

Terms of Service
Last Updated: December 5, 2018

Please read DLIVE Inc.'s ("**Company**", "**we**", "**us**" or "**our**") Terms of Service (the "**Agreement**") carefully. This Agreement constitutes a binding obligation between you and Company. This Agreement applies to your use of: our websites located at <https://dlive.tv/> (the "**Site**"), the products or services we may provide or offer, our mobile applications (the "**App**") through which any products and services are provided, and your member account (collectively the "**Services**").

1. **Agreement to Terms.** By using our Services, you agree to be bound by this Agreement. If you do not agree to be bound by this Agreement, do not use the Services. If you are accessing and using the Services on behalf of a company (such as your employer) or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to this Agreement. In that case, "you" and "your" will refer to that company or other legal entity.
2. **Privacy Policy.** Please refer to our privacy policy (the "**Privacy Policy**") for information on how we collect, use and disclose information from our users. You acknowledge and agree that your use of the Services is subject to our Privacy Policy.

IMPORTANT NOTICE REGARDING ARBITRATION: WHEN YOU AGREE TO THIS AGREEMENT YOU ARE AGREEING (WITH LIMITED EXCEPTION) TO RESOLVE ANY DISPUTE BETWEEN YOU AND COMPANY THROUGH BINDING, INDIVIDUAL ARBITRATION RATHER THAN IN COURT. PLEASE REVIEW CAREFULLY SECTION 19 "DISPUTE RESOLUTION" FOR DETAILS REGARDING ARBITRATION (INCLUDING THE PROCEDURE TO OPT OUT OF ARBITRATION).

3. **Changes to Terms or Services.** We may update this Agreement at any time, in our sole discretion. If we do so, we will deliver a notice either by posting the updated Agreement on the App, on the Site, or through other communications deemed appropriate by us. It is important that you review this Agreement whenever we update them or you use the Services. If you continue to use the Services after we have posted updated Agreement, you are agreeing to be bound by the updated Agreement. If you do not agree to be bound by the updated Agreement, then, except as otherwise provided in Section 19(a)(viii), you may not use the Services anymore. Because our Services are evolving over time we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.
4. **Who May Use the Services?** THE SERVICES ARE NOT AVAILABLE TO PERSONS UNDER THE AGE OF 13, or in certain jurisdictions, under 16 ("**Minors**") and we do not knowingly collect information from Minors. If you are between 13 (or 16 in certain jurisdictions) and 18, you must have permission from your legal guardian before you are permitted to use the Services. If we learn that we have collected information of a Minor, we will take steps to delete such information from our files as soon as possible.
5. **Account.**
 - (a) Need for an Account. Even without any Account, you may view pre-recorded video content and live streaming content made available through the Services. If you want to use certain features of the Services (such as posting a comment to a video or giving a virtual gift to another user), however, you will need to have an account (the "**Account**"; the holder of an Account, the "**Account Holder**").
 - (b) Types of Account. Many features of the Services are available only to our Account Holders. There are three types of Accounts: (i) third party accounts based on users' existing accounts with Facebook, YouTube, Twitch or other social media platforms that we may support (each, a "**SNS Account**"); (ii)

accounts based on users' existing account with <https://account.lino.network> (the "**Lino Point Account**"); and (iii) creating a new account by providing your email address (the "**Email Account**"). Some features of our Services are not available to Accounts based on SNS Accounts and Email Accounts, and are only available to Accounts based on Lino Point Accounts.

(i) If you choose the SNS Account option, we will obtain from your existing SNS Account certain information such as your user name, profile photo, and other personal information we may obtain (but to the extent that your SNS Account privacy settings permit us to access such information).

(ii) If you choose the Lino Point Account option, we will obtain from your existing Lino Point Account certain information such as your username, account balance, transaction history, and other information (but to the extent that your Lino Point Account privacy settings permit us to access such information).

