

# **Klixters Inc. ® Terms and Conditions**

## **It Pays 2 Play**

Welcome to the Klixters Inc. We offer an advertising platform that let you get paid for watching commercial ads and others features and gives you control of sharing your information with advertisers! (“it pays 2 play”)

Before using the website available at Klixters.com (the “**Site**”) please take the time to carefully read our Terms and Conditions below (“**Terms**,” or “**Agreement**”). The Terms constitute a binding contract between you the Member and Klixters Inc.

THESE TERMS REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE. PLEASE CAREFULLY REVIEW SECTION 15 BELOW FOR MORE INFORMATION.

### **1. Acceptance of Terms**

By clicking “I agree,” creating an account, using the Site, and/or using any of the various services available through the Site (together with the Site and Web App, the “**Services**”) offered by Klixters Inc. (“**Klixters**” “ **we** ,” “ **us** ,” and/or “ **our** ”), or by visiting or browsing the Services, you, the user (collectively “ **Users** ,” or “ **you** ”), acknowledge and agree to these legally binding Terms. You also agree to the Klixters Privacy Policy (“**Privacy Policy**”) and all supplemental terms that may be presented to you for your review, which are incorporated by reference. **If you do not agree to this Agreement, then you are not permitted to use the Services.**

You agree to use the Services only for lawful purposes, and that you are responsible for your use of the Services and communications with us, all of which must comply with these Terms. You hereby represent and warrant that:

1. you are accessing the Services solely within the United States of America and its territories (US), and other countries when they are available.
2. you are over the age of thirteen (16) and you are not accessing the Services or using the Services on behalf of anyone whose age is under 16 years, and
3. you are fully able and competent to enter into a binding contract.

If at any time you are not in full compliance with all foregoing provisions of this Section, you are in material violation of this Agreement and you must immediately cease all use of, and access to the Services.

## **2. Modification to this Agreement and the Services.**

Klixters may at its sole discretion, change these Terms, including the Klixters Privacy Policy, from time to time without prior notice to you. If changes occur, we will notify you by posting the updates on the Services, or by email to the email affiliated with your account. Updated versions will never apply retroactively and will give the exact date they go into effect. We recommend that you check the Terms and Privacy Policy periodically for changes. Your continued use of the Services following the posting of any changes to the Terms means you accept those new terms.

Additionally, Klixters reserves the right to modify, suspend, or discontinue the Services (including, but not limited to, the availability of any feature, database, or Content), whether temporarily or permanently at any time for any reason. You agree that Klixters shall not be liable to you for any modification, suspension, or discontinuation of the Services. Some modifications may require updates to your existing third-party software on your device in order to continue to use the Services. Klixters may also impose limits on certain features and services or restrict your access to parts or all of the Services without notice or liability.

## **3. License Grant**

We grant to you a limited, personal, revocable, worldwide, royalty-free, non-exclusive, and non-transferable right and license to use the Services. You agree to respect all legal notices, information, and restrictions contained in any content accessed through the Services. You must provide all equipment and software necessary to connect to the Services, including but not limited to, a mobile device that is suitable to connect with and use the App. You are solely responsible for any fees, including internet connection or mobile fees, that you incur when accessing the Service.

