

# Terms and Conditions

*Effective May 23, 2011*

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These Terms & Conditions ("Agreement") govern use of the WWW.SOCIALSTATISTIC.COM website and the services related to such website. The services offered by WWW.SOCIALSTATISTIC.COM ("WWW.SOCIALSTATISTIC.COM") include the WWW.SOCIALSTATISTIC.COM website ("Website") and any other services, features, content or applications offered from time to time by WWW.SOCIALSTATISTIC.COM in connection with the Website and its affiliated sites, interactive computer service and online properties (collectively, the "Services"). By using the Services you agree to be bound by this Agreement. You must be at least thirteen (13) years old to use the Services. By providing any information to WWW.SOCIALSTATISTIC.COM through the Website or your mobile phone, you represent to WWW.SOCIALSTATISTIC.COM that you are thirteen (13) years of age or older. If you are between thirteen (13) and seventeen (17) years old, you represent that you have received parental permission and consent to use the Services, including, but not limited to completing the registration process and downloading Content (defined below) to your phone. Florida residents must be at least eighteen (18) years old to use the Services.

This Agreement also incorporates by reference the terms and conditions of the WWW.SOCIALSTATISTIC.COM Privacy Policy. This Agreement may be amended from time to time in WWW.SOCIALSTATISTIC.COM's discretion and pursuant to applicable law. Amended versions of this Agreement will be effective upon posting on the Website. **YOU AGREE TO REVIEW THESE TERMS & CONDITIONS FROM TIME TO TIME AND AGREE THAT ANY SUBSEQUENT ACCESS TO OR USE BY YOU OF THE SERVICES FOLLOWING CHANGES TO THE TERMS & CONDITIONS SHALL CONSTITUTE YOUR ACCEPTANCE OF ALL SUCH CHANGES. IF YOU DO NOT AGREE WITH OR CANNOT COMPLY WITH THE TERMS OF THIS AGREEMENT YOU MUST EXIT THE WEBSITE IMMEDIATELY AND MUST NOT PROVIDE ANY INFORMATION TO WWW.SOCIALSTATISTIC.COM OR ANY LINKED THIRD PARTY OR USE ANY OF THE SERVICES OR PRODUCTS OFFERED OR PROVIDED ON THE WEBSITE.**

## 1. Website Service and Billing Information

Normal carrier charges and taxes for downloading or messaging may apply to any Content you receive from WWW.SOCIALSTATISTIC.COM. "Content" means collectively, text alert messages available on the

Website. Text messaging capability is required for all WWW.SOCIALSTATISTIC.COM services. Internet-enabled handsets are required to download multimedia Content (e.g. ringtones, wallpapers, games, videos, etc.), but certain web-enabled handsets such as the iPhone, Pre, and Sidekick devices are NOT compatible with the multimedia Content provided by WWW.SOCIALSTATISTIC.COM.

(a) Subscription Service. By entering your cell phone number on the Website, you consent to receive a text message containing a PIN code. By entering the PIN code on the Website, you acknowledge you are subscribing to WWW.SOCIALSTATISTIC.COM's text alert subscription service. Subscribing provides you with monthly alerts. WWW.SOCIALSTATISTIC.COM subscribers may cancel by texting STOP to any message they receive. All plans are subject to WWW.SOCIALSTATISTIC.COM's Terms and Conditions and Privacy Policy, available on our Website. To get help, text HELP to the message you receive or contact Customer Care.

By registering for a subscription service, you authorize WWW.SOCIALSTATISTIC.COM to bill you through your mobile telephone carrier. Message and Data Rates May Apply. You confirm you are the owner of the phone or have permission of the owner to incur these charges. Do not enter your personal PIN Code unless you have read, understand and agree to these terms and conditions. Monthly Club subscriptions are billed the recurring applicable subscription fee each month until you cancel the subscription. Monthly subscribers are billed on a 30-day cycle, which begins on the first day you sign up for the subscription and ends 30 days thereafter (your "Billing Cycle"). Your mobile phone bill will be charged on the first day of each Billing Cycle. You agree that normal carrier charges (e.g. WAP, MMS, GPRS, and SMS) may apply. Unused monthly credits do not roll-over to the next month's Billing Cycle. You agree that if any attempt to bill you for your subscription fails for any reason, including non-payment by you or errors on the part of your mobile telephone company, WWW.SOCIALSTATISTIC.COM reserves the right to re-bill you for any outstanding fees.

