

TERMS & CONDITIONS OF USE

EFFECTIVE DATE: MARCH 20, 2018

These Terms and Conditions of Use (these “Terms of Use”) apply when you access, use, or visit this website (the “Website”) and any other websites owned or operated by Ever New Melbourne Limited (Corporation Number 805301-4) (referred to in these Terms of Use as “Provider,” “we,” “us” and “our”). Your use of, or access to, this Website constitutes your agreement to be bound by these Terms of Use. This Website is a service made available by Provider, and all content, information, services and software provided on or through this Website, in whole or in part (“Content”) may be accessed, utilized or used (“Use” or “Used”) by you (“you” or “User”) only in accordance with these Terms of Use.

Notice Regarding Dispute Resolution: These Terms of Use contain provisions that govern how claims you and we may have against each other are resolved (see Section 14 below), including an agreement and obligation to arbitrate disputes, which will, subject to limited exceptions, require you to submit claims you have against us to binding arbitration, unless you opt-out in accordance with Section 14.5. Unless you opt-out of arbitration: (a) you will only be permitted to pursue claims against us on an individual basis, not as part of any class or representative action or proceeding; and (b) you will only be permitted to seek relief (including monetary, injunctive, and declaratory relief) on an individual basis.

1. Affirmative Representations Regarding Your Use of this Website. When you Use this Website, you represent that: (a) the information you submit to us is truthful and accurate; (b) your use of this Website and your use of services available on this Website do not violate any applicable law or regulation; (c) you are 18 years of age or older; and (d) you are of sufficient legal age or otherwise have legal capacity to legally enter into these Terms of Use.

2. Privacy Policy. In connection with your use of the Website, please review our Privacy Policy, located at evernew.com, to understand how we use information we collect from you when you Use this Website. The Privacy Policy is part of and is governed by these Terms of Use, and by agreeing to these Terms of Use, you agree to be bound by the terms of the Privacy Policy—and agree that we may use information collected from you in accordance with its terms.

3. License; Limitations on Use.

3.1 Scope of Use. As a User of this Website you are granted a nonexclusive, nontransferable, revocable, limited license to Use this Website and the Content in accordance with these Terms of Use. This Website and the Content on this Website is for your personal Use only and not for commercial exploitation, enhancement, verification or validation.

3.2 Passwords. If you are a registered user of the Website, you are responsible for keeping your password confidential and must refrain from disclosing it to any other person. You may not permit any other person to use your password, and must change your password immediately if you believe that it has become known to any other person.

3.3 Linking to this Website. You may provide links to this Website, provided: (a) you do not remove or obscure, by framing or otherwise, any portion of our web pages, including their advertisements, the Website brand, the Terms of Use, or other notices on this Website without prior written consent from Provider; and (b) you promptly discontinue providing links to this Website if requested by Provider.

3.4 Prohibited Use. You may not Use this Website and/or any Content to:

- a. Conduct commercial or promotional activities or sales efforts without prior written consent from Provider.
- b. Provide content related to gambling, including, without limitation, any online casino, sports books, bingo or poker.
- c. Provide or facilitate illegal contests, pyramid schemes, sweepstakes or chain letters.
- d. Infringe upon the rights of any third party, including intellectual property rights, privacy rights, rights of publicity, or other personal or proprietary rights, or engage in deceptive or fraudulent activity.
- e. Copy, modify, reproduce, republish, distribute, display, or transmit for commercial, non-profit or public purposes all or any portion of this Website, except to the extent permitted above or with prior written consent from Provider.
- f. Manually extract, decompile, reverse engineer, disassemble, rent, lease, loan, sell, sublicense, or create derivative works from this Website or the Content without prior written consent from Provider.
- g. Determine this Website's architecture, or extract data or information about usage, individual identities or users, via use of any network monitoring or discovery software or otherwise.
- h. Monitor, copy, scan, review, index, mirror, ping or validate our Website or the Content without Provider's prior written permission, via robot, spider, other automatic software or device, process, approach or methodology, manual or otherwise (methods such as web scraping, harvesting, data extraction, data validation or verification are prohibited).
- i. Contribute content that contains restricted access mechanisms, hidden content of any kind, or utilize SQL injections or cross site scripting methods.
- j. Transmit any computer virus, worm, defect, Trojan Horse, or any other item of a destructive nature, or upload any virus or malicious code.
- k. Transmit any false, misleading, fraudulent or illegal communications, information or data.
- l. Engage in phishing, spoofing, or other illegal or fraudulent activities, or violate applicable laws in your jurisdiction.
- m. Access unauthorized information.
- n. Solicit information from minors, harm, or threaten to harm minors.
- o. Attack, threaten with violence, stalk, harass, incite, harm, or intimidate any other user, person or organization, or engage in any other threatening behavior.

