

## THEHUMANEXPERIENCE TERMS OF SERVICE

THESE TERMS AND CONDITIONS (THE "TERMS") ARE A LEGAL CONTRACT BETWEEN YOU AND THE HUMAN EXPERIENCE, INC. ("T.H.E.", "WE" OR "US"). THE TERMS EXPLAIN HOW YOU ARE PERMITTED TO USE THE WEBSITE LOCATED AT THE URL: WWW.THEHUMANEXPERIENCE.INFO AND ALL ASSOCIATED SITES LINKED TO WWW.THEHUMANEXPERIENCE.INFO BY T.H.E., ITS SUBSIDIARIES AND AFFILIATED COMPANIES (COLLECTIVELY, THE "SITE"). UNLESS OTHERWISE SPECIFIED, ALL REFERENCES TO "SITE" INCLUDE THE CONTENT AND SERVICES AVAILABLE THROUGH THE SITE (THE "SERVICES"). BY USING ANY PART OF THE SITE, YOU ARE AGREEING TO ALL THE TERMS; IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT ACCESS OR OTHERWISE USE ANY PART OF THE SITE OR ANY INFORMATION CONTAINED ON THE SITE.

NOTE: THESE TERMS CONTAIN A DISPUTE RESOLUTION AND ARBITRATION PROVISION, INCLUDING CLASS ACTION WAIVER THAT AFFECTS YOUR RIGHTS UNDER THESE TERMS AND WITH RESPECT TO DISPUTES YOU MAY HAVE WITH T.H.E. YOU MAY OPT OUT OF THE BINDING INDIVIDUAL ARBITRATION AND CLASS ACTION WAIVER AS PROVIDED BELOW.

### Changes.

T.H.E. may make changes to the content and Services offered on the Site at any time. T.H.E. can change, update, or add or remove provisions of these Terms, at any time by posting the updated Terms on this Site and displaying a notice on its website. By using any part of the Site after T.H.E. has updated the Terms, you are agreeing to all the updated Terms; if you do not agree with any of the updated Terms, you must stop using the Site.

### General Use.

By using this Site, you represent, acknowledge and agree that you are at least 18 years of age, or if you are under 18 years of age but are at least 13 years old (a "Minor"), that you are using the Site with the consent of your parent or legal guardian and that you have received your parent's or legal guardian's permission to use the Site and agree to its Terms. If you are a parent or legal guardian of a Minor, you hereby agree to bind the Minor to these Terms and to fully indemnify and hold harmless T.H.E. if the Minor breaches any of these Terms. If you are not at least 13 years old, you may not use the Site at any time or in any manner or submit any information to the T.H.E. or the Site.

T.H.E. provides content through the Site that is copyrighted and/or trademarked work of T.H.E. or T.H.E.'s third-party licensors and suppliers or other users of the Site (collectively, the "Materials"). Materials may include logos, graphics, video, images, software and other content.

Subject to the terms and conditions of these Terms, and your compliance with these Terms, T.H.E. hereby grants you a limited, personal, non-exclusive and non-transferable license to use and to display the Materials and to use this Site solely for your personal use. Except for the foregoing license, you have no other rights in the Site or any Materials and you may not modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, enhance or in any way exploit any of the Site or Materials in any manner.

If you breach any of these Terms, the above license will terminate automatically, and you must immediately destroy any downloaded or printed Materials.

### Geo-Location Terms.

The Services include and make use of certain functionality and services provided by third-parties that allow T.H.E. to include maps, geocoding, places and other content from Google, Inc. ("Google") as part of the Services (the "Geo-Location Services"). Your use of the Geo-Location Services is subject to Google's then current Terms of Use for Google Maps/Google Earth ([http://www.google.com/intl/en\\_us/help/terms\\_maps.html](http://www.google.com/intl/en_us/help/terms_maps.html)) and by using the Geo-Location Services, you are agreeing to be bound by Google's Terms of Use.

