

HOMERUN TERMS OF USE

Last updated November 21, 2011

Welcome to HomeRun! HomeRun is a service operated by Deem Offers, Inc. ("HomeRun", "our", "we" or "us") that connects its users to deals offered by merchants for a variety of products and/or services. These HomeRun Terms of Use ("Terms of Use") apply to the HomeRun service and the HomeRun.com web site, any mobile applications that post these Terms of Use and any interactive features, downloads, applications, and widgets that post these Terms of Use (collectively, "Site"). These Terms of Use apply to your use of the Site, regardless of whether accessed via computer, kiosk, mobile device or otherwise. **You agree to these Terms of Use and our [Privacy Statement](#) by accessing or using the Site.** IF YOU DO NOT AGREE TO THESE TERMS OF USE, YOU MUST IMMEDIATELY CEASE ACCESS TO THE SITE AND DO NOT USE ANY HOMERUN SERVICE OFFERED THROUGH THE SITE.

In some instances, both these Terms of Use and a separate document that provides additional conditions may apply to a service or product offered via the Site ("**Additional Terms**"). To the extent there is a conflict between these Terms of Use and any Additional Terms, the Additional Terms will control unless the Additional Terms expressly state otherwise. Please also review our Privacy Statement [here](#).

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1. Eligibility, Membership and Permitted Uses.

HomeRun promotes and markets certain products and services on behalf of select merchants (“Merchants”). Vouchers may be purchased by you to be redeemed for products and/or services from Merchants or other parties identified in the terms of the offer. All vouchers are subject to these Terms of Use and the terms of the offer disclosed to users at the time of purchase. Merchants are responsible for redeeming vouchers, not HomeRun. Use of the Site and its services is void where prohibited.

You must be 18 years old and able to form a legally binding contract to be eligible to use HomeRun’s services. Certain areas of the Site may require you to create an account with us or may otherwise ask you to provide information to participate in certain features or access certain content. The decision to provide this information is purely optional; however, if you elect not to provide such information, you may not be able to access certain content or participate in certain features of the Site. If you choose to create an account you agree that:

- Such account is for your personal use;
- You will only make legitimate purchases;
- You will use all appropriate measures to safeguard your password and be responsible for your use or anyone else’s use should you allow another person to access your account;
- You will have the right to provide any and all information you submit to the Site, and that you will only provide information about yourself;
- You will contribute only decent and appropriate content at all times;
- You will notify us immediately of any unauthorized use of your account;
- You will provide only accurate, complete, and current information to us.

If you register with us, you agree to accept responsibility for all activities that occur under your account or password, if any, and you agree you will not sell, transfer or assign your membership or any membership rights. You are responsible for maintaining the confidentiality of your password, if any, and for restricting access to your computer (or other Internet access device, as applicable). HomeRun reserves the right to cancel, suspend, or deactivate accounts in its sole discretion and without liability. In addition, if you violate any of these limitations we may terminate your account and, without limitation, you may forfeit any points or credits in your account. If we discover that you have committed any fraud, submitted any false information, or submitted any other person’s information to the Site, we will terminate your account, and we reserve the right to hold you responsible and liable for any and all damages that we suffer. We may pursue any and all available legal actions.

2. Site Content.

Our “content” includes, without limitations, all products, software, and services offered via the Site, the technology to operate the Site, as well as all text, images, photos, video, audio, source code, articles, design, and all other forms of data or communication created, posted, displayed, or transmitted by or onto the Site. The content is proprietary and belongs to us or our Merchants or other partners. You may not modify, copy, distribute, display, transmit, sell, or create derivative works from any content or information from or through the Site.

ANY COPYING, DISTRIBUTING, TRANSMITTING, POSTING, LINKING, DEEP LINKING, OR OTHERWISE MODIFYING OF THIS SITE OR CONTENT WITHOUT THE EXPRESS WRITTEN PERMISSION OF HOMERUN IS STRICTLY PROHIBITED. Any violation of this policy may result in a copyright, trademark or other intellectual property right infringement that may subject you to civil and/or criminal penalties.

The content is protected by United States and international laws. HomeRun owns copyright in the selection, coordination, arrangement and enhancement of the content and Site. You may download, print, or save content for your personal use only. Except as otherwise expressly permitted by these Terms of Use, no copying, redistribution, retransmission, publication or commercial exploitation of downloaded content is permitted without the express prior written permission of HomeRun and the owner. If copying, redistribution or publication of content is permitted, you agree that you will not make any changes in or delete any author attribution, trademark legend or copyright notice.

You acknowledge and agree that we are not granting any license to you under any intellectual property rights by virtue of these Terms of Use except for the limited right to use the Site and access its services in accordance with these Terms of Use and solely for your individual and personal use as intended through the normal functionality of the Site and its services. YOU UNDERSTAND THAT YOU HAVE NO RIGHTS TO THE SITE, CONTENT OR ANY OTHER HOMERUN PROPERTY EXCEPT AS WE INDICATED IN THESE TERMS OF USE. We reserve all rights not expressly granted, in and to the Site, its content and services.

