

## **THE EMOTIONAL COMFORT® COMPANY SERVICE AGREEMENT/TERMS AND CONDITIONS**

### **1. ACCEPTANCE OF TERMS**

The services that THE EMOTIONAL COMFORT® COMPANY, provides to User is subject to the following Terms and Conditions ("TAC"). THE EMOTIONAL COMFORT® COMPANY reserves the right to update the TAC at any time without notice to User. The most current version of the TAC can be reviewed by clicking on the "Terms and Conditions" hypertext link located at the bottom of our Web pages.

A. This Agreement, which incorporates by reference other provisions applicable to use of [www.emotionalcomfort.com](http://www.emotionalcomfort.com) including, but not limited to, supplemental terms and conditions set forth hereof ("Supplemental Terms") governing the use of certain specific material contained in [www.emotionalcomfort.com](http://www.emotionalcomfort.com) sets forth the terms and conditions that apply to use of [www.emotionalcomfort.com](http://www.emotionalcomfort.com) by User. By using THE EMOTIONAL COMFORT® COMPANY (other than to read this Agreement for the first time), User agrees to comply with all of the terms and conditions hereof. The right to use [www.emotionalcomfort.com](http://www.emotionalcomfort.com) is personal to User and is not transferable to any other person or entity. User is responsible for all use of User's Account (under any screen name or password) and for ensuring that all use of User's Account complies fully with the provisions of this Agreement. User shall be responsible for protecting the confidentiality of User's password(s), if any.

B. THE EMOTIONAL COMFORT® COMPANY shall have the right at any time to change or discontinue any aspect or feature of [www.emotionalcomfort.com](http://www.emotionalcomfort.com) including, but not limited to, content, hours of availability, and equipment needed for access or use.

### **2. Changed Terms**

THE EMOTIONAL COMFORT® COMPANY shall have the right at any time to change or modify the terms and conditions applicable to User's use of [www.emotionalcomfort.com](http://www.emotionalcomfort.com) or any part thereof, or to impose new conditions, including, but not limited to, adding fees and charges for use. Such changes, modifications, additions or deletions shall be effective immediately upon notice thereof, which may be given by means including, but not limited to, posting on [www.emotionalcomfort.com](http://www.emotionalcomfort.com) or by electronic or conventional mail, or by any other means by which User obtains notice thereof. Any use of [www.emotionalcomfort.com](http://www.emotionalcomfort.com) by User after such notice shall be deemed to constitute acceptance by User of such changes, modifications or additions.

### **3. DESCRIPTION OF SERVICES**

Through its Web property, THE EMOTIONAL COMFORT® COMPANY provides User with access to a variety of resources, including download areas, communication forums and product information (collectively "Services"). The Services, including any updates, enhancements, new features, and/or the addition of any new Web properties, are subject to the TAC.

### **4. Equipment**

User shall be responsible for obtaining and maintaining all telephone, computer hardware, software and other equipment needed for access to and use of [www.emotionalcomfort.com](http://www.emotionalcomfort.com) and all charges related thereto.

## 5. User Conduct

A. User shall use [www.emotionalcomfort.com](http://www.emotionalcomfort.com) for lawful purposes only. User shall not post or transmit through [www.emotionalcomfort.com](http://www.emotionalcomfort.com) any material which violates or infringes in any way upon the rights of others, which is unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane or otherwise objectionable, which encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law, or which, without THE EMOTIONAL COMFORT® COMPANY express prior approval, contains advertising or any solicitation with respect to products or services. Any conduct by a User that in THE EMOTIONAL COMFORT® COMPANY discretion restricts or inhibits any other User from using or enjoying [www.emotionalcomfort.com](http://www.emotionalcomfort.com) will not be permitted. User shall not use [www.emotionalcomfort.com](http://www.emotionalcomfort.com) to advertise or perform any commercial solicitation, including, but not limited to, the solicitation of users to become subscribers of other on-line information services competitive with THE EMOTIONAL COMFORT® COMPANY.

