

Sojern Terms of Service Agreement

Last updated: 07/13/2008

The following Terms of Service Agreement (“Terms of Service Agreement” or “Agreement”) governs the use of the Sojern online services and any content or information therein (the “Service”) and the Sojern.com website along with such website pages on which the Service is provided (the “Site”) by Sojern, Inc. (“Sojern” or “us” or “we”). Please read the terms and conditions contained in this Agreement carefully. You can access the current version of this Agreement any time at [Terms of Service](#). This Agreement may be modified from time to time and such modifications shall be effective immediately upon posting to the Site. The effective date of the then-current version of this Agreement will appear on this page. It is your responsibility to regularly check the Site to determine if there have been changes to this Terms of Service Agreement and to review such changes.

This Terms of Service Agreement applies to you if you are using the Service and even if you are only browsing or visiting the Site. By visiting the Site or using the Service, you agree to be legally bound by all of the terms of this Agreement, and Sojern’s [Privacy Policy](#), which is incorporated herein by reference, including all changes and revisions to this Agreement and the [Privacy Policy](#). Your failure to abide by this Agreement or any other terms or conditions posted anywhere on the Site may result in suspension or termination of your access to the Site or the Service, without notice, in addition to Sojern's other remedies.

IF YOU DO NOT AGREE TO THE TERMS OF SERVICE AGREEMENT, YOU ARE NOT PERMITTED TO USE THE SITE OR THE SERVICE.

Personal and Lawful Use Only

Unless otherwise specified, the Site and the Service are intended for your personal, noncommercial use only. You agree to use the Site and the Service only for lawful purposes and you acknowledge that your failure to do so may subject you to civil and criminal liability.

No use by Children Under 13

The Site and the Service are not intended for users under the age of 13. Sojern does not knowingly collect personally identifiable information from users under the age of 13. Users under the age of 13 are expressly prohibited from submitting their personally identifiable information to us; any information submitted by such users will not knowingly be used or retained by us. Click here to view Sojern’s [Privacy Policy](#).

Your Representations and Warranties

By using the Site or the Service you represent and warrant that you are at least 13 years old, you have read and agree to abide by this Agreement, you have read and agree to our Privacy Policy, any information you submit is truthful and accurate, and your use of the Site and the Service does not violate any applicable law or regulation.

Site Access

Sojern may refuse, restrict or suspend your access to the Site or the Service at any time, without warning or notice, for any reason, in our sole discretion.

Sojern reserves the right to modify, suspend or terminate the Site, the Service, or any feature or portion thereof at any time, without warning or notice, for any reason, in our sole discretion.

Sojern shall not be liable to you or any third party for modification, suspension or termination of your access to the Site or the Service, or any modification, suspension or termination of the Site or the Service itself or any feature or portion thereof.

Intellectual Property Rights

The content on the Site and the Service, including but not limited to, the text, software, scripts, graphics, photos, sounds, music, videos, interactive features and the like (“Site Content”) and the trademarks, service marks and logos contained therein (“Site Marks”), are owned by or licensed to Sojern and are subject to copyright, trademark, service mark, trade dress, patent and other intellectual property rights and protections under United States and foreign laws and international conventions. Sojern reserves all rights not expressly granted to you hereunder in and to the Site, Site Content and Site Marks.

Copyright Policy

If you believe in good faith that any Site Content has been copied in a way that constitutes copyright infringement, you may forward the following information to Sojern’s Copyright Agent at copyrightnotices@sojern.com: (i) information reasonably sufficient to permit us to contact you as the complaining party, such as your name, address, telephone number, and email address at which you may be contacted; (ii) identification and description of the copyrighted work that you claim has been infringed, or if multiple copyrighted works at the Site are covered by a single notification, a representative list of such works; (iii) the exact URL or identification of the material that is claimed to be infringing; (iv) 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; (v) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; and (vi) a statement by you, made under penalty of perjury, that the information in your notice is accurate and that you are the copyright owner or are authorized to act on behalf of the copyright owners.