HomeRun, the HomeRun logo, and other names, logos, icons and marks identifying HomeRun products and services are trademarks of Deem Offers, Inc. All rights in respect of this trademark are hereby expressly reserved. You may not use any HomeRun mark without prior written permission from Deem Offers, Inc. Unless otherwise indicated, all other trademarks appearing on the Site are the property of their respective owners.

3. Site Availability and Modification to the Site.

You acknowledge that sometimes there may be interruptions in service or events that are beyond the control of HomeRun. HomeRun shall not be responsible for any

data lost while transmitting information on the Internet. While it is HomeRun's objective to make the Site accessible 24 hours per day, 7 days per week, the Site may be unavailable from time to time for any or no reason, including without limitation, for routine maintenance, and HomeRun will not be liable for any such unavailability.

HomeRun shall have the right at any time to change or discontinue any aspect or feature of the Site, including, but not limited to, content, hours of availability and equipment needed for access or use. You agree that HomeRun will not be liable to you or to any third party for any modification, suspension or discontinuance of the Site or any part thereof. HomeRun also reserves the right to charge for use of the Site, in whole or in part, and to change its fees from time to time in its discretion.

4. Modification to Terms of Use.

HomeRun may, in its sole discretion, modify or revise these Terms of Use, at any time. If we make changes that materially affect your use of the Site or our services we will notify you by sending you an e-mail to the e-mail address that is registered with your account and/or by posting notice of the change on the Site. You agree that your use of the Site, after the date on which the Terms of Use changed, will constitute your acceptance of the updated Terms of Use, and that you agree to be bound by such modifications or revisions. Please revisit our Terms of Use often to ensure that you stay informed of any changes to the Site.

5. Equipment and Transmission of Information.

You shall be responsible for obtaining and maintaining all Internet access, telephone, computer hardware and other equipment needed for access to and use of the Site and all charges related thereto. HomeRun shall not be liable for any damages to your equipment resulting from the use of the Site.

You understand that we do not control the security of any network you may choose to use to access the Site or communicate with us. Therefore, we cannot be, and are not responsible for, the security or data loss of any information that you choose to submit to the Site while the information is being transmitted or communicated.

6. Restrictions on Use.

HomeRun reserves the right to modify, suspend, or discontinue access to its services and the Site for any reason, including but not limited to, your violation of any of the restrictions below. In your use of the Site or its services you agree that you will not (or aid or abet any third party to):

- a. Use the Site or its services for any phishing, spoofing, illegal or fraudulent activity or violate any laws;

- b. Exploit the Site or its services to access unauthorized information;
- c. Use the Site for any commercial or promotional activities or sales efforts without prior written consent from us;
- d. Copy, publish, transmit, distribute, perform, sell, create derivative works of, or in any way exploit any of the content of the Site, in whole or in part, without our prior written consent;
- e. Use the Site or its services to attack, threaten violence, stalk, harass, incite, harm, or intimidate any other user, person or organization, or to engage in any other threatening behavior;
- f. Transmit or post any material that is abusive, harassing, tortious, defamatory, vulgar, pornographic, obscene, libelous, fraudulent, invasive of another's privacy, hateful, or racially, ethnically, or otherwise objectionable, for example, any materials containing slurs, hate speech or which attack an individual or group on the basis of race, color, religion, national origin, or sexual preferences;
- g. Transmit any advertising, promotional materials, junk mail, spam (sending the same message multiple times or to multiple people will be treated as spam), chain letters, contests, pyramid schemes, surveys, or any other form of solicitation or mass messaging, whether commercial in nature or not;
- h. Transmit any material that contains adware, malware, spyware, software viruses, or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
- i. Use the Site to solicit information from minors or to harm or threaten to harm minors;
- j. Engage in or contribute to any wrongdoing that may create any liability for HomeRun or any of its partners and/or Merchants;
- k. Use the Site in a manner that, or post to the Site any material that infringes, misappropriates or violates any third party rights including, without limitation, breach of confidence, copyright, trademark, patent, trade secret, moral rights, privacy rights, right of publicity, or any other intellectual property or proprietary right;
- l. Impersonate any person or entity, or otherwise misrepresent your affiliation with a person or entity;
- m. Interfere with or disrupt or attempt to disrupt the Site or servers or networks

connected to the Site, or cause excessive traffic demands on the Site's technology infrastructure, or disobey any requirements, procedures, policies, or regulations of networks connected to the Site or our services;

n. Engage in the unauthorized use, copying, or distribution of any of the Site's content;

o. Circumvent, disable or otherwise interfere with security-related features of the Site or features that prevent or restrict use or copying of any content or enforce limitations on use of the Site or the content therein;

p. Reverse engineer any portion of the Site;

q. Process, collect or record user information or Site content, or otherwise access the Site without the Company's permission, using automated means, such as but not limited to robots, spiders, scrapers, or site search/retrieval applications (except as may be a result of standard search engine or Internet browser usage);

r. Contribute content that contains restricted access mechanisms, hidden content of any kinds, or utilize SQL injection or cross site scripting methods;

s. Use the Site or any content to transmit any malicious code, computer virus, worm, defect, Trojan Horse, or any other item of a destructive nature;

t. Use the Site or any of its information to solicit Site users, Merchants, or partners to become users, Merchants or partners of other similar services that directly or indirectly compete with HomeRun.