p. Transmit or post any material that is abusive, harassing, tortious, defamatory, vulgar, pornographic, obscene, libelous, fraudulent, invasive of another's privacy, hateful, or otherwise objectionable, for example, any materials containing racial, ethnic, or other slurs, or hate speech, or which attack an individual or group on the basis of race, gender, gender identity, ethnicity, religion, national origin, or sexual preference.

q. Transmit any unsolicited or unauthorized advertising, promotional materials, junk mail, spam (note that sending the same message multiple times or to multiple people will be treated as spam), chain letters, contests, pyramid schemes, surveys, or any other form of solicitation or mass messaging, whether commercial in nature or not.

r. Export or re-export this Website or any portion thereof, or its Content, in violation of the export control laws and regulations of the United States of America.

4. Third Party Content, Links, Platforms and Communications.

4.1 Third Party Content. Third party content (including, without limitation, content posted by other users of the Website) may appear on this Website or may be accessible via links from this Website. Provider shall not be responsible for and assumes no liability for any infringement, mistakes, misstatements of law, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity in the statements, opinions, representations or any other form of content contained in any third party content appearing on this Website. You understand that the information and opinions in the third party content is neither endorsed by, nor does it reflect the beliefs or opinions of, Provider. Further, information and opinions provided by employees and agents of Provider in Interactive Areas (as defined in Section 6.1 herein) are not endorsed by Provider and do not represent the beliefs and opinions of Provider.

4.2 Third Party Links. Provider, or third party users, may provide links to other websites or resources on this Website. Provider has no control over these websites and resources. You acknowledge and agree that Provider is not responsible for the availability of these external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products or other materials contained in or available from such sites or resources. You acknowledge that use of any third party website is governed by the terms of use and privacy policy for that website and not by these Terms of Use or Provider's Privacy Policy. Provider reserves the right to disable any link or remove any third party content, at any time, in its sole discretion.

4.3 Third Party Platforms. It may be possible to access this Website via a third party social network, email service, or other platform, including, but not limited to, Facebook or Facebook Connect (each, a "Third Party Platform"). Access to this Website via a Third Party Platform may only be granted if you explicitly allow it, and that access may be through an interface provided by the Third Party Platform. If you access this Website via a Third Party Platform, then certain activity or actions you take on this Website may be viewable as a "story" or a feed on that Third Party Platform, and thus may be searchable or viewable in other online locations as well. You may be able to control or change the "stories" that can be published on the Third Party Platform by modifying your settings on that Third Party Platform. We have no control over, and are not liable for, your use of any Third Party Platform, including, without limitation, the feeds published by Third Party Platforms. Because we do not have control over user interfaces provided by Third Party Platforms, we do not take any responsibility for any changes or problems with the interface or exchange of information provided by any of them. We have no control over the privacy policies of Third Party Platforms. Neither do we have any control over or

responsibility for the information or content collected by these Third Party Platforms. If you access this Website through a Third Party Platform, then we encourage you to become familiar with the terms of use and privacy policies and other practices of the applicable Third Party Platform.

4.4 *Third Party Communications.* As used in these Terms of Use, “Third Party Communications” means any communications directed or sent to you from any third party, whether directly or indirectly. You are solely responsible for assessing and verifying the identity and trustworthiness of the source and content of any Third Party Communications. Provider assumes no responsibility for verifying—and makes no representations or warranties regarding—the identity or trustworthiness of the source or content of any Third Party Communications.

5. *Intellectual Property Rights.* Except as expressly provided in these Terms of Use, nothing contained in these Terms of Use shall be construed as conferring or granting to you any license, ownership or other property right in or to this Website or any Content, by implication, estoppel or otherwise, under copyright or other intellectual property rights. You agree that this Website and Content are owned or licensed by us and are subject to copyright and other intellectual property rights under United States and foreign laws, and international conventions. EVER NEW, the EVER NEW logo, and all other Provider trademarks, service marks, product names, and trade names of Provider appearing on or in conjunction with this Website or the Content are owned by Provider. The Website and the Content are for your information and personal use only and not for commercial exploitation. We reserve all rights in and to this Website and the Content. Provider does not grant you the right to use or display any trademark, service mark, product name, trade name or logo appearing on this Website without Provider’s or the respective owner’s prior written consent.