## **4. Rules and Conduct**

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

**You understand and agree that you will not use the Services to engage in the prohibited conduct below:**

1. You shall not use the Services for any illegal purpose, or in violation of any local, state, national, or international law, including, without limitation, laws governing intellectual property and other proprietary rights, data protection and privacy, and import or export control;
2. You shall not post, store, send, transmit, or disseminate any information or material which infringes any patents, trademarks, trade secrets, copyrights, or any other proprietary or intellectual property rights;
3. You shall not use the Services in any way to monitor or evaluate the availability, performance or functionality of the Services for any competitive purpose, or perform or assist any other party to perform any benchmarking on the Services.
4. You shall not violate any separate agreements between you and Klixters Inc.
5. You shall not attempt to use any method to gain unauthorized access to any features of the Services;
6. You shall not directly or indirectly decipher, decompile, remove, disassemble, reverse engineer, or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Services, security-related features of the Services, features that prevent or restrict use or copying of any content accessible through the Services, or features that enforce limitations on use of the Services, except to the extent applicable laws specifically prohibit such restriction;
7. You shall not directly or indirectly modify, translate, or otherwise create derivative works of any part of the Services;
8. You shall not directly or indirectly copy, rent, lease, distribute, or otherwise transfer any of the rights that you receive hereunder;
9. You shall not directly or indirectly take any action that imposes or may impose (as determined by Klixters in its sole discretion) an unreasonable or disproportionately large load on Klixters or its third-party providers' infrastructure; interfere or attempt to interfere with the proper working of the Service or any activities conducted on the Service; run Mailing list, Listserv, or any form of auto-responder or "spam" on the Service; or use manual or automated software, devices, or other processes to "crawl" or "spider" any page of the Site;
10. You shall not create a false identity on the Services, misrepresent your identity, create a profile for anyone other than you, or use or attempt to use another account;
11. You shall not disclose information that you do not have the consent to disclose (such as confidential information of others (including of your employer if you are an individual)); and
12. You shall not post content that: is direct or specific threat of violence to others; is in furtherance of illegal activities; is harassing, hateful, libelous, defamatory, abusive, or constitutes spam; or is pornographic, predatory, sexually graphic, racist, offensive, harmful to a minor, or would otherwise violate the rights of any third party or give rise to civil or criminal liability.

If for any reason, Klixters determines that you have failed to follow these rules, we reserve the right to prohibit any and all current or future use of the Services by you. If we have reason to suspect, or learn that anyone is violating these Terms, we may investigate and/or take legal action as necessary including bringing a lawsuit for damages caused by

the violation. We reserve the right to investigate and take appropriate legal action, including without limitation, cooperating with and assisting law enforcement or government agencies in any resulting investigations of illegal conduct.

## 5. Collection and Use of Your Information.

You acknowledge that when you use the Services, Klixters may use automatic means (including, for example, cookies and web beacons) to collect information about your use of the Services. You also may be required to provide certain information about yourself as a condition to using certain of its features or functionality. Additionally, you hereby give us permission to combine your information, anonymized versions of your information, and other data that we collect about you with data of other users of the Services and/or other services that we operate. All information we collect through or in connection with the Services is subject to the Klixters Privacy Policy ("**Privacy Policy**"). By using the Services, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

## 6. Communications

You consent to accept and receive communications from us, including e-mail, text messages, calls, and push notifications to the cellular telephone number you provide to us. These communications may be generated by automatic telephone dialing systems which will deliver prerecorded messages, including for the purposes of secondary authentication, receipts, reminders and other notifications. Standard message and data rates applied by your cell phone carrier may apply to the text messages we send you, and you are responsible for any charges from your carrier for text messages sent from us. You may opt-out of receiving communications by following the unsubscribe options we provide to you. You acknowledge that opting out of receiving communications may impact your use of the Services.

## 7. Klixters Inc. Account

You may view basic landing page content on the Services without registering for an account, but as a condition of using certain aspects of the Services, including watching ads in exchange for payment, you are required to create a Klixters account (an "**Account**"). Each individual User may establish only one (1) Account, connected to 1 email and 1 phone number.

You represent that the information in your Account and any other information you otherwise provide to us, is accurate, current, and complete information, and agree to update it and keep it accurate, current, and complete. We reserve the right to suspend or terminate your Account or your access to the Services if any information provided to us proves to be inaccurate, not current, or incomplete.

You are solely responsible for maintaining the confidentiality of your account and password and for restricting access to your computer/mobile device, and you hereby agree to accept

responsibility for all activities, charges, and damages that occur under your account. If you discover any unauthorized use of your account, or other known account-related security breach, you must report it to Klixters immediately. You agree that you are responsible for anything that happens through your account until you close your account or prove that your account security was compromised due to no fault of your own. Klixters cannot and will not be liable for any loss or damage arising from your failure to comply with this section.