7. Your Content and Communications.

HomeRun may allow you to express your opinions, communicate, and share purchase histories with other users of the Site through forums, groups, or other communication methods. By submitting content to the Site, you grant to HomeRun and its successors in business a perpetual, worldwide, irrevocable, royalty-free, and non-exclusive license to use, reproduce, distribute, sub-license through multiple tiers of sublicensees, modify, edit, publish, translate, display, perform, adapt, create derivative works from and market and promote the content, for any commercial purposes, and in any medium now existing or hereinafter developed, and to use the content without your prior approval or the payment of any compensation. You also grant each user of the Site a non-exclusive license to access your content as permitted through the functionality of the Site and under these Terms of Use.

By posting content to the Site, you also hereby represent and warrant that you have the right to post that content and to grant the foregoing rights to HomeRun and its affiliates, partners, sublicensees, and users of the Site.

You take sole responsibility for all content that you post on the Site and the consequences of posting that content. You are responsible for obtaining all necessary rights to upload, post and distribute all content, including obtaining permission from any person shown in a photo that you upload or that is identified in any writing that you post. HomeRun shall have the right, but not the obligation, to monitor the content at any time and shall have the right, but not the obligation, to remove or modify any content that HomeRun, in its sole discretion, find to be in violation of these Terms of Use or otherwise inappropriate. Any comments, suggestions, ratings, advice, and/or messages of any kind made by you or any other users of the Site are those of the respective authors and not of HomeRun. You acknowledge that any content you post on the Site is a public and not private communication. Others may read and view your communications without your knowledge, so use common sense and be careful about what you post. You acknowledge and agree that your relationship with HomeRun is not a confidential, fiduciary, or other type of special relationship, and, except as otherwise set forth in these Terms of Use, that your decision to transmit any content to or from the Site does not place HomeRun in a position that is any different from the position held by members of the general public, including with regard to your content. None of your content will be subject to any obligation of confidence on the part of HomeRun, and we will not be liable for any use or disclosure of any content that you provide.

We do not control or endorse the content, messages or information posted by users of the Site. We specifically disclaim any liability resulting from your or any other postings to the Site, including any objectionable content.

During the use of HomeRun, we may allow you to invite friends to join you on the Site either as a simple invitation or as part of sending them a free gift. To make it easy to find friends, we let you submit their email addresses manually or through a bulk webmail import. By submitting email addresses via either method, you grant HomeRun the right to send email invites to those provided recipients on your behalf as requested or directed by you.

You are solely responsible for your interaction with other users of the Site, whether online or offline. We are not responsible or liable for the conduct of any user. We reserve the right, but have no obligation, to monitor disputes and take action associated with those disputes (e.g., revoking membership). Exercise common sense and your best judgment in your interactions with others, when you submit or post any personal or other information, and in all other online activities.

8. Terms of Purchase.

You are required to create an account in order to make a purchase. This is required so we can provide you with easy access to print your orders, view your past

purchases, modify your preferences, and to ensure permissible use of the products and/or services.

The vouchers you purchase from our Site are special promotional offers that you purchase from Merchants and that can be redeemed for specified products or services from those Merchants. The Merchant, not HomeRun, is the seller of the products and/or services. When you purchase or redeem a voucher you are agreeing to these Terms of Use, including this Section 8, (Terms of Purchase), and any terms disclosed at the time of purchase and on the voucher (the “Additional Terms,”. In the event there is a conflict between the Terms of Use and the Additional Terms, the Additional Terms will control.

A. Vouchers.

As the issuer of the voucher, the Merchant is solely responsible for redeeming the voucher you purchase on the Site. The Merchant is also fully responsible for all goods and services it provides to you and for any and all injuries, illnesses, damages, claims, liabilities and costs (collectively, “Liabilities”) it may cause you to suffer, directly or indirectly, in full or in part, whether related to the use or redemption of a voucher or not. You waive and release HomeRun and its subsidiaries, affiliates, partners, officers, directors, employees and agents from any Liabilities arising from or related to any Merchant’s act or Merchant’s omission to act in connection with your use of a voucher or the products and/or services relating to the voucher.

