**Site Usage Agreement**

THIS SITE USAGE AGREEMENT IS A BINDING CONTRACT between **Kirkendoll Management, a limited liability company** (“**Kirkendoll**”, “we”, “us”, “our”) and you, and if applicable, between us and the company you represent. You or the company you represent are referred to as “you.” **Kirkendoll** and you are also referred to individually as a “party” and collectively as the “parties”.

**You represent and warrant that you are over the age of eighteen (18) and possess the legal capacity to bind yourself to this Agreement or, if you are entering into this Agreement on behalf of a business organization, that you are over the age of eighteen (18) and duly authorized to bind that entity to this Agreement**.

**Scope of Agreement**

This “Agreement” governs the use of this Internet site located at kirkmgmt.com (the “Site”). **If you do not agree to each and all of these terms and conditions, you may not use the site and should leave the site immediately.** We reserve the right, at our sole and absolute discretion, to change, modify, add, or remove portions of these terms at any time without notice and, unless otherwise indicated, such changes will become effective immediately; therefore, please check these terms periodically for changes. Your continued use of the Site following the posting of changes to this Agreement will mean you accept those changes. Please print and retain a copy of this Agreement, as it may be changed from time to time, for your records.

**Content**

The publicly accessible parts of this Site contain materials provided by us for informational purposes only, with the understanding that we are by the provision of these materials not engaged in the rendering of professional advice or service.

In certain sections of this Site, you may find opinions, testimonials, or other such statements. These opinions are not necessarily those of **Kirkendoll**. Our content may be changed without notice. Similar to any printed materials, our content may become out-of-date. We undertake no obligation to update any content. We do not represent or otherwise warrant that our content will be error-free, free from viruses or other harmful components, or that we will correct any errors in our Content. We do not represent or otherwise warrant that the information available on or through our Site will be correct, accurate, timely or otherwise reliable. We reserve the right to make alterations or deletions to the content of the Site at any time without notice.

**Restrictions on Use of Content**

This Site and its content is subject to copyright protection and belongs exclusively to **Kirkendoll**, or its subsidiaries or affiliated companies and/or third party licensors. No material from the Site or any Internet site owned, operated, licensed, or controlled by us or our affiliates may be copied, reproduced, republished, uploaded, posted, transmitted, or distributed in any way. For purposes of these terms, the use of any such material on any other Web, Internet, intranet, extranet or other site or computer environment is prohibited. All trademarks, service marks, trade names and trade dress are proprietary to us. You may not frame or utilize framing techniques to enclose any of our trademarks, logos, or other proprietary information (including images, text, page layout, or form) without our prior express written consent. You may not use any meta tags or any other "hidden text" utilizing our name, trademarks or other proprietary information without our prior express written consent. We consider our copyrights, trademarks, and other intellectual property rights to be valuable assets, and take infringement of them seriously.

**Submissions**

We are pleased to hear from our users and welcome your comments regarding the Site and the products and services offered in connection therewith. Unfortunately, however, our company policy does not allow us to accept or consider creative ideas, suggestions, or materials other than those that we have specifically requested. We employ a talented staff and consultants who may be working on the same or similar ideas. We hope you will understand that it is the intent of this policy to avoid the possibility of future misunderstandings when projects developed by our professional staff and/or consultants might seem to others to be similar to their own creative work. Please do not send us any unsolicited original creative materials of any kind. While we value your feedback on the Site and the services and products offered in connection therewith, we request that you be specific in your comments with respect to the same, and not submit any creative ideas, suggestions, or materials (unless specifically requested by us).

If you send us creative suggestions, ideas, notes, graphics, drawings, concepts, or other information (collectively, the "Submissions"), you agree to assign your rights in the Submissions to us without any compensation and that the Submissions shall be deemed, and shall remain, our property. None of the Submissions shall be subject to any obligation of confidence on our part and we shall not be liable for any use or disclosure of any Submissions. Without limitation of the foregoing, we shall exclusively own all now known or hereafter existing rights to the Submissions of every kind and nature throughout the universe and shall be entitled to unrestricted use of the Submissions for any purpose whatsoever, commercial or otherwise, without compensation to the provider of the Submissions. To be clear, if you send us your creative ideas and suggestions, we will be entitled to use the Submission for any commercial or other purpose whatsoever, without compensation to you or any other person sending the Submission. You acknowledge that you are responsible for whatever material you submit, and you, not us, have full responsibility for the message, including its legality, reliability, appropriateness, originality, and copyright.