6. **Description of the Services.**

(a) Description. The Services enable you to, among other things but subject to the type of Account that you have, view pre-recorded video content and live streaming content made available through the Services, broadcast live stream (which is not available as of the date of this Agreement), post and share pre-recorded video content, share other users' video content, participate in live chats and interact with other users of the Services (such as commenting on a video and giving a gift). You acknowledge that certain video content may be available only in certain geographical areas, as determined by the Company in its sole discretion.

(b) Responsibility for Internet Charges. Access to the Services may require the use of your personal computer and/or mobile devices, as well as communications with or use of data and storage on such devices. You are responsible for any Internet connection or mobile fees and charges that you may incur when accessing the Services.

(c) Compliance with Community Guidelines. You must ensure that your use of Services complies with any community guidelines that we may publish (the "**Community Guidelines**"). We may update the Community Guidelines at any time and from time to time. If you do not agree to our Community Guidelines, you must immediately cease to use the Services. You understand that, without limiting the generality of Section 14 and without limiting our remedies or rights, we may terminate your Account and remove your User Content, with or without any prior notice, in the event of your breach of our Community Guidelines or this Agreement. For greater certainty, any breach of the Community Guidelines by you constitutes a material breach of this Agreement.

(d) Public Information. You acknowledge that certain information including, without limitation, your username, profile photo, posted video content, comments to your video content, comments you posted to others' videos, virtual gifts from others to your video content, virtual gifts you sent to others, your Lino Point Account balance and your total earnings are all public information and can be accessed by anyone, including members and non-members of the Services.

7. **Lino Points.**

(a) Lino Points. You understand that video content platform that we offer as part of the Services integrates with various features of the Lino Point Account accounts from <https://account.lino.network> and Lino reward points (the "**Lino Points**"). Lino Points may be stored using a Lino Point Account and can be used for various Services such as giving a virtual gift. If you use the SNS Account option or Email Account option, we will create a Lino Point Account for you. Such Lino Point Account will be associated

with your SNS Account or Email Account and will be used to hold any Lino Points you may have. You will have access to your account balance but what you can do with such Lino Point Account may be limited and you may not have complete access to such Lino Point Account until you complete the required steps to complete the creation of the Lino Point Account. If you create your Account using the Lino Point Account option, the Lino Points you have in your Lino Point Account will be accessible through the Services. Lino Points can be used to access certain features of the Services.

(b) Gifts. When you receive a virtual gift from another user, it is possible that you will earn Lino Points. When you give a virtual gift to another user through the Services, you will need to spend certain number of Lino Points. If you use the Services through your existing Lino Point Account, you may be required to enter your Lino Point Account credentials before you spend your Lino Points. You understand that the amount of Lino Points that each virtual gift may earn, and the amount of Lino Points each virtual gift may cost, are determined by the Company in its sole discretion.

(c) Locked Lino Points Program. If you lock your Lino Points, you will be able to participate in guiding the direction of the platform, such as product development and governance decisions, receive rewards for participation and unlock premium services. For instance, users who lock their Lino Points will be able to participate in daily questionnaires and vote on decisions relating to the network and receive rewards for their participation.

(d) No Conversion; Consumptive Purposes Only. You acknowledge that it is not possible to use the Services to convert Lino Points to any other value. THE LINO POINTS ARE SOLELY FOR USE IN CONNECTION WITH THE SERVICES AND THERE IS NO OPPORTUNITY FOR PROFITS. Lino Points may not be transferred to anyone outside of the Site, and may not be sold or otherwise converted into any value. By purchasing Lino Points, you hereby agree and acknowledge (1) that you are not doing so with the intent or expectation of profits from any appreciation in value or otherwise from your purchase and ownership of Lino Points, (2) you are acquiring the Lino Points with the sole intention of consuming them on the Site and (3) the number of Lino Points that you are purchasing is not in excess of the amount of Lino Points that you can reasonably consume in a reasonable amount of time after such purchase.

8. **Feedback.** We welcome feedback, comments and suggestions for improvements to the Services (“**Feedback**”). You can submit Feedback by emailing legal@dlive.tv. You grant to us a non-exclusive, transferable, worldwide, perpetual, irrevocable, fully-paid, royalty-free license, with the right to sublicense, under any and all intellectual property rights that you own or control to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any purpose.