There are three kinds of vouchers you may purchase:

- i) “Standard Voucher” means any voucher other than Event Voucher or Travel Voucher. The Promotional Value (defined below) of a Standard Voucher will expire on the date specified on the voucher unless prohibited by law. The Amount Paid (defined below) will not expire.
- ii) “Event Voucher” means any voucher for ticketed events. Event Vouchers have no value once the event date and time has passed.
- iii) “Travel Voucher” means any voucher for hotel stays, cruises, or other travel packages. The voucher will expire on the date specified on the voucher unless prohibited by law. If the expiration date on the Travel Voucher has passed, and you have not yet redeemed the Travel Voucher or if you have redeemed your Travel Voucher by booking your travel plans and need to reschedule, (to the extent the Travel Voucher is not for a specific date or dates), please contact the Merchant directly for credits or rescheduling assistance. Once the expiration date on the Travel Voucher has passed, and you have not yet redeemed the Travel Voucher, or if you have redeemed your Travel Voucher by booking your travel plans, HomeRun deems the associated Travel Voucher fully redeemed, and therefore, the Merchant’s policy with respect to credits, rescheduling or refunds will control and you agree to look

solely to the Merchant in those instances. If you would like HomeRun to help you connect with Merchants, please email us at help@homerunmail.com.

Vouchers have the following values:

- i) "Amount Paid" means the amount paid by you to purchase the voucher.
- ii) "Promotional Value" means the additional value beyond the Amount Paid.
- iii) "Full Offer Value" means the Amount Paid plus the Promotional Value.

As an example, if you pay \$25 and receive a voucher that will give you \$60 worth of products or services from a Merchant, this means the voucher has:

- A Full Offer Value of \$60;
- An Amount Paid of \$25 (this does not expire until used or refunded);
- A Promotional Value of \$35 (this does expire on the date stated on the voucher unless prohibited by law).

B. Refunds and Credits.

In no event will users ever receive a refund or credit that is greater than the Amount Paid.

For Standard Vouchers, HomeRun will provide a credit or refund for the Amount Paid within fourteen (14) days of purchase; provided the Standard Voucher is not previously redeemed. After fourteen (14) days and up to thirty (30) days of your purchase of a Standard Voucher, HomeRun will provide a credit in your HomeRun account for the Amount Paid; provided the Standard Voucher is not previously redeemed. After thirty (30) days from your purchase of a Standard Voucher, the Promotional Value will expire in accordance with the terms of the Standard Voucher and the Amount Paid will never expire until redeemed or refunded; however, after thirty (30) days the Amount Paid will only be refunded by HomeRun as required by law or in the event a Merchant refuses to honor a valid voucher as more fully detailed below.

For Event Vouchers, HomeRun will provide a credit or refund for the Amount Paid (i) within twenty-four (24) hours of purchase; or (ii) if the event is cancelled and not rescheduled. As detailed above, HomeRun deems Event Vouchers fully redeemed once the event has passed, even if you did not use the Event Voucher, and no refunds or credits are available for any such Event Vouchers.

For Travel Vouchers, HomeRun will provide a credit or refund for the Amount Paid within twenty-four (24) hours of purchase, but only if you have not yet booked your travel plans within that twenty-four (24) hour period. If you have booked your travel plans within that twenty-four (24) hour period, HomeRun deems that Travel Voucher redeemed and all refunds, credits or rescheduling will be subject to the policies of the Merchant and you will look solely to the Merchant in that instance.

In the event a Merchant refuses to honor any valid voucher you purchased, HomeRun will provide you with a credit or a refund for the Amount Paid. You will need to provide us with a written request including a detailed description of your attempt to use the voucher and the responsible Merchant's refusal to honor the voucher. Upon review and verification of your request (including but not limited to verification with the Merchant), we will provide you with the credit or refund. Please send your requests to help@homerunmail.com.

Unless otherwise stated in the voucher or required by law, the following additional terms apply to all vouchers:

- Use of vouchers for alcoholic beverages is at the sole discretion of the Merchant,
- Vouchers cannot be combined with any other coupons or offers,
- Vouchers cannot be used for taxes, tips, prior balances, shipping or handling, as applicable,
- Voucher price does not include sales, value added or use taxes, which may be charged to you separately by the Merchant at the time you redeem the voucher,
- Vouchers are not redeemable for cash,
- Unauthorized reproduction, resale, modification or trade of vouchers is prohibited,
- Limit one (1) voucher per redemption,
- Vouchers are not reloadable.

9. Credits and Points.

Credits can be used on the Site towards any purchase. You get credits when you invite new users and/or when you receive credit relating to your purchases.

You get points as you do more, enjoy more, and share more on the Site. You get points for inviting, sharing, and buying on the Site. As you accrue more points, you may be offered special deals such as our Private Reserve deals.

