

# Terms of Use

## 1. Site Content, Ownership, Limited License and Rights of Others

### A. Content.

The Site contains a variety of: (i) materials and other items relating to MALK Organics, MALK Organics' products and mission statement, and similar items from our licensors and other third parties, including all layout, information, articles, posts, text, data, files, images, scripts, designs, graphics, button icons, instructions, illustrations, photographs, audio clips, music, sounds, pictures, videos, advertising copy, URLs, technology, software, interactive features, the "look and feel" of the Site, and the compilation, assembly, and arrangement of the materials of the Site and any and all copyrightable material (including source and object code); (ii) trademarks, trade dress, logos, trade names, service marks, and/or trade identities of various parties, including those of MALK Organics (collectively, "Trademarks"); and (iii) other forms of intellectual property (all of the foregoing, collectively "Content").

### B. Ownership.

The Site (including past, present and future versions) and the Content are owned or controlled by MALK Organics and our licensors and certain other third parties. All rights, title, and interest in and to the Content available via the Site is the property of MALK Organics or our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, patent, or other intellectual property rights and laws to the fullest extent possible. MALK Organics owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Site.

### C. Limited License.

Subject to your strict compliance with these Terms and the Additional Terms, MALK Organics grants you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to download (temporary storage only), display, view, use, play, and/or print one copy of the Content (excluding source and object code in raw form or otherwise, other than as made available to access and use to enable display and functionality) on a personal computer, mobile phone or other wireless device, or other Internet enabled device (each, a "Device") for your personal, non-commercial use only. The foregoing limited license: (i) does not give you any ownership of, or any other intellectual property interest in, any Content, and (ii) may be immediately suspended or terminated for any reason, in MALK Organic's sole discretion, and without advance notice or liability. In some instances, we may permit you to have greater access to and use of Content, subject to certain Additional Terms.

### D. Rights of Others.

When using the Site, you must respect the intellectual property and other rights of MALK Organics and others. Your unauthorized use of Content may violate copyright, trademark, privacy, publicity,

communications, and other laws, and any such use may result in your personal liability, including potential criminal liability.

## **2. Site and Content Use Restrictions**

### **A. Site Use Restrictions.**

You agree that you will not: (i) use the Site for any political or commercial purpose (including, without limitation, for purposes of advertising, soliciting funds, collecting product prices, and selling products); (ii) use any meta tags or any other “hidden text” utilizing any Trademarks; (iii) engage in any activities through or in connection with the Site that seek to attempt to or do harm any individuals or entities or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party, or are otherwise objectionable to MALK Organics; (iv) reverse engineer, decompile, disassemble, reverse assemble, or modify any Site source or object code or any software or other products, services, or processes accessible through any portion of the Site; (v) engage in any activity that interferes with a user’s access to the Site or the proper operation of the Site, or otherwise causes harm to the Site, MALK Organics, or other users of the Site; (vi) interfere with or circumvent any security feature of the Site or any feature that restricts or enforces limitations on use of or access to the Site, the Content, or the User-Generated Content; (vii) harvest or otherwise collect or store any information (including personally identifiable information about other users of the Site, including email addresses, without the express consent of such users); (viii) attempt to gain unauthorized access to the Site, other computer systems or networks connected to the Site, through password mining or any other means; or (ix) otherwise violate these Terms or any Additional Terms.

### **B. Content Use Restrictions.**

You also agree that, in using the Site: (i) you will not monitor, gather, copy, or distribute the Content (except as may be a result of standard search engine activity or use of a standard browser) on the Site by using any robot, rover, “bot”, spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) you will not frame or utilize framing techniques to enclose any such Content (including any images, text, or page layout); (iii) you will keep intact all Trademark, copyright, and other intellectual property notices contained in such Content; (iv) you will not use such Content in a manner that suggests an unauthorized association with any of our or our licensors’ products, services, or brands; (v) you will not make any modifications to such Content; (vi) you will not copy, modify, reproduce, archive, sell, lease, rent, exchange, create derivative works from, publish by hard copy or electronic means, publicly perform, display, disseminate, distribute, broadcast, retransmit, circulate or transfer to any third party or on any third-party application or website, or otherwise use or exploit such Content in any way for any purpose except as specifically permitted by these Terms or any Additional Terms or with the prior written consent of an officer of MALK Organics or, in the case of Content from a licensor, the owner of the Content; and (vii) you will not insert any code or product to manipulate such Content in any way that adversely affects any user experience.

### **C. Availability of Site and Content.**

MALK Organics may immediately suspend or terminate the availability of the Site and Content (and any elements and features of them), in whole or in part, for any reason, in MALK Organics' sole discretion, and without advance notice or liability.

#### **D. Reservation of All Rights Not Granted as to Content and Site.**

These Terms and any Additional Terms include only narrow, limited grants of rights to Content and to use and access the Site. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. MALK Organics and its licensors and other third parties reserve all rights not expressly granted to you. *Any unauthorized use of any Content or the Site for any purpose is prohibited.*

### **3. Content You Submit and Community Usage Rules**

#### **A. User-Generated Content.**

**(i) General.** MALK Organics may now or in the future offer users of the Site the opportunity to create, build, post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available on or submit through the Site (collectively, "submit") messages, recipes, text, illustrations, files, images, graphics, photos, comments, responses, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, personally identifiable information, or other information or materials and the ideas contained therein (collectively, "User-Generated Content"). MALK Organics may allow you to do this through forums, blogs, message boards, social networking environments, contact us tools, email, and other communications functionality. Subject to the license you grant in these Terms, you retain whatever legally cognizable right, title, and interest you have in your User-Generated Content and you remain ultimately responsible for it.

