

## **TERMS OF SERVICE**

**Effective Date: January 20, 2020**

Thank you for visiting a BitOGenius Inc. property (“BitOGenius”). These Terms of Service (“Terms” or “Terms of Service”) are a legal contract between you and BitOGenius and govern your use of all the text, data, educational materials, merchandise, information, software, graphics, photographs and other materials (all of which are referred to as “Materials”) that we and our affiliates may make available to you through this website and/or any services we may provide through our website or our mobile applications (the website, services and Mobile Application are referred to collectively in these Terms as the “BitOGenius Services”). If you are agreeing to these Terms as a representative of a school or other entity, you represent that you have the authority to bind that entity and “you” herein refers to that entity.

**READ THESE TERMS CAREFULLY BEFORE BROWSING THIS WEBSITE OR USING ANY OF OUR SERVICES OR MOBILE APPLICATIONS.**

**USING THE SERVICES IN ANY WAY INDICATES THAT YOU HAVE BOTH READ AND ACCEPT THESE TERMS. YOU CANNOT USE THIS WEBSITE OR ANY OTHER PART OF THE SERVICES IF YOU DO NOT ACCEPT THESE TERMS.**

**THESE TERMS CONTAIN A DISPUTE RESOLUTION AND ARBITRATION PROVISION, INCLUDING A CLASS ACTION WAIVER THAT AFFECTS YOUR RIGHTS UNDER THESE TERMS AND WITH RESPECT TO DISPUTES YOU MAY HAVE WITH BITOGENIUS.**

**1. GENERAL.** These Terms represent the complete agreement and understanding between you and BitOGenius and supersede all prior agreements and representations between the parties with respect to the subject matter of these Terms. These Terms do not, and shall not be construed to, create any partnership, joint venture, employer-employee, agency, or franchisor-franchisee relationship between you and BitOGenius. Headings used in these Terms are for reference purposes only and in no way define or limit the scope of the section. If any provision of these Terms is held to be unenforceable for any reason, such provision will be reformed only to the extent necessary to make it enforceable and the other terms of these Terms will remain in full force and effect. The failure of BitOGenius to act with respect to a breach of these Terms by you or others does not constitute a waiver and will not limit BitOGenius's rights with respect to such breach or any subsequent breaches. You may not assign, transfer, or sublicense any or all of your rights or obligations under these Terms without our express prior written consent. We may assign, transfer, or sublicense any or all of our rights or obligations under these Terms without restriction. Any use of the term “including” or variations thereof in these Terms shall be construed as if followed by the phrase “without limitation.” Notices to you (including notices of changes to these Terms) may be made via posting to the BitOGenius Services or by e-mail (including in each case, via links), or by regular mail. Without limitation, 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.

**2. USE OF THE SERVICES.** We invite you to use BitOGenius Services for non-commercial purposes only. You must be at least 14 years old to create an account without parent or teacher, school or library administrator authorization. If you are a parent, legal guardian or teacher/administrator of a user under the age of 18, you agree that you are solely responsible for monitoring and supervising such minor’s use of the BitOGenius Services and to bind the Minor to these Terms and to fully indemnify and hold us harmless if the Minor breaches the Terms.

In these Terms we are granting you a limited, personal, non-exclusive, revocable and non-transferable license to display, print and use the Materials as follows (the “Permitted Purpose”): (i) if you are using the Materials as an individual for home use, homeschooling, or caregiving, the Materials are licensed to you for your personal, noncommercial use only; (ii) if you are using the Materials in your capacity as a teacher or on behalf of a school or other organization, the Materials are licensed to you for use by you and your students. No Materials may be shared in any manner except as stated above. Your right to use the Materials is conditioned on your compliance with these Terms (including the payment of any applicable fees). Except as expressly permitted in the foregoing license grant

and the Mobile Applications section below, you have no rights in BitOGenius Services or any part thereof and you may not modify, edit, copy, reproduce, redistribute, create derivative works of, reverse engineer, alter, enhance or in any way exploit any of this website, Materials or BitOGenius Services in any manner.

If you breach any of these Terms, BitOGenius may terminate the above license automatically and without notice.

**3. PRIVACY.** Please review our Privacy Policy (<http://bitogenius.com/privacy-policy>) and COPPA Policy (<http://bitogenius.com/coppa-policy>) which also govern your use of the Services.