## **Password Restricted Areas of this Site.**

You need not register with T.H.E. to simply visit and view the homepage of the Site. However, in order to access the remainder of the Site and use the Services you must register for an account.

If you desire to register for an account with us, you must submit all required information on the account registration page. You may also have the ability to provide additional optional information that is not required to register for an account but may be helpful to T.H.E. in providing you with more a more customized experience when using the Site. Once you have submitted your account registration information, we will either approve or reject your registration, in our sole discretion. If your account is approved, you will be permitted to login to the Site using the password you selected in the registration process. T.H.E. may also provide you with the ability to register for an account on the Site using your existing account and log-in credentials on Third-Party Sites (as defined below) such as Facebook or Twitter.

You are responsible for maintaining the confidentiality of your account password and/or any Third-Party Site password that you use to login to the Site (collectively, "Passwords"), and you are responsible for all activities that occur using your Passwords. You agree not to share your Passwords, let others access or use your Passwords or do anything else that might jeopardize the security of your Passwords. You agree to notify T.H.E. if any of your Passwords is lost, stolen, if you are aware of any unauthorized use of your Passwords or if you know of any other breach of security in relation to this Site.

All the information that you provide when registering for an account and otherwise through the Site must be accurate, complete and up to date. You may change, correct or remove any information from your account by either logging into your account directly and making the desired changes.

## **Beta Release.**

If you register for a "beta account" or other pre-release version of the Site and/or Services ("Beta Release"), you acknowledge and agree that the Beta Release may contain, in our sole discretion, more or fewer features or different licensing terms than a subsequent commercial release version of the Site and/or Services that may be offered through the Site. You acknowledge and agree that any "beta account" will automatically convert to a commercial release version account upon the launch date of the Site and its Services to the public ("Public Launch Date"). If you do not desire to continue using the Site or its Services after the Public Launch Date, you may contact us to delete your account in accordance with the terms and conditions governing deletion of personal information set forth in T.H.E.'s Privacy Policy. [[www.thehumanexperienceapp.com/privacy](http://www.thehumanexperienceapp.com/privacy)] While T.H.E. generally intends to distribute commercial release versions of the Site and the Services, T.H.E. reserves the right not to release later commercial release versions of any Beta Release. Without limiting any disclaimer of warranty or other limitation stated herein, you agree that any Beta Release is not considered by T.H.E. to be suitable for commercial use, and that it may contain errors affecting its proper operation. BY ACCEPTING THESE TERMS, YOU ACKNOWLEDGE AND AGREE THAT USE OF A BETA RELEASE MAY EXHIBIT SPORADIC DISRUPTIONS THAT HAVE THE POTENTIAL TO DISRUPT YOUR USE OF THE SITE IN GENERAL AND ANY SERVICES THAT MAY BE OFFERED THROUGH THE SITE. T.H.E. SPECIFICALLY DISCLAIMS ALL DAMAGES RESULTING FROM YOUR USE OF ANY BETA RELEASE.

## **Fees and Payment.**

You agree to pay all applicable fees related to your use of the Services based on T.H.E.'s fees, charges, and billing terms then in effect. All fees are based on services purchased, regardless of actual usage. If you do not pay on time or if T.H.E. cannot charge your payment method for any reason, T.H.E. reserves the right to either suspend or terminate your access to the Site and account and terminate these Terms. By providing a payment method, you expressly authorize us to charge the applicable fees on your payment method at regular intervals as well as any taxes and other charges incurred in connection with your account, all of which depend on your particular Subscription and utilized services.

Paid subscriptions to use the Services (“Subscriptions”) come with a one-month free trial period. At the end of this period you will be notified to select a payment plan and enter credit card information. Subscriptions and the rights and privileges provided to you as a subscriber are personal and non-transferable. By providing a payment method, you expressly authorize T.H.E. and/or our third-party payment processor to charge the applicable fees on said payment method as well as taxes and other charges incurred thereto at regular intervals. We reserve the right to change prices for Subscriptions at any time, and do not provide price protection or refunds in the event of promotions or price decreases.

