

# TERMS OF SERVICE (CLICKWRAP) AGREEMENT

THIS TERMS OF SERVICE AGREEMENT on 31-January of the year 2014 between , e com Developers, a proprietary firm owned by D.Regil Das with its office situated at Ground floor,66/4026 A, Pullepaddy, Chittoor road, Ernakulam, Kochi-682036, herein after referred to as the first party on the first part and represented by its executive /owner/managing partner , with its office situated at herein after referred to as the second party on the second part. This agreement evidences the terms and conditions of the service provided by the first party to the second party.

BY CLICKING THE ACCEPTANCE CHECKBOX of the ONLINE ORDER FORM of the first party, or by ACCESSING, USING OR INSTALLING ANY PART OF THE APPLICATION/PRODUCT/SERVICE of the first party , the second party who is termed as the End-user herein after EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY ALL OF THE TERMS OF THE AGREEMENT.

## VALIDITY:

- a. This contract in electronic form will be valid as per Section 10A of the Information Technology Act, 2000.
- b. The first party retains the exclusive right to sale/Provision of Applications/Products/Services and the second party become a buyer only when the first party admits the request /order
- c. The first party reserves its exclusive right to restrict/terminate this Agreement on its own discretion even without giving any prior notice
- d. The purchase of Applications/Products/Services shall begin only after the ordering process as stipulated by the first party has been completed and the relevant fees have been paid by the End-user.

## OBLIGATIONS OF END-USER & PRIVACY OF THE CONTRACT

- e. The End-user shall not violate any laws, third party rights or policies.
- f. The End-user shall not use the first party's Applications, services or Products if unable to form legally binding contracts, or are temporarily or indefinitely suspended by the first party from using our Applications, services or Products
- g. The End-User shall comply & abide with all the guidelines laid down by TRAI for telemarketers in the TRAI from time to time ([http://www.nccptrai.gov.in/nccpreistry/Guidelines\\_for\\_telemarketers.pdf](http://www.nccptrai.gov.in/nccpreistry/Guidelines_for_telemarketers.pdf)).
- h. The End-user shall not distribute viruses or any other technologies that may harm the first party, or its the interests or property of its users.
- i. The End-user has no right to export or re-export any tools of the first party.
- j. The End-user shall not harvest or otherwise collect information about users, including email addresses, without their consent.
- k. The End-user shall not hold the e com Developers liable for any damages, whatsoever resulting from the use of the company's Applications, services or Products.
- l. The End-user shall take precautions to ensure that whatever is selected for use is free of such items as viruses, worms, Trojan horses, malicious codes and other items of a destructive nature.
- m. The right to use the Applications, services or Products of e com Developers is personal to End-User and is not transferable to any other person or entity.
- n. End User shall be solely responsible for protecting the confidentiality of End User's password(s), if any.

## **TECHNICAL ISSUES:**

o. End User acknowledges that, sometimes there may be interruptions in service or events that are beyond the control of the first party, and the first party shall not be responsible for any data lost while transmitting information on the Internet. While it is the first party's objective is to make their service available for End Users any time, the first party's services may be unavailable from time to time for any reason including, without limitation, routine maintenance, holidays etc. The End-user understands and acknowledges that due to circumstances both within and outside of the control of the first party, access to services may be interrupted, suspended or terminated from time to time.

p. The first party shall have the right at any time to change or discontinue any aspect or feature of the first party, including, but not limited to, content, hours of availability and equipment needed for access or use. Further the first party may discontinue disseminating any portion of information or category of information, may change or eliminate any transmission method and may change transmission speeds or other signal characteristics.

## **PRODUCTS & SERVICES:**

1. None of the information contained or which may appear at our website of the first party shall be viewed as an offer to sell or as a solicitation to purchase any of the products or services. Rather, the information on the products and services is provided to the End-user so that the End-user can learn what products the first party generally offers. The products and service statements on this Website are for general description purposes only.

## **PAYMENT & REFUND:**

1. e com Developers reserves the right to determine the amount of refund value in case of cancellation and amendments. The decision on the quantum of refund will be final as that made by e com Developers. The refund will be made in the name of the End-User. It will take at least 15 days to process refunds for all services. There will be no refund for unutilized services unless specified. All cancellation and amendment charges will be applicable as per principles policies on which the first party has no control and the End-user shall be subjected to it.

## **GRANT OF LICENSE:**

1. By purchasing the Applicaton, Service or Product of the first party, End User shall have the rights to use the Applicaton, Service or Product for the End User's requirements only, and the End User shall not have the rights to reproduce, use for others, modify, publish, edit, translate or distribute the Applicaton, Service or Product as it is or as part of other works in any form, media, or technology whether now known or hereafter developed, nor to sublicense such rights without prior permission of the first party.

