

## TERMS OF SERVICE

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Texas Thoroughbred Association provides thoroughbred auction services and information through its software, services and tools that enable you to learn about, and bid on and sell, thoroughbred horses or fractional interests, breeding rights, breeding seasons of thoroughbred horses ("Horses") at our live auctions and other sales events. This page explains the terms and conditions by which you may visit our websites, access and participate in our live auctions and other sales events (in-person or online) and use our related mobile and web services and tools (collectively, the "Services"). By accessing, participating in or using the Services, or by clicking a button or checking a box marked "I agree that I have read and agree to the Terms and Conditions" (or something similar), you signify that you have read, understood, and agree to be bound by these Terms of Service (this "Agreement"). We reserve all rights to modify this Agreement, and we will provide you with notice of any such modifications as described below. This Agreement applies to all visitors, guests, users and others who access or participate in the Services, including all guests, sellers and bidders participating in our auctions and other sales events ("Users").

**IMPORTANT: READ CAREFULLY.** Please read these Terms carefully as they contain important information about your legal rights, remedies and obligations. These Terms are a legal contract between you and TTA (as defined herein). By accessing the Service, you agree to be bound by these Terms. If you do not agree to these Terms, please exit the Service and refrain from all further use of it.

Please note: Section 12 of these Terms contains an arbitration clause and class action waiver that apply to all users. Section 12 affects how disputes with TTA are resolved. By accepting these Terms, you agree to be bound by this arbitration clause and class action waiver. Please read it carefully.

### 1. Services

#### 1.1 Eligibility

This is a contract between you and Texas Thoroughbred Association, a Texas corporation ("TTA", "we", "our" or "us"). The terms "you" and "your" refer to all individuals or entities accessing the Service. You must read and agree to this Agreement before using the Services. If you do not agree to this Agreement, you may not use the Services. You may use the Services only if you can form a binding contract with us, and only in compliance with this Agreement and all applicable local, state, national and international laws, rules and regulations. You must be at least 18 years old and able to enter into legally binding contracts to access and use the Service or register a TTA Account. By accessing or using the Service or TTA Account, you represent and warrant that you are 18 or older and have the legal capacity and authority to enter into a contract. The Services are not available to any Users we have previously removed or suspended from the Services.

#### 1.2 Access and Use

Subject to your compliance with the terms and conditions of this Agreement, you may access and use the Services for your own professional and business purposes solely in order to bid on and buy Horses available for sale on the Services, to sell your Horses via the Services, or to acquire other products and services available via the Services, in each case subject to the restrictions described in this Agreement, including without limitation the restrictions set forth in Sections 1.3 and 2 below. The Services are not available for personal, family or household uses. We reserve all rights not

expressly granted in this Agreement in and to the Services and our Intellectual Property (defined below). We may suspend or terminate your access to the Services at any time for any reason or no reason.

### 1.3 Restrictions

You will not, and you will not assist, permit or enable others to, do any of the following:

- (a) use the Services for any purpose other than as expressly set forth in Section 1.2 above;
- (b) disassemble, reverse engineer, decode or decompile any part of the Services, including, without limitation, the online bidding engine and algorithmic pricing tools;
- (c) use any robot, spider, scraper, data mining tool, data gathering or extraction tool, or any other automated means, to access, collect, copy or record the Services;
- (d) copy, rent, lease, sell, transfer, assign, sublicense, modify, alter, or create derivative works of any part of the Services or any of our Intellectual Property;
- (e) remove any copyright notices or proprietary legends from the Services;
- (f) take photos, screenshots or other images of the Services or otherwise extract reports and other output of the Services, other than records of your auction registrations and past purchases that you take via any download and related functionality provided on the Services ("User Account History and Content");
- (g) use the Services in a manner that impacts (i) the stability of our servers, (ii) the operation or performance of the Services or any other User's use of the Services, or (iii) the behavior of other applications using the Services;
- (h) use the Services in any manner or for any purpose that violates any applicable law, regulation, legal requirement or obligation, contractual obligation, or any right of any person including, but not limited to, intellectual property rights, rights of privacy and/or rights of personality, or which otherwise may be harmful (in our sole discretion) to us, our providers, our suppliers or Users;
- (i) use the Services in competition with us, to develop competing products or services, or otherwise to our detriment or commercial disadvantage;
- (j) use the Services for benchmarking or competitive analysis of the Services;
- (k) attempt to interfere with, compromise the system integrity or security of, or decipher any transmissions to or from, the servers running the Services;
- (l) transmit viruses, worms or other software agents through the Services;
- (m) impersonate another person or misrepresent your affiliation with a person or entity, hide or attempt to hide your identity, or otherwise use the Services for any invasive or fraudulent purpose, including, for example, for domain spoofing or other forms of phishing;
- (n) share passwords or authentication credentials for the Services;