6. *User Postings.*

6.1 *Ownership of Postings.* We do not claim any ownership rights in any data, information, text, graphics, links, messages, reviews, content, or other materials (collectively, “Postings”) that you post on or through this Website, in any interactive areas of this Website (the “Interactive Areas”), which include, without limitation, any blogs, reviews, wikis, bulletin boards, reviews, discussion boards, chat rooms, email forums, and question and answer features. After posting your Postings on this Website, you continue to retain any rights you may have in your Postings, including any intellectual property rights or other proprietary rights associated with your Postings, subject to the license you grant to us below.

6.2 *License of Your Postings to Provider.* By posting, publishing, uploading, or distributing any Postings for use on this Website, you grant (or warrant that the owner of such rights has expressly granted) Provider a perpetual, worldwide, royalty-free, irrevocable, non-exclusive right and license, with the right to sublicense, to use, modify, reproduce, publish, adapt, publicly perform, publicly display, digitally display and digitally perform, translate, create derivative works from and distribute your Postings or incorporate your Postings into any form, medium, or technology now known or later developed throughout the universe. You agree that you shall have no recourse against Provider for any alleged or actual infringement or misappropriation of any proprietary right in Postings you provide to Provider.

6.3 *Postings Must Accurately Identify You.* Your Postings shall be accompanied by your real name and shall not be posted anonymously. Participants in Interactive Areas shall not misrepresent their identity or their affiliation with any person or entity.

6.4 Rules Applicable to Postings. You are entirely responsible for the content of, and any harm resulting from, any Posting that you post on or through this Website. When you create or make available a Posting on or through this Website, you represent and warrant that you:

- (a) own or have sufficient rights to post your Posting on or through the Service;
- (b) will not post any Postings that violate our or any other person's privacy rights, publicity rights, intellectual property rights (including without limitation copyrights) or contract rights;
- (c) will not post any Postings that violate these Terms of Use;
- (d) have fully complied with any third-party licenses relating to Postings and shall pay all royalties, fees and any other monies required to be paid in connection with Postings that you post on or through the Service;
- (e) will not post any Postings that: (i) are defamatory, damaging, disruptive, unlawful, inappropriate, offensive, inaccurate, pornographic, vulgar, indecent, profane, hateful, racially or ethnically offensive, obscene, lewd, lascivious, filthy, threatening, excessively violent, harassing, or otherwise objectionable; (ii) incite, encourage or threaten immediate physical harm against another, including but not limited to, Postings that promote racism, bigotry, sexism, religious intolerance or harm against any group or individual; (iii) are misleading or deceptive; or (iv) contain material that solicits personal information from anyone under the age of 13, or exploits anyone in a sexual or violent manner;
- (f) will not distribute on or through this Website any Postings or presentations of data containing any advertising, promotion, solicitation for goods, services or funds or solicitation for others to become members of any enterprise or organization without the express written permission of the Provider;
- (g) will not post any Postings that constitute, contain, install or attempt to install or promote spyware, malware or other computer code, whether on our or others' computers or equipment, designated to enable you or others to gather information about or monitor the on-line or other activities of another party;
- (h) will not post any Postings that will or may give rise to liability or violate any local, state, federal or international law, or the regulations of the U.S. Securities and Exchange Commission, any rules of any securities exchange such as the California Stock Exchange, the American Stock Exchange, or the NASDAQ.

Notwithstanding the limitation set forth in Section 6.4(f), where appropriate, as part of a Posting you (i) may list along with your name, address and email address, your own web site's URL, and (ii) may recommend third party web sites, goods or services so long as you have no financial interest in and receive no direct or indirect benefit from such recommended web site, product or service or its recommendation. In no event may any person or entity solicit anyone with data retrieved from this Website.

6.5 *No Monitoring of Postings.* Provider has no obligation to monitor or screen Postings and is not responsible for the content in such Postings or any content linked to or from such Postings. Provider however reserves the right, in its sole discretion, to monitor Interactive Areas, screen Postings, edit Postings, cause Postings not to be posted, published, uploaded or distributed, and remove Postings, at any time and for any or no reason without notification of or permission from you. Provider may delete your Posting at any time for any reason without notification of or permission from you.

7. Online Purchases.

7.1 *Age Requirements.* To make a purchase from this Website or to subscribe to this Website you must be 18 years of age or over, or have obtained the consent of a parent or guardian if you are under 18 years of age.