10. Copyrights and Other Intellectual Property.

You may not use the Site for any purpose or in any manner that infringes the rights of any third party. We encourage you to report any content on the Site that you believe infringes your rights. Only the intellectual property rights owner or person authorized to act on behalf of the owner can report potentially infringing content. If you have a good faith belief that content on the Site infringes your copyright, trademark, or other intellectual property rights, please follow the procedures set forth below.

COPYRIGHT. Pursuant to the Digital Millennium Copyright Act (DMCA), Title 17 of the U.S. Code, Section 512, HomeRun has implemented procedures for receiving written notification of claimed copyright infringement and for processing such claims in accordance with such law. If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide the following information to our designated copyright agent:

- a. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- b. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- c. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
- d. Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;
- e. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- f. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

All DMCA notices should be sent to our designated agent as follows:

HomeRun
Attn: DMCA Complaints
1051 E. Hillsdale Blvd., 6th Floor
Foster City, California 94404

OTHER INTELLECTUAL PROPERTY. If you believe that any content on the Site violates your exclusive rights other than copyrights, please provide HomeRun at least the following information:

- a. Your physical or electronic signature;
- b. Identification of the material that you claim is infringing your exclusive rights and information reasonably sufficient to permit us to locate the material;
- c. An explanation of the exclusive rights that you own/have and why the you believe the content infringes those rights, sufficient for us to evaluate the complaint; and
- d. Accurate contact information for you.

Please send your complaint regarding content on the Site to:

HomeRun
Attn: Complaints
1051 E. Hillsdale Blvd., 6th Floor
Foster City, California 94404

GENERAL RIGHTS INFORMATION. It is often difficult to determine if your intellectual property rights have been violated or if the DMCA requirements have been met. We may request additional information before we remove any infringing material. If a dispute develops as to the correct owner of the rights in question, we reserve the right to remove your content along with that of the alleged infringer pending resolution of the matter. HomeRun will provide you with notice if your materials have been removed based on a third party complaint of alleged infringement of the third party's intellectual property rights.

Please note that under Section 512(f) of the Copyright Act any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability for damages. **Don't make false claims!** Please also note that the information provided in the legal notice you submit may be forwarded to the person who provided the allegedly infringing content.

Under Section 512(f) of the Copyright Act, any person who knowingly materially misrepresents that material or activity was removed or disabled by mistake or misidentification may be subject to liability.

We have a policy of terminating the accounts of users who (in our reasonable discretion) are repeat infringers.

11. Widgets and Applications.

We may provide certain materials that you may choose to include on your personal web page, third party website or social networking site (“Personal Page”) by pasting the HTML or other code provided by us and labeled as an embed code (or similar identifying label) (“Embed Code”) into your Personal Page (“Widget”). For any Widgets that we make available, we grant you a revocable permission, subject to the restrictions in these Terms of Use, to include the Embed Code as provided by us (without editing) for inclusion only on your Personal Page and only on a site that: (i) permits you to post the Widget there; and (ii) does not have terms of use or other conditions that purport to give that site operator any interest or right in or to our Embed Code or materials other than to obtain a limited, terminable right to host the Widget and permit its normal operation. Your use of the Widget may display our trademarks contained on the Widget or materials made available via the Widget, but we control the use thereof and all goodwill associated with such use inures exclusively to us. You agree that you will not embed or otherwise make available a Widget on a web page or other location in violation of the prior sentence or that contains content that is distasteful, unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable (in our sole opinion). We make no specific warranties about Widgets and we may discontinue providing the services necessary for the Widgets to operate at any time for any reason without any liability to you. In addition, we may disable Widgets that you include on your Personal Page(s) if you violate these Terms of Use (as determined by us in our sole discretion), or for any or no reason, without any liability to you. You agree that our permission to you to use Widgets on your Personal Page does not provide you (or any third party) with any intellectual property rights in or to the Widget or the materials made available via any Widget. You agree to not make any commercial use of any Widget or the materials made available in a Widget, in whole or in part, nor to sell, lease, hypothecate, transfer, license, encumber or otherwise exploit same, in whole or in part, or purport to give any third party permission to do so. This includes a prohibition on you or a third party overlaying or otherwise associating advertising with the Widget or materials. You agree to include, and not remove or alter, our trademark, copyright or other proprietary rights notices, as provided by us on a Widget, Widget code or materials made available via a Widget and you agree to comply with Widget usage guidelines that may be provided by us from time to time. You agree not to circumvent (or in any way attempt to circumvent) the security or rights management features in a Widget or any component of a Widget that are designed to prevent users from copying, manipulating or retaining the materials made available via a Widget. You also agree to not use (or attempt to use) any Widget, or any component of a Widget, to display content other than the specific materials provided or intended by us to be displayed via a particular Widget.

NOTICE TO THIRD PARTY SITES: Any of our materials made available in connection with your site, or otherwise, by our Widgets, third party widgets or otherwise is our exclusive property and no grant of any intellectual property rights is made by

us. We retain the right to demand that you cease any use of our materials upon notice and you will do so.