(o) bypass the measures we may use to prevent or restrict access to the Services or enforce limitations on use of the Services or the content therein, including without limitation features that prevent or restrict use or copying of any content;

(p) identify us or display any portion of the Services on any site or service that disparages us or our products or services, or infringes any of our Intellectual Property or other rights;

(q) identify or refer to us or the Services in a manner that could reasonably imply an endorsement, relationship or affiliation with or sponsorship between you or a third party and us, other than your permitted use of the Services under this Agreement, without our prior express written consent; or

(r) engage in any form of shill bidding, including collusion, bid manipulation and bidding on items that you, or a party affiliated with you, are selling in an auction.

#### 1.4 User Accounts

Your account on the Services (your "User Account") gives you access to the services and functionality that we may establish and maintain from time to time and in our sole discretion. For example, User Account holders can, subject to all of the terms and conditions of this Agreement, including the restrictions set forth in Sections 1.3 and 2:

create multiple accounts under a single user profile;

create and submit applications for financing with respect to items you are bidding or wish to bid on;

check historic results from our auctions to assist you in bidding on similar items or selling your items;

access the online bidding engine to bid online in real time at our auctions (after registering to bid at the auction); access User Account History and Content; and receive email updates about auction dates and new services offered by us. We may maintain different types of User Accounts for different types of Users. If you open a User Account on behalf of a company, organization, or other entity, then (i) "you" includes you and that entity, (ii) you represent and warrant that you are an authorized representative of the entity with the authority to bind the entity to this Agreement, and (iii) you agree to this Agreement on the entity's behalf.

You may never use another User's User Account without permission. When creating your User Account, you must provide accurate and complete profile information, and you must keep this information current. You are solely responsible for the activity that occurs on your User Account, and you must keep your User Account password secure. You must notify us immediately of any breach of security or unauthorized use of your User Account. We will not be liable for any losses caused by any unauthorized use of your User Account.

By providing us your email address you agree to our using the email address to send you Service-related notices, including any notices required by law, in lieu of communication by postal mail. Where the law permits, we may also use your email address to send you other messages, such as changes to features of the Services and special offers. If you do not want to receive such email messages, you may opt out. Opting out may prevent you from receiving email messages regarding improvements, auctions, events and offers; however, opting out will not prevent you from receiving Services-related notices.

You acknowledge that you do not own the User Account you use to access the Services. Notwithstanding anything in this Agreement to the contrary, you agree that we have the absolute right to manage, regulate, control, modify and/or eliminate any data stored by us or on our behalf on our (including on our third party hosting providers') servers as we see fit in our sole discretion, in any general or specific case, and that we will have no liability to you based on our exercise of such right. All data on our servers are subject to deletion, alteration or transfer. NOTWITHSTANDING ANY

VALUE ATTRIBUTED TO SUCH DATA BY YOU OR ANY THIRD PARTY, YOU UNDERSTAND AND AGREE THAT ANY DATA, USER ACCOUNT HISTORY AND CONTENT AND USER AND SYSTEM DATA (DEFINED BELOW) RESIDING ON OUR SERVERS, MAY BE DELETED, ALTERED, MOVED OR TRANSFERRED AT ANY TIME FOR ANY REASON IN OUR SOLE DISCRETION, WITH OR WITHOUT NOTICE AND WITH NO LIABILITY OF ANY KIND. WE DO NOT PROVIDE OR GUARANTEE, AND EXPRESSLY DISCLAIM, ANY VALUE, CASH OR OTHERWISE, ATTRIBUTED TO ANY DATA RESIDING ON OUR SERVERS.

