

## BLUE MAKALU, INC. DBA THRONE

### Terms of Service

Last updated: 15th of October 2022

These Terms of Service constitute a legally binding agreement between you and Blue Makalu Inc. dba Throne (together with its affiliates, “**Throne**”, “**we**,” “**our**” or “**us**”) governing your use of our products, services, and website (the “**Site**” and collectively with the foregoing, the “**Services**”).

YOU ACKNOWLEDGE AND AGREE THAT, BY CLICKING ON THE “I AGREE” OR SIMILAR BUTTON, REGISTERING FOR AN ACCOUNT, OR ACCESSING OR USING THE SERVICES, YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS OF SERVICE, WHETHER OR NOT YOU HAVE REGISTERED WITH THE SITE. IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, THEN YOU HAVE NO RIGHT TO ACCESS OR USE THE SERVICES. These Terms of Service are effective as of the date you first click “I agree” (or similar button or checkbox) or use or access the Services, whichever is earlier. If you accept or agree to these Terms of Service on behalf of your employer or another legal entity, you represent and warrant that (i) you have full legal authority to bind your employer or such entity to these Terms of Services; (ii) you have read and understand these Terms of Service; and (iii) you agree to these Terms of Service on behalf of the party that you represent. In such event, “you” and “your” will refer and apply to your employer or such other legal entity.

Any personal data you submit to us or which we collect about you is governed by our Privacy Policy (“**Privacy Policy**”), available at <https://jointhrone.com/privacy>. You acknowledge that by using the Services, you have reviewed the Privacy Policy. The Privacy Policy is incorporated by reference into these Terms of Service and together form and are hereinafter referred to as this “**Agreement.**”

PLEASE NOTE: THIS AGREEMENT GOVERNS HOW DISPUTES BETWEEN YOU AND THRONE CAN BE RESOLVED. IT CONTAINS A BINDING AND FINAL ARBITRATION PROVISION AND CLASS ACTION WAIVER (SECTION 15). PLEASE READ CAREFULLY AS IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING, IF APPLICABLE, YOUR RIGHT TO OPT OUT OF ARBITRATION.

#### 1. **Our Services**

Throne is a gifting platform for online content creators. We allow fans to buy gifts for creators in an enjoyable and privacy-friendly way.

Further, through the Services Throne enables commerce related to partner stores, creators and fans. More about this in Section 8.

#### 2. **Our Users**

To summarize:

- a creator is a user who (x) has set up an account on the Site to create a wish list of items for their fans to purchase as gifts, or (y) curates a storefront, which is a list of items that fans can purchase for themselves;

- a gifter is a user who purchases an item for a creator from the creator’s wish list through the Site;
- a fan is a gifter or a user who purchases an item for themselves from the creator’s storefront;
- a partner store is a merchant that has a relationship with Throne and its products and services for sale are integrated directly to the Services; and
- a verified or preferred store is a merchant that is supported in a user’s specific jurisdiction; and
- a gift is any good or service purchased for a creator through the Services.

### **3. Account, Password, Security, and Mobile Phone Use**

3.1. As a creator, you must register with Throne and create an account to use the Services (an “**Account**”) and as part of that process you will be requested to provide certain information, including without limitation your name, full address, phone number and email address. By using the Services, you agree to provide true, accurate, current and complete information as prompted by the registration process and to maintain and promptly update the Account information to keep it accurate, current and complete. You are the sole authorized user of your Account. You are responsible for maintaining the confidentiality of any log-in, password, and Account number provided by you or given to you by Throne for accessing the Services. You are solely and fully responsible for all activities that occur under your password or Account, even if not authorized by you. Throne has no control over the use of any user’s Account and expressly disclaims any liability derived therefrom. Should you suspect that any unauthorized party may be using your password or Account or you suspect any other breach of security, you agree to contact Throne immediately.

3.2. The person signing up for the Services will be the contracting party (“**Account Owner**”) for the purposes of these Terms of Service and will be the person who is authorized to use any corresponding Account we provide to the Account Owner in connection with the Services; provided, however, that if you are signing up for the Services on behalf of your employer, your employer shall be the Account Owner. As the Account Owner, you are solely responsible for complying with these Terms of Service and only you are entitled to all benefits accruing thereto. Your Account is not transferable to any other person or account. You must immediately notify us of any unauthorized use of your password or identification or any other breach or threatened breach of our security or the security of your Account.

3.3. If Throne determines that an Account username impersonates someone else without their express permission or infringes someone’s intellectual property, then Throne may terminate or suspend such Account in accordance with Section 9 and/or require an updated username.

3.4. As a fan, when you purchase a product, you will be required to provide certain information, including without limitation your name, full address, phone number, email address and credit card information. By using the Services, you agree to provide true, accurate, current and complete information as required to complete the purchase.

3.5. By providing your mobile phone number and using the Services, you hereby affirmatively consent to Throne’s use of your mobile phone number for calls and recurring texts (including with an autodialer and/or prerecorded voice) in order to (i) perform and improve upon the Services, (ii) facilitate the carrying out of the Services, and (iii) provide you with information and reminders regarding your registration, changes and updates, service outages or alterations. Throne will not assess any charges for calls

or texts, but standard message, data or other charges from your wireless carrier may apply. You may opt-out of receiving texts messages from us by modifying your Account settings on the Site, texting “STOP” in response to any texts, or by emailing hello@jointhroner.com and specifying you want to opt-out of texts. You may opt-out of receiving calls from us by stating that you no longer wish to receive calls during any call with us, or by emailing hello@jointhroner.com and specifying you want to opt-out of calls. You understand that we may send you a text confirming any opt-out by you.