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C. User shall not upload, post or otherwise make available on [www.emotionalcomfort.com](http://www.emotionalcomfort.com) any material protected by copyright, trademark or other proprietary right without the express permission of the owner of the copyright, trademark or other proprietary right and the burden of determining that any material is not protected by copyright rests with User. User shall be solely liable for any damage resulting from any infringement of copyrights, proprietary rights, or any other harm resulting from such a submission. By submitting material to any public area of [www.emotionalcomfort.com](http://www.emotionalcomfort.com) User automatically grants, or warrants that the owner of such material has expressly granted THE EMOTIONAL COMFORT® COMPANY the royalty-free, perpetual, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate and distribute such material (in whole or in part) worldwide and/or to incorporate it in other works in any form, media or technology now known or hereafter developed for the full term of any copyright that may exist in such material. User also permits any other User to access, view, store or reproduce the material for that User's personal use. User hereby grants THE EMOTIONAL COMFORT® COMPANY the right to edit, copy, publish and distribute any material made available on [www.emotionalcomfort.com](http://www.emotionalcomfort.com) by User.

D. The foregoing provisions of Section 5 are for the benefit of THE EMOTIONAL COMFORT® COMPANY, its subsidiaries, affiliates and its third party content providers and licensors and each shall have the right to assert and enforce such provisions directly or on its own behalf.

## **6. USE OF SERVICES**

The Services may contain email services, bulletin board services, chat areas, news groups, forums, communities, personal web pages, calendars, photo albums, file cabinets and/or other message or communication facilities designed to enable User to communicate with others (each a "Communication Service" and collectively "Communication Services"). User agrees to use the Communication Services only to post, send and receive messages and material that are proper and, when applicable, related to the particular Communication Service. By way of example, and not as a limitation, User agrees that when using the Communication Services, User will not:

- Use the Communication Services in connection with surveys, contests, pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise).
- Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
- Publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, obscene, indecent or unlawful topic, name, material or information.
- Upload, or otherwise make available, files that contain images, photographs, software or other material protected by intellectual property laws, including, by way of example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) unless User own or control the rights thereto or have received all necessary consent to do the same.
- Use any material or information, including images or photographs, which are made available through the Services in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of any party.
- Upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of another's computer or property of another.
- Advertise or offer to sell or buy any goods or services for any business purpose, unless such Communication Services specifically allows such messages.
- Download any file posted by another user of a Communication Service that User know, or reasonably should know, cannot be legally reproduced, displayed, performed, and/or distributed in such manner.
- Falsify or delete any copyright management information, such as author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded.
- Restrict or inhibit any other user from using and enjoying the Communication Services.
- Violate any code of conduct or other guidelines which may be applicable for any particular Communication Service.
- Harvest or otherwise collect information about others, including email addresses.
- Violate any applicable laws or regulations.
- Create a false identity for the purpose of misleading others.
- Use, download or otherwise copy, or provide (whether or not for a fee) to a person or entity any directory of users of the Services or other user or usage information or any portion thereof.

THE EMOTIONAL COMFORT® COMPANY has no obligation to monitor the Communication Services. However, THE EMOTIONAL COMFORT® COMPANY reserves the right to review materials posted to the Communication Services and to remove any materials in its sole discretion. THE EMOTIONAL COMFORT® COMPANY reserves the right to terminate User's access to any or all of the Communication Services at any time, without notice, for any reason whatsoever. THE EMOTIONAL COMFORT® COMPANY reserves the right at all times to disclose any information as it deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in THE EMOTIONAL COMFORT® COMPANY's sole discretion.

Materials uploaded to the Communication Services may be subject to posted limitations on usage, reproduction and/or dissemination; User is responsible for adhering to such limitations if User downloads the materials. Always use caution when giving out any personally identifiable information in any Communication Services. THE EMOTIONAL COMFORT® COMPANY does not control or endorse the content, messages or information found in any Communication Services and, therefore, THE EMOTIONAL COMFORT® COMPANY specifically disclaims any liability with regard to the Communication Services and any actions resulting from User's participation in any Communication Services. Managers and hosts are not authorized THE EMOTIONAL COMFORT® COMPANY spokespersons, and their views do not necessarily reflect those of THE EMOTIONAL COMFORT® COMPANY.

## **7. MEMBER ACCOUNT, PASSWORD, AND SECURITY**

If any of the Services requires User to open an account, User must complete the registration process by providing THE EMOTIONAL COMFORT® COMPANY with current, complete and accurate information as prompted by the applicable registration form. User also will choose a password and a user name. User is entirely responsible for maintaining the confidentiality of User's password and account. Furthermore, User is entirely responsible for any and all activities that occur under User's account. User agrees to notify THE EMOTIONAL COMFORT® COMPANY immediately of any unauthorized use of User's account or any other breach of security. THE EMOTIONAL COMFORT® COMPANY will not be liable for any loss that User may incur as a result of someone else using User's password or account, either with or without User's knowledge. However, User could be held liable for losses incurred by THE EMOTIONAL COMFORT® COMPANY or another party due to someone else using User's account or password. User may not use anyone else's account at any time, without the permission of the account holder.

