud:** Intentionally spreading false information is not allowed. You may not make, or use any content made available through the Service to make any misleading or deceptive statements, including by omitting other pertinent facts or context, misattributing or misquoting statements made by any other user, or combining content to produce misleading or deceptive statements. Further, you may not transmit, post or otherwise use any content made available through the Service to communicate anything that reflects negatively on Fireside or any other user. Finally, claiming to represent the Fireside organization or any other organization that you are not affiliated with, as an employee, agent or other representative is prohibited.

**Illegal/Content:** Support, glorification or praise of terrorism, organized crime or hate groups is not allowed. Offering sexual services and selling firearms/drugs are prohibited.

**Hate Speech, Bullying & Abuse:** Attacks or abuse based on race, ethnicity, national origin, sex, gender, gender identity, sexual orientation, religion, disability or disease are prohibited.

**Activity Inciting Physical, Psychological or Informational Harm:** Content and discussions which lead to activity resulting in physical or psychological harm to anyone are not allowed. Content and discussions which aim to “hide” pertinent information or prevent creators or audience members from accessing valuable information is also prohibited. In addition, activities inciting self-harm or other self-destructive behavior are also not permitted.

**Malicious Content/Activities:** Spam, scams or other malicious content (e.g., phishing), unauthorized sharing of personal information (e.g., personal information of some unrelated third party) and (3) suspension evasion are not permitted.

**Violence & Nudity:** Content containing audio descriptions and/or video about extreme or gratuitous gore or violence are not allowed. In addition, content containing audio descriptions and/or video pertaining to nudity are also not permitted.

**Pre-recorded Content / Prohibited Guests:** Broadcasting pre-recorded content as the sole content for your show is prohibited on Fireside. In addition, only persons who have an account on Fireside may be invited to participate as a guest on any given Fireside show. Streaming guests from third party tools (e.g., Zoom) through a single user’s stream is prohibited.

**Fireside Guidelines / Rules:** In addition to adhering to the Fireside Guiding Principles & Values set forth above, Fireside will periodically issue guidelines and rules to creators as we develop the Fireside community. Any activity in direct violation of these guidelines and/or rules is prohibited.

**As a member of the Fireside community, each of us has a responsibility to uphold and enforce the values set forth above. We expect all of our users to know, follow, and enforce the Code and failure to do so can result in your removal from the Fireside platform and potentially result in the termination of your relationship with Fireside.**

**Special Notice for International Use; Export Controls:** Software (defined below) available in connection with the Service and the transmission of applicable data, if any, is subject to United States export controls. No Software may be downloaded from the Service or otherwise exported or re-exported in violation of U.S. export laws. Downloading or using the Software is at your sole

risk. Recognizing the global nature of the Internet, you agree to comply with all local rules and laws regarding your use of the Service, including as it concerns online conduct and acceptable content.

## Third Party Distribution Channels

Fireside offers Software applications that may be made available through the Apple App Store, the Google Play Store or other distribution channels (“Distribution Channels”). If you obtain such Software through a Distribution Channel, you may be subject to additional terms of the Distribution Channel. These Terms of Service are between you and us only, and not with the Distribution Channel. To the extent that you utilize any other third party products and services in connection with your use of our Services, you agree to comply with all applicable terms of any agreement for such third party products and services.

With respect to Software that is made available for your use in connection with an Apple-branded product (such Software, “Apple-Enabled Software”), in addition to the other terms and conditions set forth in these Terms of Service, the following terms and conditions apply:

- Fireside and you acknowledge that these Terms of Service are concluded between Fireside and you only, and not with Apple Inc. (“Apple”), and that as between Fireside and Apple, Fireside, not Apple, is solely responsible for the Apple-Enabled Software and the content thereof.
- You may not use the Apple-Enabled Software in any manner that is in violation of or inconsistent with the Usage Rules set forth for Apple-Enabled Software in, or otherwise be in conflict with, the App Store Terms of Service.
- Your license to use the Apple-Enabled Software is limited to a non-transferable license to use the Apple-Enabled Software on an iOS Product that you own or control, as permitted by the Usage Rules set forth in the App Store Terms of Service.
- Apple has no obligation whatsoever to provide any maintenance or support services with respect to the Apple-Enabled Software.
- Apple is not responsible for any product warranties, whether express or implied by law. In the event of any failure of the Apple-Enabled Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Apple-Enabled Software to you, if any; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Apple-Enabled Software, or any other claims, losses, liabilities, damages, costs or expenses



attributable to any failure to conform to any warranty, which will be Fireside's sole responsibility, to the extent it cannot be disclaimed under applicable law.

