

# TERMS OF SERVICE

Last updated on February 3, 2017

Welcome to Red e App. Please read the following Terms of Service (these “Terms”) carefully as they form a contract between you and Red e App, Inc. (formerly Red e Productions LLC, “Red e App”, “we”, “us”, “our”) that governs your access and use of the Red e App mobile application (“App”), the Red e App website (<http://www.redeapp.com>) (the “Site”), and other associated services and or products referred to collectively as (“Red e App Services”). References to “you” or “users” encompass all users, including both administrative users for organizations or networks and registered end users. These Terms describe both your rights and your obligations as part of using Red e App Services.

## 1. General Acceptance of Terms

By accepting these Terms or by using Red e App Services, you agree to be bound by these Terms (including the Privacy Policy, which is incorporated into these Terms by reference). Your use of Red e App Services constitutes your acceptance of these Terms, and if you do not agree with these Terms then do not access or use Red e App Services.

If you are entering into these Terms on behalf of a company or other legal entity, you represent that you have the authority to bind such entity. If you do not have such authority, or if you do not agree with these Terms, you may not use Red e App Services. You acknowledge that these Terms are a contract between you and Red e App, even though it is electronic and is not physically signed by you and Red e App, and it governs your use of Red e App Services.

By accessing or using Red e App Services, you affirm that you are at least 18 years of age and that you are fully able and competent to enter into and comply with the terms and conditions herein. If you are under 13 years of age, you are not permitted to access or use Red e App Services. If we become aware that you are using the Red e App Services even though you are under 13, we will deactivate your account.

If you and Red e App have executed a written “Statement of Work” or “Master Service Agreement” which sets forth terms and conditions relating to your use of Red e App Services, then the terms of those agreements will also govern your use. If there is a direct conflict between these Terms and the aforementioned agreements then the terms of the “Statement of Work” and or “Master Service Agreement” will control for purposes of resolving said conflicts.

## 2. Electronic Communication.

Visiting the Site, using the App, and or sending emails to Red e App constitutes electronic communications. You consent to receive electronic communications and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically, via email and on the Site or App, satisfy any legal requirement that such communications be in writing.

## 3. Description of the Red e App Services.

Red e App services include, but are not limited to, related systems and technologies, as well as the Site, the App, data, reports, text, images, and other content made available by or on behalf of Red e App through any of the foregoing. Red e App Services does not include your data or any third party data or applications. All rights, title and interest in and to Red e App Services and its components, including all intellectual property rights, will remain with and belong exclusively to Red e App.

## 4. Access & Use of the Red e App Services.

Red e App retains all ownership of Red e App Services and, unless expressly contained herein, reserves all rights in it, including title, and interest in Red e App Services and all copies and derivative works of it. Red e App grants you a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use Red e App Services, for the sole purpose of enabling you to use and enjoy the benefits of Red e App Services in a manner permitted by these Terms. Without the prior written consent of Red e App, you may not assign, or grant a sublicense of your rights, grant a security interest in or over your rights, or transfer any part of your rights to use Red e App Services.

## 5. Your Account.

To obtain access to Red e App Services you are required to register a user account with Red e App. When registering with Red e App, you must provide and maintain true, accurate, and current personal information. You agree to keep your account information and password confidential and not allow a third party to access or use Red e App Services on your behalf. Red e App will not be liable for any loss or damage arising from any unauthorized use of your accounts. All users should be aware that your network administrator may have certain rights to access your account and may obtain

related information in connection with Red e App Services. For more information, please see our Privacy Policy. Network administrators are solely responsible for informing network members of any applicable company policies, obtaining any legally required network member consents to such policies, and for ensuring that all uses of Red e App Services comply with applicable federal, state and or international privacy laws.

## **6. Content.**

You are solely responsible for your conduct, the content of your data, and all communications with others while using Red e App Services. We may choose to review any content and or your content for compliance with our policies and guidelines, but you acknowledge that Red e App has no obligation to monitor any information on Red e App Services and Red e App may remove any content you provide or disable your account at any time for any reason or for no reason at all. Your content means any data, information, names, and or content you share, transmit, text, or otherwise make available via Red e App Services. Your content includes messages you send, comments you make on files or through messages, profile information and anything else you enter or upload into Red e App Services. Red e App will make commercially reasonable efforts to ensure that all facilities used to store and process your content meet a high standard for security. For more information on our current practices and policies regarding data privacy, security and confidentiality, please view our Security Policy.