## **8. NOTICE SPECIFIC TO SOFTWARE AVAILABLE ON THIS YOUR WEBSITE ADDRESS**

Any software that is made available to download from the Services ("Software") is the copyrighted work of THE EMOTIONAL COMFORT® COMPANY and/or its suppliers. Use of the Software is governed by the terms of the end user license agreement, if any, which accompanies or is included with the Software ("License Agreement"). An end user will be unable to install any Software that is accompanied by or includes a License Agreement, unless he or she first agrees to the License Agreement terms.

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## **9. NOTICE SPECIFIC TO DOCUMENTS AVAILABLE ON THIS YOUR WEBSITE ADDRESS**

Permission to use Documents (such as white papers, press releases, datasheets and FAQs) from the Services is granted, provided that (1) the below copyright notice appears in all copies and that both the copyright notice and this permission notice appear, (2) use of such Documents from the Services is for informational and non-commercial or personal use only and will not be copied or posted on any network computer or broadcast in any media, and (3) no modifications of any Documents are made. Accredited educational institutions, such as universities, private/public colleges, and state community colleges, may download and reproduce the Documents for distribution in the classroom. Distribution outside the classroom requires express written permission. Use for any other purpose is expressly prohibited by law, and may result in severe civil and criminal penalties. Violators will be prosecuted to the maximum extent possible.

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#### **11. MATERIALS PROVIDED TO THE EMOTIONAL COMFORT® COMPANY OR POSTED AT ANY OF ITS YOUR WEBSITE ADDRESSES**

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In addition to the warranty and representation set forth above, by Posting a Submission that contain images, photographs, pictures or that are otherwise graphical in whole or in part ("Images"), User warrant and represent that (a) User is the copyright owner of such Images, or that the copyright owner of such Images has granted User permission to use such Images or any content and/or images contained in such Images consistent with the manner and purpose of User's use and as otherwise permitted by these Terms of Use and the Services, (b) User have the rights necessary to grant the licenses and sublicenses described in these Terms of Use, and (c) that each person depicted in such Images, if any, has provided consent to the use of the

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## **12. Disclaimer of Warranty; Limitation of Liability**

A. USER EXPRESSLY AGREES THAT USE OF [www.emotionalcomfort.com](http://www.emotionalcomfort.com) IS AT USER'S SOLE RISK. NEITHER THE EMOTIONAL COMFORT® COMPANY ITS AFFILIATES NOR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, THIRD PARTY CONTENT PROVIDERS OR LICENSORS WARRANT THAT [www.emotionalcomfort.com](http://www.emotionalcomfort.com) WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF [www.emotionalcomfort.com](http://www.emotionalcomfort.com) OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION, SERVICE, OR MERCHANDISE PROVIDED THROUGH [www.emotionalcomfort.com](http://www.emotionalcomfort.com).

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G. FORCE MAJEURE – NEITHER PARTY WILL BE RESPONSIBLE FOR ANY FAILURE OR DELAY IN PERFORMANCE DUE TO CIRCUMSTANCES BEYOND ITS REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, ACTS OF GOD, WAR, RIOT, EMBARGOES, ACTS OF CIVIL OR MILITARY AUTHORITIES, FIRE, FLOODS, ACCIDENTS, SERVICE OUTAGES RESULTING FROM EQUIPMENT AND/OR SOFTWARE FAILURE AND/OR TELECOMMUNICATIONS FAILURES, POWER FAILURES, NETWORK FAILURES, FAILURES OF THIRD PARTY SERVICE PROVIDERS (INCLUDING PROVIDERS OF INTERNET SERVICES AND TELECOMMUNICATIONS). THE PARTY AFFECTED BY ANY SUCH EVENT SHALL NOTIFY THE OTHER PARTY WITHIN A MAXIMUM OF FIFTEEN (15) DAYS FROM ITS OCCURENCE. THE PERFORMANCE OF THS AGREEMENT SHALL THEN BE SUSPENDED FOR AS LONG AS ANY SUCH EVENT SHALL PREVENT THE AFFECTED PARTY FROM PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT.