**(ii) Non-Confidentiality of Your User-Generated Content.** Except as otherwise described in the Site's posted [Privacy Policy](#) or any Additional Terms, you agree that: (a) your User-Generated Content will be treated as non-confidential – regardless of whether you mark them "confidential," "proprietary," or the like – and will not be returned; and (b) MALK Organics does not assume any obligation of any kind to you or any third party with respect to your User-Generated Content. Upon MALK Organics' request, you will furnish us with any documentation necessary to substantiate the rights to such content and to verify your compliance with these Terms or any Additional Terms. You acknowledge that the Internet and mobile communications may be subject to breaches of security and that you are aware that submissions of User-Generated Content may not be secure, and you will consider this before submitting any User-Generated Content and do so at your own risk. In your communications with MALK Organics, please keep in mind that we do not seek any unsolicited ideas or materials for products or Sites, or even suggested improvements to products or services, including, without limitation, ideas, concepts, inventions, or designs for music, websites, apps, books, scripts, screenplays, motion pictures, television shows, theatrical productions, software or otherwise (collectively, "Unsolicited Ideas and Materials"). Any Unsolicited Ideas and Materials you post on or send to us via the Site are deemed User-Generated Content and licensed to us as set forth below. In addition, MALK Organics retains all of the rights held by members of the general public with regard to your Unsolicited Ideas and Materials. MALK Organics' receipt of your Unsolicited Ideas and Materials is not an admission by MALK Organics of

their novelty, priority, or originality, and it does not impair MALK Organics' right to contest existing or future intellectual property rights relating to your Unsolicited Ideas and Materials.

**(iii) License to MALK Organics of Your User-Generated Content.** Except as otherwise described in any applicable Additional Terms (such as a contest official rules), which specifically govern the submission of your User-Generated Content, you hereby grant to MALK Organics, and you agree to grant to MALK Organics, the non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise use and exploit in any manner whatsoever, all or any portion of your User-Generated Content (and derivative works thereof), for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same. Without limitation, the granted rights include the right to: (a) configure, host, index, cache, archive, store, digitize, compress, optimize, modify, reformat, edit, adapt, publish in searchable format, and remove such User-Generated Content and combine same with other materials, and (b) use any ideas, concepts, know-how, or techniques contained in any User-Generated Content for any purposes whatsoever, including developing, producing, and marketing products and/or Sites. You understand that in exercising such rights metadata, notices and content may be removed or altered, including copyright management information, and you consent thereto and represent and warrant you have all necessary authority to do so. In order to further effect the rights and license that you grant to MALK Organics to your User-Generated Content, you also hereby grant to MALK Organics MALK Organics, and agree to grant to MALK Organics, the unconditional, perpetual, irrevocable right to use and exploit your name, persona, and likeness in connection with any User-Generated Content, without any obligation or remuneration to you. Except as prohibited by law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any User-Generated Content, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section 3(A)(iii).

**(iv) Exclusive Right to Manage Our Site.** MALK Organics may, but will not have any obligation to, review, monitor, display, post, store, maintain, accept, or otherwise make use of, any of your User-Generated Content, and MALK Organics may, in its sole discretion, reject, delete, move, re-format, remove or refuse to post or otherwise make use of User-Generated Content without notice or any liability to you or any third party in connection with our operation of User-Generated Content venues in an appropriate manner. Without limitation, we may do so to address content that comes to our attention that we believe is offensive, obscene, lewd, lascivious, filthy, violent, harassing, threatening, abusive, illegal or otherwise objectionable or inappropriate, or to enforce the rights of third parties or these Terms or any applicable Additional Terms, including, without limitation, the content restrictions set forth below in the Rules (defined in Section 3(B)). Such User-Generated Content submitted by you or others need not be maintained on the Site by us for any period of time and you will not have the right, once submitted, to access, archive, maintain, or otherwise use such User-Generated Content on the Site or elsewhere.

**(v) Representations and Warranties Related to Your User-Generated Content.** Each time you submit any User-Generated Content, you represent and warrant that you are at least the age of majority in the jurisdiction in which you reside or are the parent or legal guardian, or have all proper consents from the parent or legal guardian, of any minor who is depicted in or contributed to any User-Generated Content you submit, and that, as to that User-Generated Content: (a) you are the sole author and owner of the intellectual property and other rights to the User-Generated Content, or you have a lawful right to submit the User-Generated Content and grant MALK Organics the rights to it that you are granting by these Terms and any Additional Terms, all without any MALK Organics obligation to obtain consent of any third party and without creating any obligation or liability of MALK Organics; (b) the User-Generated Content is accurate; (c) the User-Generated Content does not and, as to MALK Organics' permitted uses and exploitation set forth in these Terms, will not infringe any intellectual property or other right of any third party; and (d) the User-Generated Content will not violate these Terms (including the Rules) or any Additional Terms, or cause injury or harm to any person.