3.6. By providing your email address, you consent to receive electronic communications from us, including notices about your Account, such as password changes and information related to gifts, and from third-party vendors fulfilling a gift purchase from a gifter.

#### 4. **Billing, Payment, Fees, Taxes and Payout**

4.1. As a gifter, creator or fan, payment and any other expenses must be paid through the third party payment service provider (the “**PSP**”) as indicated on the Services (which may include but is not limited to Stripe, Inc. and its affiliates). You may be required to register with the PSP, agree to terms of service of the PSP, provide your payment details to the PSP and go through a vetting process at the request of the PSP to set up an account with the PSP (the “**PSP Services Agreement**”). By accepting these Terms of Service, you agree that you have downloaded or printed, and reviewed and agreed to, the PSP Services Agreement. Please note that Throne is not a party to the PSP Services Agreement and that you, the PSP and any other parties listed in the PSP Services Agreement are the parties to the PSP Services Agreement and that Throne has no obligations, responsibility or liability to any user or any other party under the PSP Services Agreement.

4.2. With respect to products purchased from a partner store, Throne will pay such partner store the proceeds from the purchase, less the agreed upon fee payable to Throne as agreed with the partner store (the “**Partner Store Fee**”) and any applicable taxes. In addition, for products purchased by a fan from a partner store through a creator’s storefront, Throne will also be entitled to, prior to disbursing the collected amounts to the partner store, (i) deduct a transaction fee for the sale equal to a percentage of the purchase price that is set and calculated based on Throne’s then-current policy (the “**Throne Storefront Fee**”); and (ii) deduct a fee equal to a percentage of the purchase price that is set and calculated based on Throne’s then-current policy (the “**Throne Creator Commerce Fee**”). In connection with a creator commerce transaction, Throne will process a payment to a partner store and creator, as applicable, within seven business days after Throne’s receipt of proceeds if a fan has not initiated a refund or return request. If a fan returns or refunds a partner store’s product, then, subject to the return policies of the partner store, the Partner Store Fee and Throne Creator Commerce Fee will be refunded.

4.3. Throne may establish further guidelines for the calculation of the Partner Store Fee, Throne Storefront Fee and the Throne Creator Commerce Fee (e.g., inclusion or exclusion of shipping costs, taxes, and other amounts, as well as the effect of discounts and promotions), as communicated through the Services or otherwise.

4.4. For the avoidance of doubt, any service fees with respect to gifts purchased by gifters from a non-partner store (including those that may be assessed by the PSP or Throne) shall be the sole responsibility of the gifter and shall never be the responsibility of either the creator (for receiving gifts) or Throne (for facilitating the gifting transaction).

4.5. With respect to gifts purchased by gifters or products purchased by fans, all prices and fees displayed on the Services are exclusive of applicable federal, provincial, state, local or other governmental sales, goods and services or other taxes, fees or charges now in force or enacted in the future (“**Taxes**”). Any applicable Taxes are based on the rates applicable to the billing address you provide to us, and will be calculated at the time a transaction is charged. Unless otherwise indicated, all prices, fees and other charges are in U.S. dollars, and all payments shall be in U.S. currency.

4.6. With respect to any Taxes applicable to the receipt of gifts, each creator shall have sole responsibility and liability for all reporting and payment of such Taxes. As a Throne user, you warrant (which means you make a legally enforceable promise) that you will at all times comply with all laws and regulations relating to Taxes applicable to your use of the Services. If, at any point while you have a Throne account, any Tax non-compliance occurs in relation to you (including a failure by you to report earnings or the imposition on you of any penalty or interest relating to Tax) or if any litigation, inquiry or investigation is commenced against you that is in connection with, or that may lead to, any occurrence of Tax non-compliance, you agree that you will notify us by email to [hello@jointhrone.com](mailto:hello@jointhrone.com) within seven days of the occurrence of the non-compliance or the commencement of the litigation, inquiry or investigation (as applicable). Throne is not responsible for advising you on your Taxes and will not be liable for any non-payment of Taxes by Throne users.

4.7. We collect tax identification information and report this to tax authorities as legally required.

4.8. As a recipient of a gift or a fan purchasing from a creator’s storefront, each creator and fan, respectively, shall have sole responsibility for any customs, import duties or other related charges, which vary from country to country for international delivery. You are solely responsible for any such additional charges. In addition, it is your responsibility to check with your local customs office to verify whether the country to which you are having a gift shipped permits the shipment of such gift to you.

4.9. If applicable, each creator may opt to allow more than one fan to contribute to the purchase of a gift (the “**Crowdfunded Gift**”). In order to participate in the purchase of a Crowdfunded Gift, a gifter must contribute at least \$5.00 to the purchase price (unless the remaining unpaid portion of the Crowdfunded Gift’s purchase price is less than \$5.00 and greater than \$0.50). When the Crowdfunded Gift’s total purchase price is not met by contributions from gifters, creator may, as applicable, (i) wait until additional gifters contribute the remaining unpaid portion of the Crowdfunded Gift’s purchase price, (ii) pay the remaining unpaid portion of the Crowdfunded Gift’s purchase price through the PSP or (iii) pay the remaining unpaid portion of the Crowdfunded Gift’s purchase price from creator’s Throne balance.