## **8. Klixters Inc. Payments ( Klixbit = a Penny, Klixcoin = a Dollar )**

Users will receive advertisements (an "Ad") selected by us. If you view an Ad under your User account, we will deposit a credit into your Klixters account. Once you have earned at least 25 klixcoins or more in credits, you will have the option to process payment of those credits directly to your checking account, PayPal, or other such services as made available on our platform, or donate the credits to your favorite non-for profit. You expressly authorize Klixters or Klixters service provider to originate credit transfers to your financial institution account. We reserve the right to adjust the amount of klixbits you will receive per Ad view. Additional credit opportunities might be offered, with instructions on how such credits might be credited to your Klixters account. You agree that you have not earned the right to any of the credits until or unless you have at least 25 klixcoins worth of credits in your Klixters account. You agree that klixcoins in your Klixters account will not earn any interest. You agree to solely responsible for any taxes resulting from the processing of klixcoins to your account, and understand that we will not withhold any klixcoins for the purpose of paying your taxes.

## **9. Termination / Cancel of Usage**

You may cancel your account at any time through your account settings. We may suspend or cancel your account without notice to you if you violate this Agreement. If your account is cancelled, Klixters reserves the right to remove your account information along with any account settings from our servers with NO liability or notice to you, subject to the account balance provisions below.

Upon termination of your account. your license to use Klixters Services terminates. All provisions of these Terms that by their nature should survive termination shall survive termination, including, without limitation, any funds earned by you and owed to you through your use of the platform, ownership provisions, warranty disclaimers, indemnity, and limitations of liability. You acknowledge and understand that our rights regarding any content you submitted to the website before your account was terminated shall survive termination.

*Account Balances After Termination or Inactivity*

User "Inactivity" is defined by:

1. The User replying STOP to our text notifications; or
2. The User has not fully completed an opportunity in their Klixters Inc. in 12 months or more.

In any case, Klixters will reach out to the User via email, warning them that their account is considered inactive and will be closed if not reactivate. After an account is deemed inactive, Klixters will assess an account maintenance fee of 25 klixcoins (or the maximum remaining balance) until the account is reactivated by emailing support@Klixters.com. Prior to deducting any fees due to account inactivity, Klixters will provide you at least thirty (30) days- written notice. If your account remains inactive for the amount of time specified by applicable state law, usually between thirty-six (36) and sixty (60) months, it will be considered abandoned. Once an account is abandoned, Klixters is required by state law to remit the abandoned funds to the appropriate state agency as unclaimed property. Klixters may also charge additional fees associated with the delivery of abandoned funds to the applicable state agency subject to limitations of applicable law.

## **10. Third-Party Sites (including Advertiser Sites)**

The Services permit you to link to other websites or resources on the internet, including when you choose to opt-in to view an advertiser's information. Links on the Services to third party websites, if any, are provided only as a convenience to you. If you use these links, you will leave the Services. The inclusion or integration of third-party services or links does not imply control of, endorsement by, or affiliation with Klixters. Your dealings with third parties are solely between you and such third parties. You agree that Klixters will not be responsible or liable for any content, goods or services provided on or through these outside websites or for your use or inability to use such websites. You will use these links at your own risk.

## **11. Klixters Inc. Intellectual Property and User Content**

### **Intellectual Property**

Through the Services, Klixters may make accessible various content, including, but not limited to, videos, photographs, images, artwork, graphics, audio clips, comments, data, text, software, scripts, campaigns, other material and information, and associated trademarks and copyrightable works (collectively, "**Content**"). Users of the Services may have the ability to contribute, add, create, submit, distribute, facilitate the distribution of, collect, post, or otherwise make accessible Content through submission of profile photos.