## 2. Cancellation of the Services

If you wish to discontinue receiving messages from the Website, you must cancel your subscription. You have several options to do this: (1) Club subscribers may cancel their subscription by texting STOP to the message you receive; (2) You may cancel your subscription via the Website, at Customer Care; or (3) you may cancel your subscription via telephone toll free at [Customer Care #], either through our interactive voice response system at any time or by contacting our Customer Service team directly Monday through Friday from 8am to 6pm Eastern Time. Subscription cancellation will become effective immediately when we receive the cancellation request for monthly subscribers, and all unredeemed credits will be forfeited. Services are not pro-rated for mid-month cancellations and no refunds will be given except as set forth in Refund Policy below.

## 3. Termination by WWW.SOCIALSTATISTIC.COM

You acknowledge and agree that WWW.SOCIALSTATISTIC.COM, in its sole discretion, may suspend, discontinue or refuse any and all current and future access to or use of any portion of the Services at any time without notice to you in the event WWW.SOCIALSTATISTIC.COM reasonably believes that you have breached this Agreement. You acknowledge and agree that WWW.SOCIALSTATISTIC.COM shall have no liability or responsibility to you for termination, suspension or discontinuation of your access or use in the event you breach this Agreement, and that no portion of your fees will be refunded in such case.

## 4. Refund Policy

A refund will be issued if there is a technical issue that results in an inability of the user to receive their Content. Such technical issues include corrupt files, system errors, or other unforeseen difficulties that may arise. If you choose a phone we do not support, if your carrier does not support multimedia Content, if you do not have Internet enabled (if required) and/or text messaging on your phone, if you select a phone as part of a download that is not the actual model of your phone, or if you are not satisfied with the actual product that has been correctly delivered then WE WILL NOT REFUND YOUR MONEY OR CREDITS.

## 5. Problems Receiving Content

If you order content and have problems downloading or are unable to download it, please contact us at Customer Care.

## 6. Copyright Restrictions

Your payment and subsequent download of Content includes a non-exclusive, non-transferable, revocable license to use the content received from WWW.SOCIALSTATISTIC.COM for your personal, non-commercial use. Content received from WWW.SOCIALSTATISTIC.COM does not expire, unlike some other wireless content websites. However, if you transfer this Content to anyone else or otherwise use it in violation of this Agreement, you may be liable to pay compensation and costs to both WWW.SOCIALSTATISTIC.COM and its various third party partners.

## 7. Marketing Information

We will not share or use any details from your payment (except to arrange and/or clarify payment terms) with anyone outside WWW.SOCIALSTATISTIC.COM and various third party partners. Please see the WWW.SOCIALSTATISTIC.COM Privacy Policy for additional information.

## 8. Proprietary Rights

The materials available via the Services, including without limitation, Content, text, information, documents, scripts, graphics, photos, organization, design, compilation, look and feel, illustrations, artwork, video, music (including but not limited to content), images (including, but not limited to wallpaper), software, sounds, games, interactive features and all trademarks, service marks and logos or other works or materials (collectively, "Materials") are owned by or licensed to WWW.SOCIALSTATISTIC.COM and/or a Third Party provider(s) and are protected under copyright, trademark and other intellectual property and proprietary rights laws. You must keep intact, and may not remove or alter any Materials or any copyright or other proprietary notices available via the Services, and you may not display or reproduce the Materials other than with the prior written consent of WWW.SOCIALSTATISTIC.COM.