- Fireside and you acknowledge that Fireside, not Apple, is responsible for addressing any claims of you or any third party relating to the Apple-Enabled Software or your possession and/or use of that Apple-Enabled Software, including, but not limited to: (i) product liability claims; (ii) any claim that the Apple-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 Apple-Enabled Software or the end-user's possession and use of that Apple-Enabled Software infringes that third party's intellectual property rights, as between Fireside and Apple, Fireside, not Apple, 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; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
- If you have any questions, complaints or claims with respect to the Apple-Enabled Software, they should be directed to Fireside as follows:

Fireside Chat Inc  
548 Market St, PMB 40252,  
San Francisco, CA, 94104-5401

Fireside and you acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of these Terms of Service with respect to the Apple-Enabled Software, and that, upon your acceptance of the terms and conditions of these Terms of Service, Apple 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 Apple-Enabled Software as a third party beneficiary thereof.

## Intellectual Property Rights

- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- a description of the copyrighted work or other intellectual property that you claim has been infringed;
- a description of where the material that you claim is infringing is located on

- the Service, with enough detail that we may find it on the Service;
- your address, telephone number, and email address;
  - a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright or intellectual property owner, its agent, or the law;
  - a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

**Counter-Notice:** If you believe your User Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to upload and use the content in your User Content, you may send a written counter-notice containing the following information to the Copyright Agent:

- your physical or electronic signature;
- identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- a statement that you have a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content; and
- your name, address, telephone number, and email address, a statement that you consent to the jurisdiction of the federal court located within the Northern District of California and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, Fireside will send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at our sole discretion.

**Repeat Infringer Policy:** In accordance with the DMCA and other applicable law, Fireside has adopted a policy of terminating, in appropriate circumstances and at Fireside's sole discretion, users who are deemed to be repeat infringers. Fireside may also at its sole discretion limit access to the Service and/or terminate the memberships of any users who infringe any intellectual property rights of others,

whether or not there is any repeat infringement.

## Third Party Websites

The Service may provide, or third parties may provide, links or other access to other sites and resources on the Internet. Fireside has no control over such sites and resources and Fireside is not responsible for and does not endorse such sites and resources. You further acknowledge and agree that Fireside will not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any content, events, goods or services available on or through any such site or resource. Any dealings you have with third parties found while using the Service are between you and the third party, and you agree that Fireside is not liable for any loss or claim that you may have against any such third party.

## Social Networking Services

You may enable or log in to the Service via various online third party services, such as social media and social networking services like Facebook or Twitter (“Social Networking Services”). By logging in or directly integrating these Social Networking Services into the Service, we make your online experiences richer and more personalized. To take advantage of this feature and capabilities, we may ask you to authenticate, register for or log into Social Networking Services on the websites of their respective providers. As part of such integration, the Social Networking Services will provide us with access to certain information that you have provided to such Social Networking Services, and we will use, store and disclose such information in accordance with our Privacy Policy. For more information about the implications of activating these Social Networking Services and Fireside’s use, storage and disclosure of information related to you and your use of such services within Fireside (including your friend lists and the like), please see our Privacy Policy at [www.firesidechat.com/privacy-policy](http://www.firesidechat.com/privacy-policy). However, please remember that the manner in which Social Networking Services use, store and disclose your information is governed solely by the policies of such third parties, and Fireside shall have no liability or responsibility for the privacy practices or other actions of any third party site or service that may be enabled within the Service.