You may choose, at your sole and absolute discretion and risk, to use applications that connect your profile on the Site with a third party site (each, an "Application") and such Application may interact with, connect to or gather and/or pull information from and to your HomeRun account. By using such Applications, you acknowledge and agree to the following: (i) if you use an Application to share information relating to your HomeRun account, you are consenting to the information about your account being shared; (ii) your use of an Application may cause personally identifying information to be publicly disclosed and/or associated with you, even if HomeRun has not provided such information; and (iii) your use of an Application is at your own option and risk, and you will hold HomeRun harmless for the sharing of information relating to your HomeRun account that results from your use of an Application. You must read all log-in boxes and other pop-up boxes closely for notices about sharing your account information with, through or by any other means identified on an Application.

12. Mobile.

We may offer features and services that are available to you via your mobile phone or other mobile device. These features and services may include, without limitation, the ability to upload content to the Site, download applications to your mobile phone or access Site features (collectively, the "Mobile Features"). Standard messaging, data and other fees may be charged by your carrier. Fees and charges will appear on your mobile bill or be deducted from your pre-paid balance. Your carrier may prohibit or restrict certain Mobile Features and certain Mobile Features may be incompatible with your carrier or mobile device. Contact your carrier with questions regarding these issues. As applicable, instructions regarding how to opt-out of Mobile Features will be disclosed in connection with Mobile Features.

13. Sweepstakes, Contests, and Promotions

Any sweepstakes, contests or other promotions (any, a "Promotion") that may be offered via the Site may be governed by a separate set of rules that may have eligibility requirements, such as certain age or geographic area restrictions, terms and conditions governing the Promotion, use of content, and disclosures about how your personal information may be used. It is your responsibility to read these rules to determine whether or not you want to and are eligible to participate, register and/or enter, and to determine the applicable terms and conditions of the Promotion. By participating in a Promotion, you will be subject to those official rules, and you agree to comply with and abide by such rules and the decisions of the identified sponsor(s).

14. Your Warranties

You represent and warrant that: (i) you have the legal right and capacity to enter into these Terms of Use in your jurisdiction and to comply with these Terms of Use; (ii) you hold and will continue to hold all rights necessary to enter into and perform your obligations under these Terms of Use; and (iii) by purchasing products or services from us, you acknowledge and represent that you are authorized to use the payment card used for your purchases.

15. Disclaimer of Warranty and Limitation of Liability.

YOU EXPRESSLY AGREE THAT USE OF THE SITE IS AT YOUR SOLE RISK. NEITHER HOMERUN, ITS AFFILIATES NOR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, THIRD PARTY CONTENT PROVIDERS OR LICENSORS WARRANT THAT USE OF THE SITE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO WE OR THEY MAKE ANY WARRANTY AS TO (I) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SITE, OR (II) THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION, SERVICE OR MERCHANDISE PROVIDED THROUGH THE SITE.

THIS SITE IS MADE ACCESSIBLE ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, CUSTOM, TRADE, SYSTEM INTEGRATION AND FREEDOM FROM VIRUS, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT.

THIS DISCLAIMER OF LIABILITY APPLIES TO ANY DAMAGES OR INJURY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, TORTIOUS BEHAVIOR, NEGLIGENCE, OR UNDER ANY OTHER CAUSE OF ACTION. YOU SPECIFICALLY ACKNOWLEDGE THAT HOMERUN IS NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD-PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH THE USER.

THE MERCHANTS OFFERING PRODUCTS AND SERVICES THROUGH THE SITE ARE INDEPENDENT CONTRACTORS AND NOT AGENTS OR EMPLOYEES OF HOMERUN. HOMERUN, ITS AFFILIATES AND EMPLOYEES ARE NOT AGENTS OF THE MERCHANTS OFFERING PRODUCTS AND/OR SERVICES VIA HOMERUN AND ARE NOT LIABLE FOR THE ACTS, ERRORS, OMISSIONS, REPRESENTATIONS, WARRANTIES, BREACHES OR NEGLIGENCE OF ANY SUCH MERCHANTS OR FOR ANY PERSONAL INJURIES, DEATH, PROPERTY DAMAGE, OR OTHER DAMAGES OR

EXPENSES RESULTING THEREFROM. HOMERUN HAS NO LIABILITY IN THE EVENT OF ANY STRIKE, FORCE MAJEURE OR OTHER CAUSES BEYOND HOMERUN'S DIRECT CONTROL.

IN NO EVENT SHALL HOMERUN, OR ANY PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING OR DISTRIBUTING THIS SITE OR THE CONTENTS HEREOF, INCLUDING ANY SOFTWARE, BE LIABLE FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SITE. YOU HEREBY ACKNOWLEDGE THAT THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL CONTENT ON THE SITE.