**(vi) Enforcement.** MALK Organics has no obligation to monitor or enforce your intellectual property rights to your User-Generated Content, but you grant us the right to protect and enforce our rights to your User-Generated Content, including by bringing and controlling actions in your name and on your behalf (at MALK Organics' cost and expense, to which you hereby consent and irrevocably appoint MALK Organics as your attorney-in-fact, with the power of substitution and delegation, which appointment is coupled with an interest).

## **B. Community Usage Rules.**

As a user of the Site, these Community Usage Rules ("Rules") are here to help you understand the conduct that is expected of members of the Site's online communities ("Communities").

**(i) Nature of Rules.** Your participation in the Communities is subject to all of the Terms, including these Rules:

- **Your User-Generated Content.** All of your User-Generated Content either must be original with you or you must have all necessary rights in it from third parties in order to permit you to comply with these Terms and any Additional Terms. Your User-Generated Content should not contain any visible logos, phrases, or trademarks that belong to third parties. Do not use any User-Generated Content that belongs to other people and pass it off as your own; this includes any content that you might have found elsewhere on the Internet. If anyone contributes to your User-Generated Content or has any rights to your User-Generated Content, or if anyone appears or is referred to in the User-Generated Content, then you must also have their permission to submit such User-Generated Content to MALK Organics. (For example, if someone has taken a picture of you and your friend, and you submit that photo to MALK Organics as your User-Generated Content, then you must obtain your friend's and the photographer's permission to do so.)
- **Speaking of Photos: No Pictures, Videos, or Images of Anyone Other Than You and Your Friends and Family.** If you choose to submit photos to the Site, link to embedded videos, or include other images of real people, then make sure they are of you or of you and someone you know – and only if you have their express permission to submit it.
- **Act Appropriately.** All of your Site activities must be venue appropriate, as determined by us. Be respectful of others' opinions and comments so we can continue to build Communities for

everyone to enjoy. If you think your User-Generated Content might offend someone or be embarrassing to someone, then chances are it probably will and it doesn't belong on the Site. Cursing, harassing, stalking, insulting comments, personal attacks, gossip, and similar actions are prohibited. Your User-Generated Content must not threaten, abuse, or harm others, and it must not include any negative comments that are connected to race, national origin, gender, sexual orientation, or physical handicap. Your User-Generated Content must not be defamatory, slanderous, indecent, obscene, pornographic, or sexually explicit.

- **Do Not Use for Commercial or Political Purposes.** Your User-Generated Content must not advertise or promote a product or Site or other commercial activity, or a politician, public servant, or law.
- **Do Not Use for Inappropriate Purposes.** Your User-Generated Content must not promote any infringing, illegal, or other similarly inappropriate activity.
- **Be Honest and Do Not Misrepresent Yourself or Your User-Generated Content.** Do not impersonate any other person, user, or company, and do not submit User-Generated Content that you believe may be false, fraudulent, deceptive, inaccurate, or misleading, or that misrepresents your identity or affiliation with a person or company.
- **Others Can See.** We hope that you will use the Communities to exchange information and content and have venue appropriate discussions with other members. However, please remember that the Communities are public or semi-public and User-Generated Content that you submit on the Site within a Community may be accessible and viewable by other users. Do not submit personally identifying information (*e.g.*, first and last name together, password, phone number, address, credit card number, medical information, e-mail address, or other personally identifiable information or contact information) on Community spaces and take care when disclosing this type of information to others.
- **Don't Share Other Peoples' Personal Information.** Your User-Generated Content should not reveal another person's address, phone number, e-mail address, social security number, credit card number, medical information, financial information, or any other information that may be used to track, contact, or impersonate that individual, unless, and in the form and by the method, specifically requested by MALK Organics.
- **Don't Damage the Site or Anyone's Computers or Other Devices.** Your User-Generated Content must not submit viruses, Trojan horses, spyware, or any other technologies or malicious code that could impact the operation of the Site or any computer or other Device.

If you submit User-Generated Content that MALK Organics LALA reasonably believes violates these Rules, then we may take any legally available action that we deem appropriate, in our sole discretion. However, we are not obligated to take any action not required by law. We may require, at any time, proof of the permissions referred to above in a form acceptable to us. Failure to provide such proof may lead to, among other things, the User-Generated Content in question being removed from the Site.

## **4. Procedure for Alleging Copyright Infringement**

### **A. DMCA Notice.**

MALK Organics will respond appropriately to notices of alleged copyright infringement that comply with the U.S. Digital Millennium Copyright Act ("DMCA"), as set forth below. If you own a copyright in a work (or represent such a copyright owner) and believe that your (or such owner's) copyright in that

work has been infringed by an improper posting or distribution of it via the Site, then you may send us a written notice that includes all of the following:

- (i) a legend or subject line that says: “DMCA Copyright Infringement Notice”
- (ii) a description of the copyrighted work that you claim has been infringed or, if multiple copyrighted works are covered by a single notification, a representative list of such works
- (iii) a description of where the material that you claim is infringing or is the subject of infringing activity is located that is reasonably sufficient to permit us to locate the material (please include the URL of the Site on which the material appears)
- (iv) your full name, address, telephone number and e-mail address
- (v) a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law
- (vi) a statement by you, made under penalty of perjury, that all the information in your notice is accurate, and that you are the copyright owner (or, if you are not the copyright owner, then your statement must indicate that you are authorized to act on the behalf of the owner of an exclusive right that is allegedly infringed) and
- (vii) your electronic or physical signature.