In addition, Fireside is not responsible for the accuracy, availability or reliability of any information, content, goods, data, opinions, advice or statements made available in connection with Social Networking Services. As such, Fireside is not liable for any damage or loss caused or alleged to be caused by or in connection

with use of or reliance on any such Social Networking Services. Fireside enables these features merely as a convenience and the integration or inclusion of such features does not imply an endorsement or recommendation.

## General Media Release

Please note that Fireside is obtaining this General Media Release in order to protect its creators and allow them to freely use, reproduce, distribute and license the content they create on Fireside off of the application without having to obtain media releases from each audience member they interact with during their respective shows. Please keep in mind that any reference to "Associated Parties" (as defined below) includes creators.

Through this release, you hereby authorize Fireside and its licensees, directors, officers, employees, contractors, representatives, successors, assigns and any authorized users of the Service (collectively, the "Associated Parties") to create audio and/or video recordings, still and digital images and/or textual descriptions, testimonials, and statements made by you through the Fireside application (hereinafter, the "Recordings"), without further compensation or permission.

You hereby agree and acknowledge that Fireside and any Associated Parties (e.g., creators) may use the Recordings, including your name and likeness, for any commercial and non-commercial purposes (including the creation of NFTs), including to use, reproduce, distribute, and license to others in accordance with Fireside's Terms of Service, in any manner of media whatsoever now or hereafter known, without further compensation or permissions.

You understand that all Recordings in which you participate are the exclusive property of Fireside or an Associated Party (e.g., a creator) and you waive any right to inspect or approve of the final images or content in which the Recordings appear.

You hereby irrevocably agree that you will not assert or maintain against Fireside or the Associated Parties any claim, action, suit or demand of any kind or nature through their use, distribution and exploitation of the Recordings.

## Indemnity and Release

You agree to release, indemnify and hold Fireside and its affiliates and their officers, employees, directors and agents (collectively, "Indemnitees") harmless

from any from any and all losses, damages, expenses, including reasonable attorneys' fees, rights, claims, actions of any kind and injury (including death) arising out of or relating to your use of the Service, any User Content, your connection to the Service, your violation of these Terms of Service or your violation of any rights of another. Notwithstanding the foregoing, you will have no obligation to indemnify or hold harmless any Indemnitee from or against any liability, losses, damages or expenses incurred as a result of any action or inaction of such Indemnitee. If you are a California resident, you waive California Civil Code Section 1542, which says: "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." If you are a resident of another jurisdiction, you waive any comparable statute or doctrine.

## **Disclaimer of Warranties**

YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. FIRESIDE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

FIRESIDE MAKES NO WARRANTY THAT (I) THE SERVICE WILL MEET YOUR REQUIREMENTS, (II) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, OR (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS.

## **Limitation of Liability**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT FIRESIDE WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF PROFITS INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF FIRESIDE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, RESULTING FROM: (I) THE USE OR THE INABILITY TO USE THE SERVICE; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND

SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (V) ANY OTHER MATTER RELATING TO THE SERVICE. IN NO EVENT WILL FIRESIDE'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION EXCEED THE AMOUNT YOU HAVE PAID FIRESIDE IN THE LAST SIX (6) MONTHS, OR, IF GREATER, ONE HUNDRED DOLLARS (\$100).

SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OR EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU OR BE ENFORCEABLE WITH RESPECT TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICE OR WITH THESE TERMS OF SERVICE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICE.

IF YOU ARE A USER FROM NEW JERSEY, THE FOREGOING SECTIONS TITLED "DISCLAIMER OF WARRANTIES" AND "LIMITATION OF LIABILITY" ARE INTENDED TO BE ONLY AS BROAD AS IS PERMITTED UNDER THE LAWS OF THE STATE OF NEW JERSEY. IF ANY PORTION OF THESE SECTIONS IS HELD TO BE INVALID UNDER THE LAWS OF THE STATE OF NEW JERSEY, THE INVALIDITY OF SUCH PORTION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THE APPLICABLE SECTIONS.