### 1.5 User and System Data

As part of your use and interaction with the Services, we will collect data, metadata, content and information, including personal information, that you provide to us or that is collected by us or via the Services ("User and System Data"). You hereby grant to us, and represent and warrant that you have all rights necessary to grant to us, a perpetual, irrevocable, non-exclusive, sublicensable, transferable and royalty-free right and license to collect, use, reproduce, electronically distribute, transmit, have transmitted, perform, display, store, archive, and to modify and make derivative works of any and all User and System Data in order to provide and maintain the Services, including the making available to you of your User Account History and Content, and, solely in de-identified or aggregate form, to improve our products and services and for our other business purposes (and any and all such derived data is deemed part of our Intellectual Property).

### 1.6 Changes to the Services

We may, without prior notice, change the Services, stop providing the Services or features of the Services, to you or to Users generally, or create usage limits for the Services. We may permanently or temporarily terminate or suspend your access to the Services without notice and liability for any reason, including if in our sole determination you violate any provision of this Agreement, or for no reason. Upon termination of access for any reason or no reason, you continue to be bound by this Agreement.

### 1.7 Disputes with Other Users

You are solely responsible for your direct interactions with other Users. We reserve the right, but have no obligation, to monitor disputes between you and other Users. We will have no liability for your direct interactions with other Users, or for any User's action or inaction.

### 1.8 Export Control

You are entirely responsible for compliance with all applicable local laws and regulations relating to export and import regulations. You may not use the Services if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government or under similar laws or regulations applicable in other jurisdictions.

### 1.9 Additional Terms for Auctions and Bidding

Texas Thoroughbred Association holds auctions in the City of Grand Prairie, Dallas County, Texas. In order to participate in Services, You agree to complete forms, applications and documentation (collectively "Forms") that may be required at the sole discretion of Texas Thoroughbred Association including but not limited to Online Bidder Registration, Credit Application, Buyer Registration and Credit Request, Acknowledgment of Purchase. You agree to provide your electronic signature, facsimile, email response or other means of acceptance regarding Forms as instructed by and at the sole discretion of Texas Thoroughbred Association. You authorize Texas Thoroughbred Association to complete Forms on your behalf that are necessary to complete your transaction, including but not limited to electing whether or not to

request exemption from applicable Texas and local sales tax, or requesting blood tests on your purchases. You agree that you have read these Terms and Texas Thoroughbred Association Conditions of Sale and agree to abide by them with full and complete understanding thereof.

## 2. Auction Data; Permitted Uses; Restrictions

As part of the Services, we may provide you access to data, information and content relating to Horses available for auction, including without limitation current and historical item listings, descriptions, bids, selling prices, values and other related information, materials and content ("Auction Data").

You may access and use Auction Data only in order to assist you in bidding, via the Services, on Horses similar to the Horses to which such Auction Data relates, or to assist you in making determinations with respect to selling your own Horses via the Services, such as, for example, determining the potential value of your Horses or the appropriate time to sell your Horses (the "Permitted Uses"). With respect to Auction Data, you will not, and you will not permit any third party to, use any Auction Data in any manner or for any purpose other than the Permitted Uses, without our prior express written consent. For clarity, and without limiting the foregoing, the following activities are not permitted:

- (a) recording, copying or storing any Auction Data in any manner or for any purpose whatsoever, other than for the Permitted Uses;
- (b) directly or indirectly publishing, transmitting or distributing Auction Data, or any derivative works thereof including reports or other analyses regarding the secondary Horse market, in any manner for any form of monetary or other valuable consideration;
- (c) using or referencing Auction Data in connection with any securities trading activities; or
- (d) incorporating Auction Data in any manner into Horse pricing tools, dashboards or other visualization products.

