

# Terms of Use

Please read these Terms of Use carefully before using the services offered by Topplers. By using the Service in any manner, including, but not limited to, visiting or browsing the Site or contributing content, information, or other materials or services to the Site, you agree to be bound by this Agreement.

## **Summary of Service**

Topplers' mission is to enable Users to impact the world in a positive way by setting big things in motion with charitable programs that inspire, educate, and motivate people. The invitation-only community features stories of passionate people and the causes that inspire them, and allows other Users to join them in their quests to make big changes happen. Upon joining, a User will gain access to a list of simple actions that can be taken to help, and be able to track the impact of their participation, invite others to join in, and share how they're helping.

## **Acceptance of Terms**

The Service is offered subject to acceptance of all of the terms contained in these Terms of Use, including the Privacy Policy available in the footer of the Topplers website, all other operating rules, policies, and procedures that may be published on the Site by Topplers, which are incorporated by reference. These Terms of Use apply to every user of the Service. Topplers reserves the right, at its sole discretion, to modify or replace these Terms of Use by posting the updated terms on the Site. It is your responsibility to check the Terms of Use periodically for changes. Your continued use of the Service following the posting of any changes to the Terms of Use constitutes acceptance of those changes.

Topplers reserves the right to change, suspend, or discontinue the Service (including, but not limited to, the availability of any feature, database, or Content) at any time for any reason.

The Service is intended for individuals who are at least 13 years old. You represent and warrant that if you are an individual, you are at least 13 years old, and that all registration information you submit is accurate and truthful. Topplers reserves the right to ask for proof of age from you and your account may be suspended until satisfactory proof of age is provided. Topplers may, at its sole discretion, refuse to offer the Service to any person or entity and change its eligibility criteria at any time. This provision is void where prohibited by law and the right to access the Service is revoked in those jurisdictions.

## **Rules and Conduct**

As a condition of use, you promise not to use the Service for any purpose that is prohibited by the Terms of Use or law. The Service is provided only for your own personal, non-commercial use. You are responsible for all of your activity in connection

with the Service. You shall not, and shall not permit any third party using your account to take any action, or submit content, that:

- infringes any patent, trademark, trade secret, copyright, right of publicity, or other right of any other person or entity, or violates any law or contract;
- you know is false, misleading, or inaccurate;
- is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, tortious, obscene, offensive, profane, or invasive of another's privacy;
- constitutes unsolicited or unauthorized advertising or promotional material or any junk mail, spam, or chain letters;
- contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit, or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password, or other information of Topplers or any third party;
- is made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence; or
- impersonates any person or entity, including any employee or representative of Topplers.

Additionally, you shall not: (i) interfere or attempt to interfere with the proper working of the Service or any activities conducted on the Service; (iii) bypass any measures Topplers may use to prevent or restrict access to the Service (or other accounts, computer systems, or networks connected to the Service); (iv) run Maillist, Listserv, or any form of auto-responder or "spam" on the Service; or (v) use manual or automated software, devices, or other processes to "crawl" or "spider" any page of the Site.

You shall not directly or indirectly: (i) decipher, decompile, disassemble, reverse engineer, or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Service, except to the extent applicable laws specifically prohibit such restriction; (ii) modify, translate, or otherwise create derivative works of any part of the Service; or (iii) copy, rent, lease, distribute, or otherwise transfer any of the rights that you receive hereunder. You shall abide by all applicable local, state, national, and international laws and regulations.

### **Registration**

You may view some Content on the Site without registering, but as a condition of using certain aspects of the Service, you may be required to register with Topplers and set up your user name (email address) and password. You shall provide accurate, complete, and updated registration information. Failure to do so shall constitute a breach of the Terms of Use, which may result in immediate termination of your account. You shall not use a User ID, name or term that (i) is the name of another person, with the intent to impersonate that person; (ii) is subject to any rights of another person, without

appropriate authorization; or (iii) is offensive, vulgar, or obscene. Topplers reserves the right in its sole discretion to refuse registration of or cancel a User ID registration. You are solely responsible for activity that occurs on your account and shall be responsible for maintaining the confidentiality of your password for the Site. You shall never use another User account without the other User's express permission. You will immediately notify Topplers in writing of any unauthorized use of your account, or other known account-related security breach.