4.10. If you are a creator, then the cash value of gifts purchased for you by a gifter may be applied to your Throne balance instead of receiving a gift when any of the following occurs: (i) a fan purchases a gift from an unverified store on your wish list; (ii) you are located in a jurisdiction unsupported by the Services; (iii) a gift purchased by a fan is not processed by Throne within six weeks of purchase; (iv) contributions for a Crowdfunded Gift exceed the purchase price; (v) a gift order is cancelled or refunded by the partner store or (vi) Throne approves the cash payout option at its sole discretion. You may request a cash payout from your Throne balance through the PSP if your Throne balance is equal to or greater than USD \$30.00. A cash payout will be processed within seven business days after your request; provided that such payout may take up to 180 days if the Account is subject to investigation for fraudulent activity.

## 5. User Generated Content

5.1. **“User Generated Content”** is defined as any content, information, and materials that may be textual, audio or visual that you provide, submit, upload, publish or make otherwise available to the Services and our users by creators. For clarification, “User Generated Content” includes but is not limited to a creator’s wishlist. You are solely responsible for User Generated Content, and we act merely as a passive conduit for your online distribution and publication of your User Generated Content. You acknowledge and agree that Throne:

- 5.1.1. Is not involved in the creation or development of User Generated Content.
- 5.1.2. Disclaims any responsibility for User Generated Content.
- 5.1.3. Cannot be liable for claims arising out of or relating to User Generated Content.
- 5.1.4. Is not obligated to monitor, review or remove User Generated Content, but reserves the right to limit or remove User Generated Content on the Services at its sole discretion.
- 5.1.5. Strongly recommends that User Generated Content not include any explicit or adult content.

5.2. You hereby represent and warrant to Throne that your User Generated Content (i) will not be false, inaccurate, incomplete or misleading; (ii) will not infringe on any third party’s copyright, patent, trademark, trade secret or other proprietary right or rights of publicity, personality or privacy; (iii) will not violate any law, statute, ordinance or regulation (including without limitation those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising, anti-spam or privacy); (iv) will not be defamatory, libelous, unlawfully threatening or unlawfully harassing; (v) will not be obscene or contain pornography (including but not limited to child pornography) or be harmful to minors; (vi) will not be violent or excessively gory; (vii) will not contain hate speech, intimidation or abuse of any kind targeting any individual, group or institution; (viii) will not be purposefully designed to harm in any way including financial harm with tactics such as chargebacks, fraudulent disputes or fraudulent activity; (ix) will not contain any viruses, Trojan Horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (x) will not represent you being employed or directly engaged by or affiliated with Throne or purport you to act as a representative or agent of Throne; (xi) will not create liability for Throne or cause Throne to lose (in whole or in part) the services of its ISPs or other suppliers; (xii) will not contain anything prohibited by the PSP (for the avoidance of doubt the PSP’s acceptable use and prohibited activities can be found at <https://stripe.com/legal/restricted-businesses>) and (xiii) any other activity that Throne may deem in its sole discretion to be unacceptable.

5.3. By making available any User Generated Content through the Services, you hereby grant to Throne a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license, with the right to sublicense, to use, access, view, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast and otherwise exploit such User Generated Content on, through or by means of the Services. We do not claim any ownership rights in any such User Generated Content and nothing in this Agreement will be deemed to restrict any rights that you may have to use and exploit any such User Generated Content.

## 6. Representations and Warranties

6.1. You represent and warrant that: (i)(x) you are 18 years of age or older or are at least of the legally required age in the jurisdiction in which you reside, or (y) you are the legal guardian of a user between 13 years of age and the legally required age in the jurisdiction in which you reside, and are otherwise capable of entering into binding contracts, and (ii) you have the right, authority and capacity to enter into this Agreement and to abide by the terms and conditions of this Agreement, and that you will so abide. Where you enter into this Agreement on behalf of a company or other organization, you represent and warrant that you have authority to act on behalf of that entity and to bind that entity to this Agreement.

6.2. You further represent and warrant that (i) you have read, understand and agree to be bound by these Terms of Service and the Privacy Policy in order to access and use the Services, (ii) you will act professionally and responsibly in your interactions with other users and (iii) when using or accessing the Services, you will act in accordance with any applicable local, state, or federal law or custom and in good faith.

6.3. You agree not to engage in any of the following prohibited activities, among others: (i) copying, distributing or disclosing any part of the Services in any medium other than as allowed by the Services and these Terms of Service; (ii) using any automated system (other than any functionalities of the Services), including without limitation “robots,” “spiders,” “offline readers,” etc., to access the Services; (iii) transmitting spam, chain letters or other unsolicited email or attempting to phish, pharm, pretext, spider, crawl or scrape; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Services; (v) violating any international, federal, provincial or state regulations, rules, laws or local ordinances; (vi) conducting any unlawful purposes or soliciting others to perform or participate in any unlawful acts; (vii) uploading invalid data, viruses, worms or other software agents through the Services; (viii) infringing upon or violate our intellectual property rights or the intellectual property rights of others; (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) harassing, insulting, harming, abusing, defaming, harassing, stalking, threatening, intimidating or otherwise violating the legal rights (such as of privacy and publicity) of any other users or visitors of the Services or staff member of Throne; (xi) interfering with or any activity that threatens the performance, security or proper functioning of the Services; (xii) uploading or transmitting viruses or any other type of malicious code; (xiii) attempting to decipher, decompile, disassemble or reverse engineer any of the software or algorithms used to provide the Services; (xiv) bypassing the security features or measures we may use to prevent or restrict access to the Services, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Services or the content therein; (xv) attempting to access unauthorized Accounts or to collect or track the personal information of others; (xvi) using the Services for any purpose or in any manner that infringes the rights of any third party or (xvii) encouraging or enabling any other individual to do any of the foregoing.