MALK Organics will only respond to DMCA Notices that it receives by mail or e-mail at the addresses below:

By Mail: MALK Organics, 8211 Dunlap St. Houston, TX 77074 (Attn: Legal Dept.)

By E-Mail: [hello@malkorganics.com](mailto:hello@malkorganics.com)

It is often difficult to determine if your copyright has been infringed. MALK Organics may elect to not respond to DMCA Notices that do not substantially comply with all of the foregoing requirements, and MALK Organics may elect to remove allegedly infringing material that comes to its attention via notices that do not substantially comply with the DMCA.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

We may send the information that you provide in your notice to the person who provided the allegedly infringing work. That person may elect to send us a DMCA Counter-Notification.

Without limiting MALK Organics’ other rights, MALK Organics may, in appropriate circumstances, terminate a repeat infringer’s access to the Site and any other website owned or operated by MALK Organics.

## **B. Counter-Notification.**

If access on the Site to a work that you submitted to MALK Organics is disabled or the work is removed as a result of a DMCA Notice, and if you believe that the disabled access or removal is the result of mistake or misidentification, then you may send us a DMCA Counter-Notification to the addresses above. Your DMCA Counter-Notification should contain the following information:

- (i) a legend or subject line that says: “DMCA Counter-Notification”
- (ii) a description 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 (please include the URL of the Site from which the material was removed or access to it disabled)
- (iii) a statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled
- (iv) your full name, address, telephone number, e-mail address, and the username of your account
- (v) a statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located (or, if the address is located outside the U.S.A., to the jurisdiction of the United States District Court for the Northern District of Texas), and that you will accept Site of process from the person who provided DMCA notification to us or an agent of such person and
- (vi) your electronic or physical signature.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity was removed or disabled by mistake or misidentification may be subject to liability.

If we receive a DMCA Counter-Notification, then we may replace the material that we removed (or stop disabling access to it) in not less than ten (10) and not more than fourteen (14) business days following receipt of the DMCA Counter-Notification. However, we will not do this if we first receive notice at the addresses above that the party who sent us the DMCA Copyright Infringement Notice has filed a lawsuit asking a court for an order restraining the person who provided the material from engaging in infringing activity relating to the material on the Site. You should also be aware that we might forward the Counter-Notification to the party who sent us the DMCA Copyright Infringement Notice.

## **5. Procedure For Alleging Infringement of Other Intellectual Property**

If you own intellectual property other than copyrights and believe that your intellectual property has been infringed by an improper posting or distribution of it via the Site, then you may send us a written notice to the addresses set forth above that includes all of the following:

- (a) a legend or subject line that says: “Intellectual Property Infringement Notice”

- (b) a description of the intellectual property that you claim has been infringed
- (c) a description of where the material that you claim is infringing or is the subject of infringing activity is located that is reasonably sufficient to permit us to locate the material (please include the URL of the Site on which the material appears)
- (d) your full name, address, telephone number and e-mail address
- (e) a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the owner of the intellectual property, its agent, or the law
- (f) a statement by you, made under penalty of perjury, that all the information in your notice is accurate, and that you are the owner of the intellectual property at issue (or, if you are not the owner, then your statement must indicate that you are authorized to act on the behalf of the owner of the intellectual property that is allegedly infringed) and
- (g) your electronic or physical signature.

We will act on such notices in our sole discretion. Any user of the Site that fails to respond satisfactorily to LALA with regard to any such notice is subject to suspension or termination. We may send the information that you provide in your notice to the person who provided the allegedly infringing material.

## **6. Notices, Questions and Customer Service**

You agree that: (i) we may give you notices of new, revised or changed terms and other important matters by prominently posting notice on the home page of the Site, or in another reasonable manner; and (ii) we may contact you by mail or email sent to the address provided by you. You agree to promptly notify us if you change your email or mailing address by updating your account information.

If you have a question regarding using the Site, you may contact us [here](#). You acknowledge that the provision of customer support is at MALK Organics' sole discretion and that we have no obligation to provide you with customer support of any kind.

## **7. Links by You to the Site**

We grant you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to create hyperlinks to the Site, so long as: (a) the links only incorporate text, and do not use any Trademarks; (b) the links and the content on your website do not suggest any affiliation with MALK Organics or cause any other confusion; and (c) the links and the content on your website do not portray MALK Organics or its products or services in a false, misleading, derogatory, or otherwise offensive matter, and do not contain content that is unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party or are otherwise objectionable to MALK Organics. MALK Organics reserves the right to suspend or prohibit linking to the Site for any reason, in its sole discretion, without advance notice or any liability of any kind to you or any third party.