### **Our Content**

Our Content is protected in many ways, including copyrights, trademarks, service marks, and other rights and laws. You agree to respect all legal notices, information, and restrictions contained in any content accessed through the Services. You also agree not to change, translate, or otherwise create derivative works based off our content. All other Content

viewed through the Services is the property of its respective owner. You have a limited, revocable, non-exclusive, non-transferrable license to use the Services and our Content solely for legally permitted activities related to our Services as outlined in these Terms.

## **User Content**

We, including third party partners and our affiliates, may ask you for Feedback (as further defined below) on your experience with the Services. Klixters shall be the owner of any reviews, comments, suggestions or other feedback regarding the Services posted to the Services or on Klixters social media pages (collectively, "**Feedback**"). Without limitation, Klixters will have exclusive ownership of all present and future existing rights to the Feedback of every kind and nature everywhere and will be entitled to use the Feedback for any commercial or other purpose whatsoever, including to advertise and promote Klixters without compensation to you or any other person sending the Feedback. You specifically waive any "moral rights" in and to the Feedback.

To the extent that you decide to post any content ("**User Content**"), including your profile information, photos, or Feedback, on the Services, you agree that your User Content will not contain third-party copyrighted material, or material that is subject to other third-party proprietary rights, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to post the material and to grant Klixters all of the license rights granted herein. You acknowledge that you are responsible for whatever material you submit, and you not Klixters have full responsibility for the User Content, including its legality, reliability, appropriateness, originality, and copyright. Klixters may refuse to accept or transmit User Content. Additionally, Klixters shall have the right to delete, edit, modify, reformat, excerpt, or translate any of your User Content.

We do not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, or reliability of any User Content or communications posted via the Services or endorse any opinions expressed via the Services. You understand that, by using the Services, you may be exposed to content that might be offensive, harmful, inaccurate or otherwise inappropriate, or in some cases content that has been mislabeled or is otherwise deceptive, objectionable or difficult to view. Under no circumstances will Klixters be liable in any way for any User Content not modified by Klixters including, but not limited to, any errors or omissions in any User Content, or any loss or damage of any kind incurred as a result of the use of any User Content posted, emailed, transmitted or otherwise made available via the Services or distributed elsewhere.

## **12. Copyright and Trademark Notices**

### **Copyright Policy**

Klixters complies with the Digital Millennium Copyright Act (DMCA). Klixters will remove infringing materials in accordance with the DMCA if properly notified that Content infringes copyright. If you believe that your work has been copied in a way that constitutes copyright infringement, please notify Klixters Copyright Agent by email at support@Klixters.com or by mail to the address in the Contact section. Please do not send notices or inquiries about

anything other than alleged copyright infringement or other intellectual property claims to our Copyright Agent. Your email must contain the following information:

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- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- information reasonably sufficient to permit us to contact you, such as an address, telephone number, and, if available, an e-mail address;
- a description of the copyrighted work that you claim has been infringed;
- a description of where the material that you claim is infringing is located on the Services, sufficient for Klixters to locate the material; your address, telephone number, and email address;
- a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- a statement by you that the information in your notice is accurate and, under penalty of perjury, that you are the copyright owner or authorized to act on the copyright owner's behalf.

If you fail to comply with these notice requirements, your notification may not be valid. Under the Copyright Act, any person who knowingly materially misrepresents that material is infringing or was removed or disabled by mistake or misidentification may be subject to liability.

In accordance with the Digital Millennium Copyright Act, Klixters has adopted a policy of, in appropriate circumstances, terminating User accounts that are repeat infringers of the intellectual property rights of others. Klixters also may terminate User accounts even based on a single infringement.