Your Compliance

You may not in any way make commercial or other unauthorized use, by publication, re-transmission, distribution, performance, caching, or otherwise, of material obtained through the Site or the Service, except as permitted by the Copyright Act or other law or as expressly permitted in writing by this Agreement, Sojern, the Site or the Service.

Prohibited Activity

In using or accessing the Site or the Service you agree that you will use the Site and the Service only for lawful purposes and in accordance with applicable law and this Agreement. You are prohibited from storing, distributing or transmitting any unlawful material through the Site or the Service. You may not collect or store personal information regarding other users. If a third party claims that material you have submitted to the Site is unlawful, you will bear the burden of establishing that it is lawful.

You agree not to disrupt, overwhelm, attack, modify or interfere with the Site, the Service or any associated software, hardware and/or servers in any way, and you agree not to impede or interfere with others' use of the Site or the Service. You further agree not to alter or tamper with any information or materials on or associated with the Site or the Service. Other than connecting to Sojern's servers by http requests using a Web browser, you may not attempt to gain access to Sojern's servers by any means, including, without limitation, by using administrator passwords or by representing yourself as an administrator while using the Site or the Service or otherwise.

You agree not to use the Site or the Service to upload, post, transmit, share, store or otherwise make available any content that we deem to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, indecent, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable. You further agree not to upload, post, transmit, share or otherwise make available any unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation.

This is only a partial list of prohibited conduct. Sojern reserves the right to investigate and take appropriate action, including, but not limited to, removing any content from the Site for any reason, suspending or canceling any user's access to the Site or Service, and/or commencing legal action against any user who makes available any content that Sojern, in its sole discretion, deems inappropriate. Sojern reserves the right to determine, in its sole and absolute discretion, whether any material falls within any prohibited category or is otherwise impermissible.

Sojern grants you a limited, revocable, non-exclusive license, with no right to sublicense, to access, display, and copy material (excluding any software code) displayed or provided on the Site or the Service solely for your non-commercial, personal use of the Site and the Service. You may not copy, reproduce, distribute, broadcast, publish, collect into a database, display, perform, modify, create derivative works of, sell, license, transmit, or in any way exploit any part of the Site, the Service or Site Content, except as specifically permitted herein. Any copies you make of Site Content must include all copyright and other proprietary notices included on the original content. Without limiting the generality of the foregoing, you may not distribute any part of the Site or the Service over any network, including a local area network, nor sell or offer it for sale. Using any material displayed on the Site or the Service on any other website or networked computer environment is prohibited. Also, decompiling, reverse engineering, disassembling, or otherwise reducing any software used on the Site or the Service into a readable form in order to examine the construction of such software and/or to copy or create other products based (in

whole or in part) on such software, is prohibited, except as permitted by law.

You may not circumvent, disable or otherwise interfere with any security-related features of the Site or the Service or features that prevent or restrict use or copying of any content or enforce limitations on use of the Site, the Service or the Site Content.

Privacy

Use of the Site and the Service is further governed by Sojern's [Privacy Policy](#), which is incorporated into this Agreement by reference.

Content Disclaimer

Without limiting the disclaimer of warranties set forth below, all Site Content is provided on an "as is" "as available" basis without warranties of any kind, either express or implied. Sojern is not liable for any inaccuracies, errors, omissions or miscalculations in any of the Site Content and is not liable for your reliance on the Site Content, or any occurrences, outcomes or results relating to or arising from such reliance. Sojern is not responsible for any statements, warranties, representations, offers, events or advertisements made by any third party in Site Content.

Links to Other Websites

The Site and the Service (including advertisements, Site Content and other materials contained in the Site) may contain links to other websites that are not operated or maintained by Sojern and are not covered by this Agreement. Sojern has no control over, and makes no representations or warranties of any kind with regard to any other websites, their terms of use or the way they may collect, save, store and use information, including your personally identifiable information. Sojern has no responsibility or liability for the services or content of, and does not endorse any other websites, their terms of use or the way they may collect, save, store and use information, including your personally identifiable information. You should review the terms of use of each website you visit. Your linking to any service or site is at your sole risk.