You retain ownership of all of your intellectual property rights in any content you provide. Red e App does not claim ownership over any of your content and these Terms do not grant us any licenses or rights to your content except for the limited rights needed for us to provide Red e App Services, and as otherwise described herein. In order for us to provide Red e App Services, we require that you grant us certain rights with respect to your content. For example, we need to be able to transmit, store and copy your content in order to display it to you and other users associated with you and or your organization's network, to index it so you are able to search it, to make backups to prevent data loss, etc. Your acceptance of these Terms gives us the permission to do so and grants us any such rights necessary to provide Red e App Services to you, which includes allowing us to use third-party service providers in the operation and administration of Red e App Services and the rights granted to us are extended to these third parties to the degree necessary in order for Red e App Services to be provided. You acknowledge, consent and agree that Red e App may access, preserve and disclose your account information and your content if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce these Terms; (c) respond to claims that any of your content violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property or personal safety of Red e App, its users and the public. Further, we reserve the right to use your name as a reference for marketing or promotional purposes through Red e App Services and in other communication with existing or potential Red e App customers. For example, we might list your company on our Site under lists of Red e App customers.

## **7. International Users & Content Storage.**

Red e App services are controlled, operated and administered by Red e App from our offices within the United States. If you access Red e App Services from a location outside the United States, you are responsible for complying with any applicable local laws. You agree that you will not use Red e App Services or related content in any country or in any manner prohibited by any applicable laws, restrictions or regulations. If you are located outside the United States and choose to provide information to Red e App, please be advised that we transfer personal information to the United States and process it there and you expressly acknowledge and consent to your personal data being transmitted to the United States for processing and storage.

## **8. Acceptable Use; Representations and Warranties.**

You are responsible for your conduct, the content you provide, and communications with others while using Red e App Services. You represent and warrant to Red e App that (a) you have full power and authority to enter into these Terms; (b) you own all content that you provide through Red e App Services or have obtained all permissions, releases, rights or licenses required to engage in your activities in connection with the Red e App Services; and (c) your content and use of Red e App Services do not and will not violate, infringe, or misappropriate any third party's copyright, trademark, right of privacy or publicity, or other personal or proprietary right.

When using Red e App Services you agree to comply with the following acceptable use practices and conditions: (a) you may not misuse Red e App Services by interfering with normal operations, or by attempting to access Red e App Services using a method other than through the interfaces and instructions that we provide; (b) you may not probe, scan, or test the vulnerability of Red e App Services or Red e App system or network; (c) you may not deny others access to Red e App Services; (d) you may not use Red e App Services to transmit content that may be deemed threatening, harassing, racist, libelous, defamatory, pornographic, vulgar, obscene, or otherwise inappropriate, including any messages constituting or encouraging criminal conduct; (e) you may not transmit any viruses, malware,

or other types of malicious software, or links to such software, through Red e App Services; (f) you may not alter any files or libraries in any portion of Red e App Services or copy any part of Red e App Services; (g) you may not engage in abusive or excessive usage of Red e App Services; (h) you may not impersonate another person or access another user's account without that person's permission; (i) you may not use Red e App Services to commit an unlawful activity or to infringe the intellectual property rights of others; (j) you may not resell or lease any portion of Red e App Services; (k) you may not decompile, reverse engineer, disassemble, or otherwise attempt to derive the source code for Red e App; and (l) you may not assist anyone else in violating these Terms.

If your use of Red e App Services requires you to comply with industry specific regulations applicable to such use, such as to collect, protect, or otherwise handle "protected health information", as defined in 45 C.F.R. §160.103, you will be solely responsible for such compliance. You may not use Red e App Services in a way that would subject Red e App to those industry specific regulations without entering into a separate business associate agreement with Red e App that permits you to do so.