7.2 *Product Availability.* All products and offers shown on the Website are subject to availability at the advertised price. Provider cannot guarantee that your size and style will be in stock when you order from the Website. Provider strives to ensure that all details, descriptions and prices which appear on the Website are accurate. However, errors may occur from time to time which we will correct without notice. Provider reserves the right to withdraw any product from sale at any time, for any reason and without notice.

7.3 *Order Cancellation and Refusal.* If we discover an error on our Website or we are unable to fulfill your order, we will attempt to contact you and cancel the order and you will receive a full refund in the form of the original payment method. Provider reserves the right to refuse to fulfill or to cancel any order, including any orders that we consider to be a bulk order, fraudulent, not for personal use or otherwise not in compliance with these Terms of Use.

7.4 *Order Confirmation.* When you place an order, you will receive an acknowledgement email confirming receipt of your order. This email will only be an acknowledgement and will not constitute acceptance of your order. Acceptance of the order and completion of the sale will not occur until your payment is received by us.

7.5 *Pricing.* Prices are in U.S. Dollars and any related sales tax and delivery costs are displayed and charged in addition to the cost of a product. Provider reserves the right to alter prices on the Website at any time, for any reason and without notice.

7.6 *Payment.* Purchases from this Website may only be made using the online payment facility on this Website with a valid credit card, gift card or PayPal account. If payment was made using a credit card, that card issuer controls the timing of any refund that may be given by Provider due to cancellation or refusal of an order.

7.7 *Transfer of Title; Risk of Loss.* Title and risk of loss in a product purchased from this Website transfers to you upon receipt of full payment and dispatch of the product from Provider.

7.8 *Delivery.* Dispatch times may vary according to availability and we take no responsibility for any delays in delivery.

8. *Promotions and Offers.* Provider may, from time to time, offer limited promotional discount codes which may be used to purchase products on the Website. The conditions of use relating to any discount will be specified at the time of issuance. Provider reserves the right to terminate, suspend or

modify the promotion or offer without notice. All promotions and offers are non-transferable and are not redeemable for cash.

9. Digital Millennium Copyright Act.

9.1 Notification of Alleged Copyright Infringement. Provider has registered an agent with the United States Copyright Office (a "Copyright Agent") in accordance with the terms of the Digital Millennium Copyright Act (the "DMCA") and avails itself of the safe harbor and other protections available under the DMCA. Provider reserves the right to remove from the Website any Content or Postings that allegedly infringe another person's copyright. If you believe Content on the Website infringes your valid copyrights, please send a notification (a "DMCA Notification"), including all information included in Section 9.2 below, by mail or email to our Copyright Agent at:

Attn: DMCA Copyright Agent
Copyright Manager
Email: copyright@evernew.com

Please be advised that under Section 512(f) of the Digital Millennium Copyright Act you may be held liable for damages and attorneys' fees if you make material misrepresentations in a DMCA Notification. Therefore, if you are not sure whether content available on or through the Website infringes your copyright, you should contact an attorney.

9.2 DMCA Notification Requirements. The following information must be included in each DMCA Notification that you send to our Copyright Agent:

- (a) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- (b) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of the works at that site.
- (c) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material. If possible, we prefer a complete list of all of the precise URLs that you allege contain infringing content.
- (d) Information reasonably sufficient to permit us to contact you, the complaining party, such as an address, telephone number, and, if available, an electronic mail address where you may be contacted. We prefer you provide us with your email address for ease of correspondence.
- (e) The following statements must be included in your DMCA Notification:

"I hereby declare that I believe in good faith that the disputed use of the copyrighted material is not authorized by the copyright owner, its agent, or the law."

"I hereby swear that the claimed information is accurate to the best of my knowledge and, under penalty of perjury, that I am the owner, or authorized to act on behalf of the owner, of the copyright or of an exclusive right under the copyright that has been infringed."

“I give my permission to pass my contact information to the alleged infringing party.”

If the content in dispute originates from a third party site or source, please provide us notification as to which, if any, of the following apply:

- (a) Display and/or access to the material on the originating site has been disabled.
- (b) Under court order, the material was removed from the originating site.
- (c) Under court order, access to the material on the originating site is disabled.

9.3 Repeat Infringers. Provider reserves the right to terminate Users of the Website who are repeat infringers in appropriate circumstances, in its sole discretion.

