

Terms of Service
Last Updated: 09.11.2018

Please read these Terms of Service (the “**Terms**”) and our [Privacy Policy](#) (“**Privacy Policy**”) carefully because they govern your use of our mobile device application (“**App**”). To make these Terms easier to read, the website (“**Site**”), our services, and App are collectively called the “**Services**.”

1. Agreement to Terms. By using our Services, you agree to be bound by these Terms. If you don’t agree to be bound by these Terms, do not use the Services.

2. Privacy Policy. Please refer to our Privacy Policy for information on how we collect, use and disclose information from our users. You acknowledge and agree that your use of the Services is subject to our Privacy Policy.

IMPORTANT NOTICE REGARDING ARBITRATION: WHEN YOU AGREE TO THESE TERMS YOU ARE AGREEING (WITH LIMITED EXCEPTION) TO RESOLVE ANY DISPUTE BETWEEN YOU AND CLIENT THROUGH BINDING, INDIVIDUAL ARBITRATION RATHER THAN IN COURT. PLEASE REVIEW CAREFULLY SECTION 15 “DISPUTE RESOLUTION” BELOW FOR DETAILS REGARDING ARBITRATION (INCLUDING THE PROCEDURE TO OPT OUT OF ARBITRATION).

3. Changes to Terms or Services. We may update the Terms at any time, in our sole discretion. If we do so, we’ll let you know either by posting the updated Terms on the Site or through other communications. It’s important that you review the Terms whenever we update them or you use the Services. If you continue to use the Services after we have posted updated Terms, you are agreeing to be bound by the updated Terms. If you don’t agree to be bound by the updated Terms, then, except as otherwise provided in Section 15(e) “Effect of Changes on Arbitration,” you may not use the Services anymore. Because our Services are evolving over time we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.

4. Who May Use the Services?

(a) Eligibility. You may use the Services only if you are 18 years or older and capable of forming a binding contract with Client) and are not barred from using the Services under applicable law.

(b) Registration and Your Information. If you want to use certain features of the Services you’ll have to create an account (“**Account**”). You can do this via the Site or through your account with certain third-party social networking services such as Facebook or Twitter (each, an “**SNS Account**”). If you choose the SNS Account option we’ll create your Account by extracting from your SNS Account certain personal information such as your name and email address and other personal information that your privacy settings on the SNS Account permit us to access.

(c) Accuracy of Account Information. It’s important that you provide us with accurate, complete and up-to-date information for your Account and you agree to update such information to keep it accurate, complete and up-to-date. If you don’t, we might have to suspend or terminate your Account. You agree that you won’t disclose your Account password to anyone and you’ll notify us immediately of any unauthorized use of your Account. You’re responsible for all activities that occur under your Account, whether or not you know about them.

5. Feedback. We welcome feedback, comments and suggestions for improvements to the Services (“**Feedback**”). You can submit Feedback by emailing us at feedback@dipseastories.com. You grant to us a non-exclusive, transferable, worldwide, perpetual, irrevocable, fully-paid, royalty-free license, with the right to

sublicense, under any and all intellectual property rights that you own or control to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any purpose.

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

(a) Our Content Ownership. For purposes of these Terms: “**Content**” means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Services. Subject to the foregoing, Client and its licensors exclusively own all right, title and interest in and to the Services and Content, including all associated intellectual property rights. You acknowledge that the Services and Content are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services or Content.

(b) Rights in Content Granted by Client. Subject to your compliance with these Terms, Client grants to you a limited, non-exclusive, non-transferable license, with no right to sublicense, to view and display the Content solely in connection with your permitted use of the Services and solely for your personal and non-commercial purposes.