**4. PIXICADE MOBILE APPLICATION.** We make BitOGenius Services, namely, the Pixicade game available through a Mobile Application via a mobile device. To use the Mobile Application, you must have a mobile device that is compatible with the mobile service. We do not warrant that the Mobile Application will be compatible with your mobile device. You may not: (i) modify, disassemble, decompile or reverse engineer the Mobile Application, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the Mobile Application to any third-party or use the Mobile Application to provide time sharing or similar services for any third-party; (iii) make any copies of the Mobile Application; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Mobile Application, features that prevent or restrict use or copying of any content accessible through the Mobile Application, or features that enforce limitations on use of the Mobile Application; or (v) delete the copyright and other proprietary rights notices on the Mobile Application. You acknowledge that we may from time to time issue upgraded versions of the Mobile Application and may automatically electronically upgrade the version of the Mobile Application that you are using on your mobile device. You consent to such automatic upgrading on your mobile device and agree that these Terms will apply to all such upgrades. The foregoing license grant is not a sale of the Mobile Application or any copy thereof, and we and our third-party licensors or suppliers retain all right, title, and interest in and to the Mobile Application (and any copy of the Mobile Application). Standard carrier data charges may apply to your use of the Mobile Application.

**5. ACCOUNTS; PASSWORD RESTRICTED SERVICES.** You need not register with us to simply visit and view the website and not use any services or download any Materials. However, in order to access certain BitOGenius Services and access certain Materials, you may need to register an account with us.

For users aged 13 and younger, a parent's email must be provided and confirmed in order for the user to have access to the Mobile Application. For users over the age of 13, no personal information is needed to access and use the Mobile Application; however, we may provide you with the ability to register for an account using your existing account and log-in credentials from third-party sites and services such as Facebook. By using such third-party accounts and/or credentials, you are consenting to our retention and use, and such third-party site's disclosure, of the account, credentials and other populated profile information that you submit.

**6. SCHOOL & LIBRARY ACCOUNTS.** To use the Mobile Application, an authorized administrator must open an account with BitOGenius and execute an Order Form with a selected subscription model for a certain amount of devices to use within a school or library ("Subscription"). Any Subscription will commence from the date of your subscription activation ("Effective Date") and remain effective until terminated by BitOGenius or you, or as provided for in an Order Form (if applicable) ("Term"), unless terminated otherwise as provided for in these Terms. With activation of your Subscription, you have unlimited access to all features of the Pixicade game only for the amount of devices as you subscribed for. If you like to upgrade your Subscription to add more devices, you may do so at a pro-rata rate for the remaining Term or as agreed upon in an Order Form.

Schools and libraries shall not use full student names in connection with the BitOGenius Services. Because BitOGenius does not have access to student educational records, FERPA does not apply. Notwithstanding the foregoing, BitOGenius may use (and disclose) anonymous, de-identified and/or aggregate data derived from the BitOGenius Services, provided such data does not identify any student. The school or library is responsible for ensuring that the collection, use, disclosure and processing of student personally identifying information is not disclosed while using the BitOGenius Services, and as part of the BitOGenius Services complies with applicable law, legal or contractual restrictions. If you are a school or library, you further represent and warrant that you will not direct or engage BitOGenius to collect, use, disclose or otherwise process student information in a manner that would violate applicable law or any other legal or contractual restrictions applicable to school or library. Further,

that you will supervise student use of the BitOGenius Services and ensure that students are not uploading photos of themselves or any other inappropriate content.

You agree to pay all applicable fees related to your use of the BitOGenius Services. All fees are based on services purchased, regardless of actual usage. BitOGenius may suspend or terminate your paid account and/or access to our paid BitOGenius Services if your payment is late and/or your offered payment method (e.g., credit card, PayPal, etc.) cannot be processed. By providing a payment method, you expressly authorize us to charge the applicable fees on your payment method 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.

By providing a payment method, you expressly authorize BitOGenius 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. 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.

You may cancel your subscription any time within 7 days of purchase to receive a complete refund of your purchase price. To exercise this satisfaction guarantee cancellation and receive a refund, simply send an email to [education@bitogenius.com](mailto:education@bitogenius.com) during the first seven (7) calendar days after you subscribe. Subscriptions and the rights and privileges provided to you are non-transferable.