## 9. Forms, Registration and Passwords

If any of the Services require you to open an account, register or provide certain information, you agree to complete the account initiation, registration or other process by providing WWW.SOCIALSTATISTIC.COM with current, complete and accurate information as requested by any forms. You acknowledge and agree that any login, identifier, PIN or password issued in connection with the Services (each, a "Password") is confidential information. You must maintain the confidentiality of any Password, and you may not disclose such Password to any other person or entity or permit any other person or entity to access the Services using such Password. You agree to notify WWW.SOCIALSTATISTIC.COM immediately of any unauthorized use of any Password or any other breach of security of which you are aware. You may not use any Password that is not issued directly to you or approved by WWW.SOCIALSTATISTIC.COM.

## 10. Prohibited Activities

You may not use the Services in a manner inconsistent with any and all applicable laws, rules and regulations. The Services are for your personal and non-commercial use only. You may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell any information, software, Content, Materials, or products or services obtained from the Services. Content owned by WWW.SOCIALSTATISTIC.COM's licensors may be subject to additional restrictions. You agree not to reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate the Content received through the Services to anyone, including but not limited to others in the same company or organization without WWW.SOCIALSTATISTIC.COM's express prior written consent.

## 11. Warranty Disclaimer

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, WWW.SOCIALSTATISTIC.COM PROVIDES THE WEBSITE, SERVICES, MATERIALS AND CONTENT, INCLUDING BUT NOT LIMITED TO CONTENT SUPPLIED BY THIRD PARTIES THROUGH WWW.SOCIALSTATISTIC.COM, STRICTLY ON AN "AS IS" BASIS, FOR YOUR USE AT YOUR OWN RISK, AND HEREBY EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY LAW ALL WARRANTIES OR CONDITIONS OF ANY KIND, WRITTEN OR ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

WWW.SOCIALSTATISTIC.COM MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE SERVICES, CONTENT, MATERIALS OR THE CONTENT OF ANY SITES LINKED TO THE WEBSITE AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR (i) ANY ERRORS, MISTAKES, OR INACCURACIES OF CONTENT OR MATERIALS, (ii) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND 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 WHICH MAY BE TRANSMITTED TO OR THROUGH THE SERVICES BY ANY THIRD PARTY, AND/OR (vi) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR MATERIALS OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES.

WWW.SOCIALSTATISTIC.COM DOES NOT WARRANT, ENDORSE, GUARANTEE OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICES OR ANY HYPERLINKED WEBSITE OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND WWW.SOCIALSTATISTIC.COM WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

## 12. Limitation of Liability

IN NO EVENT SHALL WWW.SOCIALSTATISTIC.COM BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT DAMAGES ARISING FROM YOUR USE OF THE SERVICES, EVEN IF WWW.SOCIALSTATISTIC.COM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, WWW.SOCIALSTATISTIC.COM'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE LESSER OF TEN U.S. DOLLARS (\$10) OR THE AMOUNT PAID, IF ANY, BY YOU TO WWW.SOCIALSTATISTIC.COM FOR THE SERVICES GIVING RISE TO THE ACTION.

THE LIMITATION OF LIABILITY HEREIN IS A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN AND REFLECTS A FAIR ALLOCATION OF RISK. THE WEBSITE, THE CONTENT, AND ANY SERVICES OR INFORMATION OFFERED THROUGH THE SERVICES WOULD NOT BE PROVIDED WITHOUT SUCH LIMITATIONS AND YOU AGREE THAT THE LIMITATION AND EXCLUSIONS OF LIABILITY, DISCLAIMERS AND EXCLUSIVE REMEDY SPECIFIED HEREIN WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN CATEGORIES OF DAMAGES AND/OR THE EXCLUSION OF CERTAIN REMEDIES, IN SUCH JURISDICTIONS, YOU AGREE THAT THE LIABILITY OF WWW.SOCIALSTATISTIC.COM SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY SUCH JURISDICTION.

## 13. Arbitration; Governing Law

Most customer concerns can be resolved quickly and to the customers satisfaction by contacting our customer service department via email at [ecare.legal@gmail.com](mailto:ecare.legal@gmail.com)

(a) **DISPUTE RESOLUTION:** The Company and you each agree to first contact each other with any controversy, claim, or dispute ("Disputed Claim") arising out of or relating to the Terms and Conditions between the Company and you, providing a written description of the problem, all relevant documents or information and the proposed resolution. You agree to contact the Company with disputes by emailing us at [ecare.legal@gmail.com](mailto:ecare.legal@gmail.com). The email notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). The Company will contact you by email. If the Company and you do not reach an agreement to resolve the claim within 30 days after the email notice is received, you or the Company may commence an arbitration proceeding.

