

# Terms of Use

**PLEASE READ THESE TERMS OF USE (“Terms of Use”) PRIOR TO USING THIS WEBSITE. THESE TERMS OF USE CONSTITUTE A BINDING AGREEMENT (“AGREEMENT”) BETWEEN USER AND THE COMPANY RESPECTING USER’S ACCESS TO AND USAGE OF THE WEBSITE AND ANY SERVICE MADE BY THE COMPANY. BY VISITING, ACCESSING, BROWSING OR USING THE WEBSITE, USER AGREES AND CONSENTS TO BE BOUND BY THESE TERMS OF USE. USER’S CONSENT TO BE BOUND BY THESE TERMS OF SERVICE SHALL HAVE THE SAME LEGAL EFFECT AND IMPORT AS IF USER HAD PERSONALLY SIGNED AN ORIGINAL WRITTEN VERSION OF THESE TERMS OF USE. USER AGREES TO BE BOUND BY THESE TERMS OF USE EACH AND EVERY TIME USER ACCESSES OR USES THE WEBSITE OR ACCESSES THE COMPANY’S SERVICE. USER ACKNOWLEDGES THAT COMPANY MAY IN ITS DISRECTION, WITH OR WITHOUT NOTICE TO USERS, CHANGE THESE TERMS OF USE AT ANY TIME OR FROM TIME TO TIME, FOR ANY REASON. ANY SUCH CHANGES WILL BECOME EFFECTIVE UPON POSTING SUCH CHANGES IN THE TERMS OF USE SECTION OF THE WEBSITE. IT IS IMPORTANT FOR YOU TO VISIT THIS PAGE PERIODICALLY TO REVIEW THIS AGREEMENT. IF YOU DO NOT AGREE TO SUCH TERMS, PLEASE DO NOT VISIT, ACCESS BROWSE OR OTHERWISE USE THE WEBSITE OR ACCESS THE COMPANY’S SERVICE.**

## **Definitions**

“**Website**” shall mean and include all the materials, text, information, concepts, program materials, photographic images, narrative, music, design, videos or any other content generally viewable by Visitors on [www.picturethisbydennise.com](http://www.picturethisbydennise.com) and through which Members may access Service. .

“**Company**” refers to Picture This by Dennise, owner of the Website.

“**Us**” or “**we**” or “**our**” refers to the Company.

“**Visitor**” is someone that merely visits or browses our Website.

“**Member**” has the meaning set forth in the Monthly Subscription Agreement

“**User**” is a collective identifier that refers to either a Visitor or a Member.

**“You”** or **“Your(s)”** refers to you as a Visitor, Member or User.

**“Content”** shall mean any all text, music, information, materials, concepts, program materials, photographic images, manuals, narratives, design, graphics, videos or any other content offered by the Company on or in Website or Service (including any Blog), but excluding Member Content

**“Member Content”** is, other than Content, any and all text, information, materials, concepts, programs, program materials, marketing, business plans, projections, forecasts, estimates, budgets, photography images, manuals, narratives, design, graphics, or any other content posted, uploaded, transmitted to or shared on the Monthly Subscription Service section of Website by a Member and available exclusively to Members.

**“Blog”** shall mean that portion of the Company’s Website containing the Company representative’s experiences, observations, narratives, videos, photographic images or graphics or containing links to other websites, exclusively available to Members for viewing or submission of Member Content.

**“Terms of Use”** shall mean these rules, regulations, restrictions, policies and limitations respecting access to and use of the Website by Users and by Members with respect to the Monthly Subscription Service and any Subscription Content.