10. Our Management of this Website; User Misconduct.

10.1 Our Right to Manage this Website. We reserve the right, but do not undertake the obligation to: (a) monitor or review this Website for violations of these Terms of Use and for compliance with our policies; (b) report to law enforcement authorities and/or take legal action against anyone who violates these Terms of Use; (c) manage this Website in a manner designed to protect our and third parties' rights and property or to facilitate the proper functioning of this Website; (d) screen our users, or attempt to verify the statements of our users; and/or (e) monitor disputes between you and other users or to terminate or block you and other users from violating these Terms of Use.

10.2 Interactions with other Users. Please choose carefully both the information you post on this Website, and that you give to other users of this Website. Provider makes no guarantees, either express or implied, regarding individuals you may interact with through this Website, either with regard to their conduct, or regarding the quality of any products or services they provide. We discourage you from publicly posting your telephone number, street address or other personal or financial information on this Website. Information posted to this Website by other Users of this Website may be offensive, harmful or inaccurate, and in some cases may be mislabeled or deceptively labeled. You assume all risks associated with dealing with other users with whom you come in contact through this Website.

10.3 Our Right to Terminate Users. **Without limiting any other provision of these Terms of Use, we reserve the right to, in our sole discretion, and without notice or liability, deny access to and use of the Service to any person—for any reason or for no reason at all—as permitted by applicable law, including, without limitation, for breach of any representation, warranty or covenant contained in these Terms of Use, or any applicable law or regulation.**

10.4 Unlawful Activity. Provider reserves the right to investigate complaints or reported violations of our Terms of Use and to take any action we deem appropriate including but not limited to reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties and disclosing any information necessary or appropriate to such persons or entities relating to user profiles, e-mail addresses, usage history, posted materials, IP addresses and traffic information.

10.5 Remedies for Violations. Provider reserves the right to seek all remedies available at law and in equity for violations of these Terms of Use, including but not limited to the right to block access from a particular internet address to this Website and any other Provider web sites and their features.

11. Warranty Disclaimer; Limitation on Liability.

11.1 Disclaimer of Warranties.

A. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THIS WEBSITE, THE INTERACTIVE AREAS, THE CONTENT, AND POSTINGS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. PROVIDER EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PROVIDER DOES NOT WARRANT THAT THIS WEBSITE OR THE CONTENT IS FREE OF MALWARE OR OTHER HARMFUL COMPONENTS. PROVIDER DISCLAIMS ALL RESPONSIBILITY FOR ANY LOSS, INJURY, CLAIM, LIABILITY, OR DAMAGE OF ANY KIND RESULTING FROM, ARISING OUT OF OR ANY WAY RELATED TO: (I) ANY ERRORS IN OR OMISSIONS FROM THIS WEBSITE, THE INTERACTIVE AREAS, THE CONTENT, AND THE POSTINGS INCLUDING, BUT NOT LIMITED TO, TECHNICAL INACCURACIES AND TYPOGRAPHICAL ERRORS; (II) THIRD PARTY COMMUNICATIONS; (III) ANY THIRD PARTY PLATFORMS, WEBSITES OR CONTENT THEREIN DIRECTLY OR INDIRECTLY ACCESSED THROUGH LINKS IN THIS WEBSITE, INCLUDING BUT NOT LIMITED TO ANY ERRORS IN OR OMISSIONS THEREFROM; (IV) THE UNAVAILABILITY OF THIS WEBSITE, THE INTERACTIVE AREAS, THE CONTENT, THE POSTINGS, OR ANY PORTION THEREOF; (V) YOUR USE OF THIS WEBSITE, THE INTERACTIVE AREAS, THE CONTENT, OR THE POSTINGS; OR (VI) YOUR USE OF ANY EQUIPMENT OR SOFTWARE IN CONNECTION WITH THIS WEBSITE, THE INTERACTIVE AREAS, THE CONTENT, OR THE POSTINGS.

B. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY, RELIABILITY, TIMELINESS OR COMPLETENESS OF THE WEBSITE’S CONTENT, THE CONTENT OF ANY WEBSITE LINKED TO THE WEBSITE, POSTINGS, INFORMATION OR ANY OTHER ITEMS OR MATERIALS ON THE WEBSITE OR LINKED TO BY THE WEBSITE. WE ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY: (I) ERRORS; MISTAKES OR INACCURACIES OF CONTENT AND POSTINGS; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE WEBSITE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE WEBSITE; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH THE WEBSITE BY ANY THIRD PARTY; AND/OR (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT AND POSTING OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THIS WEBSITE.