6.4. You hereby warrant and represent that, other than as fully and promptly disclosed to Throne as set forth below, you do not have any motivation, status or interest which Throne may reasonably wish to know about in connection with the Services, including without limitation, if you are using or will or intend to use the Services for any journalistic, investigative or unlawful purpose. You hereby warrant and represent that you will promptly disclose to Throne in writing any such motivation, status or interest, whether existing prior to registration or as arises during your use of the Services.

## **7. Gift Terms**

7.1. All gifts are subject to the terms and conditions of the applicable vendor, which terms and conditions are stated on the applicable Merchant Profile Page and on the applicable creator's ordering list. Vendor, and not Throne, is solely responsible for the condition of gifts. All images of gifts are for illustrative purposes only, and gifts may vary from the pictures. Gift availability is subject to change without notice, and availability is not guaranteed. Although Throne uses its best efforts to ensure that the availability, colors and details of the gift are as described in the Services, Throne does not guarantee that it will match in every instance.

7.2. If you are a creator who receives a gift from your wish list:

7.2.1. You acknowledge and agree that you are not a service provider to Throne.

7.2.2. You acknowledge and agree that the gift is a voluntary transfer from gifter to creator without compensation or restriction.

7.2.3. Throne will place gift orders for items listed in the internal Partner Store as well as from verified stores listed at <https://throne.me/merchants>.

7.2.4. You acknowledge and agree that Throne reserves the right, at its election, to send gifts from Throne, itself, on behalf of merchants, which may or may not be from your wish list at no additional cost to you.

7.2.5. You acknowledge and agree that a gift cannot be (i) claimed in cash by the creator except as explicitly permitted by these Terms of Service, (ii) assigned by the creator to a third party, (iii) received as consideration for transactions, (iv) received as payment for services rendered to a fan or third party, (v) received as payment for delivery of goods, (vi) received as a promise for access to creator's content, services or goods or (vii) exchanged for other goods or services.

7.2.6. If applicable, you may enable crowdfunding, which allows more than one fan to contribute to the purchase of the gift.

7.2.7. You will receive a notice of the gift via electronic notification from Throne with status. The gift will be shipped to the physical address or e-mail address the creator has provided us.

7.2.8. For digital gifts, a redemption link for the gift might be provided (or the gift might be sent to the creator's email).

7.2.9. Each gift will be delivered in accordance with the applicable retailer's terms for such gift, and the delivery of the gift will be handled by the retailer's designated carrier.

7.2.10. Throne does not control the delivery time or method of any gift, and Throne is not liable for any delivery or shipping issues or delays. Throne is not responsible for any gift lost in transit, stolen after delivery, or lost due to an incorrect, incomplete or outdated address, a PO box address or an otherwise non-residential address. Throne will submit refund requests to verified stores for lost or stolen gifts, but Throne will not be

obligated to offer refunds for any lost or stolen gifts if the verified store denies the refund request. In order to submit a refund request, Throne may request additional evidence or documentation from creator including, but not limited to, a police report.

7.2.11. The delivery estimate given by Throne stems directly from the retailer's delivery estimate and Throne takes no responsibility if this delivery estimate is exceeded due to circumstances out of our control.

7.2.12. Each creator is solely responsible for updating wish lists for non-partner and unverified stores with current pricing and details.

7.2.13. A return request may be rejected at Throne's discretion except in the case of a faulty item from a partner or non-partner store. The partner store's return policy will govern the return process of gifts purchased from a partner store. For a faulty item purchased from a non-partner store, Throne will submit a return request with the merchant, but Throne will not be obligated to offer a refund if the non-partner store rejects the return request.

7.3. Wish lists may not include any of the following items ("**Prohibited Items**"):

7.3.1. Alcohol

7.3.2. Tobacco

7.3.3. Items containing THC

7.3.4. Firearms

7.3.5. Live animals

7.4. If you are a gifter who purchases from a creator's wish list:

7.4.1. Once gifter has purchased an item through the Site, the order cannot be canceled or refunded unless the creator chooses to cancel the order or refund the gifter themselves.

7.4.2. Throne endeavors to keep ordering times as low as possible but please allow 30 business days for orders to be placed. If the order is not placed within 30 business days, gifter can request a refund. The gifter agrees to not dispute payments for orders that have not been placed within 30 business days of purchase.

7.4.3. For the avoidance of doubt, the service provided by Throne to the gifter constitutes purchasing a given physical or digital good for the creator, the gifter will not receive any tracking or order status information or physical or digital goods.