### **Fees and Payments**

Joining Topplers is free. However, we do charge fees for certain services. When you use a service that has a fee you have an opportunity to review and accept the fees that you will be charged. Changes to fees are effective after we provide you with notice by posting the changes on the Site. You are responsible for paying all fees and taxes associated with your use of the Service.

All funds are collected by Paypal.

### **Third-Party Sites**

The Service may permit you to link to other websites or resources on the internet, and other websites or resources may contain links to the Site. When you access third-party websites, you do so at your own risk. Those other websites are not under Topplers' control, and you acknowledge that Topplers is not liable for the content, functions, accuracy, legality, appropriateness, or any other aspect of those other websites or resources. The inclusion on another website of any link to the Site does not imply endorsement by or affiliation with Topplers. You further acknowledge and agree that Topplers shall not be liable for any damage related to the use of any content, goods, or services available through any third-party website or resource.

### **Content and License**

You agree that the Service contains Content provided by Topplers and its partners and Users and that the Content may be protected by copyrights, trademarks, service marks, patents, trade secrets, or other rights and laws. You shall abide by and maintain all copyright and other legal notices, information, and restrictions contained in any Content accessed through the Service.

Topplers grants to each User of the Service a worldwide, non-exclusive, non-sublicensable and non-transferable license to use and reproduce the Content, solely for personal, non-commercial use. Use, reproduction, modification, distribution, or storage of any Content for other than personal, non-commercial use is prohibited without prior written permission from Topplers, or from the copyright holder. You shall not sell, license, rent, or otherwise use or exploit any Content for commercial use or in any way that violates any third-party right.

### **User Provided Material**

By submitting any material, posts, or information to this site, you agree to the following terms:

- Topplers will not have any ownership rights over your material. Anything posted shall be considered non-proprietary and non-confidential. We shall be entitled to copy, disclose, distribute, or use for such other purpose as we deem appropriate all material and posts provided to us, with the exception of personal information, the use of which is covered under our Privacy Policy (located in the footer of the Topplers website).
- You may be identified publicly by your name or User ID in association with your account.
- You further agree that your posts will not contain third-party copyrighted material, or material that is subject to other third-party proprietary rights, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to post the material and to grant Topplers all of the license rights granted herein.
- You agree that your posts or materials will not obtain content that is discriminatory, obscene, pornographic, defamatory, liable to incite hatred, in breach of confidentiality or privacy, which may cause annoyance or inconvenience to others, which encourages or constitutes conduct that would be deemed a criminal offence, give rise to civil liability, or otherwise is contrary to the law in the United States.
- Your post or anything sent to or from this site will not be harmful in nature including, but not limited to, computer viruses, Trojan horses, corrupted data, or other potentially harmful software or data.
- Topplers shall have the right to delete, edit, modify, reformat, excerpt, or translate any of your posts or materials.
- All information publicly posted or privately transmitted through the Site is the sole responsibility of the person from which that content originated.
- Topplers will not be liable for any errors or omissions in any Content.
- Topplers cannot guarantee the identity of any other Users with whom you may interact while using the Service.
- All Content you access through the Service is at your own risk and you will be solely responsible for any resulting damage or loss to any party.

Topplers has adopted a policy of, in appropriate circumstances, terminating User accounts that are repeat infringers of the rights of Topplers or others. Topplers also may terminate User accounts even based on a single infringement.