Upon termination of your subscription for any reason you shall immediately cease using the BitOGenius Services. The license granted herein by BitOGenius shall automatically terminate and your active Subscriptions and your account will be terminated. Your data (including, without limitation, your log-in credentials and other account or Subscription associated information) will be stored for a minimum period of 6 months, subject to our Privacy Policy (<http://bitogenius.com/privacy-policy>). Refunds are not granted in the event that your Subscription terminates before its first-year anniversary.

**7. MERCHANDISE.** The BitOGenius Services may make available various products, including the Pixcade Mobile Game Maker box kit, and in-app purchases for sale (collectively, "Products"). We have made efforts to accurately display the attributes of Products, including the applicable colors. However, as the actual colors you see will depend on your monitor, we cannot guarantee that your monitor's display of any color will accurately reflect actual product color or finish. In addition, certain weights, measures, and similar descriptions are approximate and are for convenience only.

We may sell Products for children's use; however, these Products are intended for sale to adults.

**8. PLACING AN ORDER.** We accept most major credit cards as well as PayPal for online ordering. We may use third party providers such as Shopify to process your payments. Please review their terms of service as well.

You represent and warrant that you have the right to use any credit card or other means of payment that you provide to us. All billing information you provide to us must be truthful and accurate. Providing any untruthful or inaccurate information is a breach of these Terms may result in cancellation of your order. Prior to accepting an order, we may also request additional information from you. Verification of information may be required prior to the acknowledgment or completion of any purchase. We reserve the right to refuse or cancel an order for any reason including limitations on quantities available for purchase, inaccuracies, or errors in product or pricing information, or problems identified by our credit and fraud avoidance department. If your order is canceled after your credit card (or other payment account) has been charged, we will issue a credit to your credit card (or other applicable payment account) in the amount of the charge. We will attempt to contact you if all or any portion of your order is canceled or if additional information is required to accept your order. BitOGenius may request a pre-authorization for some orders placed online with a credit or debit card. This pre-authorization will not be billed to you; however, your card issuer may hold this amount for a short period. Your card issuer determines the length of time the pre-authorization is held. We do this to ensure that the card details are still valid and that you have sufficient funds to complete the transaction.

By confirming your purchase at the end of the checkout process, you agree to accept and pay for the Products, as well as all shipping and handling charges and applicable taxes.

BitOGenius reserves the right, including without prior notice, to limit the quantity of items purchased per person, per household, or per order for any reason. We will attempt to notify you should such limits be applied. BitOGenius also reserves the right, at our sole discretion, to prohibit sales to dealers or resellers. For purposes of these Terms of Service, “reselling” will be defined as purchasing or intending to purchase any Product(s) from BitOGenius for the purpose of engaging in a commercial sale of the same Product(s) to a third party.

**9. PRICING INFORMATION; AVAILABILITY.** BitOGenius cannot confirm the price or availability of an item until after your order is placed. Pricing or availability errors may occur on the BitOGenius Services. The receipt of an order confirmation does not constitute our acceptance of an order or our confirmation of an offer to sell a Product. BitOGenius reserves the right to cancel any orders containing pricing or availability errors, with no further obligation to you, even after your receipt of an order confirmation or shipping notice from BitOGenius. BitOGenius may, at its discretion, either contact you for instructions or cancel your order and notify you of such cancellation. Pricing for products may be different on BitOGenius websites or from prices available in the Mobile Application.

**10. SHIPPING.** BitOGenius ships via United States Postal Service but reserves the right to use other carriers if a shipment method has not been selected by you. You will be notified via email when your order has shipped. BitOGenius is not responsible for any delays or damage on behalf of USPS or other carrier.

**11. RETURN POLICY.** BitOGenius will gladly issue a refund on physical Products (not in-app purchases) purchased from one of our websites. Products must be returned unused with the original packaging intact. If the merchandise is opened, we can only accept a return within forty-five (45) days of purchase and only if the QR code that came in the box is still there. We will invalidate the QR code and the device associated with the QR code upon return. Please contact us at [orders@bitogenius.com](mailto:orders@bitogenius.com) to obtain a return authorization number and address for return shipping. BitOGenius is not responsible for return shipping charges (all shipping charges are your responsibility). Upon receipt of your returned item, we will issue a refund for the product purchase price (excluding shipping) in the same form of payment used for the purchase.