## **Dispute Resolution By Binding Arbitration: PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS YOUR RIGHTS.**

### **a. Agreement to Arbitrate**

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 Fireside, 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 Fireside 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.

## **b. Prohibition of Class and Representative Actions and Non-Individualized Relief**

***YOU AND FIRESIDE 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 FIRESIDE 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.***

## **c. Pre-Arbitration Dispute Resolution**

Fireside 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 [support@firesidechat.com](mailto:support@firesidechat.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 Fireside should be sent to 548 Market St, PMB 40252, San Francisco, CA, 94104-5401 ("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 Fireside and you do not resolve the claim within sixty (60) calendar days after the Notice is received, you or Fireside may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Fireside or you shall

not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Fireside is entitled.

## **d. Arbitration Procedures**

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/> as may be updated from time to time. 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 Fireside 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, Fireside 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.

## **e. Costs of Arbitration**

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, Fireside 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, Fireside 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, Fireside 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.

## **f. Confidentiality**

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.

## **g. Severability**

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.

## **h. Future Changes to Arbitration Agreement**

Notwithstanding any provision in this Terms of Service to the contrary, Fireside 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 Fireside 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).

## Termination

You agree that Fireside, in its sole discretion, may suspend or terminate your account (or any part thereof) or use of the Service and remove and discard any content within the Service, for any reason, including, without limitation, for lack of use or if Fireside believes that you have violated or acted inconsistently with the letter or spirit of these Terms of Service. Any suspected fraudulent, abusive or illegal activity that may be grounds for termination of your use of Service, may be referred to appropriate law enforcement authorities. Fireside may also in its sole discretion and at any time discontinue providing the Service, or any part thereof, with or without notice. You agree that any termination of your access to the Service under any provision of this Terms of Service may be effected without prior notice, and acknowledge and agree that Fireside may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Service. Further, you agree that Fireside will not be liable to you or any third party for any termination of your access to the Service.

## User Disputes

You agree that you are solely responsible for your interactions with any other user in connection with the Service and Fireside will have no liability or responsibility with respect thereto. Fireside reserves the right, but has no obligation, to become involved in any way with disputes between you and any other user of the Service.

## General

These Terms of Service constitute the entire agreement between you and Fireside and govern your use of the Service, superseding any prior agreements between you and Fireside with respect to the Service. You also may be subject to additional terms and conditions that may apply when you use affiliate or third party services, third party content or third party software. These Terms of Service will be governed by the laws of the State of California without regard to its conflict of law provisions. With respect to any disputes or claims not subject to arbitration, as set forth above, you and Fireside agree to submit to the personal

and exclusive jurisdiction of the state and federal courts located within San Francisco County, California. The failure of Fireside to exercise or enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision. If any provision of these Terms of Service is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms of Service remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or these Terms of Service must be filed within one (1) year after such claim or cause of action arose or be forever barred. A printed version of this agreement and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You may not assign this Terms of Service without the prior written consent of Fireside, but Fireside may assign or transfer this Terms of Service, in whole or in part, without restriction. The section titles in these Terms of Service are for convenience only and have no legal or contractual effect. Notices to you may be made via either email or regular mail. The Service may also provide notices to you of changes to these Terms of Service or other matters by displaying notices or links to notices generally on the Service.

At Fireside, we respect the privacy of our users. For details please see our [Privacy Policy](#). By using the Service, you consent to our collection and use of personal data as outlined therein.

## Notice for California Users

Under California Civil Code Section 1789.3, users of the Service from California are entitled to the following specific consumer rights notice: 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., Suite N 112, Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210. You may contact us at Fireside Chat. Inc., 548 Market St, PMB 40252, San Francisco, CA, 94104-5401 or at (415) 524-4299.

## Questions? Concerns? Suggestions?

Please contact us at [support@firesidechat.com](mailto:support@firesidechat.com) to report any violations of these Terms of Service or to pose any questions regarding this Terms of Service or the

Service.