**“Third Party Link”** or **“Third Party Advertiser Link”** shall have the meaning as further set forth herein.

## **AGREEMENT; SOLE AND ENTIRE UNDERSTANDING; REVISIONS AND AMENDMENTS**

Except as may be provided in these Terms and Conditions User’s access and use of the Company’s Website or Service, these Terms of Use: a) constitutes the entire and only agreement between the Company and you; and b) supersede any and all other agreements, representations, warranties and understandings, whether in oral or written form, respecting access or other use of our Website or Service. Notwithstanding the foregoing, the Company does require Members to agree to additional terms and conditions in order for Member’s to access our Service (including any Content and Member Content contained therein) available through the Website through a Monthly Subscription Agreement.

The Company may revise or amend this Agreement at any time without specific notice to you. The then latest Agreement will be posted on our Website, and Users should review this Agreement prior to using our Website or Service. After any

revisions to this Agreement are posted, you agree to be bound to any changes to this Agreement. Therefore, it is important for you to visit this page periodically to review the Agreement. Please read this Agreement carefully and save it. If you do not accept this Agreement, do not access and use our Website or access our Service. If you have already accessed our Website and do not accept this Agreement, you should immediately discontinue use of our Website and Service.

### **WEBSITE LIMITED LICENSE GRANT**

Subject to the terms and conditions contained herein, Company grants you: a) as a Visitor a non-exclusive, limited right to view the public areas of our Website, and: b) as a Member the additional, limited rights to access the Monthly Subscription Service under the terms of a Monthly Subscription Agreement. Your use as a Visitor to the Website is solely for personal, private, non-public, non-commercial purposes; your access to Subscription Content as a Member is further detailed in the Monthly Subscription Agreement. Notwithstanding anything to the contrary, Company reserves all right, title and interest in and to the Company name, Website, Content, Blog, and collectively any and all associated logos, trademarks, service marks or other properties; User agrees to not use any of the foregoing without the Company's prior written consent, which may be withheld by Company in its absolute sole discretion. The Company's grant of the foregoing does not in any way: 1) create or establish any other relationship between you and the Company, including but not limited to any joint venture, partnership, agency, employment, franchise or other relationship, and 2) does not allow you to access the Service without first becoming a registered Member pursuant to the Monthly Subscription Agreement. No person or entity not a party to these Terms of Use will be deemed as a third party beneficiary of the rights granted herein.

### **USER ELIGIBILITY; USER COMPLIANCE**

1. Users, whether as Visitors or Members, must be eighteen (18) years of age or older ("Eligibility Requirement"). Users visiting, accessing, browsing or using the Company's Website or Member's accessing and using the Company's Service (including any Content or Member Content contained therein) warrant and represent that they are in compliance with this Eligibility Requirement as of the date of their initial visit or browse of the Company's Website. Users failing to meet this Eligibility Requirement or falsely representing that they are in compliance with the Eligibility Requirement are unauthorized and unlicensed users and subject to Company's terminating any and all access privileges to the Website or the Service (including any Content and Member Content contained therein). As a further continuing condition of eligibility to visit, access, browse or use the Website or Service, any and all Users agree,

each with respect to the Website or Service (including any Content contained therein) to: a) comply with any and all applicable United States federal and state laws, rules and regulations and any applicable laws, rules, regulations or other enactments of other non-domestic governing bodies with jurisdiction over the subject matter of these Terms of Use; b) not create compilations or derivative works as defined under United States copyright laws; c) not redistribute or attempt to redistribute in any manner, including, but not limited to, sale, license, sublicense, lease, rental, subscription, or any other distribution, or; d) decompile, disassemble or reverse engineer our any related software.

2. User may not assign its rights or obligations under these Terms of Use to any other party; Member may not assign its rights or obligations under the Monthly Subscription Agreement.