**12. ELECTRONIC COMMUNICATIONS.** When you use the BitOGenius Services, or send e-mails, text messages, and other communications from your desktop or mobile device to us, you may be communicating with us electronically. You consent to receive communications from us electronically, such as e-mails, texts, mobile push notices, or notices and messages on this site, and you can retain copies of these communications for your records. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

**14. THIRD PARTY SITES.** Any and all references on BitOGenius Services to any names, marks, products, or services of third parties, or links to third-party sites or information, are not an endorsement, sponsorship, or recommendation of the third party or its information, products, or services. BitOGenius is not responsible for the content of any third-party linked site or any link contained in a linked site, including any third-party social media or mobile app platform with which the BitOGenius Sites operate or otherwise interact, nor is BitOGenius responsible for the acts or omissions of any operator of any such site or platform. Your use of any such third-party site or platform is at your own risk and will be governed by such third party's terms and policies (including its Privacy Policy (<http://bitogenius.com/privacy-policy>)).

**15. USER SUBMISSIONS.** Certain areas of the BitOGenius Services may permit you to submit games feedback, information, data, text, images, photographs, messages, or other materials (each, a “User Submission”). You agree that you are solely responsible for all of your User Submissions and that any such User Submission is considered both non-confidential and non-proprietary. Further, we do not guarantee that you will be able to edit or delete any User Submission you have submitted.

By submitting a User Submission, you grant to BitOGenius an irrevocable, perpetual, transferable, non-exclusive, fully-paid, worldwide, royalty-free license (sublicensable through multiple tiers) to use, distribute, reproduce, modify, adapt, publish, translate, publicly perform, and publicly display your User Submissions (or any modification

thereto), in whole or in part, in any format or medium now known or later developed. Further, BitOGenius may use (and permit others to use) your User Submission in any manner and for any purpose (including, without limitation, commercial purposes) that we deem appropriate in our sole discretion (including, without limitation, to incorporate your User Submission or any modification thereto, in whole or in part, into any technology, product, or service). We may display advertisements in connection with your User Submissions and use your User Submissions for advertising and promotional purposes. We may, but are not obligated to, pre-screen User Submissions or monitor any area of the BitOGenius Services through which User Submissions may be submitted.

We are not required to host, display, or distribute any User Submissions on or through the BitOGenius Services and may remove at any time or refuse any User Submissions for any reason. You understand that when using the BitOGenius Services, you will be exposed to User Submissions from a variety of sources and that we are not responsible for the accuracy, usefulness, reliability or intellectual property rights of or relating to such User Submissions. You further understand and acknowledge that you may be exposed to User Submissions that are inaccurate, offensive, defamatory, indecent or objectionable and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against us with respect thereto. We are not responsible for any loss, theft, or damage of any kind to any User Submissions. Further, you agree that we may freely disclose your User Submission to any third party absent any obligation of confidence on the part of the recipient.

Notwithstanding the foregoing, BitOGenius will never publicly disclose User Submissions of those aged 13 and under. Please see our COPPA Policy (<http://bitogenius.com/coppa-policy>) for more information.

By submitting any User Submission, you are promising us that:

- a. You own all rights in your User Submissions (including, without limitation, all rights to the reproduction and display of your User Submissions) or, alternatively, you have acquired all necessary rights in your User Submissions to enable you to grant to us the rights in your User Submissions as described in these Terms;
- b. Your User Submissions do not infringe the copyright, trademark, patent, trade secret, or other intellectual property rights, privacy rights, or any other legal or moral rights of any third party;
- c. You voluntarily agree to waive all “moral rights” that you may have in your User Submission;
- d. Your User Submission does not violate any law;
- e. Your User Submission is not, and may not reasonably be considered to be, defamatory, libelous, hateful, racially, ethnically, religiously, or otherwise biased or offensive, unlawfully threatening, or unlawfully harassing to any individual, partnership, or corporation, vulgar, pornographic, obscene, or invasive of another's privacy;
- f. You were not and will not be compensated or granted any consideration by any third party for submitting your User Submission;
- g. Your User Submission does not incorporate materials from a third-party website, or addresses, email addresses, contact information, or phone numbers (other than your own);
- h. Your User Submission does not contain any viruses, spyware, adware, or other potentially damaging programs or files;
- i. Your User Submission does not contain any information that you consider confidential, proprietary, or personal; and
- j. Your User Submission does not contain or constitute any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of solicitation.

**16. UNAUTHORIZED ACTIVITIES.** To be clear, we authorize your use of the BitOGenius Services only for Permitted Purposes. Any other use of the BitOGenius Services beyond the Permitted Purposes is prohibited and, therefore, constitutes unauthorized use of the BitOGenius Services. This is because as between you and us, all rights in the BitOGenius Services remain our property.