### **Copyright Notifications**

Topplers will remove infringing materials in accordance with the Digital Millennium Copyright Act (DMCA) if properly notified that Content infringes copyright. If you believe that your work has been copied in a way that constitutes copyright infringement, please notify Topplers by submitting a notification via email to [info@topplers.org](mailto:info@topplers.org). Your email

must contain the following information (please confirm these requirements with your legal counsel, or see the U.S. Copyright Act, 17 U.S.C. §512(c)(3), for more information):

- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- a description of the copyrighted work that you claim has been infringed;
- a description of where the material that you claim is infringing is located on the Site, sufficient for Topplers to locate the material;
- 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 owner, its agent, or the law; and
- a statement by you that the information in your notice is accurate and, under penalty of perjury, that you are the copyright owner or authorized to act on the copyright owner's behalf.

If you believe that your work has been removed or disabled by mistake or misidentification, please notify Topplers in writing by emailing us at [info@topplers.org](mailto:info@topplers.org). Your counter-notice must contain the following information (please confirm these requirements with your legal counsel or see the U.S. Copyright Act, 17 U.S.C. §512(g)(3), for more information):

- a physical or electronic signature of the user of the Services;
- 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;
- a statement made under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material; and
- the subscriber's name, address, telephone number, and a statement that the subscriber consents to the jurisdiction of the Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the user will accept service of process from the person who provided notification under subscriber (c)(1)(C) or an agent of such person.

Under the Copyright Act, any person who knowingly materially misrepresents that material is infringing or was removed or disabled by mistake or misidentification may be subject to liability.

If you fail to comply with these notice requirements, your notification or counter-notification may not be valid.

Our designated copyright agent for notice of alleged copyright infringement can be reached at:

Topplers

1111 Pearl Street, Suite 201, Boulder, CO 80302

info@topplers.org

### **Termination**

Topplers may terminate your access to the Service, without cause or notice, which may result in the forfeiture and destruction of all information associated with your account. If you wish to terminate your account, you may do so by following the instructions on the Site. Any fees paid to Topplers are non-refundable. All provisions of the Terms of Use that by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitations of liability.

### **Warranty Disclaimer**

Topplers has no special relationship with or fiduciary duty to you. You acknowledge that Topplers has no duty to take any action regarding any of the following: which Users gain access to the Site; what Content Users access through the Site; what effects the Content may have on Users; how Users may interpret or use the Content; or what actions Users may take as a result of having been exposed to the Content. Topplers cannot guarantee the authenticity of any data or information that Users provide about themselves or their projects. You release Topplers from all liability for your having acquired or not acquired Content through the Site. The Site may contain, or direct you to websites containing, information that some people may find offensive or inappropriate. Topplers makes no representations concerning any Content on the Site, and Topplers is not liable for the accuracy, copyright compliance, legality, or decency of material contained on the Service.

Topplers does not guarantee that any Content will be made available through the Service. Topplers has no obligation to monitor the Service or Content. Topplers reserves the right to, at any time, for any reason, and without notice: (i) cancel, reject, interrupt, remove, or suspend a campaign or project; (ii) remove, edit, or modify any Content, including, but not limited to, any User Submission; and (iii) remove or block any User. Topplers reserves the right not to comment on the reasons for any of these actions.

The Service is provided “as is” and “as available” and is without warranty of any kind, express or implied, including, but not limited to, the implied warranties of title, non-infringement, merchantability, and fitness for a particular purpose, and any warranties implied by any course of performance or usage of trade, all of which are expressly disclaimed. Topplers, and its directors, employees, agents, suppliers, partners, and content providers do not warrant that: (a) the Service will be secure or available at any particular time or location; (b) any defects or errors will be corrected; (c) any content or software available at or through the Service is free of viruses or other harmful components; or (d) the results of using the Service will meet your requirements. Your

use of the Service is solely at your own risk. Some states or countries do not allow limitations on how long an implied warranty lasts, so the above limitations may not apply to you.