7. **Rights and Terms for Apps.**

(a) Rights in App Granted by Client. Subject to your compliance with these Terms, Client grants to you a limited non-exclusive, non-transferable license, with no right to sublicense, to download and install a copy of the App on a mobile device or computer that you own or control and to run such copy of the App solely for your own personal non-commercial purposes. You may not copy the App, except for making a reasonable number of copies for backup or archival purposes. Except as expressly permitted in these Terms, you may not: (i) copy, modify or create derivative works based on the App; (ii) distribute, transfer, sublicense, lease, lend or rent the App to any third party; (iii) reverse engineer, decompile or disassemble the App; or (iv) make the functionality of the App available to multiple users through any means. Client reserves all rights in and to the App not expressly granted to you under these Terms.

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

- These Terms are concluded between you and Client, and not with the App Provider, and Client (not the App Provider), is solely responsible for the App.
- The App Provider has no obligation to furnish any maintenance and support services with respect to the App.
- In the event of any failure of the App to conform to any applicable warranty, you may notify the App Provider, and the App Provider will refund the purchase price for the App to you (if applicable) and, to the maximum extent permitted by applicable law, the App Provider will have no other warranty obligation whatsoever with respect to the App. Any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Client.
- The App Provider is not responsible for addressing any claims you have or any claims of any third party relating to the App or your possession and use of the App, including, but not limited to: (i) product

liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

- In the event of any third party claim that the App or your possession and use of that App infringes that third party's intellectual property rights, Client will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by these Terms.
- The App Provider, and its subsidiaries, are third-party beneficiaries of these Terms as related to your license to the App, and that, upon your acceptance of the Terms, the App Provider will have the right (and will be deemed to have accepted the right) to enforce these Terms as related to your license of the App against you as a third-party beneficiary thereof.
- You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a terrorist-supporting country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
- You must also comply with all applicable third party terms of service when using the App.

8. General Prohibitions and Client's Enforcement Rights. You agree not to do any of the following:

- (a)** Use, display, mirror or frame the Services or any individual element within the Services, Client's name, any Client trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Client's express written consent;
- (b)** Access, tamper with, or use non-public areas of the Services, Client's computer systems, or the technical delivery systems of Client's providers;
- (c)** Attempt to probe, scan or test the vulnerability of any Client system or network or breach any security or authentication measures;
- (d)** Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Client or any of Client's providers or any other third party (including another user) to protect the Services or Content;
- (e)** Attempt to access or search the Services or Content or download Content from the Services through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Client or other generally available third-party web browsers;
- (f)** Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;
- (g)** Use any meta tags or other hidden text or metadata utilizing a Client trademark, logo URL or product name without Client's express written consent;
- (h)** Use the Services or Content, or any portion thereof, for any commercial purpose or for the benefit of any third party or in any manner not permitted by these Terms;

- (i) Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Services or Content to send altered, deceptive or false source-identifying information;
- (j) Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Services or Content;
- (k) Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services;
- (l) Collect or store any personally identifiable information from the Services from other users of the Services without their express permission;
- (m) Impersonate or misrepresent your affiliation with any person or entity;
- (n) Violate any applicable law or regulation; or
- (o) Encourage or enable any other individual to do any of the foregoing.

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

9. Links to Third Party Websites or Resources. The Services (including the App) may contain links to third-party websites or resources. We provide these links only as a convenience and are not responsible for the content, products or services on or available from those websites or resources or links displayed on such websites. You acknowledge sole responsibility for and assume all risk arising from, your use of any third-party websites or resources.

10. Termination. We may terminate your access to and use of the Services, at our sole discretion, at any time and without notice to you. You may cancel your Account at any time by sending an email to us at feedback@dipseastories.com. Upon any termination, discontinuation or cancellation of the Services or your Account, the following Sections will survive: 6(a), 6(b), 6(c), 12, 13, 14, 156, and 16.

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

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

13. Limitation of Liability.

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

(b) IN NO EVENT WILL CLIENT'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR CONTENT EXCEED THE AMOUNTS YOU HAVE PAID TO CLIENT FOR USE OF THE SERVICES OR CONTENT OR ONE HUNDRED DOLLARS (\$100), IF YOU HAVE NOT HAD ANY PAYMENT OBLIGATIONS TO CLIENT, AS APPLICABLE.