Disclaimer of Warranties

THE SITE, THE SERVICE AND ALL THE CONTENT, INFORMATION, SOFTWARE, FACILITIES, SERVICES AND ANY MATERIALS MADE AVAILABLE ON OR THROUGH THE SITE AND THE SERVICE ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. YOUR USE OF THE SITE, THE SERVICE AND ANY CONTENT, INFORMATION, SOFTWARE, FACILITIES, SERVICES AND ANY MATERIALS MADE AVAILABLE ON OR THROUGH THE SITE OR THE SERVICE IS AT YOUR OWN RISK.

SOJERN, ITS OFFICERS, MANAGERS, MEMBERS, DIRECTORS, EMPLOYEES AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SITE, THE SERVICE AND YOUR USE THEREOF INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE AND NON-INFRINGEMENT, OR WITH RESPECT TO THE ACCURACY, RELIABILITY, OR COMPLETENESS OF ANY CONTENT, INFORMATION, SOFTWARE, FACILITIES, SERVICES OR OTHER MATERIALS MADE AVAILABLE ON OR THROUGH THE SITE, THE SERVICE OR ANY SITES LINKED TO OR FROM THE SITE OR THE SERVICE.

SOJERN DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SITE OR THE SERVICE WILL BE AVAILABLE, UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE, THE SERVICE OR THE SERVERS THAT MAKE THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

IN THE EVENT THAT ANY APPLICABLE LAW DOES NOT PERMIT THE EXCLUSION OF SOME OR ALL OF THE ABOVE IMPLIED WARRANTIES FROM APPLYING TO YOU, THE ABOVE EXCLUSIONS WILL APPLY TO YOU TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

Limitation of Liability

IN NO EVENT SHALL SOJERN, ITS OFFICERS, MEMBERS, MANAGERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, ACTUAL, EXEMPLARY, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCURRED AS A RESULT OF YOUR USE OF THE SITE, THE SERVICE OR ANY SERVICES OR CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SITE OR THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT SOJERN IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

Indemnity

You agree to defend, indemnify and hold harmless Sojern, its members, managers, officers, directors, shareholders, parents, subsidiaries, affiliates, agents, employees and licensors, from and against any and all claims, losses, expenses, damages, obligations, liabilities, and costs, including reasonable attorneys fees, arising from or related to: (a) your use of and access to the Site and the Service; (b) your violation or breach of any of the terms of this Agreement and/or your representations or warranties; (c) your violation of the rights of any third party, including but not limited to any copyright, property, or privacy right; or (d) any claim that one or more of your submissions to the Site has caused damage to a third party. This defense and indemnification obligation will survive your use of the Site and the Service. We reserve the right to take over the exclusive defense of any claim for which we or any of the indemnitees listed above are entitled to indemnification hereunder. In such event, you shall pay all fees and costs for such defense and shall provide us with such cooperation at no charge as is reasonably requested by us.

Location/Consent to Transfer

The Site and the Service are hosted in the United States of America and are intended for and directed to users in the United States. Those who access or use the Site or the Service from other jurisdictions do so at their own volition and risk and are solely responsible for compliance with local law. If you are accessing the Site or the Service from any region with laws or regulations governing personal data collection, use and disclosure that differ from the laws of the United States, your continued use of the Site or the Service, which is governed by this Agreement and our Privacy Policy under U.S. law, constitutes your consent to transferring your personal information to the United States.

This Agreement

If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions. This Agreement, together with the [Privacy Policy](#), is the entire agreement between the parties relating to the matters contained herein.

Transfer of Rights

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Sojern without restriction.

Law and Venue

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nebraska, as they are applied to agreements entered into and to be performed entirely within Nebraska. Any action you, any third party or Sojern may bring to enforce this Agreement or, in connection with any matters related to the Site or the Service shall be brought only in the State or Federal Courts located in Omaha, Nebraska, and you expressly consent to the exclusive jurisdiction of said courts over yourself and any such matters.

I HAVE READ THIS AGREEMENT AND AGREE TO ALL OF THE PROVISIONS CONTAINED HEREIN.