Electronic Communications Privacy Act Notice (18 USC §2701-2711): TOPPLERS MAKES NO GUARANTEE OF CONFIDENTIALITY OR PRIVACY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED ON THE SITE OR ANY WEBSITE LINKED TO THE SITE. Topplers will not be liable for the privacy of email addresses, registration and identification information, disk space, communications, confidential or trade-secret information, or any other Content stored on Topplers' equipment, transmitted over networks accessed by the Site, or otherwise connected with your use of the Service.

### **Indemnification**

You shall defend, indemnify, and hold harmless Topplers, its affiliates, and each of its and its affiliates' employees, contractors, directors, suppliers, and representatives from all liabilities, claims, and expenses, including reasonable attorneys' fees and other legal costs, that arise from or relate to your use or misuse of, or access to, the Service and Content, or otherwise from your posts or materials, violation of the Terms of Use, or infringement by you, or any third party using your account, of any intellectual property or other right of any person or entity. Topplers reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with Topplers in asserting any available defenses.

### **Limitation of Liability**

In no event shall Topplers, nor its directors, employees, agents, partners, suppliers, or content providers, be liable under contract, tort, strict liability, negligence, or any other legal or equitable theory with respect to the service (i) for any lost profits, data loss, cost of procurement of substitute goods or services, or special, indirect, incidental, punitive, or consequential damages of any kind whatsoever, substitute goods or services (however arising), (ii) for any bugs, viruses, trojan horses, or the like (regardless of the source of origination), or (iii) for any direct damages in excess of (in the aggregate) one hundred U.S. dollars (\$100.00). Some states or countries do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations and exclusions may not apply to you.

### **International**

Accessing the Service is prohibited from territories where the Content is illegal. If you access the Service from other locations, you do so at your own initiative and are responsible for compliance with local laws.

### **Electronic Delivery, Notice Policy, and Your Consent**

By using the Services, you consent to receive from Topplers all communications including notices, agreements, legally required disclosures, or other information in connection with the Services (collectively, "Contract Notices") electronically. Topplers may provide the electronic Contract Notices by posting them on the Site. If you desire to

withdraw your consent to receive Contract Notices electronically, you must discontinue your use of the Services.

### **Governing Law**

These Terms of Use (and any further rules, policies, or guidelines incorporated by reference) shall be governed by and construed in accordance with the laws of the State of Colorado and the United States, without giving effect to any principles of conflicts of law, and without application of the Uniform Computer Information Transaction Act or the United Nations Convention of Controls for International Sale of Goods. You agree that Topplers and its Services are deemed a passive website that does not give rise to personal jurisdiction over Topplers or its parents, subsidiaries, affiliates, successors, assigns, employees, agents, directors, officers or shareholders, either specific or general, in any jurisdiction other than the State of Colorado. You agree that any action at law or in equity arising out of or relating to these terms, or your use or non-use of the Services, shall be filed only in the state or federal courts located in Boulder County in the State of Colorado and you hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action. You hereby irrevocably waive any right you may have to trial by jury in any dispute, action, or proceeding.

### **Integration and Severability**

These Terms of Use and other referenced material are the entire agreement between you and Topplers with respect to the Service, and supersede all prior or contemporaneous communications and proposals (whether oral, written, or electronic) between you and Topplers with respect to the Service and govern the future relationship. If any provision of the Terms of Use is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Terms of Use will otherwise remain in full force and effect and enforceable. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

### **Miscellaneous**

Topplers shall not be liable for any failure to perform its obligations hereunder where the failure results from any cause beyond Topplers' reasonable control, including, without limitation, mechanical, electronic, or communications failure or degradation. The Terms of Use are personal to you, and are not assignable, transferable, or sublicensable by you except with Topplers' prior written consent. Topplers may assign, transfer, or delegate any of its rights and obligations hereunder without consent. No agency, partnership, joint venture, or employment relationship is created as a result of the Terms of Use and neither party has any authority of any kind to bind the other in any respect. In any action or proceeding to enforce rights under the Terms of Use, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under the Terms of Use will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-



mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service.