C. WE DO NOT REPRESENT OR IMPLY THAT WE ENDORSE POSTINGS, OR ANY OTHER MATERIALS OR ITEMS AVAILABLE ON OR LINKED TO BY THE SERVICE, INCLUDING, WITHOUT LIMITATION, CONTENT HOSTED ON THIRD PARTY SITES, OR PRODUCTS OR SERVICES MADE AVAILABLE ON THIRD PARTY SITES. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE ARE NOT LIABLE TO YOU FOR ANY LOSS OR DAMAGE THAT MIGHT ARISE IN CONNECTION WITH THIRD PARTY POSTINGS, THIRD PARTY SITES, OR ANY PRODUCTS OR SERVICES OFFERED THROUGH THIRD PARTY SITES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OR DAMAGE RESULTING FROM SECURITY VULNERABILITIES IN THIRD PARTY PRODUCTS OR FROM YOUR RELIANCE ON THE BUSINESS LISTINGS, RATINGS, OR REVIEWS FOUND ON, USED ON, OR MADE AVAILABLE THROUGH THE WEBSITE. YOU ASSUME ALL RISK WHEN USING THIS WEBSITE, INCLUDING BUT NOT LIMITED TO ALL OF THE RISKS

ASSOCIATED WITH ANY ONLINE OR OFFLINE INTERACTIONS WITH OTHERS, INCLUDING CONTRACTING FOR OR SUPPLYING SERVICES OF ANY NATURE.

D. PROVIDER DOES NOT ASSUME ANY RESPONSIBILITY FOR THE ACCURACY OR RELIABILITY OF ANY INFORMATION PROVIDED BY USERS SEEKING SERVICES OR USERS SUPPLYING SERVICES AS LISTED ON THIS WEBSITE. PROVIDER DOES NOT ASSUME AND EXPRESSLY DISCLAIMS ANY LIABILITY THAT MAY RESULT FROM THE USE OF THIS INFORMATION. PROVIDER IS NOT RESPONSIBLE FOR THE CONDUCT, WHETHER ONLINE OR OFFLINE, OF ANY USER OF THIS WEBSITE.

E. PROVIDER MAKES NO GUARANTEE OF CONFIDENTIALITY OR PRIVACY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED TO OR FROM THIS WEBSITE. PROVIDER WILL NOT BE LIABLE FOR THE PRIVACY OF ANY OF YOUR OR ANY OTHER THIRD PARTY POSTINGS TO THIS WEBSITE AND SPECIFICALLY DISCLAIMS ANY LIABILITY RESULTING FROM SUCH POSTINGS AND COMMUNICATIONS, INCLUDING ANY OBJECTIONABLE CONTENT.

F. WHEN PROVIDER POSTS CONTENT AND MATERIALS, INCLUDING REVIEWS OF PRODUCTS AND SERVICES AND LINKS TO WEBSITES, PLEASE BE AWARE THAT THESE CONTENT AND MATERIALS MAY REFERENCE, LIST, REVIEW, AND/OR RATE ENTITIES, PRODUCTS OR SERVICES WITH WHICH WE HAVE DIRECT OR INDIRECT AFFILIATIONS OR OTHER RELATIONSHIPS. WE MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE ABSENCE OR EXISTENCE OF, OR THE EXTENT OR NATURE OF, ANY DIRECT OR INDIRECT AFFILIATIONS OR RELATIONSHIPS THAT WE MAY HAVE WITH ANY ENTITIES, PRODUCTS OR SERVICES THAT ARE REFERENCED, LISTED, REVIEWED AND/OR RATED ON THE WEBSITE. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE HAVE NO LIABILITY OR RESPONSIBILITY OF ANY KIND FOR ANY FURTHER UNDERSTANDING YOU MAY HAVE ABOUT THE ABSENCE OR EXISTENCE OF, OR THE EXTENT OR NATURE OF, AFFILIATIONS OR RELATIONSHIPS AMONG US AND ANY OTHER ENTITIES, PRODUCTS OR SERVICES IDENTIFIED ON, FOUND ON, USED ON, OR MADE AVAILABLE THROUGH THE SITE.