### **Counter-Notice**

If you believe that your Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the material in your Content, you may send a written counter-notice containing the following information to the Copyright Agent: (1) Your physical or electronic signature; (2) Identification of the Content that has been removed or to which access has been disabled and the location at which the Content appeared before it was removed or disabled; (3) A statement that you have a good faith belief that the Content was removed or disabled as a result of mistake or a misidentification of the Content; and (4) Your name, address, telephone number, and email address, a statement that you consent to the jurisdiction of the federal court in Lee County Florida, and a statement that you will accept service of process from the person who provided notification of the alleged infringement. If a counter-notice is received by the Copyright Agent, Klixters Inc. may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed Content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the Content provider, member or user, the removed Content may be replaced, or access to it restored, in 10 to 15 business days or more after receipt of the counter-notice, at Klixters sole discretion.



### **13. Warranty and Disclaimer**

YOU USE THE SERVICES IS AT YOUR OWN RISK. YOU FURTHER ACKNOWLEDGE THAT ANY INFORMATION THAT YOU CHOOSE TO SHARE VIA THE SERVICES IS AT YOUR OWN RISK. WE EXPRESSLY DISCLAIM ALL REPRESENTATIONS AND WARRANTIES ABOUT THE ACCURACY, COMPLETENESS, TIMELINESS OR EFFICACY OF THE CONTENT OF THE APPLICATION, AND ASSUME NO LIABILITY OR RESPONSIBILITY TO YOU FOR ANY ERRORS, MISTAKES, OR INACCURACIES IN SUCH CONTENT OR IN THE SERVICES PROVIDED BY US. YOU AGREE THAT YOUR ACCESS TO, AND USE OF THE SERVICES AND THE CONTENT AVAILABLE THROUGH THE FOREGOING IS ON AN "AS-IS", "AS AVAILABLE" BASIS AND WE SPECIFICALLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WE DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE PRODUCTS, OFFERINGS, CONTENT, AND MATERIALS AVAILABLE THROUGH THE SERVICES, INCLUDING WITHOUT LIMITATION THE AVAILABILITY, USE, OR RESULTS OF SERVICES IN THE EVENT OF AN EMERGENCY. IF ANY APPLICABLE AUTHORITY HOLDS ANY PORTION OF THIS SECTION TO BE UNENFORCEABLE, THEN OUR LIABILITY AND RESPONSIBILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY APPLICABLE LAW.

You acknowledge that there may be interruptions in service or events that are beyond our control. While we use reasonable efforts to keep the Services accessible, the Services may be unavailable from time to time for any reason including, without limitation, system down time for routine maintenance. Klixters Inc. makes no warranties or representations of any kind, express, statutory or implied as to:

1. the availability of telecommunication services from your or any other telecommunications services provider and access by you or any other user to the Services at any time or from any location;
2. any loss, damage, or other security intrusion of the telecommunication Services;
3. compatibility between our Services and your mobile device; and/or
4. any disclosure of information to third parties or failure to transmit any data, communications or settings connected with the Services.

### **14. Limitation of Liability**

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN NO EVENT SHALL KLIXTERS INC., NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS, OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICE (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGINATION), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) TWO TIMES (2X) THE TOTAL AMOUNT EARNED BY YOU ON THE PLATFORM IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM OR FIVE HUNDRED U.S. DOLLARS (\$500.00), WHICHEVER IS LESS. SOME STATES OR COUNTRIES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

IN THESE JURISDICTIONS, KLIXTERS LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

## **15. Indemnification**

You agree to defend, indemnify, and to hold harmless Klixters, together with its officers and directors, from any and all liabilities, penalties, claims, causes of action, and demands brought by third-parties (including the costs, expenses and attorneys' fees on account thereof) arising, resulting from or relating to: (a) your use of the Services or your inability to use the Services; (b) an allegation that you violated any representation, warranty, covenant or condition in this Agreement; (c) your intentional or negligent misrepresentation or misuse confidential or protected information; and (d) your Content. Your agreement to defend, to indemnify, and to hold Klixters harmless applies whether any claim against Klixters is based in allegations of violation(s) of law or contract or tort (including strict liability), and regardless of the form of action, including but not limited to your violation of any third-party rights, a claim that the Services caused damage to you or to any third party and/or your use and access to the Services. This indemnification section shall survive your termination of or cessation of use of the Services.