## **8. Linked-To Websites; Advertisements; Dealings with Third Parties**

### **A. Linked Sites; Advertisements.**

The Site may contain links, as part of third-party ads on the Site or otherwise, to or from third-party websites (“Linked Sites”), including websites operated by advertisers, licensors, licensees, and certain other third parties who may have business relationships with MALK Organics. MALK Organics may have no control over the content, operations, policies, terms, or other elements of Linked Sites, and MALK Organics does not assume any obligation to review any MALK Organics Sites. MALK Organics does not endorse, approve, or sponsor any Linked Sites, or any third-party content, advertising, information, materials, products, services, or other items. Furthermore, MALK Organics is not responsible for the quality or delivery of the products or services offered, accessed, obtained by or advertised at such sites. Finally, MALK Organics will under no circumstances be liable for any direct, indirect, incidental or special loss or other damage, whether arising from negligence, breach of contract, defamation, infringement of copyright or other intellectual property rights, caused by the exhibition, distribution or exploitation of any information or content contained within these third-party Linked Sites. Any activities you engage in connection with any of the same are subject to the privacy and other policies, terms and conditions of use and/or sale, and rules issued by the operator of the Linked Sites. MALK Organics disclaims all liability in connection therewith.

### **B. Dealings with Third Parties.**

Any interactions, correspondence, transactions, and other dealings that you have with any third parties found on or through the Site (including on or via Linked Sites or advertisements) are solely between you and the third party (including issues related to the content of third-party advertisements, payments, delivery of goods, warranties (including product warranties), privacy and data security, and the like). MALK Organics disclaims all liability in connection therewith.

## **9. Wireless**

### **A. Wireless Features.**

The Site may offer certain features and services that are available to you via your wireless Device. These features and services may include the ability to access the Site’s features and upload content to the Site, receive messages from the Site, and download applications to your wireless Device (collectively, “Wireless Features”). Standard messaging, data, and other fees may be charged by your carrier to participate in Wireless Features. Fees and charges may appear on your wireless bill or be deducted from your pre-paid balance. Your carrier may prohibit or restrict certain Wireless Features and certain Wireless Features may be incompatible with your carrier or wireless Device. You should check with your carrier to find out what plans are available and how much they cost. Contact your carrier with questions regarding these issues.

### **B. Terms of Wireless Features.**

You agree that as to the Wireless Features for which you are registered for, we may send communications to your wireless Device regarding us or other parties. Further, we may collect information related to your use of the Wireless Features. If you have registered via the Site for Wireless Features, then you agree to notify MALK Organics of any changes to your wireless contact information (including phone number) and update your accounts on the Site to reflect the changes.

## **10. Dispute Resolution**

Certain portions of this Section 10 are deemed to be a “written agreement to arbitrate” pursuant to the Federal Arbitration Act. You and MALK Organics agree that we intend that this Section 10 satisfy the “writing” requirement of the Federal Arbitration Act. This Section 10 can only be amended by mutual agreement.

### **A. First – Try to Resolve Disputes and Excluded Disputes.**

If any controversy, allegation, or claim arises out of or relates to the Site, the Content, your User-Generated Content, these Terms, or any Additional Terms, whether heretofore or hereafter arising (collectively, “Dispute”), or to any of MALK Organics’ actual or alleged intellectual property rights (an “Excluded Dispute”, which includes those actions set forth in Section 10(D), then you and we agree to send a written notice to the other providing a reasonable description of the Dispute or Excluded Dispute, along with a proposed resolution of it. Our notice to you will be sent to you based on the most recent contact information that you provide us. But if no such contact information exists or if such information is not current, then we have no obligation under this Section 10(A). Your notice to us must be sent to: MALK Organics, 8211 Dunlap St, Houston, TX 77074 (Attn: Legal Dept.). For a period of sixty (60) days from the date of receipt of notice from the other party, MALK Organics and you will engage in a dialogue in order to attempt to resolve the Dispute or Excluded Dispute, though nothing will require either you or MALK Organics to resolve the Dispute or Excluded Dispute on terms with respect to which you and MALK Organics, in each of our sole discretion, are not comfortable.

### **B. Binding Arbitration.**

If we cannot resolve a Dispute as set forth in Section 10(A) (or agree to arbitration in writing with respect to an Excluded Dispute) within sixty (60) days of receipt of the notice, then ANY AND ALL DISPUTES ARISING BETWEEN YOU AND LALA MUST BE RESOLVED BY FINAL AND BINDING ARBITRATION. THIS INCLUDES ANY AND ALL DISPUTES BASED ON ANY PRODUCT, SERVICE OR ADVERTISING CONNECTED TO THE PROVISION OR USE OF THE SITE (WHETHER BASED IN CONTRACT, STATUTE, REGULATION, ORDINANCE, TORT – INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, FRAUD, ANY OTHER INTENTIONAL TORT OR COMMON LAW, CONSTITUTIONAL PROVISION, RESPONDEAT SUPERIOR, AGENCY OR ANY OTHER LEGAL OR EQUITABLE THEORY – AND WHETHER ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THESE TERMS. The Federal Arbitration Act (“FAA”) shall govern the arbitrability of all disputes between MALK Organics and you regarding these Terms (and any Additional Terms) and the Site, including the No Class Action Matters section below. BY AGREEING TO ARBITRATE, EACH PARTY IS GIVING UP ITS RIGHT TO GO TO COURT AND HAVE ANY DISPUTE HEARD BY A JUDGE OR JURY.