If such negotiations fail to resolve the dispute within their first 30 days, Disputed Claims must be resolved by binding arbitration of a single arbitrator in accordance with the rules of the American Arbitration Association ("AAA"). The arbitrability of Disputes shall also be determined by the arbitrator. Each party shall bear its own expenses and the parties shall equally share the filing and other administrative fees of the AAA and the expenses of the arbitrator, except that the arbitrator shall be entitled to award a different allocation of costs and fees where the arbitrator determines that a filed claim is frivolous. The arbitration proceeding shall be conducted in the English language, in San Francisco, CA. Any award of the arbitrator shall be in writing and shall state the reasons for the award. Judgment upon an award may be entered in any Court having competent jurisdiction. The decision of the arbitrator must be based upon the service agreement and applicable law. The decision of the arbitrator must be reduced to writing, is final and binding except for fraud, misconduct, or errors of law, and judgment upon the decision rendered may be entered in any court having jurisdiction

**IT IS IMPORTANT THAT YOU READ THIS ARBITRATION CLAUSE. IT PROVIDES THAT YOU MAY BE REQUIRED TO SETTLE ANY CLAIM OR DISPUTE THROUGH ARBITRATION, EVEN IF YOU WOULD PREFER TO LITIGATE THE CLAIM IN COURT. YOU ARE GIVING UP THE RIGHTS YOU MIGHT HAVE TO LITIGATE SUCH CLAIMS BEFORE A JURY. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT, SUCH AS DISCOVERY, PARTICIPATING IN A CLASS ACTION OR THE RIGHT TO APPEAL THE DECISION, MAY NOT BE AVAILABLE IN ARBITRATION OR MAY BE MORE LIMITED. YOU SHOULD CONSULT LEGAL COUNSEL TO DETERMINE WHETHER THIS ARBITRATION CLAUSE IS APPROPRIATE FOR YOU. YOU CAN OPT OUT OF THE ARBITRATION BY FOLLOWING THE INSTRUCTIONS IN PARAGRAPH C OF THIS ARBITRATION CLAUSE.**

(b) **NO CLASS ACTIONS.** EVEN IF APPLICABLE LAW PERMITS CLASS ACTIONS OR CLASS ARBITRATIONS, THE DISPUTE RESOLUTION PROCEDURE SPECIFIED HERE APPLIES AND, THE COMPANY AND YOU EACH WAIVE ANY RIGHT TO PURSUE DISPUTES ON A CLASSWIDE BASIS; THAT IS, TO EITHER JOIN A CLAIM WITH THE CLAIM OF ANY OTHER PERSON OR ENTITY, OR ASSERT A CLAIM IN A REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE IN ANY LAWSUIT, ARBITRATION OR OTHER PROCEEDING.

(c) **RIGHT TO OPT OUT.** If you do not wish to be bound by this arbitration clause, you must notify the Company in writing within thirty (30) days after accepting this Agreement, or your rejection of arbitration will not be effective. You must send your request by email to [ecare.legal@gmail.com](mailto:ecare.legal@gmail.com). Your request must include your telephone number(s) and a clear statement of your intent, such as "I reject the arbitration clause stated in the Company's Agreement."

(d) **GOVERNING LAW.** The laws of the state of California will govern any disputes relating to the Disputed Claim or this Agreement, notwithstanding the conflicts of laws rules of California or any other jurisdiction.