## **9. Changes and Updates.**

Red e App reserves the right, in its sole discretion, to change these Terms. The most current version of the Terms will supersede all previous versions. Any changes made to the Terms will be posted on this page. Red e App encourages you to periodically review these Terms to stay informed of updates. These Terms apply to all visitors, users, and others who access Red e App Services. In order for certain changes to become effective, applicable law may require Red e App to obtain your consent to such changes, or to provide you with sufficient advance notice of them. Your continued use of Red e App Services represents your acceptance of any modifications to these Terms.

Red e App may add, alter, or remove functionality from Red e App Services at any time without prior notice. We may also limit, suspend, or discontinue Red e App Services at its discretion. Red e App may remove content from Red e App Services at any time in our sole discretion, although we will endeavor to notify you before we do that if it materially impacts you and if practicable under the circumstances.

## **10. Third Party Services & Content.**

All transactions using Red e App Services are between the transacting parties only. Red e App Services may contain features and functionalities linking you or providing you with certain functionality and access to third party content, including websites, directories, servers, networks, systems, information and databases, applications, software, programs, products or services, and the Internet as a whole; you acknowledge that we are not responsible for such content or services. Red e App is not a direct party to such a transaction or an agent of any transacting party. Any such activities, and any terms associated with such activities, are solely between you and the applicable third party and you irrevocably waive any claim against us with respect to such sites and third party content.

## **11. Red e App Content.**

Red e App services, including the Site and App, are owned and operated by Red e App. The visual interfaces, graphics, design, compilation, information, source code, software, services and products, and all other elements of the Red e App Services are protected by United States copyright, trade dress, patent, and trademark laws, international conventions, and all other relevant intellectual property and proprietary rights, and applicable laws. Except for any content provided by or made accessible by you, all Red e App content contained within Red e App Services are the copyrighted property of Red e App or its subsidiaries or affiliated companies and or third party licensors, including all trademarks, service marks, and trade names. Except as expressly authorized by Red e App, you agree not to sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorized use of Red e App content. Unless we have granted you licenses to our intellectual property in these Terms, our providing you with the Red e App Services does not give you any license to our intellectual property. Any rights not expressly granted herein are reserved.

## **12. Indemnification.**

You agree to indemnify, defend and hold harmless Red e App, its officers, directors, employees, agents and third parties, for any losses, costs, liabilities and expenses, including reasonable attorneys' fees, due to, arising out of, or relating in, any way to your use of, access to, Red e App Services. Red e App reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Red e App in asserting any available defenses.

### **13. Disclaimer of Warranties & Limitation of Liability.**

THE INFORMATION, SOFTWARE, AND SERVICES INCLUDED IN OR AVAILABLE THROUGH THE SITE OR APP MAY INCLUDE INACCURACIES OR TYPOGRAPHICAL ERRORS. RED E APP MAY MAKE IMPROVEMENTS AND OR CHANGES IN THE SITE OR APP AT ANY TIME. RED E APP MAKES NO REPRESENTATIONS ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, AND ACCURACY OF THE INFORMATION, SOFTWARE, SERVICES AND RELATED GRAPHICS CONTAINED ON THE SITE OR APP FOR ANY PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL SUCH INFORMATION, SOFTWARE, SERVICES AND RELATED GRAPHICS ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND. RED E APP HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH REGARD TO THIS INFORMATION, SOFTWARE, SERVICES AND RELATED GRAPHICS, INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL RED E APP BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR PERFORMANCE OF RED E APP, WITH THE DELAY OR INABILITY TO USE THE SERVICES, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR FOR ANY INFORMATION, SOFTWARE, SERVICES AND RELATED GRAPHICS OBTAINED THROUGH THE SERVICES, OR OTHERWISE ARISING OUT OF THE USE OF THE SERVICES, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF RED E APP HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. UNDER NO CIRCUMSTANCES WILL RED E APP'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO YOUR USE OF THE SERVICES, WHETHER IN CONTRACT OR TORT, EXCEED TEN DOLLARS (\$10). SINCE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICES, OR WITH ANY OF THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING RED E APP SERVICES.