9. **Content Ownership, Responsibility and Removal.**

(a) Definitions. For purposes of this Agreement: (i) “**Content**” means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Services; and (ii) “**User Content**” means any Content that you provide to be made available through the Services.

(b) Our Content Ownership. Company does not claim any ownership rights in any User Content and nothing in this Agreement will be deemed to restrict any rights that you may have to use and exploit your User Content. Subject to the foregoing, Company and its licensors exclusively own all right, title and interest in and to the Content excluding any User Content, including all associated intellectual property rights. You acknowledge that the Services (which, for greater certainty, includes without limitation the Content and the provision of Content) are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter or obscure any copyright,

trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services or Content.

(c) Rights in User Content Granted by You. By making any User Content available through the Services you hereby grant to Company a non-exclusive, irrevocable, perpetual, transferable, worldwide, royalty-free license, with the right to sublicense, to: (i) use, copy, modify, distribute, publicly display and publicly perform your User Content in connection with operating and providing the Services to you and to other users of the Services, including without limitation for general promotional purposes, in any form, format, media or media channels now known or later developed or discovered; and (ii); use the name, identity, likeness and voice (or other biographical information) that you submit in connection with such User Content. In the event that such User Content contain the name, identity, likeness and voice (or other biographical information) or intellectual property rights or proprietary rights of third parties, you represent and warrant that you have obtained the appropriate consents and/or licenses for your use of such information and that Company and its sub-licensees are allowed to use them to the extent indicated in this Agreement.

(d) Your Responsibility for User Content. You are solely responsible for all your User Content. You represent and warrant that you own all your User Content or you have all rights that are necessary to grant us the license rights in your User Content under this Agreement. You also represent and warrant that neither your User Content, nor your use and provision of your User Content to be made available through the Services, nor any use of your User Content by Company on or through the Services will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

(e) Removal of User Content. You can remove your User Content by specifically deleting it. However, in certain instances, some of your User Content (such as posts or comments you make) may not be completely removed and copies of your User Content may continue to exist on the Services or outside of the Services (such as when any video content that you make available to the public is copied and distributed by other users of the Services). We are not responsible or liable for the removal or deletion of (or the failure to remove or delete) any of your User Content.

(f) Rights in Content Granted by Company. Subject to your compliance with this Agreement, Company grants to you a limited, non-exclusive, non-transferable license, with no right to sublicense, to, during the term of this Agreement, access and view the Content (excluding your User Content) solely in connection with your permitted use of the Services and solely for your personal and non-commercial purposes.

10. Copyright Policy. Company respects copyright law and expects its users to do the same. It is Company's policy to terminate in appropriate circumstances Account Holders who repeatedly infringe or are believed to be repeatedly infringing the rights of copyright holders. Please see Company's Copyright Policy, for further information.

11. Rights and Terms for App.

(a) Rights in App Granted by Company. Subject to your compliance with this Agreement, Company grants to you a limited, non-exclusive, non-transferable license, with no right to sublicense, to download and install a copy of the App on a mobile device or computer that you own or control and to run such copy of the App solely for your own personal purposes. You may not copy the App, except for making a reasonable number of copies for backup or archival purposes. Except as expressly permitted in this Agreement, you may not: (i) copy, modify or create derivative works based on the App; (ii) distribute, transfer, sublicense, lease, lend or rent the App to any third party; (iii) reverse engineer, decompile or

disassemble the App; or (iv) make the functionality of the App available to multiple users through any means. Company reserves all rights in and to the App not expressly granted to you under this Agreement.