11.2. *Limitation of Liability.* TO THE EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS, INJURY, CLAIM, LIABILITY, OR DAMAGE OF ANY KIND RESULTING FROM YOUR USE OF THIS WEBSITE, THE CONTENT, THE POSTINGS, THE INTERACTIVE AREAS, ANY FACTS OR OPINIONS APPEARING ON OR THROUGH AN INTERACTIVE AREA, OR ANY THIRD PARTY COMMUNICATIONS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE USE OF OR INABILITY TO USE THIS WEBSITE, THE INTERACTIVE AREAS, THE CONTENT, THE POSTINGS, OR ANY THIRD PARTY COMMUNICATIONS. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS OF USE, OUR LIABILITY TO YOU IN RESPECT OF ANY LOSS OR DAMAGE SUFFERED BY YOU AND ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OF USE, WHETHER IN CONTRACT, TORT OR FOR BREACH OF STATUTORY DUTY OR IN ANY OTHER WAY SHALL NOT EXCEED \$50.

11.3 *Exceptions to Disclaimers and Liability Limitations.* SOME STATES OR JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF CERTAIN WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF YOU RESIDE IN ONE OF THESE STATES

OR JURISDICTIONS, THE LIMITATIONS OR EXCLUSIONS IN SECTIONS 11.1 and 11.2 MAY NOT APPLY TO YOU.

12. Indemnification. You agree to indemnify, defend and hold Provider, its officers, directors, employees, agents, licensors, suppliers and any third party information providers to this Website harmless from and against all claims, losses, expenses, damages and costs, including reasonable attorneys' fees, resulting from any violation of these Terms of Use by you or arising from or related to any Postings or Content uploaded or submitted by you. **You will not be required to indemnify and hold Provider harmless from and against any claims, liabilities, damages, losses, or expenses resulting from Provider's own negligent conduct.**

13. Third Party Beneficiaries. The provisions of Section 11 (Warranty Disclaimer; Limitation on Liability) and Section 12 (Indemnification) are for the benefit of Provider and its officers, directors, employees, agents, licensors, suppliers, and any third party information providers to this Website. Each of these individuals or entities shall have the right to assert and enforce those provisions directly against you on its/their own behalf.

14. Legal Disputes and Arbitration Agreement.

Please Read This Following Clause Carefully – It May Significantly Affect Your Legal Rights, Including Your Right to File a Lawsuit in Court

14.1 Initial Dispute Resolution. We are available by email at customerservice@evernew.ca to address any concerns you may have regarding your use of this Website. Most concerns may be quickly resolved in this manner. Each of you and Provider agree to use best efforts to settle any dispute, claim, question, or disagreement directly through consultation and good faith negotiations which shall be a precondition to either party initiating a lawsuit or arbitration.

14.2 Agreement to Binding Arbitration. If we do not reach an agreed upon solution within a period of thirty (30) days from the time informal dispute resolution is pursued pursuant to Section 14.1 above, then either party may initiate binding arbitration. All claims arising out of or relating to these Terms of Use (including their formation, performance and breach), the parties' relationship with each other and/or your use of this Website shall be finally settled by binding arbitration administered on a confidential basis by JAMS, in accordance with the JAMS Streamlined Arbitration Rules and Procedures, excluding any rules or procedures governing or permitting class actions. Each party will have the right to use legal counsel in connection with arbitration at its own expense. The parties shall select a single neutral arbitrator in accordance with the JAMS Streamlined Arbitration Rules and Procedures. The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of these Terms of Use, including, but not limited to, any claim that all or any part of these Terms of Use is void or voidable. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be in writing and provide a statement of the essential findings and conclusions, shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. The interpretation and enforcement of these Terms of Use shall be subject to the Federal Arbitration Act.

The JAMS rules governing the arbitration may be accessed at <https://www.jamsadr.com/adr-rules-procedures>. If you initiate arbitration, to the extent the filing fee for the arbitration exceeds Two Hundred and Fifty U.S. Dollars (\$250.00), we will pay the additional cost. If we are required to pay the additional cost of the filing fees, you should submit a request for payment of fees to JAMS along with

your form for initiating the arbitration, and we will make arrangements to pay all necessary fees directly to JAMS. We will also be responsible for paying all other arbitration costs arising in connection with the arbitration other than costs incurred by you for legal counsel, travel and other out-of-pocket costs and expenses not constituting fees or amounts payable to JAMS. You will not be required to pay fees and costs incurred by Provider if you do not prevail in arbitration.

The parties understand that, absent this mandatory provision, they would have the right to sue in court and have a jury trial. They further understand that, in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court.