## 3. Our Proprietary Rights

You acknowledge and agree that the Services and all materials therein or transferred thereby, including, without limitation, Auction Data and all other videos, audio, images and other content and information displayed or made available on the Services, and all software, algorithms, code and technology underlying the Services, and all intellectual property rights therein and thereto throughout the world (collectively and individually, our "Intellectual Property"), are our (or our licensors' as applicable) sole and exclusive property. Except as explicitly provided herein, nothing in this Agreement will be deemed to create a license in or under any intellectual property rights, and you agree not to access, sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any of our Intellectual Property. Use of our Intellectual Property for any purpose not expressly permitted by this Agreement is strictly prohibited.

You may choose to, or we may invite you to submit, comments or ideas about the Services, including without limitation about how to improve the Services or our products ("Ideas"). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place us under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, we do not waive any rights to use similar or related ideas previously known to us, or developed by our employees, or obtained from sources other than you.

## 4. Additional Terms for Mobile Applications

4.1 Mobile Applications. We may make available software to access the Services via a mobile device ("Mobile Applications"). To use any Mobile Applications, you must have a mobile device that is compatible with the Mobile Applications. We do not warrant that the Mobile Applications will be compatible with your mobile device. You may use mobile data in connection with the Mobile Applications and may incur additional charges from your wireless or cellular provider for these services. You agree that you are solely responsible for any such charges. We hereby grant you a non-exclusive, non-transferable, revocable license to use a compiled code copy of the Mobile Applications for your User Account on one or more mobile devices owned or leased solely by you, solely for your personal use. You may not: (i) modify, disassemble, decompile or reverse engineer the Mobile Applications, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the Mobile Applications to any third party or use the Mobile Applications to provide time sharing or similar services for any third party; (iii) make any copies of the Mobile Applications; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Mobile Applications, features that prevent or restrict use or copying of any content accessible through the Mobile Applications, or features that enforce limitations on use of the Mobile Applications; or (v) delete the copyright and other proprietary rights notices on the Mobile Applications. You acknowledge that we may from time to time issue upgraded versions of the Mobile Applications, and may, where your device settings permit, automatically electronically upgrade the version of the Mobile Applications that you are using on your mobile device. You consent to such automatic upgrading on your mobile device, and agree that the terms and conditions of this Agreement will apply to all such upgrades. Any third-party code that may be incorporated in the Mobile Applications is covered by the applicable open source or third-party license terms, if any, authorizing use of such code. The foregoing license grant is not a sale of the Mobile Applications or any copy thereof, and we or our third-party partners or suppliers retain all right, title, and interest in the Mobile Applications (and any copy thereof). Any attempt by you to transfer any of the rights, duties or obligations hereunder, except as expressly provided for in this Agreement, is void. We reserve all rights not expressly granted under this Agreement. If the Mobile Applications are being acquired on behalf of the United States Government, then the following provision applies. The Mobile Applications will be deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, reproduction, release, performance, display or disclosure of the Services and any accompanying documentation by the U.S. Government will be governed solely by this Agreement and is prohibited except to the extent expressly permitted by this Agreement. The Mobile Applications are subject to United States export laws and regulations. The Mobile Applications may not be exported or re-exported to certain countries or those persons or entities prohibited from receiving exports from the United States. In addition, the Mobile Applications may be subject to the import and export laws of other countries. You agree to comply with all United States and foreign laws related to use of the Mobile Applications and the Services.

4.2 Mobile Applications from Apple App Store. The following applies to any Mobile Applications you acquire from the Apple App Store ("Apple-Sourced Software"): You acknowledge and agree that this Agreement is solely between you and us, not Apple, Inc. ("Apple") and that Apple has no responsibility for the Apple-Sourced Software or content thereof. Your use of the Apple-Sourced Software must comply with the App Store terms of use. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Apple-Sourced Software. In the event of any failure of the Apple-Sourced Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Apple-Sourced Software to you; to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Apple-Sourced Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by this Agreement and any law applicable to us as provider of the software. You acknowledge that Apple is not responsible for addressing any claims of you or any third party relating to the Apple-Sourced Software or your possession and/or use of the Apple-Sourced Software, including, but not limited to: (i) product liability claims; (ii) any claim that the Apple-Sourced Software fails to conform to any applicable legal or regulatory

requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by this Agreement and any law applicable to us as provider of the software. You acknowledge that, in the event of any third-party claim that the Apple-Sourced Software or your possession and use of that Apple-Sourced Software infringes that third party's intellectual property rights, we, not Apple, 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. You and we acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of this Agreement as relates to your license of the Apple-Sourced Software, and that, upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement as relates to your license of the Apple-Sourced Software against you as a third-party beneficiary thereof.