(b) Accessing App from App Store. The following terms apply to any App accessed through or downloaded from any app store or distribution platform (like the Apple App Store or Google Play) where the App may now or in the future be made available (each an “**App Provider**”). You acknowledge and agree that:

(i) This Agreement is concluded between you and Company, and not with the App Provider, and Company (not the App Provider), is solely responsible for the App;

(ii) The App Provider has no obligation to furnish any maintenance and support services with respect to the App;

(iii) In the event of any failure of the App to conform to any applicable warranty, you may notify the App Provider, and the App Provider will refund the purchase price for the App to you (if applicable) and, to the maximum extent permitted by applicable law, the App Provider will have no other warranty obligation whatsoever with respect to the App. Any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Company;

(iv) The App Provider is not responsible for addressing any claims you have or any claims of any third party relating to the App or your possession and use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation;

(v) In the event of any third party claim that the App or your possession and use of that App infringes that third party’s intellectual property rights, Company will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this Agreement;

(vi) The App Provider, and its subsidiaries, are third-party beneficiaries of this Agreement as related to your license to the App, and that, upon your acceptance of this Agreement, the App Provider will have the right (and will be deemed to have accepted the right) to enforce this Agreement as related to your license of the App against you as a third-party beneficiary thereof;

(vii) You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a terrorist-supporting country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties; and

(viii) You must also comply with all applicable third party terms of service when using the App.

12. General Prohibitions and Company’s Enforcement Rights. You agree not to do any of the following:

(a) Post, upload, publish, submit or transmit any User Content that: (i) infringes, misappropriates or violates a third party’s patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, vulgar or offensive; (v) promotes discrimination,

bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (vii) promotes illegal or harmful activities or substances;

(b) Use, display, mirror or frame the Services or any individual element within the Services, Company's name, any Company trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Company's express written consent;

(c) Access, tamper with, or use non-public areas of the Services, Company's computer systems, or the technical delivery systems of Company's providers;

(d) Attempt to probe, scan or test the vulnerability of any Company system or network or breach any security or authentication measures;

(e) Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Company or any of Company's providers or any other third party (including another user) to protect the Services or any Content;

(f) Attempt to access or search the Services or Content or download Content from the Services, through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Company or other generally available third-party web browsers;

(g) Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;

(h) Use any meta tags or other hidden text or metadata utilizing a Company trademark, logo URL or product name without Company's express written consent;

(i) Use the Services, or any portion thereof, for any commercial purpose or for the benefit of any third party or in any manner not permitted by this Agreement;

(j) Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Services to send altered, deceptive or false source-identifying information;

(k) Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Services;

(l) Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services;

(m) Collect or store any personally identifiable information from the Services from other users of the Services without their express permission;

(n) Impersonate or misrepresent your affiliation with any person or entity;

(o) Violate any applicable law or regulation;

(p) Violate the Community Guidelines; or

(q) Encourage or enable any other individual to do any of the foregoing.

Although we are not obligated to monitor access to or use of the Services or to review or edit any User Content, we have the right to do so for the purpose of operating the Services, to ensure compliance with this Agreement and to comply with applicable law or other legal requirements. We reserve the right, but are not obligated, to remove or disable access to any Content, at any time and without notice, including, but not limited to, if we, at our sole discretion, consider any Content to be objectionable or in violation of this Agreement. We have the right to investigate violations of this Agreement or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

13. **Links to Third Party Websites or Resources.** The Services (including the Site, the App and the Content made available through the Services) may make available to you content provided by third parties, including links to third-party websites or resources (collectively, “**Third Party Content**”). We do not control, endorse or adopt any Third-Party Content and will have no responsibility for Third Party Content including, without limitation, material that may be misleading, incomplete, erroneous, offensive, indecent or otherwise objectionable. You acknowledge that we provide the Third Party Content to you only as a convenience and are not responsible for the content, products or services on or available from those websites or resources or links displayed on such websites. You further acknowledge sole responsibility for and assume all risk arising from, your use of any third-party websites or resources and all your interactions with such third-party websites or resources.

14. **Cancellation, Suspension or Termination of Services.**

(a) We may, in our sole discretion and without any cost or liability to you, with or without prior notice and at any time, suspend, modify or terminate, temporarily or permanently, all or any portion of our Services, with or without reason, including, without limitation, for any of the following reasons: (i) you create risk or possible legal exposure for us; (ii) our provision of the Services to you is no longer commercially viable; (iii) due to insolvency, bankruptcy, or termination or removal of the App by the App Provider; and (iv) if you breach any terms of this Agreement or the Community Guidelines.