#### 14. U.S. Export Controls

You acknowledge and agree that the Content may be subject to the U.S. Export Administration Laws and Regulations. Diversion of such Content contrary to U.S. law is prohibited. You agree that none of the Content, nor any direct product or service accessed or used via the Services, is being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, unless authorized by the U.S. Government. Proscribed countries are set forth in the U.S. Export Administration Regulations. You agree to comply strictly with all applicable U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

## 15. Disputes

The Services are hosted in the United States. Any dispute hereunder shall be governed by the laws of the State of California, USA, without regard to conflict of law provisions. You agree to exclusive personal jurisdiction and venue in the state and federal courts of the United States located in the State of California, City of San Francisco and waive any objection based on inconvenient forum. You agree that: (i) the Website and the Services shall be deemed solely based in California; and (ii) the Website shall be deemed a passive website that does not give rise to personal jurisdiction over WWW.SOCIALSTATISTIC.COM, either specific or general, in jurisdictions other than California. You further agree that service of any process, summons, notice or document by U.S. registered mail to your address shall be effective service of process for any action, suit or proceeding in the state and federal courts located in the State of Colorado, with respect to any matters to which it has submitted to jurisdiction as set forth above.

## 16. Indemnity

You agree to indemnify and hold WWW.SOCIALSTATISTIC.COM, its parent, subsidiaries, and affiliates, and their respective members, officers, agents, partners and employees, harmless from any loss, liability, claim or demand, including reasonable attorneys' fees, due to or arising out of (i) your acts or omissions concerning the Services and the Website; (ii) any breach of this Agreement including any representations and warranties made herein; and (iii) your violation of any third party right including without limitation any claim of defamation, invasion of privacy, right of publicity, unfair competition, infringement of a third person's intellectual property or other proprietary rights relating to your use of the Services or Website. WWW.SOCIALSTATISTIC.COM reserves the right to participate in such defense and settlement with its own counsel at its own expense. In no event shall you enter into any settlement that purports to bind WWW.SOCIALSTATISTIC.COM without WWW.SOCIALSTATISTIC.COM's prior written consent. WWW.SOCIALSTATISTIC.COM shall provide you reasonably prompt notice of any such claim and shall reasonably cooperate with you in the defense and/or settlement of such claim at your sole expense.

## 17. Trademarks

WWW.SOCIALSTATISTIC.COM, the WWW.SOCIALSTATISTIC.COM logo, and other marks, logos and titles are registered and/or common law trade names, trademarks or service marks (collectively "Marks") of WWW.SOCIALSTATISTIC.COM or its licensors. All other products, company names or other trademarks or service marks appearing on the Website are the property of their respective owners. Nothing contained in the Services should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Mark displayed on the Services without prior written permission of WWW.SOCIALSTATISTIC.COM or the respective owners.

## 18. Other

This Agreement constitutes the entire agreement between the parties regarding the use of the Services and the Website and supersedes all prior or contemporaneous communications between the user and WWW.SOCIALSTATISTIC.COM with respect to the Website and the Services. The failure of WWW.SOCIALSTATISTIC.COM to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. If any provision of this Agreement is deemed unlawful, void or unenforceable, the remaining provisions of this Agreement will remain in full force and effect. Any aspect of the Services is void where prohibited by law.

(a) Force Majeure. Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, terrorism, riots, acts of government, shortage of materials or supplies, or any other cause beyond the reasonable control of such party.

(b) Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof, and merges all prior discussions and writings between them with respect

to the contents of this Agreement. If any provision (or part thereof) of this Agreement is determined by a court of competent jurisdiction as part of a final non-appealable ruling, government action or binding arbitration, to be invalid, illegal, or otherwise unenforceable, such provision shall be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement shall remain in full force and effect and bind the parties according to its terms.

(c) Survival. Any obligation of the parties relating to limitations on liability and indemnification shall survive termination or expiration of this Agreement.

(d) Interpretation. Each party acknowledges and agrees that it has had the opportunity to seek the advice of independent legal counsel and has read and understood all of the terms and conditions of this Agreement. This Agreement shall not be construed against either party by reason of its drafting.

A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Please contact us at: [ecare.legal@gmail.com](mailto:ecare.legal@gmail.com) with any questions regarding this Agreement.

I HAVE READ THIS AGREEMENT AND AGREE TO ALL OF THE PROVISIONS CONTAINED ABOVE.