**Service Content, Software and Trademarks:** You acknowledge and agree that the Service may contain content or features (“Service Content”) that are protected by copyright, patent, trademark, trade secret or other proprietary rights and laws. Except as expressly authorized by Fireside, you agree not to modify, copy, frame, scrape, rent, lease, loan, sell, distribute or create derivative works based on the Service or the Service Content, in whole or in part, except that the foregoing does not apply to your own User Content (as defined below) that you legally upload to the Service. In connection with your use of the Service you will not engage in or use any data mining, robots, scraping or similar data gathering or extraction methods. If you are blocked by Fireside from accessing the Service (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). Any use of the Service or the Service Content other than as specifically authorized herein is strictly prohibited. The technology and software underlying the Service or distributed in connection therewith are the property of Fireside, our affiliates and our partners (the “Software”). You agree not to copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, or otherwise transfer any right in the Software. Any rights not expressly granted herein are reserved by Fireside.

The FIRESIDE™ and logos are trademarks and service marks of Fireside (collectively the “Fireside Trademarks”). Other Fireside, product, and service names and logos used and displayed via the Service may be trademarks or service marks of their respective owners who may or may not endorse or be affiliated with or connected to Fireside. Nothing in this Terms of Service or the Service should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any of Fireside Trademarks displayed on the Service, without our prior written permission in each instance. All goodwill generated from the use of Fireside Trademarks will inure to our exclusive benefit.

**Third Party Material:** Under no circumstances will Fireside be liable in any way for any content or materials of any third parties (including users), including, but not limited to, for any errors or omissions in any content, or for any loss or damage of any kind incurred as a result of the use of any such content. You acknowledge that Fireside does not pre-screen content, but that Fireside and its designees will have the right (but not the obligation) in their sole discretion to refuse or remove any content that is available via the Service. Without limiting

the foregoing, Fireside and its designees will have the right to remove any content that violates these Terms of Service or is deemed by Fireside, in its sole discretion, to be otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any content, including any reliance on the accuracy, completeness, or usefulness of such content.

**User Content Transmitted Through the Service:** With respect to the content, audio, video or other materials you upload through the Service or share with other users or recipients (collectively, "User Content"), you represent and warrant that you own all right, title and interest in and to such User Content, including, without limitation, all copyrights, trademarks and rights of publicity contained therein. By uploading any User Content you hereby grant and will grant Fireside and its affiliated companies a nonexclusive, worldwide, royalty free, fully paid up, transferable, sublicensable, perpetual, irrevocable license to copy, display, upload, perform, distribute, store, modify, create derivative works of and otherwise use your User Content in connection with the operation of the Service or the promotion, advertising or marketing thereof in any form, medium or technology now known or later developed. You expressly represent and warrant that your User Content contains only original content otherwise authorized for use by you, and does not contain unlicensed or unauthorized copyrighted content, including any imagery, design, audio, video, human likeness, or other unoriginal content not created by you, not authorized for use by you, not in the public domain, or otherwise without a valid claim of fair use. You further represent and warrant that you have permission to incorporate the unoriginal content.

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about or in connection with the Service ("Submissions"), provided by you to Fireside are non-confidential and Fireside will be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

You acknowledge and agree that Fireside may preserve content and may also disclose content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process, applicable laws or government requests; (b) enforce these Terms of Service; (c) respond to claims that any content violates the rights of third parties; or (d) protect the rights, property, or personal safety of Fireside, its users and the public. You understand that the technical processing and transmission of the

Service, including your content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

**Copyright Complaints:** Fireside respects 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 Fireside of your infringement claim in accordance with the procedure set forth below.

Fireside 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 Fireside’s Copyright Agent at [support@firesidechat.com](mailto:support@firesidechat.com) (Subject line: “DMCA Takedown Request”). You may also contact us by mail or facsimile at:

*Fireside Chat Inc*  
*548 Market St, PMB 40252,*  
*San Francisco, CA, 94104-5401*  
*Direct Line: (415) 524-4299*  
*Fax: +1 650-446-4505*

To be effective, the notification must be in writing and contain the following information:

## Your Privacy

[Privacy Policy](#) [Terms of Service](#)