**IMPORTANT NOTICE: Unless you cancel prior to the expiration of your current Subscription, we will automatically renew your Subscription on each monthly or yearly (depending on the Subscription you have chosen) anniversary of the date that you signed up for the paid Subscription. We will charge your credit card with the applicable renewal Subscription fee and any Taxes (as defined below) that may be imposed on such fee payments. Yearly Subscriptions must be cancelled at least 30 days prior to the anniversary date to avoid automatic renewal, while monthly subscriptions must be cancelled at least 5 days prior to the monthly renewal date.** You may cancel your Subscription by logging into your account and electing to cancel; provided that any Subscription fees charged prior to the effective date of cancellation will not be refunded, in whole or in part (unless you cancel within the trial period).

All fees are exclusive of any applicable sales, use, import or export taxes, duties, fees, value-added taxes, tariffs or other amounts attributable to your use of the Services (collectively, “Taxes”). You are solely responsible for the payment of any such Taxes. In the event we are required to pay Taxes on your behalf, you shall promptly reimburse us for all amounts paid.

## **Electronic Communications.**

By using the Site and/or the Services provided on or through the Site, you consent to receiving electronic communications from us. These electronic communications may include notices about applicable fees and charges, transactional information and other information concerning or related to the Site and/or Services provided on or through the Site. These electronic communications are part of your relationship with T.H.E. You agree that any notices, agreements, disclosures or other communications that we send you electronically will satisfy any legal communication requirements, including that such communications be in writing.

## **Privacy Policy.**

Please review our Privacy Policy (the “Privacy Policy”) [[www.thehumanexperienceapp.com/privacy](http://www.thehumanexperienceapp.com/privacy)] which explains how we use information that you submit to T.H.E..

The use of Geo-Location Services is subject to the terms of the then current Google privacy policy (<http://www.google.com/privacy.html>).

## **Links to Third-Party Sites.**

This Site may be linked to other web sites that are not T.H.E. sites, including, without limitation, social networking, blogging and similar websites through which you are able to log into this Site using your existing account and log-in credentials for such third-party sites (collectively, “Third-Party Sites”). Certain areas of the Site may allow you to interact with such Third-Party Sites, and, if applicable, allow you to configure your privacy settings in your Third-Party Site account to permit your activities on this Site to be shared with your contacts in your Third-Party Site account and, in certain situations, you may be transferred to a Third-Party Site through a link but it may appear that you are still on this Site. If you decide to access any of the Third-Party Sites linked to from the Site, you do this entirely at your own risk and you must follow the privacy policies and terms and conditions for those Third-Party Sites. T.H.E. provides links to the Third-Party Sites to you as a convenience, and T.H.E. does not verify, make any representations or take responsibility for such Third-Party Sites, including, without limitation, the truthfulness, accuracy, quality or completeness of the content, services, links displayed and/or any other activities conducted on

or through such Third-Party Sites. YOU AGREE THAT T.H.E. WILL NOT, UNDER ANY CIRCUMSTANCES, BE RESPONSIBLE OR LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY GOODS, SERVICES, INFORMATION, RESOURCES AND/OR CONTENT AVAILABLE ON OR THROUGH ANY THIRD-PARTY SITES AND/OR THIRD-PARTY DEALINGS OR COMMUNICATIONS, OR FOR ANY HARM RELATED THERETO, OR FOR ANY DAMAGES OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION WITH YOUR USE OR RELIANCE ON THE CONTENT OR BUSINESS PRACTICES OF ANY THIRD-PARTY. Any reference on the Site to any product, service, publication, institution, organization of any third-party entity or individual does not constitute or imply T.H.E.'s endorsement or recommendation.