## **16. Arbitration and Class Action Waiver**

PLEASE READ THIS SECTION CAREFULLY - IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

### **Binding Arbitration**

UNLESS YOU EXPRESSLY OPT-OUT, ANY DISPUTE OR CLAIM RELATING IN ANY WAY TO THE SERVICES OR THIS AGREEMENT WILL BE RESOLVED BY BINDING ARBITRATION, RATHER THAN IN COURT AS THE SOLE MEANS TO RESOLVE CLAIMS, SUBJECT TO THE TERMS SET FORTH BELOW. Specifically, all claims arising out of or relating to these Terms (including their formation, performance and breach), the parties' relationship with each other and/or your use of the Service shall be finally settled by binding arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules and the supplementary procedures for consumer related disputes of the American Arbitration Association (the "AAA"), excluding any rules or procedures governing or permitting class actions. The Commercial Arbitration Rules governing the arbitration may be accessed at [www.adr.org](http://www.adr.org) or by calling the AAA at +1.800.778.7879. The Federal Arbitration Act governs the interpretation and enforcement of this provision, and the arbitrator shall apply Florida law to all other matters.

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, including, but not limited to any claim that all or any part of these Terms are void or voidable, or whether a claim is subject to arbitration. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitration rules also permit you to recover attorney's fees in certain cases. The arbitrator's award shall be written, and binding on the parties and may be entered as a judgment in any court of competent jurisdiction.

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.

### **Location**

The arbitration will take place at any reasonable location within the United States reasonably convenient for both parties.

### **Class Action Waiver**

WE AND YOU AGREE THAT ANY AND ALL DISPUTES MUST BE BROUGHT IN THE RESPECTIVE PARTY'S INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. BY ENTERING INTO THIS AGREEMENT AND AGREEING TO ARBITRATION, YOU AGREE THAT YOU AND US ARE EACH WAIVING THE RIGHT TO FILE A LAWSUIT AND THE RIGHT TO A TRIAL BY JURY. IN ADDITION, YOU AGREE TO WAIVE THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR LITIGATE ON A CLASS-WIDE BASIS. YOU AGREE THAT YOU HAVE EXPRESSLY AND KNOWINGLY WAIVED THESE RIGHTS.

### **Exception - Litigation of Intellectual Property and Small Claims Court Claims**

Notwithstanding the parties' decision to resolve all disputes through arbitration, either party may bring an action in state or federal court to protect its intellectual property rights

(“**intellectual property rights**” means patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights). Either party may also seek relief in a small claims court for disputes or claims within the scope of that court’s jurisdiction.

### **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 above by sending written notice of your decision to opt-out to Klixters at support@Klixters.com. The notice must be sent within 30 days of your first use of the Service, otherwise you shall be bound to arbitrate disputes in accordance with the terms of those paragraphs. If you opt-out of these arbitration provisions, Klixters also will not be bound by them.

### **Changes to this Section**

Klixters will provide 30-days’ notice of any changes to this section. Changes will become effective on the 30th day, and will apply prospectively only to any claims arising after the 30th day.

For any dispute not subject to arbitration you and Klixters agree to submit to the personal and exclusive jurisdiction of and venue in the federal and state courts located in Lee County, Florida. You further agree to accept service of process by mail, and hereby waive any and all jurisdictional and venue defenses otherwise available.

The Terms and the relationship between you and Klixters shall be governed by the laws of the State of Florida without regard to conflict of law provisions.

## **17. Assignment**

The Terms are personal to you, and are not assignable, transferable, or sublicensable by you. Any assignment in violation of this section shall be null and void. Klixters may assign, transfer, or delegate any of its rights and obligations hereunder without your consent.