### **13. LINKS TO THIRD PARTY SITES**

THE LINKS IN THIS AREA WILL LET YOU LEAVE THE EMOTIONAL COMFORT® COMPANY'S SITE. THE LINKED SITES ARE NOT UNDER THE EMOTIONAL COMFORT® COMPANY AND THE EMOTIONAL COMFORT® COMPANY IS NOT RESPONSIBLE FOR THE CONTENTS OF ANY LINKED SITE OR ANY LINK CONTAINED IN A LINKED SITE, OR ANY CHANGES OR UPDATES TO SUCH SITES. THE EMOTIONAL COMFORT® COMPANY IS NOT RESPONSIBLE FOR WEBCASTING OR ANY OTHER FORM OF TRANSMISSION RECEIVED FROM ANY LINKED SITE. THE EMOTIONAL COMFORT® COMPANY IS PROVIDING THESE LINKS TO YOU ONLY AS A CONVENIENCE, AND THE INCLUSION OF

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#### **14. UNSOLICITED IDEA SUBMISSION POLICY**

THE EMOTIONAL COMFORT® COMPANY OR ANY OF ITS EMPLOYEES DO NOT ACCEPT OR CONSIDER UNSOLICITED IDEAS, INCLUDING IDEAS FOR NEW ADVERTISING CAMPAIGNS, NEW PROMOTIONS, NEW PRODUCTS OR TECHNOLOGIES, PROCESSES, MATERIALS, MARKETING PLANS OR NEW PRODUCT NAMES. PLEASE DO NOT SEND ANY ORIGINAL CREATIVE ARTWORK, SAMPLES, DEMOS, OR OTHER WORKS. THE SOLE PURPOSE OF THIS POLICY IS TO AVOID POTENTIAL MISUNDERSTANDINGS OR DISPUTES WHEN THE EMOTIONAL COMFORT® COMPANY PRODUCTS OR MARKETING STRATEGIES MIGHT SEEM SIMILAR TO IDEAS SUBMITTED TO THE EMOTIONAL COMFORT® COMPANY. SO, PLEASE DO NOT SEND YOUR UNSOLICITED IDEAS TO THE EMOTIONAL COMFORT® COMPANY OR ANYONE AT THE EMOTIONAL COMFORT® COMPANY. IF, DESPITE OUR REQUEST THAT YOU NOT SEND US YOUR IDEAS AND MATERIALS, YOU STILL SEND THEM, PLEASE UNDERSTAND THAT THE EMOTIONAL COMFORT® COMPANY MAKES NO ASSURANCES THAT YOUR IDEAS AND MATERIALS WILL BE TREATED AS CONFIDENTIAL OR PROPRIETARY.

#### **15. Monitoring**

THE EMOTIONAL COMFORT® COMPANY shall have the right, but not the obligation, to monitor the content of [www.emotionalcomfort.com](http://www.emotionalcomfort.com) including chat rooms and forums, to determine compliance with this Agreement and any operating rules established by THE EMOTIONAL COMFORT® COMPANY and to satisfy any law, regulation or authorized

government request. THE EMOTIONAL COMFORT® COMPANY COMFORT shall have the right in its sole discretion to edit, refuse to post or remove any material submitted to or posted on [www.emotionalcomfort.com](http://www.emotionalcomfort.com). Without limiting the foregoing, THE EMOTIONAL COMFORT® COMPANY shall have the right to remove any material that THE EMOTIONAL COMFORT® COMPANY, in its sole discretion, finds to be in violation of the provisions hereof or otherwise objectionable.

## **16. Indemnification**

User agrees to defend, indemnify and hold harmless THE EMOTIONAL COMFORT® COMPANY, 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 THE EMOTIONAL COMFORT® COMPANY by User or User's Account.

## **17. Termination**

Either THE EMOTIONAL COMFORT® COMPANY or User may terminate this Agreement at any time. Without limiting the foregoing THE EMOTIONAL COMFORT® COMPANY shall have the right to immediately terminate User's Account in the event of any conduct by User which THE EMOTIONAL COMFORT® COMPANY in its sole discretion, considers to be unacceptable, or in the event of any breach by User of this Agreement.

## **18. Miscellaneous**

This Agreement and any operating rules for [www.emotionalcomfort.com](http://www.emotionalcomfort.com) established by THE EMOTIONAL COMFORT® COMPANY constitute the entire agreement of the parties with respect to the subject matter hereof, and supersede all previous written or oral agreements between the parties with respect to such subject matter. This Agreement shall be construed in accordance with the laws of the California, United States without regard to its conflict of laws rules. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for convenience only and shall not be given any legal import.

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