(b) Upon any cancellation, suspension or termination of the Services, the following Sections of this Agreement will survive: 1, 2, 3, 8 to 13, 14(b), 15 to 20.

15. **Disclaimers.**

(a) We may require you to meet certain requirements for passwords and multi-factor authentication and we may change the requirements with or without prior notice. But, no matter how strong your password is, you must ensure that your Account credentials, including the credentials for SNS Accounts, Email Account or Lino Point Account you use in connection with the Services, are secure. If they are not, people may compromise and take action on your Account. You should always use two-factor authentication when available, always avoid copying scripts into you browser address bar, and avoid clicking on links, opening attachments or visiting Internet resources you do not trust. You are responsible for maintaining adequate security and control of any and all IDs, passwords, hints, personal identification numbers (PINs), or any other codes that you use to access or in relation to the Services. We assume no responsibility for any losses resulting from the compromise of your Account.

(b) YOU ACCEPT AND ACKNOWLEDGE THAT THERE ARE RISKS ASSOCIATED WITH PARTICIPATING IN AND UTILIZING THE LINO POINTS PROGRAM, INCLUDING, BUT NOT LIMITED TO, THE RISK OF UNKNOWN VULNERABILITIES IN OR UNANTICIPATED CHANGES TO THE PROGRAM AND UNDERLYING NETWORK. YOU ACKNOWLEDGE AND ACCEPT THAT COMPANY WILL NOT BE RESPONSIBLE FOR ANY HARM OCCURRING AS A RESULT OF SUCH RISKS.

(c) WE WILL USE REASONABLE EFFORTS TO VERIFY THE ACCURACY OF ANY INFORMATION PROVIDED BY THE SERVICES BUT WE MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE CONTENT, THE SERVICES, INFORMATION AND FUNCTIONS MADE ACCESSIBLE THROUGH THE SERVICES, ANY HYPERLINKS TO THIRD PARTY WEBSITES, OR THE SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION THROUGH THE SERVICES.

(d) WE WILL NOT BE RESPONSIBLE OR LIABLE TO YOU FOR ANY LOSS AND TAKE NO RESPONSIBILITY FOR AND WILL NOT BE LIABLE TO YOU FOR ANY USE OF OUR SERVICES, INCLUDING BUT NOT LIMITED TO ANY LOSSES, DAMAGES OR CLAIMS ARISING FROM: (A) USER ERROR SUCH AS FORGOTTEN PASSWORDS, INCORRECTLY CONSTRUCTED TRANSACTIONS, OR MISTYPED ADDRESSES; (B) SERVER FAILURE; (C) UNAUTHORIZED ACCESS TO APPLICATIONS OR YOUR THIRD PARTY ACCOUNTS; OR (D) ANY UNAUTHORIZED THIRD PARTY ACTIVITIES, INCLUDING WITHOUT LIMITATION THE USE OF VIRUSES, PHISHING, BRUTE FORCING OR OTHER MEANS OF ATTACK AGAINST THE SERVICES.

(e) WE MAKE NO WARRANTY THAT THE SERVICES INCLUDING THE SERVER THAT MAKES THE SERVICES AVAILABLE, ARE FREE OF VIRUSES OR ERRORS, THAT THE CONTENT IS ACCURATE, THAT IT WILL BE UNINTERRUPTED, OR THAT DEFECTS WILL BE CORRECTED. WE WILL NOT BE RESPONSIBLE OR LIABLE TO YOU FOR ANY LOSS OF ANY KIND, FROM ACTION TAKEN, OR TAKEN IN RELIANCE ON MATERIAL, OR INFORMATION, CONTAINED OR MADE AVAILABLE THROUGH THE SERVICES.

(f) THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness or reliability of any Content.