Unauthorized use of the BitOGenius Services may result in violation of various United States and international copyright laws. You are not authorized to use the BitOGenius Services in any of the following ways (these are examples only and the list below is not exhaustive):

- a. In a manner that modifies, publicly displays, publicly performs, reproduces or distributes any of the BitOGenius Services or Materials for any commercial purpose that competes with BitOGenius Services in any way;
- b. In a manner that violates a ny local, state, national, foreign, or international statute, regulation, rule, order, treaty, or other law;
- c. To stalk, harass, or harm another individual;
- d. To impersonate any person or entity or otherwise misrepresent your affiliation with a person or entity;
- e. To interfere with or disrupt the BitOGenius Services or servers or networks connected to any of the BitOGenius Services;
- f. To use any data mining, robots, or similar data gathering or extraction methods in connection with the BitOGenius Services; or
- g. Attempt to gain unauthorized access to any portion of the BitOGenius Services, Materials or any other accounts, computer systems, or networks connected to BitOGenius sites, whether through hacking, password mining, or any other means.

You also agree to pay any damages that we may incur to pay as a result of your violation. You alone are responsible for any violation of these Terms by you. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you and, in such case, you agree to cooperate with our defense of such claim.

**17. INTELLECTUAL PROPERTY.** The BitOGenius Services and all Materials, copyrights, trademarks, trade dress, and other intellectual property rights there (collectively, the “IP”) are owned or controlled by or licensed to BitOGenius, and are protected by U.S. and international trademark, copyright, and other intellectual property laws. Subject to your compliance with these Terms of Service, and solely for so long as you are permitted by BitOGenius to use the BitOGenius Services, you may access, view, download, and print the Materials for your personal, non-commercial use only; provided, however, that you (1) retain all copyright, trademark, or other proprietary designations contained on all Materials; (2) do not modify or alter the Materials or IP in any way; and (3) do not provide or make available the Materials or IP to any third party in a commercial manner.

No license, right, title, or interest in the BitOGenius Services or any Material or IP is transferred to you as a result of your use of the BitOGenius Services or your accessing, viewing, downloading, or printing of the Material. You may not reproduce (except as noted above), publish, transmit, distribute, display, modify, create derivative works from, sell, or participate in any sale of or exploit in any way, in whole or in part, any of the part of the BitOGenius Services. Any other use, including the reproduction, modification, distribution, transmission, republication, display, or performance, of the BitOGenius Services and the Material is strictly prohibited. The compilation (meaning the collection, arrangement, and assembly) of the BitOGenius Services and Materials is the exclusive property of BitOGenius and is also protected by U.S. and international copyright laws.

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**18. MAKING A CLAIM OF COPYRIGHT INFRINGEMENT.** BitOGenius respects the intellectual property rights of others. If you believe that your work has been copied and is accessible on the BitOGenius Services in a way that constitutes copyright infringement, please see our Copyright Policy (<http://bitogenius.com/copyright-dmca-policy>) for instructions on sending us a notice of copyright infringement. It is the policy of the Company to terminate the user accounts of repeat infringers.:

- A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright or intellectual property right that has been allegedly infringed upon;
- Identification in sufficient detail of the material being infringed upon;
- Identification of the material that is claimed to be infringing upon the intellectual property. Include information regarding the location of the infringing material with sufficient detail so that BitOGenius is capable of finding and verifying its existence;

- Contact information about the notifier including the name of the intellectual property owner, the name and title of the person contacting the web host on the owner's behalf, the address, telephone number and, if available, e-mail address;
- A statement that the notifier has a good faith belief that the material is not authorized by the intellectual property or copyright owner, its agent, or the law; and
- A statement made under penalty of perjury that the information provided is accurate and the notifying party is authorized to make the complaint on behalf of the intellectual property or copyright owner.

BitOGenius reserves the right, in its sole discretion, to terminate the account or access of any user of the BitOGenius Services who is the subject of repeated DMCA or other infringement notifications.