## **Submissions.**

You are responsible for the information, opinions, messages, comments, photos, videos, graphics, sounds and other content or material that you submit, upload, post or otherwise make available on or through the Site (each a "Submission"). You may not upload, post or otherwise make available on this Site any material protected by copyright, trademark, or any other proprietary right without the express permission of the owner of such copyright, trademark or other proprietary right, and the burden of determining whether any material is protected by any such right is on you. You shall be solely liable for any damage resulting from any infringement of copyrights, trademarks, proprietary rights, violation of contract, privacy or publicity rights or any other harm resulting from any Submission that you make. You have full responsibility for each Submission you make, including its legality, reliability and appropriateness.

Unless otherwise explicitly stated herein or in the T.H.E. Privacy Policy, you agree that any Submission provided by you in connection with this Site is provided on a non-proprietary and non-confidential basis. You hereby grant to T.H.E. a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide license (including the right to sublicense through multiple tiers) to use, reproduce, process, adapt, publicly perform, publicly display, modify, prepare derivative works, publish, transmit and distribute each of your Submissions, or any portion thereof, in any form, medium or distribution method now known or hereafter existing, known or developed, and authorize others to use the Submissions. We may modify or adapt your Submissions in order to transmit, display or distribute them over computer networks and in various media and/or make changes to the Submissions as necessary to conform and adapt them to any requirements or limitations of any networks, devices, services or media. T.H.E. agrees to use any personally identifiable information contained in any of your Submissions in accordance with T.H.E.'s Privacy Policy.

You agree to pay for all royalties, fees, damages and any other monies owing any person by reason of any Submissions posted by you to or through this Site.

When you provide Submissions you agree that those Submissions shall not be in violation of the "Unauthorized Activities" paragraph below. **Those prohibitions do not require T.H.E. to monitor, police or remove any Submissions or other information submitted by you or any other user.**

## **Unauthorized Activities.**

When using the Site, you agree to abide by common standards of decency and act in accordance with the law. For example, when using the Site you agree not to:

- Defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
- Use racially, ethnically, or otherwise offensive language.
- Discuss or incite illegal activity.
- Use explicit/obscene language or solicit/post sexually explicit images (actual or simulated).
- Post anything that exploits children or minors or that depicts cruelty to animals.

- Post any copyrighted or trademarked materials without the express permission from the owner.
- Disseminate any unsolicited or unauthorized advertising, promotional materials, 'junk mail', 'spam', 'chain letters', 'pyramid schemes', or any other form of such solicitation.
- Use any robot, spider, scraper or other automated means to access the Site.
- Take any action that imposes an unreasonable or disproportionately large load on our infrastructure.
- Alter the opinions or comments posted by others on this Site.
- Post anything contrary to our public image, goodwill or reputation.

This list of prohibitions provides examples and is not complete or exclusive. T.H.E. reserves the right to (a) terminate access to your account, your ability to post to this Site and (b) refuse, delete or remove any Submissions; with or without cause and with or without notice, for any reason or no reason, or for any action that T.H.E. determines is inappropriate or disruptive to this Site or to any other user of this Site. **T.H.E. may report to law enforcement authorities any actions that may be illegal, and any reports it receives of such conduct. When legally required or at T.H.E.'s discretion, T.H.E. will cooperate with law enforcement agencies in any investigation of alleged illegal activity on this Site or on the Internet.**

Unauthorized use of any Materials contained on this Site may violate certain laws and regulations.

You agree to indemnify and hold T.H.E. and its officers, directors, employees, affiliates, agents, licensors, and business partners harmless from and against any and all costs, damages, liabilities, and expenses (including attorneys' fees and costs of defense) T.H.E. or any other indemnified party suffers in relation to, arising from, or for the purpose of avoiding, any claim or demand from a third-party that your use of this Site or the use of this Site by any person using your user name and/or password (including without limitation, your participation in the posting areas or, your Submissions) violates any applicable law or regulation, or the copyrights, trademark rights or other rights of any third-party.

## **Proprietary Rights.**

The Human Experience is a trademark of T.H.E. in the United States. Other trademarks, names and logos on this Site are the property of their respective owners.