## **18. No Third-Party Beneficiaries**

You agree that, except as otherwise expressly provided in these Terms, there shall be no third-party beneficiaries to the Terms.

## **19. Notice Policy and Your Consent**

Under these Terms you are contracting with Klixters Inc. a Delaware corporation with its operations in Florida. All notices should be addressed to Klixters Inc. at the address in the Contact section below.

You acknowledge and agree that we may give you notice by means of a general notice on the Services, electronic mail to your email address in your account or by written communication sent by first class mail or pre-paid post to your address in your account. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email or text). You may give notice to us, with such notice deemed given when received by us, at any time by first class mail or pre-paid post to the address set forth in the Contact section or at such other address as we may advise from time to time, pursuant to this provision.

## **20. Geographic Limits of Service**

Klixters Inc. make no representation that materials contained on the Services or products described or offered are appropriate or available for use in jurisdictions outside the United States or that these Terms comply with the laws of any other country. If you access the Service from other locations, you do so at your own initiative and are responsible for compliance with local laws. Klixters reserves the right, at any time in our sole discretion, to limit the availability and accessibility of the Services to any person, geographic area, or jurisdiction we so desire.

## **21. Governing Law**

These Terms (and any further rules, policies, or guidelines incorporated by reference) shall be governed by and construed in accordance with the laws of the State of Florida and the United States, without giving effect to any principles of conflicts of law, and without application of the Uniform Computer Information Transaction Act or the United Nations Convention of Controls for International Sale of Goods.

## **22. Limitation on Time to Initiate a Dispute**

Any action or proceeding by you relating to any dispute must commence within two years after the cause of action accrues, or you will be forever barred from bringing such dispute.

## **23. Integration and Severability**

These Terms and other referenced material constitute the entire agreement between you and Klixters with respect to the Services, and supersede all prior or contemporaneous agreements, representations, warranties, and understandings (whether oral, written or electronic) between you and Klixters with respect to the services and govern the future.

relationship. If a court in any final, unappealable proceeding holds any provision of these Terms or its application to any person or circumstance invalid, illegal or unenforceable, the remainder of these Terms, shall not be affected, and shall be valid, legal and enforceable to the fullest extent permitted by law.

## **24. No Waiver**

The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

## **25. Terms for iOS App**

You acknowledge and agree that (i) these Terms are binding between you and Klixters only, and Apple is not a party hereto, and (ii) as between Klixters and Apple, it is Klixters that is responsible for the app and the content thereof. You must use the iOS app only on an Apple-branded product that runs iOS. Your use of the app must comply with the terms of use applicable to the Apple source from which you obtain it (including the Usage Rules set forth in the Apple App Store Terms of Service). You acknowledge that Apple has no obligation to furnish you with any maintenance and support services with respect to the app. You acknowledge that Apple is not responsible for addressing any claims you have or any claims of any third party relating to the app or your possession and use of the app, including, but not limited to (i) product warranty or liability claims; (ii) any claim that the app fails to conform to any applicable legal or regulatory requirement; (iii) claims arising under consumer protection or similar legislation; or (iv) claims that the app infringes a third party's intellectual property rights. In the event of any failure of the iOS version of the app to conform to any applicable warranty that has not been effectively disclaimed by these Terms, you may notify Apple, and Apple will refund the purchase price for the app (if any) to you; to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the app, and, as between Apple and Klixters, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Klixters responsibility, but only to the extent provided by these Terms. Please read the entire Terms, as other sections of these Terms limit Klixters liability in this regard. Apple, and Apple's subsidiaries, are third-party beneficiaries of these Terms. Upon your acceptance of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms against you as a third-party beneficiary thereof. There are no other third-party beneficiaries of the Terms.

## **26. Contact**

If you have any questions regarding these Terms please contact us at [support@Klixters.com](mailto:support@Klixters.com) or mail to 922 S E 14<sup>th</sup> Place Cape Coral FL. 33990

End.

Revised on February 2, 2021