**19. DISCLAIMER OF WARRANTIES.** THE BITOGENIUS SERVICES, AND ALL CONTENT, MATERIALS, PRODUCTS, SITES, FUNCTIONALITY, AND OTHER ITEMS INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE BITOGENIUS SERVICES, ARE PROVIDED BY BITOGENIUS ON AN "AS IS" AND "AS AVAILABLE" BASIS. NO BITOGENIUS ENTITY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE BITOGENIUS SITES OR THE CONTENT, MATERIALS, PRODUCTS, SERVICES, FUNCTIONALITY, OR OTHER ITEMS INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE BITOGENIUS SERVICES. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, BITOGENIUS ENTITIES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, THE BITOGENIUS ENTITIES DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, FOR ANY MERCHANDISE OFFERED ON THE BITOGENIUS SITES. YOU ACKNOWLEDGE THAT, TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, YOUR USE OF THE BITOGENIUS SERVICES IS AT YOUR SOLE RISK. THIS SECTION DOES NOT LIMIT THE TERMS OF ANY PRODUCT WARRANTY OFFERED BY THE MANUFACTURER OF AN ITEM THAT IS SOLD BY BITOGENIUS TO YOU THROUGH THE BITOGENIUS SERVICES. THIS DISCLAIMER CONSTITUTES AN ESSENTIAL PART OF THESE TERMS OF SERVICE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU ASSUME FULL RESPONSIBILITY FOR YOUR USE OF THE BITOGENIUS SERVICES AND AGREE THAT ANY INFORMATION YOU SEND OR RECEIVE DURING YOUR USE OF THE BITOGENIUS SERVICES MAY NOT BE SECURE AND MAY BE INTERCEPTED OR OTHERWISE ACCESSED BY UNAUTHORIZED PARTIES. YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NO BITOGENIUS ENTITY IS RESPONSIBLE FOR ANY LOSS OR DAMAGE TO YOUR PROPERTY OR DATA THAT RESULTS FROM ANY MATERIALS YOU ACCESS OR DOWNLOAD FROM THE BITOGENIUS SERVICES. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO YOU.

**20. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER BITOGENIUS NOR ANY OF OUR PARENTS, SUBSIDIARIES, AFFILIATES, SUPPLIERS, ADVERTISERS, AGENTS OR SPONSORS SHALL BE LIABLE FOR ANY DAMAGES RESULTING FROM YOUR DISPLAYING, COPYING, OR DOWNLOADING ANY MATERIALS TO OR FROM THIS WEBSITE OR OTHER BITOGENIUS SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE 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 WE KNOW THERE IS A POSSIBILITY OF SUCH DAMAGE. YOUR SOLE REMEDY FOR DISSATISFACTION WITH THE MATERIALS OR THE SERVICES IS TO STOP USING THEM. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO YOU.

THE AGGREGATE MAXIMUM LIABILITY TO BITOGENIUS FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHERWISE SHALL BE THE TOTAL AMOUNT PAID TO US BY YOU, IF ANY, FOR

ACCESS TO THE SERVICES AND MATERIALS IN THE TWELVE MONTHS PRECEDING ANY SUCH CLAIM.

**21. LOCAL LAWS.** We control and operate the BitOGenius Services from our headquarters in the United States of America and all of the BitOGenius Services may not be appropriate or available for use in other locations. If you use BitOGenius Services outside the United States of America, you are solely responsible for following applicable local laws. We may limit the availability of the BitOGenius Services, in whole or in part, to any person, geographic area or jurisdiction we choose, at any time. Not all products or services may be available in all states or territories.

**22. INDEMNIFICATION.** You agree to defend (at BitOGenius's option), indemnify, and hold BitOGenius harmless from and against any and all liabilities, claims, damages, costs, and expenses, including attorneys' fees and costs, arising from or related to your misuse of the BitOGenius Services or any breach by you of these Terms. BitOGenius reserves the right, at our expense, to assume exclusive defense and control of any matter otherwise subject to indemnification by you and, in any case, you agree to cooperate with BitOGenius if and as requested by BitOGenius in the defense and settlement of such matter.

**23. DISPUTE RESOLUTION AND ARBITRATION; CLASS ACTION WAIVER.** PLEASE READ THIS PROVISION CAREFULLY AS IT AFFECTS YOUR LEGAL RIGHTS. These Terms shall be governed by and construed under the laws of the United States (including federal arbitration law) and the State of New York, without regard to conflicts of law principles. This provision facilitates the prompt and efficient resolution of any dispute (e.g., claim or controversy), 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) that may arise between you and BitOGenius (a "Dispute").