Unless otherwise specified in these Terms, all information and screens appearing on this Site, including documents, services, Site design, text, graphics, logos, images and icons, as well as the arrangement thereof, are the sole property of T.H.E.. All rights not expressly granted herein are reserved. Except as otherwise required or limited by applicable law, any reproduction, distribution, modification, retransmission, or publication of any copyrighted material is strictly prohibited without the express written consent of the copyright owner or license.

## **Intellectual Property Infringement.**

T.H.E. respects the intellectual property rights of others, and we ask you to do the same. T.H.E. may, in appropriate circumstances and at our discretion, terminate service and/or access to this Site for users who infringe the intellectual property rights of others. If you believe that your work is the subject of copyright infringement and/or trademark infringement and appears on our Site, please provide T.H.E.'s designated agent the following information:

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

- Identification of the copyrighted and/or trademarked work claimed to have been infringed, or, if multiple works at a single online site are covered by a single notification, a representative list of such works at that site.
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled at the Site, and information reasonably sufficient to permit T.H.E. to locate the material.
- Information reasonably sufficient to permit T.H.E. to contact you as the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which you may be contacted.
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright and/or trademark owner, its agent, or the law.
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

T.H.E.'s agent for notice of claims of copyright or trademark infringement on this Site can be reached as follows:

Headquarters  
TheHumanExperience  
PO Box 2357  
Round Rock, Texas 78680-2357  
Headquarters@thehumanexperience.info

Please also note that for copyright infringements under Section 512(f) of the Copyright Act, any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

#### Submitting a Digital Millennium Copyright Act ("DMCA") Counter-Notification

We will notify you that we have removed or disabled access to copyright-protected material that you provided, if such removal is pursuant to a valid DMCA take-down notice that we have received. If you receive such notice from us, you may provide us with a counter-notification in writing to T.H.E. designated agent that includes all of the following information:

1. Your physical or electronic signature;
2. Identification of the material that has been removed or to which access has been disabled, and the location at which the material appeared before it was removed or access to it was disabled;
3. A statement from you under the penalty of perjury, that you have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled; and
4. Your name, physical address and telephone number, and a statement that you consent to the jurisdiction of a court for the judicial district in which your physical address is located, or if your physical address is outside of the United States, for any judicial district in which T.H.E. may be located, and that you will accept service of process from the person who provided notification of allegedly infringing material or an agent of such person.

#### Termination of Repeat Infringers

T.H.E. reserves the right, in its sole discretion, to terminate the account or access of any user of our web site and/or service who is the subject or repeated DMCA or other infringement notifications.

#### **Disclaimer of Warranties.**

Your use of this Site is at your own risk. The Materials have not been verified or authenticated in whole or in part by T.H.E., and they may include inaccuracies or typographical or other errors. T.H.E. does not warrant the accuracy or timeliness of the Materials contained on this Site. T.H.E. has no liability for any errors or omissions in the Materials, whether provided by T.H.E., our licensors or suppliers or other users.

T.H.E., FOR ITSELF AND ITS LICENSORS, MAKES NO EXPRESS, IMPLIED OR STATUTORY REPRESENTATIONS, WARRANTIES, OR GUARANTEES IN CONNECTION WITH THIS SITE, THE SERVICES, OR ANY MATERIALS RELATING TO THE QUALITY, SUITABILITY, TRUTH, ACCURACY OR COMPLETENESS OF ANY INFORMATION OR CONTENT CONTAINED OR PRESENTED ON THIS SITE. UNLESS OTHERWISE EXPLICITLY STATED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THIS SITE, MATERIALS, AND ANY INFORMATION OR CONTENT CONTAINED OR PRESENTED ON THIS SITE IS PROVIDED TO YOU ON AN “AS IS,” “AS AVAILABLE” AND “WHERE-IS” BASIS WITH NO IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. T.H.E. DOES NOT PROVIDE ANY WARRANTIES AGAINST VIRUSES, SPYWARE OR MALWARE THAT MAY BE INSTALLED ON YOUR COMPUTER OR MOBILE DEVICE.