A Dispute will be resolved solely by binding arbitration in accordance with the then-current Commercial Arbitration Rules (“Rules”) of the American Arbitration Association (“AAA”), except as modified herein, and in accordance with the AAA’s Supplementary Procedures for Consumer Related Disputes. The AAA will administer the arbitration. If an in-person arbitration hearing is required, then it will be conducted in the “metropolitan statistical area” (as defined by the U.S. Census Bureau) where you are a resident at the time the Dispute is submitted to arbitration. You and we will pay the administrative and arbitrator’s fees and other costs in accordance with the applicable arbitration rules; but if applicable arbitration rules or laws require MALK Organics to pay a greater portion or all of such fees and costs in order for this Section 10 to be enforceable, then MALK Organics will have the right to elect to pay the fees and costs and proceed to arbitration. The arbitrator will apply and be bound by these Terms and any Additional Terms, and will determine any Dispute according to applicable law and facts based upon the record and no other basis, and will issue a reasoned award only in favor of the individual party seeking relief and only to the extent to provide relief warranted by that party’s individual claim. Issues relating to the enforceability of the arbitration and class action waiver provisions contained herein are for the court to decide. This arbitration provision shall survive termination of these Terms or the Site. You can obtain AAA procedures, rules, and fee information as follows: 800.778.7879 and <http://www.adr.org>.

### **C. Limited Time to File Claims.**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IF YOU OR WE WANT TO ASSERT A DISPUTE (BUT NOT A EXCLUDED DISPUTE) AGAINST THE OTHER, THEN YOU OR WE MUST COMMENCE IT (BY DELIVERY OF WRITTEN NOTICE AS SET FORTH IN SECTION 10(A)) WITHIN ONE (1) YEAR AFTER THE DISPUTE ARISES — OR IT WILL BE FOREVER BARRED. Commencing means, as applicable: (a) by delivery of written notice as set forth above in Section 10(A); (b) filing for arbitration with the AAA as set forth in Section 10(B); or (c) filing an action in state or Federal court. The parties expressly waive any contrary statute of limitations or time bars, both legal and equitable, to the Disputes.

### **D. Injunctive Relief.**

The foregoing provisions of this Section 10 will not apply to any legal action taken by MALK Organics to seek an injunction or other equitable relief in connection with, any loss, cost, or damage (or any potential loss, cost, or damage) relating to the Site, any Content, your User-Generated Content and/or MALK Organics’ intellectual property rights (including such MALK Organics may claim that may be in dispute), MALK Organics’ operations, and/or MALK Organics’ products or services.

### **E. No Class Action Matters.**

YOU AND LALA AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING OR AS AN ASSOCIATION. Disputes will be arbitrated only on an individual basis and will not be joined or consolidated with any other arbitration or other proceedings that involve any claim or controversy of any other party. There shall be no right or authority for any Dispute to be arbitrated on a class action basis or on any basis involving Disputes brought in a purported representative capacity on behalf of the general public, or other persons or entities similarly situated. But if, for any reason, any court with competent jurisdiction

holds that this restriction is unconscionable or unenforceable, then our agreement in Section 10(B) to arbitrate will not apply and the Dispute must be brought exclusively in court pursuant to Section 10(F). Notwithstanding any other provision of this Section 10, any and all issues relating to the scope, interpretation and enforceability of the class action waiver provisions contained herein (described in this “No Class Action Matters” section), are to be decided only by a court of competent jurisdiction, and not by the arbitrator. The arbitrator does not have the power to vary these class action waiver provisions.

## **F. Federal and State Courts in Houston County, Texas.**

Except where arbitration is required above, small claims actions, or with respect to the enforcement of any arbitration decision or award, any action or proceeding relating to any Dispute or Excluded Dispute arising hereunder may only be instituted in state or Federal court in Dallas County, Texas. Accordingly, you and MALK Organics consent to the exclusive personal jurisdiction and venue of such courts for such matters.

Small Claims Matters Are Excluded from Arbitration Requirement. Notwithstanding the foregoing, either of us may bring qualifying claim of Disputes (but not Excluded Disputes) in small claims court of competent jurisdiction.

## **11. Disclaimer of Representations and Warranties**

YOUR ACCESS TO AND USE OF THE SITE IS AT YOUR SOLE RISK. THE SITE IS PROVIDED ON AN “AS IS”, “AS AVAILABLE”, AND “WITH ALL FAULTS” BASIS. Therefore, to the fullest extent permissible by law, MALK Organics and its subsidiaries and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns (collectively, the “MALK Organics Parties”) hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, as to:

- (a) the Site (including the Content and the User-Generated Content)
- (b) the functions, features, or any other elements on, or made accessible through, the Site
- (c) any products, services, or instructions offered or referenced at or linked through the Site
- (d) security associated with the transmission of your User-Generated Content transmitted to MALK Organics via the Site
- (e) whether the Site or the servers that make the Site available are free from any harmful components (including viruses, Trojan horses, and other technologies that could adversely impact your Device)
- (f) whether the information (including any instructions) on the Site is accurate, complete, correct, adequate, useful, timely, or reliable
- (g) whether any defects to or errors on the Site will be repaired or corrected
- (h) whether your access to the Site will be uninterrupted

- (i) whether the Site will be available at any particular time or location and
- (j) whether your use of the Site is lawful in any particular jurisdiction.

EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED HEREIN OR IN ADDITIONAL TERMS PROVIDED BY A LALA PARTY, LALA PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, AND FREEDOM FROM COMPUTER VIRUS.

Some jurisdictions limit or do not allow the disclaimer of implied or other warranties so the above disclaimers may not apply to the extent such jurisdictions' laws are applicable.

## **12. Limitations of our Liability**

UNDER NO CIRCUMSTANCES WILL ANY LALA PARTIES BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND, including personal injury or death or for any direct, indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages that are directly or indirectly related to:

- (a) the Site (including the Content and the User-Generated Content)
- (b) your use of or inability to use the Site, or the performance of the Site
- (c) any action taken in connection with an investigation by MALK Organics Parties or law enforcement authorities regarding your access to or use of the Site
- (d) any action taken in connection with copyright or other intellectual property owners or other rights owners
- (e) any errors or omissions in the Site's technical operation or
- (f) any damage to any user's computer, hardware, software, modem, or other equipment or technology, including damage from any security breach or from any virus, bugs, tampering, fraud, error, omission, interruption, defect, delay in operation or transmission, computer line, or network failure or any other technical or other malfunction, including losses or damages in the form of lost profits, loss of goodwill, loss of data, work stoppage, accuracy of results, or equipment failure or malfunction.

The foregoing limitations of liability will apply even if any of the foregoing events or circumstances were foreseeable and even if MALK Organics Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of the Site).

Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages of the sort that are described above, so the above limitation or exclusion may not apply to you.

**EXCEPT AS MAY BE PROVIDED IN ANY ADDITIONAL TERMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LALA PARTIES' TOTAL LIABILITY TO YOU, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH YOUR ACCESS TO AND USE OF THE SITE AND YOUR RIGHTS UNDER THESE TERMS, EXCEED AN AMOUNT EQUAL TO THE AMOUNT YOU HAVE PAID LALA IN CONNECTION WITH THE TRANSACTION(S) THAT UNDERLIE THE CLAIM(S); PROVIDED, HOWEVER, THIS PROVISION WILL NOT APPLY IF A TRIBUNAL WITH APPLICABLE JURISDICTION FINDS SUCH TO BE UNCONSCIONABLE.**

### **13. Waiver of Injunctive or Other Equitable Relief**

IF YOU CLAIM THAT YOU HAVE INCURRED ANY LOSS, DAMAGES, OR INJURIES IN CONNECTION WITH YOUR USE OF THE SITE, THEN THE LOSSES, DAMAGES, AND INJURIES WILL NOT BE IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR TO OTHER EQUITABLE RELIEF OF ANY KIND. THIS MEANS THAT, IN CONNECTION WITH YOUR CLAIM, YOU AGREE THAT YOU WILL NOT SEEK, AND THAT YOU WILL NOT BE PERMITTED TO OBTAIN, ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, USER-GENERATED CONTENT, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED OR CONTROLLED BY LALA (INCLUDING YOUR LICENSED USER-GENERATED CONTENT) OR A LICENSOR OF LALA.

### **14. Updates to Terms**

These Terms (or if applicable Additional Terms), in the form posted at the time of your use of the applicable services to which it applies, shall govern such use (including transactions entered during such use). AS OUR SITE EVOLVES, THE TERMS AND CONDITIONS UNDER WHICH WE OFFER THE SITE MAY PROSPECTIVELY BE MODIFIED AND WE MAY CEASE OFFERING THE SITE UNDER THE TERMS OR ADDITIONAL TERMS FOR WHICH THEY WERE PREVIOUSLY OFFERED. ACCORDINGLY, EACH TIME YOU SIGN IN TO OR OTHERWISE USE THE SITE YOU ARE ENTERING INTO A NEW AGREEMENT WITH US ON THE THEN APPLICABLE TERMS AND CONDITIONS AND YOU AGREE THAT WE MAY NOTIFY YOU OF OTHER TERMS BY POSTING THEM ON THE SITE (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH WE ELECT), AND THAT YOUR USE OF THE SITE AFTER SUCH NOTICE CONSTITUTES YOUR GOING FORWARD AGREEMENT TO THE OTHER TERMS FOR YOUR NEW USE AND TRANSACTIONS. Therefore, you should review the posted terms of use and any applicable Additional Terms each time you use the Site (at least prior to each transaction or submission). The new terms will be effective as to new use and transactions as of the time that we post them, or such later date as may be specified in them or in other notice to you. However, the terms of use (and any applicable Additional Terms) that applied when you previously used the Site will continue to apply to such prior use (*i.e.*, changes and additions are prospective only) unless mutually agreed. In the event any

notice to you of new, revised or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. You should frequently check the home page, your account and the email you associated with your account for notices, all of which you agree are reasonable manners of providing you notice. You can reject any new, revised or Additional Terms by discontinuing use of the Site and related services.