BOTH YOU AND BITOGENIUS AGREE THAT, EXCEPT AS PROVIDED BELOW, ALL DISPUTES ARISING OUT OF OR RELATED TO THESE TERMS OR ANY ASPECT OF THE RELATIONSHIP BETWEEN YOU AND BITOGENIUS, WILL BE RESOLVED THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY, AND YOU AGREE THAT BITOGENIUS AND YOU ARE EACH WAIVING THE RIGHT TO SUE IN COURT AND/OR TO HAVE A TRIAL BY A JURY. YOU AGREE THAT ANY ARBITRATION WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED AND YOU ARE AGREEING TO GIVE UP THE ABILITY TO PARTICIPATE IN A CLASS ACTION.

- a. Pre-Arbitration Claim Resolution.** For all Disputes, you must first give us an opportunity to resolve the Dispute which is first done by mailing us by first class United States mail to: BitOGenius, Inc., PO Box 1125, White Plains, NY 10602 the following information: (1) your name, (2) your address, (3) a written description of your claim, and (4) a description of the specific relief you seek. If we do not resolve the Dispute within 60 days after receiving your notification, then you may pursue your Dispute in arbitration.
- b. Arbitration Procedure.** The arbitration will be administered by Judicial Arbitration Mediation Services, Inc. ("JAMS") pursuant to the JAMS Streamlined Arbitration Rules & Procedures effective July 1, 2014 (the "JAMS Rules") and as modified by this agreement to arbitrate. The JAMS Rules, including instructions for bringing arbitration, are available on the JAMS website at <http://www.jamsadr.com/rules-streamlined-arbitration>. The Minimum Standards are available at <https://www.jamsadr.com/consumer-minimum-standards/>.

The arbitrator will conduct hearings, if any, by teleconference or videoconference, rather than by personal appearances, unless the arbitrator determines upon request by you or by us that an in-person hearing is appropriate. Any in-person appearances will be held in New York, New York. The arbitrator's decision will follow the terms of these Terms of Service and will be final and binding. The arbitrator will have authority to award temporary, interim, or permanent injunctive relief or relief providing for specific performance of these Terms of Service, but only to the extent necessary to provide relief warranted by the individual claim before the arbitrator. The award rendered by the arbitrator may be confirmed and enforced in any court having jurisdiction thereof. Notwithstanding any of the foregoing, nothing in these Terms of



Service will preclude you from bringing issues to the attention of federal, state, or local agencies and, if the law allows, they can seek relief against us for you.

**24. PROMOTIONS.** Any sweepstakes, contests, raffles, surveys, games, or similar promotions (collectively, "Promotions") made available through the BitOGenius Services may be governed by rules that are separate from these Terms. If you participate in any Promotions, please review the applicable rules as well as our Privacy Policy (<http://bitogenius.com/privacy-policy>). If the rules for a Promotion conflict with these Terms, the Promotion rules will govern.

**25. SEVERABILITY.** If any clause within these Terms is found to be illegal or unenforceable, that clause will be severed from the Terms whose remainder will be given full force and effect.

**26. CHANGES.** We may alter the Materials and BitOGenius Services and/or we may choose to modify, suspend or discontinue any part of the BitOGenius Services at any time and without notifying you. We may also change, update, add or remove provisions (collectively, "Modifications") of these Terms from time to time. We will inform you of any Modifications to these Terms by posting them on this website. If you object to any such Modifications, your sole recourse shall be to cease all use of the BitOGenius Services. Continued use of any Services following notice of any such modifications indicates you acknowledge and agree to be bound by the Modifications.

**27. CALIFORNIA CONSUMER NOTICE.** Under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice: This website and the BitOGenius Services are provided by BitOGenius, Inc., PO Box 1125, White Plains, NY 10602. If You have a question or complaint regarding the Service, please contact Customer Service at [support@bitogenius.com](mailto:support@bitogenius.com). You may also contact us by writing BitOGenius, PO Box 1125, White Plains, NY 10602. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by post at 1625 North Market Blvd., Sacramento, CA 95834 or by telephone at (916) 445-1254 or (800) 952-5210 or Hearing Impaired at TDD (800) 326-2297 or TDD (916) 322-1700.

**28. CONTACT US.** If you have any questions about these Terms or otherwise need to contact us for any reason, you can reach us at [support@bitogenius.com](mailto:support@bitogenius.com), or by writing to Policies Manager, PO Box 1125, White Plains, NY 10602.