7.4.4. Throne reserves the right to refuse any order in its sole discretion.

7.4.5. Throne reserves the right to ban a gifter who abuses the gift suggestion tool.

## 8. Creator Commerce



- 8.1. A creator is responsible for curating their storefront for fans, which may include partner store products or non-partner store products for purchase. Further, “partnership” in these Terms of Service is used in the colloquial sense to refer to an arrangement where the products or services of two parties are sold, branded, or otherwise marketed together, or the products of a party are somehow promoted to consumers of another party’s products. “Partner” used in this context does not refer to any kind of partnership in a legal sense.
- 8.2. A storefront may not include any Prohibited Items.
- 8.3. If you are a fan who purchases from a creator’s storefront:
  - 8.3.1. Upon purchasing a product, you will become a customer of the partner store or the verified store.
  - 8.3.2. All products are subject to the terms and conditions of the applicable vendor, which terms and conditions are stated on the applicable Merchant Profile Page. Vendor, and not Throne, is solely responsible for the condition of the products. All images of products are for illustrative purposes only, and products may vary from the pictures. Product availability is subject to change without notice, and availability is not guaranteed. Although Throne uses its best efforts to ensure that the availability, colors and details of the products are as described in the Services, Throne does not guarantee that it will match in every instance.
  - 8.3.3. Each product will be delivered in accordance with the applicable retailer’s terms for such product, and the delivery will be handled by the retailer’s designated carrier.
  - 8.3.4. Throne does not control the delivery time or method of any product, and Throne is not liable for any delivery or shipping issues or delays. Throne is not responsible for any product lost in transit, stolen after delivery, or lost due to an incorrect, incomplete or outdated address, a PO box address or an otherwise non-residential address. Throne will submit refund requests to verified stores for lost or stolen gifts, but Throne will not be obligated to offer refunds for any lost or stolen gifts if the verified store denies the refund request. In order to submit a refund request, Throne may request additional evidence or documentation from fan including, but not limited to, a police report.
  - 8.3.5. The delivery estimate given by Throne stems directly from the retailer’s delivery estimate and Throne takes no responsibility if this delivery estimate is exceeded due to circumstances out of our control.
  - 8.3.6. Throne endeavors to keep ordering times as low as possible but please allow 30 business days for orders to be placed. If the order is not placed within 30 business days, fan can request a refund. The fan agrees to not dispute payments for orders that have not been placed within 30 business days of purchase.
  - 8.3.7. A return request may be rejected at Throne’s discretion except in the case of a faulty item. The partner store’s return policy will govern the return process of products purchased from a partner store.
  - 8.3.8. Throne reserves the right to refuse any order in its sole discretion.

8.3.9. For the avoidance of doubt, the service provided by Throne to a fan constitutes purchasing a physical or digital good on behalf of such fan.

## **9. Termination and Suspension**

9.1. Unless otherwise agreed to in writing between you and Throne, either party may terminate these Terms of Service for any or no cause, at any time. As a creator, you may cancel and delete your Account at any time by either using the features on the Services to do so (if applicable and available) or by written notice to hello@jointhrone.com. After cancellation, you will no longer have access to your Account, your profile or any other information through the Services. The provisions of these Terms of Service which by their intent or meaning intended to survive such termination, including without limitation the provisions relating to disclaimer of warranties, limitations of liability, and indemnification, shall survive any termination of these Terms of Service and any termination of your use of or subscription to the Services and shall continue to apply indefinitely.

9.2. We reserve the right to refuse the Services to anyone for any reason at any time. Throne may terminate or limit your right to use the Services in the event that we are investigating or believe that you have breached any provision of this Agreement, by providing you with written or email notice. Such termination or limitation will be effective immediately upon delivery of such notice. If Throne terminates or limits your right to use the Services pursuant to this section, you are prohibited from registering and creating a new Account under your name, a fake or borrowed name or the name of any third party, even if you may be acting on behalf of the third party.

9.3. Even after your right to use the Services is terminated or limited, this Agreement will remain enforceable against you. Throne reserves the right to take appropriate legal action, including but not limited to pursuing arbitration in accordance with Section 15 of these Terms of Service.

9.4. Throne reserves the right to modify or discontinue, temporarily or permanently, all or any portion of the Services at its sole discretion. Throne is not liable to you for any modification or discontinuance of all or any portion of the Services. Throne has the right to restrict anyone from completing registration as a user if Throne believes such person may threaten the safety and integrity of the Services, or if, in Throne's discretion, such restriction is necessary to address any other reasonable business concern.

9.5. Following the termination or cancellation of your Account:

9.5.1. We reserve the right to delete all your data, including any User Generated Content, in the normal course of operation. Your data cannot be recovered once your Account is terminated or cancelled.

9.5.2. Any pending orders with Throne will be refunded to the original payment method.

## **10. Links to Third-Party Websites**

10.1. The Services may contain links (such as hyperlinks) to third-party websites. Such links do not constitute endorsement by Throne or association with those websites, their content or their operators. Such links (including without limitation external websites that are framed by the Services as well as any advertisements displayed in connection therewith) are provided as an information service, for reference and convenience only. Throne does not control any such websites, and is not responsible for their

(i) availability or accuracy, or (ii) content, advertising, products or services. It is your responsibility to evaluate the content and usefulness of the information obtained from other websites. You acknowledge and agree that Throne is not involved in the creation or development of third-party websites and disclaims any responsibility for third-party websites, and cannot be liable for claims arising out of or relating to third-party websites. Further, you acknowledge and agree that Throne has no obligation to monitor, review, or remove links to third-party websites, but reserves the right to limit or remove links to third-party websites on the Services at its sole discretion.

10.2. The use of any website controlled, owned or operated by third parties is governed by the terms and conditions of use and privacy policies for those websites. You access such third-party websites at your own risk. Throne expressly disclaims any liability arising in connection with your use and/or viewing of any websites or other material associated with links that may appear on the Services. You hereby agree to hold Throne harmless from any liability that may result from the use of links that may appear on the Services.