### **CONTENT DISCLAIMER; ERRORS; REVISIONS**

Notwithstanding the foregoing or anything to the contrary, Company reserves the right to change, alter, amend or otherwise revise the Website or the Service (including any Content contained therein) at any time, for any reason, with or without notice. User acknowledges that the Website and Service (including any Content contained therein) are not guaranteed to be complete, correct, error-free, bug-free, virus-free timely, current or up-to-date or otherwise reliable, and Company makes no warranty or guaranty that it will undertake any obligation to modify the Website or the Service (including any Content contained therein) to correct such conditions. Company reserves the right, exercisable at any time for any reason, with or without notice to Users: a) to alter or delete or revise the Website or Service (including any Content contained therein) in any way, including but not limited to changes in content, design, layout, form, functionality, or software or hardware necessary to access the Website and Services (including any Content contained therein) and; b) to shutdown the Website or the Service (including any Content contained therein) temporarily or permanently. In addition to the foregoing, Users may not be able to access the Website or Service (including but not limited to any Content contained therein) from time to time as a result of traffic congestion or acts beyond our reasonable control (e.g. fire, flood, loss of power, riots, terrorists attack, internet failure, equipment failure, failure or lack of telecommunications or network connections or computer systems, et. al. (collectively “Force Majeure Event”)). In the event of the occurrence of a Force Majeure Event, Company will have no liability for its inability or failure to make the Website or Service (including any Content contained therein) available but Company will use commercially feasible efforts to restore the affected Website or Service (including any Content contained therein) as soon as reasonably feasible.

**MEMBER CONTENT SUBMISSIONS; COMPANY AT-RISK DISCLAIMER OF LIABILITY; MEMBER WARRANTIES AND REPRESENTATIONS; PROHIBITED CONDUCT; OWNERSHIP RIGHTS**

Subject to compliance with these Terms of Use and the consent in each case of the Company, Members may post, upload, transmit or otherwise submit Member Content to the Company for public display, critiquing and commentary by the Company and other Members in the Services section of the Website or on the Company's Blog..

Each Member hereby grants Company a royalty-free, non-exclusive, worldwide license to display its Member Content on the Website for viewing by other Members as part of the Company's Monthly Subscription Service for the thirty (30) day period commencing on the first day upon which the Company first displays the Member Content. Company acknowledges that, subject to the foregoing license grant to the Company, Member shall retain any underlying ownership rights to the photographic images contained in any such Member Content.

Members understand that: a) the posting of such Member Content could subject the Member Content submitted to any range of praise or criticism, whether complimentary, neutral, or harshly critical; b) posting of Member Content is not subject to any confidentiality or non-disclosure obligation on the part of the Company or any Member nor is any Member Content deemed to be Personal Information under the Company's Online Privacy Policy; c) Company shall have no liability for any similarities between future products, services, offerings or other content developed by the Company or by another Member; d) Company has no liability as a result of opinions expressed during any critique of a Member Content submission, whether by the Company or any individual Member(s); e) Member opinions are solely the opinions of the Member and not necessarily those of the Company. Additionally, should a Member submit Member Content containing marketing, promotional, budget or business plans, Member understands and acknowledges that: a) Company's comments are strictly opinions and no Member should make decisions on the basis of those opinions without independent investigation; and b) the Company's comments are general in nature and are not aimed at any specific individual or geared toward his or her individual circumstances

Members warrant and represent that a) any and all text, information, materials, concepts, programs, program materials, photography images, manuals, narratives, design, graphics or any other content posted, uploaded or transmitted to the Website or Service: 1) is the sole and exclusive, original property of the Member, is owned in its entirety by the Member exclusively and does not violate any other Member or third party's copyright, trademark, service mark, privacy right or otherwise infringe on any other party's ownership or privacy rights..

Members agree to abide by any and all rules and regulations that Company may adopt from time to time respecting posting, uploading, transmitting or sharing of Member Content on the Website or Service viewable by Members. Member submitting Member Content agree to abide by the terms of the Monthly Subscription Agreement accessible on the Company's Website and incorporated herein by reference to this Agreement.

Members submitting Member Content in the form of narrative or written material understand and agree to not submit any such Member Content that is a) offensive, vulgar, defamatory, libelous or slanderous, tortious, or constitute an invasion of privacy; or b) harassing, racist, threatening, homophobic, hateful or obscene; c) sexually graphic or profane; or d) harmful or dangerous; or e) violent or graphic.