14.3 *Class Action and Class Arbitration Waiver.* You and Provider each further agree that any arbitration shall be conducted in your respective individual capacities only and not as a class action or other representative action, and you and Provider each expressly waive your respective right to file a class action or seek relief on a class basis. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provision set forth above in Section 14.2 shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

14.4 *Exception - Small Claims Court Claims.* Notwithstanding the parties' agreement to resolve all disputes through arbitration, either party may seek relief in a small claims court for disputes or claims within the scope of that court's jurisdiction.

14.5 *30 Day Right to Opt-Out.* You have the right to opt-out and not be bound by the arbitration and class action waiver provisions set forth in Sections 14.2, 14.3, and 14.4 by sending written notice of your decision to opt-out to the following email: customerservice@evernew.ca. The notice must be sent within thirty (30) days of first using this Website, otherwise you shall be bound to arbitrate disputes in accordance with the terms of those sections. If you opt-out of these arbitration provisions, we also will not be bound by them.

14.6 *Exclusive Venue for Litigation.* To the extent that the arbitration provisions set forth in Section 14.2 do not apply, or if you want to pursue any legal remedies to which you would otherwise be entitled but that are not available to you pursuant to this Section 14, the parties agree that any litigation between them shall be filed exclusively in state or federal courts located in the State of New York (except for small claims court actions which may be brought in the county where you reside). The parties expressly consent to exclusive jurisdiction in New York for any litigation other than small claims court actions. In the event of litigation relating to these Terms of Use or this Website, the parties agree to waive, to the maximum extent permitted by law, any right to a jury trial.

15. *Notice to New Jersey Users.* Notwithstanding any terms set forth in these Terms of Service, if any of the provisions set forth in Sections 11, 12 or 14 are held unenforceable, void or inapplicable under New Jersey law, then any such provision shall not apply to you but the rest of these Terms of Service shall remain binding on you and the Company. In addition, for New Jersey residents, the limitation on liability is inapplicable where attorneys' fees, court costs, or other damages are mandated by statute. Notwithstanding any provision in these Terms of Service, nothing in these Terms of Service is intended to, nor shall it be deemed or construed to, limit any rights available to you under the Truth-in-Consumer Contract, Warranty and Notice Act.

16. *Notice to California Users.* Under California Civil Code Section 1789.3, users located in California are entitled to the following consumer rights notice: If a user has a question or complaint

regarding the Service, please send an email to customerservice@evernew.ca. Users may also contact us by writing to:

Ever New Melbourne Limited
5300 Commerce Court West
199 Bay Street
Toronto, ON, Canada M5L 1R9

California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

17. Errors and Corrections. Provider may make improvements and/or changes to this Website's features or functionality, or Content or Postings, at any time.
18. Severability of Provisions. These Terms of Use operate to the fullest extent permissible by law. If any provision of these Terms of Use is unlawful, void or unenforceable, then that provision shall be deemed severable from the remaining provisions and shall not affect their validity and enforceability.
19. Independent Contractors. Nothing in these Terms of Use shall be deemed to create an agency, partnership, joint venture, employer-employee or franchisor-franchisee relationship of any kind between you and Provider. You will have no authority to make or accept any offers or representations on our behalf.
20. Non-Waiver. Our failure to exercise or enforce any right or provision of these Terms of Use shall not operate as a waiver of the applicable right or provision.
21. Assignment. We may assign our rights under these Terms of Use without your approval.
22. Entire Agreement. These Terms of Use constitute the complete and exclusive understanding and agreement of the parties relating to the subject matter hereof and supersede all prior understandings, proposals, agreements, negotiations, and discussions between the parties, whether written or oral. Notwithstanding anything to the contrary in these Terms of Use, if you have a separate signed written agreement with Provider that applies to your Use of any of the Content, that agreement constitutes the entire agreement between you and Provider with respect to the Content subject thereto, and these Terms of Use shall be treated as having no force or effect with respect to your use of the applicable Content.
23. Modifications to Terms of Use. Provider may modify these Terms of Use from time to time. We will notify you of material changes to these Terms of Use by posting the amended terms on this Website at least thirty (30) days before the effective date of the changes. If you have provided your email address to us, we will notify you of material changes to these Terms of Use by email at least thirty (30) days before the effective date of the changes. It is therefore very important that you make sure we have a current email address for you on file so that you will receive notice of any material changes. If you do not agree with the proposed changes, you should discontinue your use of this Website prior to the time the new Terms of Use take effect. If you continue using this Website after the new terms take effect, you will be bound by the modified Terms of Use.
24. Contact Information. If you have any questions about the Service or these Terms of Use, you can contact Provider by email at customerservice@evernew.ca.