10.3. As part of the functionality of the Services, as a creator you may link your Account with online accounts you may have with third-party service providers, such as Google (each such account, a **“Third-Party Account”**) by either: (i) providing your Third-Party Account login information through the Services; or (ii) allowing Throne to access your Third-Party Account, as is permitted under the applicable terms and conditions that govern your use of each Third-Party Account. You represent that you are entitled to disclose your Third-Party Account login information to Throne and/or grant Throne access to your Third-Party Account (including, but not limited to, for use for the purposes described herein), without breach by you of any of the terms and conditions that govern your use of the applicable Third-Party Account and without obligating Throne to pay any fees or making Throne subject to any usage limitations imposed by such third-party service providers. By granting Throne access to any Third-Party Accounts, you understand that (1) Throne may access, make available and store (if applicable) any content that you have provided to and stored in your Third-Party Account (the **“SNS Content”**) so that it is available on and through the Services via your Account, including without limitation any friend lists, and (2) Throne may submit and receive additional information to your Third-Party Account to the extent you are notified of this when you link your Account with the Third-Party Account. Unless otherwise specified in these Terms of Service, all SNS Content, if any, shall be considered to be User Generated Content. Depending on the Third-Party Accounts you choose, and subject to the privacy settings that you have set in such Third-Party Accounts, personally identifiable information that you post to your Third-Party Accounts may be available on and through your Account on the Services. Please note that if a Third-Party Account or associated service becomes unavailable or Throne’s access to such Third-Party Account is terminated by the third-party service provider, then SNS Content may no longer be available on and through the Services. You will have the ability to disable the connection between your Account on the Services and your Third-Party Accounts at any time, as set forth below. PLEASE NOTE THAT YOUR RELATIONSHIP WITH THE THIRD-PARTY PROVIDERS ASSOCIATED WITH YOUR THIRD-PARTY ACCOUNTS IS GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH SUCH THIRD PARTY PROVIDERS. Throne makes no effort to review any SNS Content for any purpose, including but not limited to, for accuracy, legality, or non-infringement, and Throne is not responsible for any SNS Content.

## 11. Intellectual Property Rights

11.1. All text, graphics, editorial content, data, formatting, graphs, designs, HTML, look and feel, photographs, music, sounds, images, software, videos, designs, trademarks, logos, typefaces and other content (collectively **“Proprietary Material”**) that users see or read through the Services is owned

by Throne, excluding User Generated Content, which users hereby grant Throne a license to use. Proprietary Material is protected in all forms, media and technologies now known or hereinafter developed. Throne owns all Proprietary Material, as well as the coordination, selection, arrangement and enhancement of such Proprietary Materials as a Collective Work under the United States Copyright Act, as amended. The Proprietary Material is protected by the domestic and international laws governing copyright, patents and other proprietary rights. You may not copy, download, use, redesign, reconfigure or retransmit anything from the Services without Throne's express prior written consent and, if applicable, the holder of the rights to the User Generated Content.

11.2. Any use of such Proprietary Material, other than as permitted therein, is expressly prohibited without the prior permission of Throne and, if applicable, the holder of the rights to the User Generated Content.

11.3. The service marks and trademarks of Throne, including without limitation Throne and Throne logos, are service marks owned by Throne. Any other trademarks, service marks, logos and/or trade names appearing via the Services are the property of their respective owners. You may not copy or use any of these marks, logos or trade names without the express prior written consent of the owner.

11.4. Additionally, you may choose to or we may invite you to submit comments, ideas, or feedback about the Services, including without limitation about how to improve our services or our products ("**Feedback**"). By submitting any Feedback, you agree that your disclosure is gratuitous, unsolicited, and without restriction and will not place Throne under any fiduciary or other obligation, and that we are free to use the Feedback without any additional compensation to you, and/or to disclose the Feedback on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, Throne does not waive any rights to use similar or related Feedback previously known to Throne, developed by its employees, or obtained from sources other than you. You acknowledge that all email and other correspondence that you submit to us shall become our sole and exclusive property.

## 12. Copyright Complaints and Copyright Agent

12.1. Throne respects the intellectual property of others, and expects users to do the same. If you believe, in good faith, that any materials provided on or in connection with the Services infringe upon your copyright or other intellectual property right, please send the following information to Throne's Copyright Agent at [admin@jointhrone.com](mailto:admin@jointhrone.com):

12.1.1. A description of the copyrighted work that you claim has been infringed, including the URL (Internet address) or other specific location on the Services where the material you claim is infringed is located. Include enough information to allow Throne to locate the material, and explain why you think an infringement has taken place;

12.1.2. A description of the location where the original or an authorized copy of the copyrighted work exists -- for example, the URL (Internet address) where it is posted or the name of the book in which it has been published;

12.1.3. Your address, telephone number and e-mail address;

12.1.4. 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;

12.1.5. 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 authorized to act on the copyright owner's behalf; and

12.1.6. An electronic or physical signature of the owner of the copyright or the person authorized to act on behalf of the owner of the copyright interest.

## 12. Confidential Information

12.1. You acknowledge that Confidential Information (as defined below) is a valuable, special and unique asset of Throne and agree that you will not disclose, transfer, use (or seek to induce others to disclose, transfer or use) any Confidential Information for any purpose other than using the Services in accordance with these Terms of Service. If relevant, you may disclose the Confidential Information to your authorized employees and agents provided that they are also bound to maintain the confidentiality of Confidential Information. You shall promptly notify Throne in writing of any circumstances that may constitute unauthorized disclosure, transfer, or use of Confidential Information. You shall use best efforts to protect Confidential Information from unauthorized disclosure, transfer or use. You shall return all originals and any copies of any and all materials containing Confidential Information to Throne upon termination of this Agreement for any reason whatsoever.