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

14. Governing Law and Forum Choice. These Terms and any action related thereto will be governed by the Federal Arbitration Act, federal arbitration law, and the laws of the State of California, without regard to its conflict of laws provisions. Except as otherwise expressly set forth in Section 15 "Dispute Resolution," the exclusive jurisdiction for all Disputes (defined below) that you and Client are not required to arbitrate will be the state and federal courts located in the Northern District of California, and you and Client each waive any objection to jurisdiction and venue in such courts.

15. Dispute Resolution.

(a) Mandatory Arbitration of Disputes. We each agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services or Content (collectively, "**Disputes**") will be resolved **solely by binding, individual arbitration and not in a class, representative or consolidated action or proceeding.** You and Client agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of these Terms, and that you and Client are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of these Terms.

(b) Exceptions and Opt-out. As limited exceptions to Section 15(a) above: (i) you may seek to resolve a Dispute in small claims court if it qualifies; and (ii) we each retain the right to seek injunctive or other equitable relief from a court to prevent (or enjoin) the infringement or misappropriation of our intellectual property rights. In addition, **you will retain the right to opt out of arbitration entirely and litigate any Dispute** if you provide us with written notice of your desire to do so by email at feedback@dipseastories.com or by regular mail at 25 Taylor St., San Francisco CA 94102 within thirty (30) days following the date you first agree to these Terms.

(c) Conducting Arbitration and Arbitration Rules. The arbitration will be conducted by the American Arbitration Association ("**AAA**") under its Consumer Arbitration Rules (the "**AAA Rules**") then in effect, except as modified by these Terms. The AAA Rules are available at www.adr.org or by calling

1-800-778-7879. A party who wishes to start arbitration must submit a written Demand for Arbitration to AAA and give notice to the other party as specified in the AAA Rules. The AAA provides a form Demand for Arbitration at www.adr.org.

16. If your claim is for U.S. \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic or video-conference hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds U.S. \$10,000, the right to a hearing will be determined by the AAA Rules. Any arbitration hearings will take place in the county (or parish) where you live, unless we both agree to a different location. The parties agree that the arbitrator shall have exclusive authority to decide all issues relating to the interpretation, applicability, enforceability and scope of this arbitration agreement.

(a) Arbitration Costs. Payment of all filing, administration and arbitrator fees will be governed by the AAA Rules. We'll pay for all filing, administration and arbitrator fees and expenses if your Dispute is for less than \$10,000, unless the arbitrator finds your Dispute frivolous. If we prevail in arbitration we'll pay all of our attorneys' fees and costs and won't seek to recover them from you. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses to the extent provided under applicable law.

(b) Class Action Waiver. **YOU AND CLIENT AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, if the parties' dispute is resolved through arbitration, the arbitrator may not consolidate another person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this Dispute Resolution section shall be null and void.

(c) Effect of Changes on Arbitration. Notwithstanding the provisions of Section 3 "Changes to Terms or Services" above, if Client changes any of the terms of this Section 15 "Dispute Resolution" after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (including by email to feedback@dipseastories.com) within 30 days of the date such change became effective, as indicated in the "Last Updated" date above or in the date of Client's email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Client in accordance with the terms of this Section 15 "Dispute Resolution" as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

(d) Severability. With the exception of any of the provisions in Section 15(e) of these Terms ("Class Action Waiver"), if an arbitrator or court of competent jurisdiction decides that any part of these Terms is invalid or unenforceable, the other parts of these Terms will still apply.

17. General Terms.

(a) Entire Agreement. These Terms constitute the entire and exclusive understanding and agreement between Client and you regarding the Services and Content, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Client and you regarding the Services and Content. If any provision of these Terms is held invalid or unenforceable by an arbitrator or a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect. You may not assign or transfer these Terms, by operation of law or otherwise, without Client's prior written

consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. Client may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

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

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

18. Contact Information. If you have any questions about these Terms or the Services, please contact Client at feedback@dipseastories.com.