### **Limitation of Liability.**

T.H.E. SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES RESULTING FROM YOUR USE OF THE SITE OR YOUR DISPLAYING, COPYING, OR DOWNLOADING ANY MATERIALS TO OR FROM THIS SITE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL T.H.E. BE LIABLE TO YOU FOR ANY INDIRECT, EXTRAORDINARY, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) HOWEVER ARISING, EVEN IF T.H.E. KNOWS THERE IS A POSSIBILITY OF SUCH DAMAGE.

### **Local Laws; Export Control.**

T.H.E. controls and operates this Site from its headquarters in the United States of America and the Materials may not be appropriate or available for use in other locations. If you use the Site or any part thereof outside the United States of America, you are responsible for following applicable local laws.

### **Feedback.**

If you send or transmit any communications, comments, questions, suggestions, or related materials to T.H.E., whether by letter, email, telephone, or otherwise (collectively, “Feedback”), suggesting or recommending changes to any part of the Site or any Materials, including, without limitation, new features or functionality relating thereto, all such Feedback is, and will be treated as, non-confidential and non-proprietary. You hereby assign all right, title, and interest in, and T.H.E. is free to use, without any attribution or compensation to you, any ideas, know-how, concepts, techniques, or other intellectual property and proprietary rights contained in the Feedback, whether or not patentable, for any purpose whatsoever, including but not limited to, developing, manufacturing, having manufactured, licensing, marketing, and selling, directly or indirectly, products and services using such Feedback. To the extent the foregoing assignment of rights, title and interest in and your Feedback is prohibited by applicable law, you hereby grant T.H.E. a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide license (including the right to sublicense through multiple tiers) to (a) to fully use, practice and exploit those non-assignable rights, title and interest, including, but not limited to, the right to use, reproduce, adapt, publicly perform, publicly display, modify, prepare derivative works, publish, transmit and distribute your Feedback, or any portion thereof, in any form, medium or distribution method now known or hereafter existing, known or developed, for any purpose, and to develop, manufacture, have manufactured, license, market, and sell, directly or indirectly, products and services using such Feedback; and (b) authorize any such use by others of your Feedback, or any portion thereof, in the same manner. You understand and agree that T.H.E. is not obligated to use, display, reproduce, or distribute any such ideas, know-how, concepts, or techniques contained in the Feedback, and you have no right to compel such use, display, reproduction, or distribution.

## **Dispute Resolution and Arbitration; Class Action Waiver.**

**Please read this carefully. It affects your rights.**

Please read this Dispute Resolution and Arbitration; Class Action Waiver provision (“Provision”) carefully. It provides that all Disputes between you and T.H.E. shall be resolved by binding arbitration. Arbitration replaces the right to go to court. In the absence of this arbitration agreement, you may otherwise have a right or opportunity to bring claims in a court, before a judge or jury, and/or to participate in or be represented in a case filed in court by others (including, but not limited to, class actions). Except as otherwise provided, entering into this agreement constitutes a waiver of your right to litigate claims and all opportunity to be heard by a judge or jury. There is no judge or jury in arbitration, and court review of an arbitration award is limited. The arbitrator must follow this agreement and can award the same damages and relief as a court (including attorney’s fees).

For the purpose of this Provision, “T.H.E.” means T.H.E. and its parents, subsidiary, and affiliate companies, and each of their respective officers, directors, employees, and agents. The term “Dispute” means any dispute, claim, or controversy between you and T.H.E. regarding any aspect of your relationship with T.H.E., whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, or negligence), or any other legal or equitable theory, and includes the validity, enforceability or scope of this Provision (with the exception of the enforceability of the Class Action Waiver clause below). “Dispute” is to be given the broadest possible meaning that will be enforced, and shall include any claims against other parties relating to services or products provided or billed to you (such as T.H.E.’s licensors, suppliers, dealers or third-party vendors) whenever you also assert claims against us in the same proceeding.