12.2. The term "**Confidential Information**" shall mean any and all of Throne's trade secrets, confidential and proprietary information, and all other information and data of Throne that is not generally known to the public or other third parties who could derive value, economic or otherwise, from its use or disclosure. Confidential Information shall be deemed to include technical data, know-how, research, product plans, products, services, customers, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, strategic and other proprietary and confidential information relating to Throne or Throne's business, operations or properties, including information about Throne's staff, users or partners, or other business information disclosed directly or indirectly in writing, orally or by drawings or observation.

## 13. Disclaimer of Warranties

13.1. THE SERVICES IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THRONE MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE CONTENT PROVIDED THROUGH THE SERVICES OR THE CONTENT OF ANY SITES LINKED TO THE SERVICES AND ASSUMES NO LIABILITY OR RESPONSIBILITY IN CONTRACT, WARRANTY OR IN TORT FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SERVICES, (III) ANY ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN; AND (IV) EVENTS BEYOND OUR REASONABLE CONTROL.

13.2. UNDER NO CIRCUMSTANCES WILL THRONE AND AFFILIATES OR THEIR CORPORATE PARTNERS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, ACTUAL, CONSEQUENTIAL, ECONOMIC, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF DATA, LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE, SYSTEM FAILURE, FAILURE TO STORE ANY IN-

FORMATION OR OTHER CONTENT MAINTAINED OR TRANSMITTED BY THRONE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES) ARISING IN CONNECTION WITH YOUR USE OF OR INABILITY TO USE THE SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF THE SAME. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU IN THEIR ENTIRETY.

13.3. IF, NOTWITHSTANDING THE FOREGOING EXCLUSIONS, IT IS DETERMINED THAT THRONE AND AFFILIATES OR THEIR CORPORATE PARTNERS ARE LIABLE FOR DAMAGES, IN NO EVENT WILL THE AGGREGATE LIABILITY, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED THE LOWER OF (I) THE TOTAL FEES PAID BY YOU TO THRONE DURING THE SIX MONTHS PRIOR TO THE TIME SUCH CLAIM AROSE OR (II) ONE HUNDRED DOLLARS (\$100), TO THE EXTENT PERMITTED BY APPLICABLE LAW.

#### 14. Indemnification

You hereby agree to indemnify, defend and hold harmless Throne and its officers, directors, employees, agents, attorneys, insurers, successors and assigns (the “**Indemnified Parties**”) from and against any and all Liabilities incurred in connection with (i) your use or inability to use the Services; (ii) your breach or violation of this Agreement; (iii) your violation of any law, or the rights of any user or third party and (iv) any content submitted by you or using your Account to the Services, including, but not limited to the extent such content may infringe on the intellectual rights of a third party or otherwise be illegal or unlawful. You also agree to indemnify the Indemnified Parties for any Liabilities resulting from your use of software robots, spiders, crawlers, or similar data gathering and extraction tools, or any other action you take that imposes an unreasonable burden or loan on our infrastructure. Throne reserves the right, in its own sole discretion, to assume the exclusive defense and control at its own expense of any matter otherwise subject to your indemnification. You will not, in any event, settle any claim or matter without the prior written consent of Throne.

#### 15. Dispute Resolution – Arbitration & Class Action Waiver

15.1. PLEASE READ THIS SECTION CAREFULLY — IT AFFECTS YOUR LEGAL RIGHTS AND GOVERNS HOW YOU AND THRONE CAN BRING CLAIMS AGAINST EACH OTHER. THIS SECTION WILL, WITH LIMITED EXCEPTION, REQUIRE YOU AND THRONE TO SUBMIT CLAIMS AGAINST EACH OTHER TO BINDING AND FINAL ARBITRATION ON AN INDIVIDUAL BASIS.

15.2. You agree that, in the event any dispute or claim arises out of or relating to your use of the Services, you will contact us at [hello@jointhrone.com](mailto:hello@jointhrone.com) and you and Throne will attempt in good faith to negotiate a written resolution of the matter directly. You agree that if the matter remains unresolved for 30 days after notification (via certified mail or personal delivery), such matter will be deemed a “Dispute” as defined below. Except for the right to seek injunctive or other equitable relief described under the “Binding Arbitration” section below, should you file any arbitration claims, or any administrative or legal actions without first having attempted to resolve the matter by mediation, then you agree that you will not be entitled to recover attorneys’ fees, even if you may have been entitled to them otherwise.

15.3. **Binding Arbitration.** You and Throne agree that any dispute, claim or controversy arising out of or relating to this Agreement or to your use of the Services (collectively “**Disputes**”) will be settled by binding arbitration, except that each party retains the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation, or violation of a party’s copyrights, trademarks, trade secrets, patents, or other intellectual property

rights. **This means that you and Throne both agree to waive the right to a trial by jury.** Notwithstanding the foregoing, you may bring a claim against Throne in “small claims” court, instead of by arbitration, but only if the claim is eligible under the rules of the small claims court and is brought in an individual, non-class, and non-representative basis, and only for so long as it remains in the small claims court and in an individual, non-class, and non-representative basis.