IN ADDITION TO THE TERMS SET FORTH ABOVE, NEITHER HOMERUN, NOR ITS AFFILIATES, INFORMATION PROVIDERS OR CONTENT PARTNERS SHALL BE LIABLE REGARDLESS OF THE CAUSE OR DURATION, FOR ANY ERRORS, INACCURACIES, OMISSIONS, OR OTHER DEFECTS IN, OR UNTIMELINESS OR UNAUTHENTICITY OF, THE INFORMATION CONTAINED WITHIN THE SITE OR FOR ANY DELAY OR INTERRUPTION IN THE TRANSMISSION THEREOF TO YOU, OR FOR ANY CLAIMS OR LOSSES ARISING THEREFROM OR OCCASIONED THEREBY. NONE OF THE FOREGOING PARTIES SHALL BE LIABLE FOR ANY THIRD-PARTY CLAIMS OR LOSSES OF ANY NATURE, INCLUDING WITHOUT LIMITATION LOST PROFITS, PUNITIVE OR CONSEQUENTIAL DAMAGES.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

YOU AGREE THAT IN THE EVENT YOU INCUR ANY DAMAGES, LOSSES OR INJURIES THAT ARISE OUT OF HOMERUN ACTS OR OMISSIONS, THE DAMAGES, IF ANY, CAUSED TO YOU ARE NOT IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION PREVENTING ANY EXPLOITATION OF ANY WEB SITE, PROPERTY, PRODUCT, SERVICE, OR OTHER MATERIALS OWNED OR CONTROLLED BY HOMERUN, AND YOU WILL HAVE NO RIGHTS TO ENJOIN OR RESTRAIN THE DEVELOPMENT, PRODUCTION, DISTRIBUTION, ADVERTISING, EXHIBITION OR EXPLOITATION OF ANY WEB SITE, PROPERTY, PRODUCT, SERVICE, OR OTHER MATERIALS OWNED OR CONTROLLED BY HOMERUN AND ITS AFFILIATES, INFORMATION PROVIDERS OR CONTENT PARTNERS.

BY ACCESSING THE SITE, YOU UNDERSTAND THAT YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY

SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

16. Monitoring.

HomeRun shall have the right, but not the obligation, to monitor the content of the Site at all times, including any chat rooms and forums that may be included as part of the Site, to determine compliance with these Terms of Use and any operating rules established by HomeRun, as well as to satisfy any applicable law, regulation or authorized government request. Without limiting the foregoing, HomeRun shall have the right to remove any material that HomeRun, in its sole discretion, finds to be in violation of the provisions hereof or otherwise objectionable.

17. Indemnity and Release.

You understand that you are personally responsible for your behavior while on the Site, the content you post, and your use of the services we provide. You agree to indemnify and hold HomeRun, and its affiliates, business partners, and their respective officers, directors, employees, and agents, harmless from and against any loss, damage, liability, cost, or expense of any kind (including attorneys' fees) arising out of or related to: any products or services purchased by you in connection with the Site, your use of the HomeRun services or access to the Site; any fraud or manipulation by you; your violation of any of these Terms of Use; your violation of any applicable law or the rights of any third party, including without limitation any copyright, property, or privacy right; any claim that one of your submissions or any of your content caused damage to a third party; or HomeRun's use of your information as permitted under these Terms of Use, the Privacy Policy, or any other written agreement between you and HomeRun. You will cooperate as fully required by HomeRun in the defense of any claim. HomeRun reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and you will not in any event settle any claim without the prior written consent of a duly authorized employee of HomeRun. This defense and indemnification obligation will survive these Terms of Use and your use of the Site.

To the extent permitted under applicable laws, you hereby release HomeRun, and its affiliates, business partners, and their respective officers, directors, employees, and agents from any and all claims or liability related to any product or service of a Merchant, any action or omissions to act by Merchant, and/or any conduct of any user.

18. Termination and Survival.

HomeRun may terminate these Terms of Use and your access to the Site at any time without liability. Notwithstanding the foregoing, these Terms of Use will survive termination of this agreement.

19. Links and Third Party Content.

The Site may contain content that is submitted by third party members. You acknowledge that by using the Site, you may be exposed to content that you may find objectionable, or which is inaccurate, misleading or incomplete. We are not responsible for the accuracy, completeness or usefulness of any content, nor do we make any endorsement claims for the Site's third party content. You use the Site and the content at your own risk.

The Site, or third party users and members, may provide links to other web sites or resources. Because we have no control over such sites and resources, you acknowledge and agree that we are not responsible for the availability of such external sites or resources, and do not endorse and are not responsible or liable for any content, advertising, products or other materials contained in or available from such sites or resources. You further acknowledge and agree that we shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any third party site or resource.

HomeRun reserves the right to disable any link or remove any third party content at any time in its sole discretion.