## **15. General Provisions**

### **A. MALK Organics Consent or Approval.**

As to any provision in these Terms or any Additional Terms that grants MALK Organics a right of consent or approval, or permits MALK Organics to exercise a right in its “sole discretion,” MALK Organics may exercise that right in its sole and absolute discretion. No MALK Organics consent or approval may be deemed to have been granted by LALA without being in writing and signed by an officer of MALK Organics.

### **B. Applicable Law.**

These Terms and any Additional Terms will be governed by and construed in accordance with, and any Dispute and Excluded Dispute will be resolved in accordance with, the laws of the state of Texas, without regard to its conflicts of law provisions.

### **C. Indemnity.**

You agree to, and you hereby, defend, indemnify, and hold MALK Organics Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys’ fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any MALK Organics Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with, whether occurring heretofore or hereafter: (i) your User-Generated Content; (ii) your use of the Site and your activities in connection with the Site; (iii) your breach or alleged breach of these Terms or any Additional Terms; (iv) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of the Site or your activities in connection with the Site; (v) information or material transmitted through your Device, even if not submitted by you, that infringes, violates, or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (vi) any misrepresentation made by you; and (vii) MALK Organics Parties’ use of the information that you submit to us (including your User-Generated Content) (all of the foregoing, “Claims and Losses”). You will cooperate as fully required by MALK Organics Parties in the defense of any Claim and Losses. Notwithstanding the foregoing, MALK Organics Parties retain the exclusive right to settle, compromise, and pay any and all Claims and Losses. MALK Organics Parties reserve the right to assume the exclusive defense and control of any Claims and Losses. You will not settle any Claims and Losses without, in each instance, the prior written consent of an officer of a MALK Organics Party.

## **D. Operation of Site; Availability of Products and Services; International Issues.**

MALK Organics controls and operates the Site from its U.S.-based offices in the U.S.A., and MALK Organics makes no representation that the Site is appropriate or available for use beyond the U.S.A. If you use the Site from other locations, you are doing so on your own initiative and are responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply. The Site may describe products and services that are available only in the U.S.A. (or only parts of it) and are not available worldwide. We reserve the right to limit the availability of the Site and/or the provision of any content, program, product, service, or other feature described or available on the Site to any person, entity, geographic area, or jurisdiction, at any time and in our sole discretion, and to limit the quantities of any content, program, product, service, or other feature that we provide. You and we disclaim any application to these Terms of the Convention on Contracts for the International Sale of Goods.

## **E. Export Controls.**

Software related to or made available by the Site may be subject to export controls of the U.S.A. No software from the Site may be downloaded, exported, or re-exported: (i) into (or to a national or resident of) any country or other jurisdiction to which the U.S.A. has embargoed goods, software, technology or services (which, as of the effective date of these Terms, includes Cuba, North Korea, Iran, Sudan, and Syria), or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders, or (iii) to anyone on the U.S. Department of Commerce's Bureau of Industry and Security Entities List as published in the Export Administration Regulations (including entities engaged in weapons of mass destruction proliferation in various countries and persons and entities that are suspected of diverting U.S. origin items to embargoed countries or terrorist end-uses). You are responsible for complying with all trade regulations and laws both foreign and domestic. Except as authorized by law, you agree and warrant not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls, including as set forth in subsections (i) – (iii) above.

## **F. Severability; Interpretation.**

If any provision of these Terms, or any Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms or the Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the Additional Terms (which will remain in full force and effect). To the extent permitted by applicable law, you agree to waive, and you hereby waive, any applicable statutory and common law that may permit a contract to be construed against its drafter. Wherever the word "including" is used in these Terms or any Additional Terms, the word will be deemed to mean "including, without limitation,"

## **G. Communications.**

When you communicate with us electronically, such as via email and text message, you consent to receive communications from us electronically. Please note that we are not obligated to respond to inquiries that we receive. 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.

## **H. Investigations; Cooperation with Law Enforcement; Termination; Survival.**

MALK Organics reserves the right, without any limitation, to: (i) investigate any suspected breaches of its Site security or its information technology or other systems or networks, (ii) investigate any suspected breaches of these Terms and any Additional Terms, (iii) investigate any information obtained by MALK Organics in connection with reviewing law enforcement databases or complying with criminal laws, (iv) involve and cooperate with law enforcement authorities in investigating any of the foregoing matters, (v) prosecute violators of these Terms and any Additional Terms, and (vi) discontinue the Site, in whole or in part, or, except as may be expressly set forth in any Additional Terms, suspend or terminate your access to it, in whole or in part, including any user accounts or registrations, at any time, without notice, for any reason and without any obligation to you or any third party. Any suspension or termination will not affect your obligations to MALK Organics under these Terms or any Additional Terms. Upon suspension or termination of your access to the Site, or upon notice from MALK Organics, all rights granted to you under these Terms or any Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Site. The provisions of these Terms and any Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to MALK Organics in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.

## **I. Assignment.**

MALK Organics may assign its rights and obligations under these Terms and any Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of MALK Organics.

## **J. No Waiver.**

Except as expressly set forth in these Terms or any Additional Terms, (i) no failure or delay by you or MALK Organics in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

## **K. Connectivity.**

You are responsible for obtaining and maintaining all Devices and other equipment and software, and all internet service provider, mobile service, and other services needed for your access to and use of the Site and you will be responsible for all charges related to them.