4.3 Mobile Applications from Google Play Store. The following applies to any Mobile Applications you acquire from the Google Play Store ("Google-Sourced Software"): (i) you acknowledge that this Agreement is between you and us only, and not with Google, Inc. ("Google"); (ii) your use of Google-Sourced Software must comply with Google's then-current Google Play Store terms of use; (iii) Google is only a provider of the Google Play Store where you obtained the Google-Sourced Software; (iv) we, and not Google, are solely responsible for Google-Sourced Software; (v) Google has no obligation or liability to you with respect to Google-Sourced Software or the Agreement; and (vi) you acknowledge and agree that Google is a third-party beneficiary to the Agreement as it relates to our Google-Sourced Software.

4.4 Precedence. To the extent of any conflict between this Agreement and the terms of any end-user license agreement distributed with the Mobile Applications, the terms of this Agreement will prevail and govern.

## 5. Fees and Payment

5.1 Fees/Requesting Bidding Privileges. There are no fees or costs associated with signing up for or maintaining a User Account. However, when requesting bidding privileges for your User Account, you may be required to provide us with a current, valid credit card in your name as part of our assessment of your request for credit and assigned bidding limit. All information that you provide in connection with this process must be accurate, complete and current. Depending on our assessment, you may be required to post a deposit prior to placing bids online in any auction.

5.2 Third-Party Payment Provider. We may use a third-party service provider for payment services. By using the Services, you agree to be bound by any terms of use of the third-party service provider as we may make available to you from time to time.

## 6. Privacy

We care about the privacy of our Users. You understand that by using the Services we will collect, use and disclose your personal information and aggregate and/or anonymized data.

## 7. Security

While we try to maintain the security of the Services, we do not guarantee that the Service will be secure or that any use of the Service will be uninterrupted. THE SERVICES ARE PROVIDED "AS IS." We cannot guarantee that unauthorized third parties will never be able to defeat our security measures or use your information for improper purposes. You acknowledge that you provide your information at your own risk.

## 8. Disclaimer of Third-Party Links and Materials

THE SERVICES MAY CONTAIN THIRD-PARTY MATERIALS OR LINKS TO THIRD-PARTY MATERIALS THAT WE DO NOT OWN OR CONTROL. WE DO NOT ENDORSE OR ASSUME ANY RESPONSIBILITY FOR ANY SUCH THIRD-PARTY SITES, INFORMATION, MATERIALS, PRODUCTS OR SERVICES. IF YOU ACCESS A THIRD-PARTY WEBSITE OR SERVICE FROM THE SERVICES OR SHARE YOUR DATA OR INFORMATION ON OR THROUGH ANY THIRD-PARTY WEBSITE OR SERVICE, YOU DO SO AT YOUR OWN RISK, AND YOU UNDERSTAND THAT THIS AGREEMENT AND OUR PRIVACY POLICY DO NOT APPLY TO YOUR USE OF SUCH SITES. YOU EXPRESSLY RELIEVE US FROM ANY AND ALL LIABILITY ARISING FROM YOUR USE OF ANY THIRD-PARTY WEBSITE, SERVICE OR CONTENT. ADDITIONALLY, YOUR DEALINGS WITH OR PARTICIPATION IN PROMOTIONS OF ADVERTISERS FOUND ON THE SERVICES, INCLUDING THE PAYMENT FOR AND DELIVERY OF GOODS OR SERVICE BY THEM, AND ANY OTHER OF THEIR TERMS (SUCH AS WARRANTIES) ARE SOLELY BETWEEN YOU AND SUCH ADVERTISERS. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE OF ANY SORT RELATING TO YOUR DEALINGS WITH SUCH ADVERTISERS.