**Public Communication, Indemnity, Waiver & Release**

If you use the Site to make any form of communication (including, without limitation, related to the creation on or through the Site and/or dissemination by any means) you must not: (i) defame, abuse, harass or threaten others; (ii) make any bigoted, hateful or racially offensive statements; (iii) advocate illegal activity or discuss illegal activities with the intent to commit them; (iv) post or distribute any material that infringes and/or violates any right of a third party or any law; (v) post or distribute any vulgar, obscene, discourteous or indecent language or images; (vi) advertise or sell to, or solicit others; (vii) use the Site for commercial purposes of any kind; (viii) post or distribute any software or other materials which contain a virus or other harmful component. You shall remain SOLELY RESPONSIBLE for the content of your messages via any public communication, and you covenant not to sue and irrevocably indemnity, release, acquit and forever discharges Kirkendoll, and each of his affiliates, administrators, directors, owners, managers, agents, representatives, advisors (including without limitation, legal counsel and accountants) or similar parties from any and all actions or causes of action (in law or in equity), charges, claims, commissions, complaints, costs, demands, damages, liabilities, obligations, promises, agreements, suits, rights, losses, debt, interest and expenses (including attorney’s fees and costs actually incurred), known or unknown, suspected or unsuspected, fixed or contingent, with or without negligence, whether liquidated or unliquidated, in contract or in tort, related to, resulting from, arising out of or associated with any public communication made by, through or as a result of, any use of the Site by you. We reserve the right to remove or edit content from the Site at any time and for any reason.

By uploading materials or creating any other content to or on the Site or submitting any materials to us, you automatically grant (or warrant that the owner of such materials expressly granted) us a perpetual, royalty-free, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, publicly perform and display, create derivative works from and distribute such materials or incorporate such materials into any form, medium, or technology now known or later developed throughout the universe. In addition, you warrant that all so-called "moral rights" in those materials have been waived.

When using the Site or making any form of communication, never assume that people are who they say they are, know what they say they know, or are affiliated with whom they say they are affiliated with in any chat room, message board, or other user generated content area.

**Linking to Our Website**

You may provide links to our Website, provided (a) that you do not remove or obscure, by framing or otherwise, any portion of our Website, (b) your website does not engage in illegal or immoral activities, and (c) you discontinue providing links to our Website immediately upon request by us.

**Links to Other Websites**

Our Site may, from time to time, contain links to third party websites. These links are provided solely as a convenience to you. By linking to these websites, we do not create or have an affiliation with, or sponsor such third party websites. Inclusion of links for any website through our Site does not mean that we endorse, guarantee, warrant, or recommend the services, products, information, content and/or data of such third party websites. **Kirkendoll** has no control over the legal documents and privacy practices of third party websites; as such, you access any such third party websites at your own risk.

**Termination**

Your access to the Site may be terminated immediately without notice from us if in our sole and absolute discretion you fail to comply with any term or provision of this Agreement. Upon termination, you must cease use of the Site and destroy all materials obtained from such site and all copies thereof, whether made under the terms of this Agreement or otherwise. Notwithstanding the termination of this Agreement, you acknowledge and agree that those rights and obligations which by their nature are intended to survive the termination of this Agreement in order to be fully operative, shall survive the termination of this Agreement.

**Disclaimers**

YOU AGREE THAT YOU USE THE SITE AT YOUR OWN RISK. THE CONTENT, SERVICES AND MATERIALS IN THE SITE ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND EITHER EXPRESS, IMPLIED OR STATUTORY. WE DO NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR ENDORSEMENTS REGARDING THE ACCURACY, RELIABILITY, USEFULNESS OR COMPLETENESS OF THE SERVICES, CONTENT OR MATERIALS IN THE SITE OR ANY SITE LINKED TO IT. TO THE MAXIMUM EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, DESIGN, ACCURACY, CAPABILITY, SUFFICIENCY, SUITABILITY, CAPACITY, COMPLETENESS, AVAILABILITY, COMPATIBILITY OR ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. WE DO NOT WARRANT THAT THE SITE OR THE SERVICES, CONTENT, MATERIALS OR FUNCTIONS CONTAINED IN THE SITE WILL BE CONTINUOUSLY AVAILABLE, UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE, SERVICES, CONTENT, MATERIALS OR THE SERVERS THAT MAKE THE SITE OR SUCH SERVICES, CONTENT AND MATERIALS AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR ARE ACCURATE OR COMPLETE. WE DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICES, CONTENT, MATERIALS, FUNCTIONS OR PRODUCTS AVAILABLE THROUGH THE SITE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

You hereby waive any and all rights to bring any claim or action related to or arising out of your use of this Site.

We are not responsible for telephone, electric, electronic, network, Internet, computer, hardware or software program malfunctions, failures, delays or difficulties, or late, lost, stolen, illegible, incomplete, garbled, misdirected, mutilated or postage due mail, e-mail, form postings, connections, messages or entries, or the security of any and all such matters.

We are not responsible for incorrect or inaccurate entry information, whether caused by Internet users or by any of the equipment or programming associated with or utilized in the Site or by any technical or human error which may occur in the processing of any information related to the Site.

We may prohibit you from utilizing the Site if in our sole and absolute discretion you show a disregard for this Agreement or act with the intent to annoy, abuse, threaten, or harass any other person, or in any other disruptive manner. We also reserve the right to refuse service, terminate accounts, remove or edit content or cancel orders in our sole and absolute discretion.

If for any reason any portion of the Site is not capable of running as planned, including infection by computer virus, bugs, tampering, unauthorized intervention, fraud, technical failures, or any other causes beyond the reasonable control of **Kirkendoll** which corrupt or affect the administration, security, fairness, integrity, or proper conduct of the Site, we reserve the right (but not the obligation) in our sole and absolute discretion, to prohibit you and any member, buyer or supplier (and all of your and their Information) from using the Site, and to cancel, terminate, modify or suspend the Site or any portion thereof and void such Information.