(g) YOU UNDERSTAND, ACKNOWLEDGE AND AGREE THAT GIVEN THE NATURE OF THE SERVICES, BY USING THE SERVICES, YOU MAY BE EXPOSED TO CONTENT THAT MIGHT BE OFFENSIVE, HARMFUL, INACCURATE OR OTHERWISE INAPPROPRIATE, OR IN SOME CASES, POSTINGS THAT HAVE BEEN MISLABELED OR ARE OTHERWISE DECEPTIVE. UNDER NO CIRCUMSTANCES WILL WE BE LIABLE IN ANY WAY FOR ANY CONTENT.

(h) YOU UNDERSTAND, ACKNOWLEDGE AND AGREE THAT WE DO NOT GUARANTEE THAT YOU WILL RECEIVE ANY VIRTUAL GIFTS FOR YOUR USER CONTENT EITHER DIRECTLY FROM US OR FROM ANYONE ELSE. WE DO NOT GUARANTEE THAT YOUR USER CONTENT WILL EARN ANY LINO POINTS OR ANY OTHER FORM OF REWARD OR COMPENSATION.

(i) YOU UNDERSTAND THAT THE LINO POINTS MAY NOT BE SOLD AND HAVE NO VALUE.

16. **Indemnity.** You will indemnify and hold harmless Company and its officers, directors, employees and agents, from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (i) your access to or use of the Services, (ii) your User Content, or (iii) your violation of this Agreement.

17. **Limitation of Liability.**

(a) NEITHER COMPANY NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOST BUSINESS OPPORTUNITY, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT COMPANY OR ANY OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

(b) IN NO EVENT WILL COMPANY'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICES EXCEED ONE HUNDRED DOLLARS (\$100).

(c) THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN COMPANY AND YOU.

18. **Governing Law and Forum Choice.** For users of our Services, this Agreement and any action related thereto will be governed by the *Federal Arbitration Act*, federal arbitration law, and the laws of the State of California, without regard to its conflict of laws provisions. Except as otherwise expressly set forth in Section 19, the exclusive jurisdiction for all Disputes (defined below) that you and Company are not required to arbitrate will be the state and federal courts located in the Northern District of California, and you and Company each waive any objection to jurisdiction and venue in such courts

19. **Dispute Resolution.** Company believes that most disagreements can be resolved informally and efficiently by contacting Company's customer support. If the dispute is not resolved through Company customer support, you and Company agree that any such dispute, claim or controversy arising out of or relating in any way to the Services or this Agreement (each, a "**Claim**"), will be determined by binding arbitration or small claims court, instead of in courts of general jurisdiction, in accordance with the following (including the procedure to opt out of arbitration), except that each party retains the right: (i) to bring an individual action in small claims court as further described in Section 19(b) below; and (ii) 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 (an "**IP Protection Action**") as further described in Section 19(c) below.

(a) Arbitration. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. You agree that, by agreeing to this Agreement, the U.S. *Federal Arbitration Act* governs the interpretation and enforcement of this arbitration provision, and that you and Company are each waiving the right to a trial by jury or to participate in a class action.

(i) Opt-out. You may opt out of arbitration entirely and litigate any Claim if you provide us with written notice of your desire to do so by email at legal@dlive.tv within thirty (30) days following the date you first agree to this Agreement.

(ii) Notice of Claim. If you elect to seek arbitration, you must first send to Company, by email, a written notice of your Claim (the "**Notice of Claim**"). The Notice of Claim to Company should be sent to legal@dlive.tv and should be prominently captioned "NOTICE OF CLAIM". The Notice of Claim should include both the mailing address and email address you would like Company to use to contact you. If Company elects to seek arbitration, it will send, by certified mail, a written Notice of Claim to your billing address on file. A Notice of Claim, whether sent by you or by Company, must (a) describe the nature and basis of the claim or dispute; (b) set forth the specific amount of damages or other relief sought (the "**Demand**"); and (c) whether you reject any subsequent modification of the Dispute Resolution section by Company.