## 9. Indemnity

You will defend, indemnify and hold us and our affiliates, agents, suppliers or licensors (and our and their employees, contractors, agents, officers and directors) harmless from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from or related to: (i) your use of and access to the Services, including any data or content transmitted or received by you; (ii) your violation of any term of this Agreement, including without limitation any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy or intellectual property rights; (iv) your violation of any applicable law, rule or regulation; (v) your use of the Services or Auction Data in any manner not expressly authorized by this Agreement, including your breach of any of the restrictions applying to your use of the Services or Auction Data as set forth in Section 1.3 or 2 above, respectively; (vi) your gross negligence or willful misconduct; or (vii) any third party's access and use of the Services with your unique username, password or other appropriate security code.

## 10. No Warranty

THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE SERVICES IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, WE, OUR SUBSIDIARIES, OUR AFFILIATES, AND OUR LICENSORS DO NOT WARRANT THAT ANY CONTENT OR INFORMATION ACCESSED THROUGH THE SERVICES IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICES WILL MEET YOUR REQUIREMENTS; THAT THE SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD OR YOUR USE OF THE SERVICES.

FEDERAL LAW, SOME STATES, PROVINCES AND OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION AND LIMITATIONS OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS AND EXCLUSIONS UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 11. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE OR OUR AFFILIATES, AGENTS, SUPPLIERS OR LICENSORS (OR OUR OR THEIR EMPLOYEES, CONTRACTORS, AGENTS, OFFICERS OR DIRECTORS), BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, ARISING OUT OF OR RELATING TO THE USE OF, OR INABILITY TO USE, THE SERVICES. UNDER NO CIRCUMSTANCES WILL WE BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF THE SERVICES; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICES; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH THE SERVICES BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICES; AND/OR (VII) USER DATA OR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY THIRD PARTY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE OR OUR AFFILIATES, AGENTS, SUPPLIERS OR LICENSORS (OR OUR OR THEIR EMPLOYEES, CONTRACTORS, AGENTS, OFFICERS OR DIRECTORS) BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE GREATER OF THE AMOUNTS YOU PAID TO TEXASFOR ITS SERVICES OR USD 50.00.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 12. Governing Law and Class Action/Dispute Resolution/Jury Trial Waiver

12.1 Agreement. You and TTA agree that we will resolve any dispute or question arising as to the interpretation of any clause of, or the rights and liabilities of the parties under or in any manner relating to these Terms and connected in any manner with use of the Services (a "Claim") in accordance with one of the subsections below or as TTA and you otherwise agree in writing.

12.2 Governing Law/Venue. This Agreement shall be governed by the laws of the State of Texas without regard to the conflicts of laws rules thereof. You hereby attorn and agree to submit to the personal and exclusive jurisdiction and proper venue of the federal and state courts located in Hays County, Texas for any action relating to this action and waive any right to trial by jury. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

12.3 Arbitration: Any Claim shall be referred to final and binding arbitration before a single arbitrator in Hays County, Texas, under the rules and procedures of the American Arbitration Association relating to the selection of arbitrators for the determination of issues. The arbitration shall be governed by the United States Federal Arbitration Act, 9 U.S.C. §§ 1-16. This agreement to arbitrate is supported by adequate consideration, receipt of which is acknowledged. The decision of the arbitrator will be binding, final and conclusive on the parties, and judgment on the arbitrator's decision may be entered in any court having jurisdiction thereof. This agreement to arbitrate is binding upon the respective successors, heirs, legal representatives, assigns and transferees of the parties. The arbitrator may, sua sponte or upon the written request of a party, issue written directions as to the scope and timetable for discovery. In the event that the arbitrator should determine that the matter(s) in dispute may be resolved by a review of a written record, and that a hearing is not necessary, each party waives the right to a hearing. The arbitrator shall be charged to render a written opinion reciting the facts as determined and the applicable law as applied. The arbitrator may award injunctive and other equitable relief, as well as an award of monetary damages. No claim of fraud, duress or other basis for revocation of contract made with respect to these agreed Terms shall limit or preclude the enforcement of this agreement to arbitrate except as such fraud, duress or other basis for revocation shall arise with particularity to this agreement to arbitrate, and each party conclusively agrees that this provision shall be interpreted in a manner consistent with the separability doctrine of *Prima Paint Corp. v. Flood and Conklin Mfg. Co.*, 388 U.S. 395 (1967).