You also agree that we and our affiliates are not responsible or liable in any way for injury, loss or damage to your computer or interception or use of credit card information, related to or resulting from use of the Site or any sites, services or materials linked or related thereto or therefrom and also are not responsible or liable in any way for any injury, loss, claim or damage relating to or resulting from any part of the Site operating or not operating on computers or networks used by you or communicating with such computers or networks.

We do not control the information provided by other users which is made available through the Site. You may find other user's information to be offensive, harmful, inaccurate, or deceptive. Please use caution and common sense when using the Site. Please note that there are also risks of dealing with foreign nationals, underage persons or people acting under false pretense.

ELECTRONIC COMMUNICATIONS PRIVACY ACT NOTICE (18 U.S.C. 2701-2711): WE MAKE NO GUARANTY OF CONFIDENTIALITY OR PRIVACY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED ON THE SITE OR ANY WEB SITE LINKED TO THE SITE. WE WILL NOT BE LIABLE FOR THE PRIVACY OF THE INFORMATION, E-MAIL ADDRESSES, REGISTRATION AND IDENTIFICATION INFORMATION, DISK SPACE, COMMUNICATIONS, CONFIDENTIAL OR TRADE-SECRET INFORMATION, OR ANY OTHER CONTENT TRANSMITTED OVER NETWORKS ACCESSED BY THE SITE, OR OTHERWISE CONNECTED WITH YOUR USE OF THE SITE.

**Limitation of Liability**

IN NO EVENT WILL **KIRKENDOLL** OR ITS DIRECTORS, EMPLOYEES, AGENTS, AND AFFILIATES BE LIABLE TO YOU, YOUR CUSTOMERS, OR ANY OTHER THIRD PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF THIS SITE, EVEN IF **KIRKENDOLL** IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.. IF YOU ARE DISSATISFIED WITH THE SITE, YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE TO DISCONTINUE USE OF THE SITE.

**Indemnification**

You agree to indemnify, defend and hold **Kirkendoll** and its employees, agents, shareholders, officers, directors, successors, assigns, agents, and affiliates harmless from and against any and all claims, damages, liabilities, costs, settlements, penalties and expenses (including attorneys’ fees, expert’s fees and settlement costs) arising out of or relating to any suit, action, proceeding, arbitration, subpoena, claim or demand brought or asserted by a third party pursuant to any theory of liability against **Kirkendoll** arising out of or relating to any use of the Site by you, breach by you of this Agreement or infringement by you of the intellectual property rights of any person, including without limitation, copyright, patent, trade secret, trade mark, artist rights, privacy, publicity or rights under other intellectual property laws. We will provide you with written notice of the existence of any basis for indemnification and we will select our defense counsel.

**Governing Law and Arbitration**

The laws of the State of Louisiana, without reference to its choice of law principles, govern this Agreement and any claims arising out of or relating to this Agreement or our relationship. All disputes, claims, and controversies arising out of or relating to this Agreement excluding legal action taken by us to collect or recover damages for, or obtain any injunction relating to our intellectual property, shall be settled solely by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association using a single arbitrator. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be conducted in New Orleans, Louisiana. The parties agree that the arbitrator cannot award punitive damages. **Kirkendoll** may seek any interim or preliminary relief from a court of competent jurisdiction necessary to protect our rights or property pending the completion of arbitration. The party requesting arbitration shall be responsible for the arbitration fees; otherwise, each party will be responsible for its own costs. However, the prevailing party may seek return of any arbitration fees paid as well as any reasonable attorney fees incurred. Judgment on the arbitration award may be entered into any court having jurisdiction thereof.

**Interpretation and Severability**

This Agreement will be construed and interpreted in a neutral manner. No rule of construction or interpretation will apply against either you or us. If any term, provision, covenant, or condition of this Agreement is held invalid or unenforceable in a valid legal proceeding, that term or provision may be modified only to the extent necessary for enforcement, that term or provision will be enforced to the maximum extent permitted by law, and the rest of this Agreement will remain in full force and effect and will in no way be affected or invalidated. Our failure to enforce any provision of our Agreement shall not be deemed a waiver of such provision nor of the right to enforce such provision. The headings in this Agreement are solely for convenience of reference and will not affect its interpretation. This Agreement does not create any third-party beneficiary rights. The word “including” is a term of expansion, not limitation.

**Digital Signature**

You agree that your use of this Site constitutes an electronic signature as defined by the Electronic Signatures in Global and National Commerce Act ("E-Sign") and the Uniform Electronic Transactions Act ("UETA") and that you have formed, executed, entered into, accepted the terms of and otherwise authenticated this Agreement and acknowledged and agreed that this Agreement is an electronic record for purposes of E-Sign, UETA and the Uniform Computer Information Transactions Act and as such is completely valid, effective, enforceable, and binding on, and non-refutable by you and any company on whose behalf you are acting.