(iii) Arbitration Proceedings. If you and Company do not reach an agreement to resolve the claim within thirty (30) days after the Notice of Claim is received, you or Company may commence an arbitration proceeding (or, alternatively, file a claim in small claims court or an IP Protection Action). You may download or copy a form of notice and a form to initiate arbitration at www.adr.org. The arbitration will be governed by the Consumer or Commercial Arbitration Rules, as appropriate, of the American Arbitration Association ("**AAA**") (collectively, the "**AAA Rules**"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules and Forms are available online at www.adr.org. The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, including issues relating to the scope and enforceability of this arbitration provision.

(iv) Arbitration Location and Procedure. Unless Company and you agree otherwise, any arbitration hearings will take place in the county (or parish) of either your residence or of the mailing address you provided in your Notice of Claim. If your claim is for U.S. \$10,000 or less, Company agrees that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds U.S. \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator will issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

(v) Injunctive and Declaratory Relief. Except as set forth in Sections 19(b) and 19(c), the arbitrator will determine all issues of liability on the merits of any Claim asserted by you or Company, and may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. To the extent that you or Company prevail on a claim and seek public injunctive relief (that is, injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public), the entitlement to and extent of such relief must be litigated in a civil court of competent jurisdiction and not in arbitration. The parties agree that litigation of any issues of public injunctive relief will be stayed pending the outcome of the merits of any individual claims in arbitration.

(vi) Arbitration Fees. If your claim for damages does not exceed \$10,000, Company will pay all fees imposed by the AAA to conduct the arbitration, including reimbursement of your initial filing fee, unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)). If your claim for damages exceeds \$10,000, standard AAA Rules will govern the payment of all AAA fees, including filing, administration and arbitrator fees.

(vii) Class Action Waiver. **YOU AND COMPANY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, if you have elected

arbitration, unless both you and Company agree otherwise, the arbitrator may not consolidate more than one person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this Dispute Resolution section will be null and void.

(viii) Modification of Dispute Resolution Section. Notwithstanding Section 3, if Company changes this "Dispute Resolution" section after the date you first accepted this Agreement, and you have not otherwise affirmatively agreed to such changes, you may reject any such change by so stating within your Notice of Claim. By failing to reject any changes to this "Dispute Resolution" section in your Notice of Claim, you agree to resolve any Claim between you and Company in accordance with the terms of the Dispute Resolution section in effect as of the date of your Notice of Claim.

(ix) Severability. With the exception of any of the provisions in Section 19(a)(vii) of this Agreement (Class Action Waiver), if an arbitrator or court of competent jurisdiction decides that any part of this Agreement is invalid or unenforceable, the other parts of this Agreement will still apply.

(b) Small Claims Court. Notwithstanding Section 19(a), you may elect to litigate your Claim in small claims court if all the requirements of the small claims court are satisfied, including any limitations on jurisdiction and the amount at issue in the dispute. You agree to bring a Claim in small claims court in your county of residence

(c) IP Protection Action. Notwithstanding Sections 19(a) or 19(b), the exclusive jurisdiction and venue of any IP Protection Action will be the state and federal courts located in the Northern District of California and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

20. **General Terms.**

(a) Entire Agreement. This Agreement constitutes the entire and exclusive understanding and agreement between Company and you regarding the Services, and this Agreement supersedes and replaces any and all prior oral or written understandings or agreements between Company and you regarding the Services. If any provision of this Agreement is held invalid or unenforceable by an arbitrator or a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. You may not assign or transfer this Agreement, by operation of law or otherwise, without Company's prior written consent. Any attempt by you to assign or transfer this Agreement, without such consent, will be null. Company may freely assign or transfer this Agreement without restriction. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their successors and permitted assigns.

(b) Notices. Any notices or other communications provided by Company under this Agreement, including those regarding modifications to this Agreement, will be given: (i) via email; or (ii) by posting to the Services. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

(c) Waiver of Rights. Company's failure to enforce any right or provision of this Agreement will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Company. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

21. **Contact Information.** If you have any questions about this Agreement or the Services, please contact Company at legal@dlive.tv.