YOU AND T.H.E. EACH AGREE THAT, EXCEPT AS PROVIDED BELOW, ANY AND ALL DISPUTES, AS DEFINED ABOVE, WHETHER PRESENTLY IN EXISTENCE OR BASED ON ACTS OR OMISSIONS IN THE PAST OR IN THE FUTURE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT IN ACCORDANCE WITH THIS PROVISION.

### Pre-Arbitration Claim Resolution

For all Disputes, whether pursued in court or arbitration, you must first give T.H.E. an opportunity to resolve the Dispute. You must commence this process by mailing written notification to Headquarters, TheHumanExperience, 2502 Vernell Way, Round Rock, Texas 78664. That written notification must include (1) your name, (2) your address, (3) a written description of your Claim, and (4) a description of the specific relief you seek. If T.H.E. does not resolve the Dispute within 45 days after it receives your written notification, you may pursue your Dispute in arbitration. You may pursue your Dispute in a court only under the circumstances described below.

### Exclusions from Arbitration/Right to Opt Out

Notwithstanding the above, you or T.H.E. may choose to pursue a Dispute in court and not by arbitration if (a) the Dispute qualifies, it may be initiated in small claims court; or (b) **YOU OPT-OUT OF THESE ARBITRATION PROCEDURES WITHIN 30 DAYS FROM THE DATE THAT YOU FIRST CONSENT TO THIS AGREEMENT** (the “Opt-Out Deadline”). You may opt out of this Provision by mailing written notification to Headquarters, TheHumanExperience, 2502 Vernell Way, Round Rock, Texas 78664. Your written notification must include (1) your name, (2) your address, and (3) a clear statement that you do not wish to resolve disputes with T.H.E. through arbitration. Your decision to opt-out of this Arbitration Provision will have no adverse effect on your relationship with T.H.E.. **Any opt-out request received after the Opt-Out Deadline will not be valid and you must pursue your Dispute in arbitration or small claims court.**

### Arbitration Procedures

If this Provision applies and the Dispute is not resolved as provided above (Pre-Arbitration Claim Resolution) either you or T.H.E. may initiate arbitration proceedings. The American Arbitration Association (“AAA”), [www.adr.org](http://www.adr.org), or JAMS, [www.jamsadr.com](http://www.jamsadr.com), will arbitrate all Disputes, and the arbitration will be conducted before a single



arbitrator. The arbitration shall be commenced as an individual arbitration, and shall in no event be commenced as a class arbitration. All issues shall be for the arbitrator to decide, including the scope of this Provision.

For arbitration before AAA, for Disputes of less than \$75,000, the AAA's Supplementary Procedures for Consumer-Related Disputes will apply; for Disputes involving \$75,000 or more, the AAA's Commercial Arbitration Rules will apply. In either instance, the AAA's Optional Rules For Emergency Measures Of Protection shall apply. The AAA rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. For arbitration before JAMS, the JAMS Comprehensive Arbitration Rules & Procedures and the JAMS Recommended Arbitration Discovery Protocols For Domestic, Commercial Cases will apply. The JAMS rules are available at [www.jamsadr.com](http://www.jamsadr.com) or by calling 1-800-352-5267. This Provision governs in the event it conflicts with the applicable arbitration rules. Under no circumstances will class action procedures or rules apply to the arbitration.

Because the Site and these Terms concern interstate commerce, the Federal Arbitration Act ("FAA") governs the arbitrability of all Disputes. However, the arbitrator will apply applicable substantive law consistent with the FAA and the applicable statute of limitations or condition precedent to suit.

**Arbitration Award** – The arbitrator may award on an individual basis any relief that would be available pursuant to applicable law, and will not have the power to award relief to, against or for the benefit of any person who is not a party to the proceeding. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. Such award will be final and binding on the parties, except for any right of appeal provided by the FAA, and may be entered in any court having jurisdiction over the parties for purposes of enforcement.