12.4 Class Action/Jury Trial Waiver. WITH RESPECT TO ALL PERSONS AND ENTITIES, REGARDLESS OF WHETHER THEY HAVE OBTAINED OR USED THE SERVICES FOR PERSONAL, COMMERCIAL OR OTHER PURPOSES, ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE PROCEEDING. YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND WE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR OTHER REPRESENTATIVE PROCEEDING OF ANY KIND. SOME JURISDICTIONS DO NOT ALLOW THIS WAIVER, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. THE WAIVER IN THIS SECTION WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

12.5 Improperly Filed Claims: All Claims brought under this Section must be resolved in accordance with this Section. All Claims filed or brought contrary to this Section shall be considered improperly filed. Should you file a Claim contrary to this Section, TTA shall be entitled to recover its reasonable attorneys' fees and costs actually incurred, provided that TTA has notified you in writing of the improperly filed claim, and you have failed to promptly withdraw the claim.

12.6 Survival: Subject to Section 15.1, this Section 13 shall survive any termination of these Terms and will continue to apply even if you stop using the Service or terminate your TTA Account.

## 13. General

13.1 Assignment. This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by us without restriction. Any attempted transfer or assignment in violation hereof will be null and void.

13.2 Notification Procedures. We may provide notifications, whether such notifications are required by law or are for marketing or other business-related purposes, to you via email notice, written or hard copy notice, or through posting of such notice on our website, as we determine in our sole discretion. We reserve the right to determine the form and means of providing notifications to our Users, provided that you may opt out of certain notifications as required under applicable laws or as described in this Agreement or our Privacy Policy. We are not responsible for any automatic filtering you or your network provider may apply to email notifications we send to the email address you provide us.

13.3 Changes to the Agreement. We may, in our sole discretion, modify or update this Agreement from time to time, and so you should review this page periodically. When we change the Agreement in a material manner, we will update the 'last modified' date at the top of this page and notify you that material changes have been made to the Agreement. Your continued use of the Services after any such change constitutes your acceptance of the new Terms of Service. If you do not agree to any of these terms or any future Terms of Service, do not use or access (or continue to access) the Services. YOU HEREBY ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNLESS OTHERWISE STATED, ANY AND EACH MODIFIED OR NEW TERMS OF SERVICE WILL FULLY GOVERN YOUR USE OF THE SERVICES, AND IS EFFECTIVE, BEGINNING AS OF YOUR FIRST ACCESS TO AND USE OF THE SERVICES, EVEN IF PRIOR TO YOUR ACCEPTANCE OF SUCH MODIFIED TERMS OF SERVICE.

13.4 Entire Agreement/Severability. This Agreement, together with any amendments and any additional agreements you may enter into with us in connection with the Services, will constitute the entire agreement between you and us concerning the Services. None of our employees or representatives are authorized to make any modification or addition to this Agreement. Any statements or comments made between you and any of our employees or representatives are expressly excluded from this Agreement and will not apply to you or us or your use of the Services. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions of this Agreement, which will remain in full force and effect. Where we have provided any translation of the English language version of this Agreement, such translation is provided for your convenience only. To the extent there is any inconsistency between the English language version and any such translation, the English language version shall govern.

13.5 No Waiver. No waiver of any term of this Agreement will be deemed a further or continuing waiver of such term or any other term, and our failure to assert any right or provision under this Agreement will not constitute a waiver of such right or provision.

13.6 Contact. Please contact us at [denisb@texasthroughbred.com](mailto:denisb@texasthroughbred.com) with any questions regarding this Agreement.

13.7 California Users. The provider of the Services is Texas Thoroughbred Association. If you are a California resident, in accordance with Cal. Civ. Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210 or (916) 445-1254.