### **14. Termination of Use.**

These Terms will remain in effect as of your acceptance date to these Terms and will remain in effect until you terminate your use of Red e App Services or breach these Terms. Red e App, in its sole discretion, has the right to immediately terminate your access to Red e App Services following any breach of these Terms. Moreover, we may refuse access or service to anyone at any time and for any reason. You may also terminate these Terms by discontinuing your use of Red e App Services. Certain sections of these Terms will survive termination, including but not limited to, Disclaimer of Warranties & Limitation of Liability, Indemnification, Applicable Law and Severability.

### **15. Notices.**

Except as explicitly stated otherwise, legal notices will be served, with respect to Red e App, by mail to: Red e Productions LLC, 216 S. Shelby Street, Louisville, KY 40202 and, with respect to you, to the email address you used during the Red e App registration process. Notice will be deemed given once mailed or emailed.

### **16. Miscellaneous.**

**a. No Third Party Beneficiaries.** Red e App and you are not legal partners or agents; instead, our relationship is that of independent contractors. These Terms are solely for your and our benefit. It is not for the benefit of any other person, except for permitted successors.

**b. Waiver.** The failure of Red e App or a user to enforce any rights granted under these Terms or to take action against the other party in the event of any breach of these Terms will not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

**c. Claims.** You must bring any claim related to these Terms or Red e App Services within one year of the date you could first bring the claim, unless your local law requires a longer time to file claims. If it isn't filed in time, the claim is permanently barred.

**d. Severability.** If any provision of these Terms shall be held to be invalid or unenforceable, the remainder of these Terms shall remain in full force and effect. To the extent any express or implied restrictions are not permitted by applicable laws, these express or implied restrictions shall remain in force and effect to the maximum extent permitted by such applicable laws.

**e. Assignment & Transfer.** We may assign, transfer, or otherwise dispose our rights and obligations under these Terms, in whole or in part, at any time without notice. You may not assign these Terms or transfer any rights to use Red e App Services.

**f. Applicable Law.** By utilizing Red e App Services, you agree that the laws of the United States and, specifically, those of the Commonwealth of Kentucky, without regard to principles of conflict of laws, will govern these Terms and any dispute of any sort that might arise between you and Red e App. Any dispute or claim arising out of or in connection with these Terms shall be adjudicated in Louisville, Kentucky, USA.

**g. Entire Agreement.** Unless otherwise specified herein, these Terms constitute the entire agreement between you and Red e App with respect to Red e App Services and it supersedes all prior or contemporaneous communications, whether electronic, oral or written, between you and Red e App with respect to Red e App Services. A printed version of these Terms and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

**h. Headings.** The heading references herein are for convenience purposes only, do not constitute a part of these Terms, and will not be deemed to limit or affect any of the provisions hereof.

**i. Arbitration.** In the case of any disputes under these Terms, the parties shall first attempt in good faith to resolve their dispute informally, or by means of commercial mediation, without the necessity of a formal proceeding. Any controversy or dispute arising out of or relating to these Terms, or the breach thereof, which cannot otherwise be resolved as provided above shall be resolved by arbitration conducted in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA") and judgment upon the award rendered by the arbitral tribunal may be entered in any court having jurisdiction thereof. The arbitration tribunal shall consist of a single arbitrator mutually agreed by the parties, or in the absence of such agreement within thirty (30) calendar days from the first referral of the dispute to the AAA, designated by the AAA. The place of arbitration shall be Louisville, Kentucky, U.S.A., unless the parties shall have agreed to another location within fifteen (15) calendar days from the first referral of the dispute to the AAA. The arbitral award shall be final and binding. The parties waive any right to appeal the arbitral award; to the extent a right to appeal may be lawfully waived. Each party retains the right to seek judicial assistance: (a) to compel arbitration; (b) to obtain interim measures of protection prior to or pending arbitration; and (c) to enforce any decision of the arbitrator, including the final award. The arbitration proceedings contemplated by this Section shall be as confidential and private as permitted by law. To that end, the parties shall not disclose the existence, content or results of any proceedings conducted in accordance with this Section, and materials submitted in connection with such proceedings shall not be admissible in any other proceeding, provided, however, that this confidentiality provision shall not prevent a petition to vacate or enforce an arbitral award, and shall not bar disclosures required by law.