**Location of Arbitration** – You or T.H.E. may initiate arbitration in either Travis County, Texas or the federal judicial district that includes your billing address. In the event that you select the federal judicial district that includes your billing address, T.H.E. may transfer the arbitration to Travis County in the event that it agrees to pay any additional fees or costs you incur as a result of the transfer, as determined by the arbitrator.

**Payment of Arbitration Fees and Costs** – T.H.E. will pay all arbitration filing fees and arbitrator's costs and expenses upon your written request given prior to the commencement of the arbitration. You are responsible for all additional fees and costs that you incur in the arbitration, including, but not limited to, attorneys or expert witnesses. Fees and costs may be awarded as provided pursuant to applicable law. In addition to any rights to recover fees and costs under applicable law, if you provide notice and negotiate in good faith with T.H.E. as provided in the section above titled "Pre-Arbitration Claim Resolution" and the arbitrator concludes that you are the prevailing party in the arbitration, you will be entitled to recover reasonable attorney's fees and costs as determined by the arbitrator.

#### Class Action Waiver

Except as otherwise provided in this Provision, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a class or representative proceeding or claims (such as a class action, consolidated action or private attorney general action) unless both you and T.H.E. specifically agree to do so following initiation of the arbitration. **If you choose to pursue your Dispute in court by opting out of the Arbitration Provision, as specified above, this Class Action Waiver will not apply to you.** Neither you, nor any other user of the Site can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding without having complied with the opt-out requirements above.

#### Jury Waiver

You understand and agree that by entering into this Agreement you and T.H.E. are each waiving the right to a jury trial or a trial before a judge in a public court. In the absence of this Provision, you and T.H.E. might otherwise have had a right or opportunity to bring Disputes in a court, before a judge or jury, and/or to participate or be represented in a case filed in court by others (including class actions). Except as otherwise provided below, those rights are waived. Other rights that you would have if you went to court, such as the right to appeal and to certain types of discovery, may be more limited or may also be waived.

### Severability

If any clause within this Provision (other than the Class Action Waiver clause above) is found to be illegal or unenforceable, that clause will be severed from this Provision, and the remainder of this Provision will be given full force and effect. If the Class Action Waiver clause is found to be illegal or unenforceable, this entire Provision will be unenforceable and the Dispute will be decided by a court.

### Continuation

This Provision shall survive the termination of your service with T.H.E. or its affiliates. Notwithstanding any provision in this Agreement to the contrary, we agree that if T.H.E. makes any change to this Provision (other than a change to the Notice Address), you may reject any such change and require T.H.E. to adhere to the language in this Provision if a dispute between us arises.

### **General.**

T.H.E. prefers to advise you if we feel you are not complying with these Terms and to recommend any necessary corrective action. However, certain violations of these Terms, as determined by T.H.E., may result in immediate termination of your access to this Site without prior notice to you. The Federal Arbitration Act, Texas state law and applicable U.S. federal law, without regard to the choice or conflicts of law provisions, will govern these Terms. Foreign laws do not apply. Except for Disputes subject to arbitration as described above, any disputes relating to these Terms or this Site will be heard in the courts located in Travis County in the State of Texas. If any of these Terms is found to be inconsistent with applicable law, then such term shall be interpreted to reflect the intentions of the parties, and no other terms will be modified. T.H.E.'s failure to enforce any of these Terms is not a waiver of such term. These Terms are the entire agreement between you and T.H.E. and supersede all prior or contemporaneous negotiations, discussions or agreements between you and T.H.E. about this Site. The proprietary rights, disclaimer of warranties, representations made by you, indemnities, limitations of liability and general provisions shall survive any termination of these Terms.

### **Contact Us.**

If you have any questions about these Terms or otherwise need to contact T.H.E. for any reason, you can reach us at TheHumanExperience, PO Box 2357, Round Rock, Texas 78680-2357, [headquarters@thehumanexperience.info](mailto:headquarters@thehumanexperience.info) or (866) 487-0549.