15.4. **Class Action Waiver.** You and Throne agree that any proceedings to resolve Disputes will be conducted on an individual basis and not in a class, consolidated, or representative action. **This means that you and Throne both agree to waive the right to participate as a plaintiff as a class member in any class action proceeding. Further, unless you and Throne agree otherwise in writing, the arbitrator in any Dispute may not consolidate more than one person’s claims and may not preside over any form of class action proceeding.**

15.5. **Arbitration Administration and Rules.** The arbitration will be administered by the American Arbitration Association (“AAA”) in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the “AAA Rules”) then in effect, except as modified by this “Dispute Resolution” section. (The AAA Rules are available at <http://www.adr.org> or by calling the AAA at 1-800-778-7879).

15.6. **Arbitration Process.** A party who desires to initiate the arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of Delaware and will be selected by the parties from the AAA’s roster of arbitrators with relevant experience. If the parties are unable to agree upon an arbitrator within seven days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with AAA Rules.

15.7. **Arbitration Location and Procedure.** Unless you and Throne agree otherwise, the seat of the arbitration shall be in Delaware. If your claim does not exceed USD\$10,000, then the arbitration will be conducted solely on the basis of documents you and Throne submit to the arbitrator, unless you request a hearing and the arbitrator then determines that a hearing is necessary. If your claim exceeds USD\$10,000, your right to a hearing will be determined by AAA Rules. Subject to AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration. Hearings may be conducted by telephone or video conference, if requested and agreed to by the parties.

15.8. **Arbitrator’s Decision and Governing Law.** The arbitrator shall apply Delaware law consistent with the Federal Arbitration Act and applicable statutes of limitations, and shall honor claims of privilege recognized by law. The arbitrator will render an award within the timeframe specified in the AAA Rules. Judgment on the arbitration may be entered in any court having jurisdiction thereof. Any award of damages by an arbitrator must be consistent with the “Disclaimers and Limitations of Liability” section above. The arbitrator may award declaratory or injunctive relief in favor of the claimant only to the extent necessary to provide relief warranted by the claimant’s individual claim.

15.9. **Fees.** Each party’s responsibility to pay the arbitration filing, administrative and arbitrator fees will depend on the circumstances of the arbitration and are set forth in the AAA Rules.

## 16. Governing Law

Except as provided in Section 15 or expressly provided in writing otherwise, this Agreement and your use of the Services will be governed by, and will be construed under, the laws of the State of Delaware, without regard to choice of law principles. This choice of law provision is only intended to specify the use of Delaware law to interpret this Agreement.

#### **17. No Agency; No Employment**

No agency, partnership, joint venture, employer-employee or franchiser-franchisee relationship is intended or created by this Agreement.

#### **18. General Provisions**

Failure by Throne to enforce any provision(s) of this Agreement will not be construed as a waiver of any provision or right. This Agreement constitutes the complete and exclusive agreement between you and Throne with respect to its subject matter, and supersedes and governs any and all prior agreements or communications. The provisions of this Agreement are intended to be interpreted in a manner which makes them valid, legal, and enforceable. Except for the "Class Action Waiver" in Section 14, in the event any provision is found to be partially or wholly invalid, illegal or unenforceable, (i) such provision shall be modified or restructured to the extent and in the manner necessary to render it valid, legal, and enforceable or, (ii) if such provision cannot be so modified or restructured, it shall be excised from the Agreement without affecting the validity, legality or enforceability of any of the remaining provisions. This Agreement may not be assigned or transferred by you without our prior written approval. We may assign or transfer this Agreement without your consent, including but not limited to assignments: (1) to a parent or subsidiary, (2) to an acquirer of assets, or (3) to any other successor or acquirer. Any assignment in violation of this section shall be null and void. This Agreement will inure to the benefit of Throne, its successors and assigns.

#### **19. Changes to this Agreement and the Services**

Throne reserves the right, at its sole and absolute discretion, to change, modify, add to, supplement, suspend, discontinue, or delete any of the terms and conditions of this Agreement (including these Terms of Service and Privacy Policy) and review, improve, modify or discontinue, temporarily or permanently, the Services or any content or information through the Services at any time, effective with or without prior notice and without any liability to Throne. Throne will endeavor to notify you of material changes by email, but will not be liable for any failure to do so. If any future changes to this Agreement are unacceptable to you or cause you to no longer be in compliance with this Agreement, you must terminate, and immediately stop using, the Services. Your continued use of the Services following any revision to this Agreement constitutes your complete and irrevocable acceptance of any and all such changes. Throne may also impose limits on certain features or restrict your access to part or all of the Services without notice or liability.

#### **20. No Rights of Third Parties**

None of the terms of this Agreement are enforceable by any persons who are not a party to this Agreement.

#### **21. Notices and Consent to Receive Notices Electronically**



You consent to receive any agreements, notices, disclosures and other communications (collectively, “**Notices**”) to which this Agreement refers electronically including without limitation by e-mail or by posting Notices on this Site. You agree that all Notices that we provide to you electronically satisfy any legal requirement that such communications be in writing. Unless otherwise specified in this Agreement, all notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or email; or the day after it is sent, if sent for next day delivery by a recognized overnight delivery service.

## **22. Contacting Us**

If you have any questions about these Terms of Service or about the Services, please contact us by email at [hello@jointhrone.com](mailto:hello@jointhrone.com) or by mail to Blue Makalu, Inc. dba Throne, 651 N Broad St, Suite 206, Middletown, Delaware 19709.