## **INDEMNIFICATION:**

1. End User agrees to defend, indemnify and hold harmless the first party, its affiliates and their respective directors, officers, employees and agents from and against all claims and expenses, including attorneys' fees, arising out of the use of any Applicaton, Service or Product of the First Party by End User.

## **GOVERNING LAW:**

3. All legal disputes will be settled under the laws of Indian courts subject to laws of Republic of India. In the event of any dispute of whatever nature, arising under this Agreement, such dispute shall be settled through good faith negotiation among the parties. In case such dispute cannot be resolved by negotiation within 30 days such dispute shall be referred to binding arbitration in accordance with the provisions of the Arbitration and Conciliation Act 1996. The place of arbitration shall be Kochi, India. The decision of the arbitral tribunal shall be final and binding upon the parties. In case of the dispute requiring intervention of courts, courts of Kochi alone shall have exclusive jurisdiction.

## **DISCLAIMER OF WARRANTY; LIMITATION OF LIABILITY:**

a. END USER EXPRESSLY AGREES THAT USE OF SOFTWARE APPLICATIONS, SERVICES OR PRODUCTS RENDERED BY THE FIRST PARTY IS AT END USER'S SOLE RISK. NEITHER THE FIRST PARTY, ITS AFFILIATES NOR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS OR LICENSORS WARRANT THAT USE OF THE SOFTWARE APPLICATIONS, SERVICES OR PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO (I) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE APPLICATIONS, SERVICES OR PRODUCTS, OR (II) THE ACCURACY, RELIABILITY OR CONTENT OF ANY OF THE SOFTWARE APPLICATIONS, SERVICES OR PRODUCTS PROVIDED BY THE FIRST PARTY.

b. THE SOFTWARE APPLICATIONS, SERVICES OR PRODUCTS ARE MADE AVAILABLE ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN

THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT.

c. THIS DISCLAIMER OF LIABILITY APPLIES TO ANY DAMAGES OR INJURY CAUSED BY, INCLUDING BUT NOT LIMITED TO ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, TORTIOUS BEHAVIOR, NEGLIGENCE, OR UNDER ANY OTHER CAUSE OF ACTION. END USER SPECIFICALLY ACKNOWLEDGES THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH END USER.

d. IN NO EVENT SHALL E COM DEVELOPERS, OR ANY PERSON OR ENTITY, INCLUDING BUT NOT LIMITED TO INVOLVED IN CREATING, PRODUCING OR DISTRIBUTING THE SOFTWARE APPLICATIONS, SERVICES OR PRODUCTS, BE LIABLE FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE APPLICATIONS, SERVICES OR PRODUCTS.

e. IN ADDITION TO THE TERMS SET FORTH ABOVE, NEITHER THE FIRST PARTY, NOR ITS AFFILIATES, SHALL BE LIABLE REGARDLESS OF THE CAUSE OR DURATION, FOR, INCLUDING BUT NOT LIMITED TO ANY ERRORS, INACCURACIES, OMISSIONS, OR OTHER DEFECTS IN, OR UNTIMELINESS OR UNAUTHENTICITY OF, THE INFORMATION CONTAINED WITH THE SOFTWARE APPLICATIONS, SERVICES OR PRODUCTS, OR FOR ANY DELAY OR INTERRUPTION IN THE TRANSMISSION THEREOF TO THE END USER, OR FOR ANY CLAIMS OR LOSSES ARISING THEREFROM OR OCCASIONED THEREBY .

IT IS EXPRESSELY UNDERSTOOD THAT THE FIRST PARTY SHALL BE INDEMINFIED FROM AY CLAIMS, LOSSES OR LIABILITY OF ANY NATURE OCCASIONED FROMTHE ABOVE EVENTS INCLUDING WITHOUT LIMITATION LOSS OF PROFITS PURITY OR CONSQUENCIAL DAMAGES.

## **TERMINATION:**

1. The first party shall terminate this User Agreement at any time for any reason including any improper use of services,application or product and/or failiure to comply with these terms and. Such termination shall not affect any right to relief to which the first party and providers and distributors may be entitled, at law or in equity. Upon termination of this User Agreement and these terms and conditions, all rights granted to the end user shall stand terminated and revert to the first party

## **PRIVACY POLICY:**

1. The End-user have read the first party Privacy Policy, the terms of which are incorporated herein, and agree that the terms of such policy are reasonable. The End-user consent to the use of your personal information by e com Developers and/or its third party providers and distributors in accordance with the terms of and for the purposes set forth in the the first party Privacy Policy.