20. Location and Territorial Restrictions.

Unless otherwise specified, the Site and its content are made available for use in the United States.

The information provided on the Site is not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject HomeRun to any registration requirement within such jurisdiction or country. HomeRun makes no representations or warranties that the information, products or services contained on the Site are appropriate for use or access outside of the U.S. Anyone using or accessing the Site from outside the U.S. does so on their own initiative and is responsible for compliance with applicable United States' and local laws regarding online conduct and acceptable content. We reserve the right to limit the availability of the Site and/or the provision of any content, program, product, service or other feature described or available thereon to any person, geographic area, or jurisdiction, at any time and in our sole discretion, and to limit the quantities of any such content, program, product, service or other feature that we provide.

Software related to or made available by the Site may be subject to United States export controls. Thus, no software from the Site may be downloaded, exported or re-exported: (a) into (or to a national or resident of) any country to which the United States has embargoed goods; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading any software related to the Site, you represent and warrant that you are not located in, under the control of, or a national or resident of, any such country or on any such list.

You agree to comply with all rules, laws and regulations that are applicable to your use of the Site, including, without limitation, those governing your transmission or use of any software or data.

21. Miscellaneous.

a. Entire Agreement.

These Terms of Use and any Additional Terms constitute the entire agreement of the parties with respect to the subject matter hereof.

b. Severability and Waiver.

If any part of these Terms of Use or any Additional Terms are held invalid or unenforceable, then that part will be modified or construed to reflect the parties' original intention. All remaining provisions will remain enforceable and in full force and effect.

A waiver by either party of any term or condition, or a failure to act on any breach thereof, in any one instance, will not waive such term or condition or the right to act on any subsequent breach thereof, or of any other provision.

c. No Agency.

No agency, partnership, joint venture, or employment is created as a result of these Terms of Use or any Additional Terms, and you do not have any authority of any kind to bind HomeRun in any respect whatsoever.

d. Assignment.

HomeRun may assign its rights and duties under these Terms of Use to any party at any time without any notice to you. These Terms of Use, and any rights granted hereunder, are not assignable, transferable or sublicensable by you except with our prior written consent. Any assignment attempted to be made in violation of these Terms of Use shall be void.

e. No Third Party Beneficiaries.

Nothing in these Terms of Use shall be deemed to confer any third party rights or

benefits.

f. Headings.

The section headings used herein are for convenience only and shall be of no legal force or effect.

g. Choice of Law, Arbitration, and Forum.

These Terms are governed by, and will be interpreted in accordance with, the laws of the State of New York, without regard to any choice of law provisions and without regard to conflicts of law principles **AND WILL SPECIFICALLY NOT BE GOVERNED BY THE UNITED NATIONS CONVENTIONS ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, IF OTHERWISE APPLICABLE.**

We will make reasonable efforts to resolve any disagreements you have with HomeRun. If the efforts fail, then by using this Site, you agree that any dispute arising out of or relating to these Terms of Use (“Dispute”), will be subject to binding arbitration by a single arbitrator with the American Arbitration Association (AAA), in accordance with its relevant industry rules, if any. Arbitration is the sole and exclusive method by which any Dispute shall be resolved. You agree that the arbitration shall be held at San Mateo, California, a location as determined by AAA pursuant to the Rules and Procedures (provided that such location is reasonably convenient for you), or at such other location as may be mutually agreed upon by you and HomeRun. You further agree that there shall be no authority for any claims to be arbitrated on a class or representative basis; arbitration can decide only your and/or HomeRun’s individual claims; and the arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated. Each party shall pay its own expenses of arbitration, and the expense of the arbitrator shall be shared equally between the parties. The arbitrator will have the authority to allow discovery in accordance with Federal Rules of discovery and grant injunctive relief and specific performance to enforce the terms of this Agreement. The arbitrator is not authorized to award exemplary or punitive damages. All applicable statutes of limitation based upon the passage of time shall be tolled while the procedures referenced in this Section are being followed with respect to any Dispute. Both parties will have the right to seek to enforce any award of an arbitrator rendered pursuant to this Section in the federal courts sitting in San Mateo County, California, unless no federal subject matter jurisdiction exists, then in the state courts of San Mateo County, California.

h. Force Majeure.

HomeRun will not be liable to you or be deemed to be in breach of its obligations under these Terms of Use for any delay or failure in performance caused by acts beyond HomeRun’s reasonable control, including, without limitation, acts of God, war, terrorism, accidents, fires, floods, strikes, labor disputes, shortages or delays in obtaining supplies or service, materials, labor, or transportation, interruption of

utility services or the Internet, acts of any unit of government or any governmental agency, or any similar or dissimilar cause.

i. Removal of Account.

Violation of any of these Terms of Use may result in removal of your postings and termination of your account.

j. Contact Us.

Questions about the Terms of Use may be emailed to: support@homerun.com.