Members acknowledge and understand that Company has no obligation to monitor Member Content posted on the Service section of the Website and disclaims any and all liability to any Member (including the Member submitting Content) or any other party, as a result of a Member's uploading, posting or transmitting Member Content to the Website or Service and the Company's embedding of the Member Content on the Website or Service.

Members may report to Company any photographic or video imagery submitted Member Content as being either in violation of subparagraphs a), b) or c) of the above paragraphs (individually or collectively a "Violation"). In the event that the Company determines in the exercise of its sole unfettered discretion that a Violation has occurred, the Company may: a) remove the objectionable Member Content from the Website; b) terminate the submitting Member's authorization to submit further Member Content in photographic or video image form or any narrative or written form; c) terminate the submitting Member's right to access the Monthly Subscription Service in its entirety; or d) all of the above.

Members acknowledge, represent and warrant that each will refrain from infringing on the Company's or any third party's intellectual property rights. Upon notification of potential infringement by any Member, we will investigate a claim of potential infringement and may, upon completion of that investigation, a) remove the objectionable Member Content from the Website; b) terminate the submitting Member's authorization to submit further Member Content in photographic or video image form or any narrative or written form; c) terminate the submitting Member's right to access the Monthly Subscription Service in its entirety; or d) all of the above.

As a Member, you agree not to use our Website or Service (including any Content contained therein), to: a) upload, post or otherwise transmit any Member Content that: 1) violates any local, state, federal or international laws, rules or regulations; 2)

infringes upon any trademark, service mark, patent, copyright, trade secret or any other property right or breaches any confidentiality or non-disclosure agreement; 3) contains any private personally identifiable information about any party; 4) contains software viruses or other code files capable of limiting or impairing our ability to deliver the Website or the Service (including any Content contained therein); 5) contains photographic or video images, text, narrative, design or any other content to which a Member does not have full ownership rights or an enforceable non-exclusive, royalty-free, worldwide, license, sublicense, distribution or sub-distribution right to transmit or display such image content in a public, commercial setting in any medium without geographic or other limitation in perpetuity; 6) contains any advertising, promotional, misleading metadata, spam, robots, spiders, offline readers, junk mail, scams or solicitation content; 7) contain links to other websites or; 8) contains video or music.

Notwithstanding anything contained herein to the contrary, the Company reserves the right, exercisable at any time in its absolute discretion for any reason not specifically referenced above, to decline to include any submitted Member Content for access and view by Members.

## **DISCLAIMER OF WARRANTIES**

**ANY USER'S USAGE OF THE WEBSITE OR SERVICE PROVIDED ON OR THROUGH THE WEBSITE (INCLUDING ANY CONTENT CONTAINED THEREIN) IS AT USER'S OWN RISK. THE WEBSITE AND SERVICES (INCLUDING ANY CONTENT CONTAINED THEREIN) ARE PROVIDED ON AN "AS IS", "WHERE IS", "WITH ALL FAULTS" AND "AS AVAILABLE" BASIS. USERS ACKNOWLEDGES AND AGREES THAT THE COMPANY HAS MADE, AND HEREBY DOES NOT MAKE ANY STATEMENTS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. COMPANY (INCLUDING ITS AGENTS, EMPLOYEES, DIRECTORS AND OFFICERS) HAS NOT MADE AND DOES NOT MAKE ANY STATEMENT, WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY OR AVAILABILITY OF THE WEBSITE AND SERVICE PROVIDED THROUGH THE WEBSITE (INCLUDING ANY CONTENT CONTAINED THEREIN). WITHOUT LIMITING THE FOREGOING, COMPANY (INCLUDING ITS AGENTS, EMPLOYEES, DIRECTORS AND OFFICERS) DOES NOT PROMISE THAT THE WEBSITE OR SERVICE PROVIDED THROUGH THE WEBSITE (INCLUDING ANY CONTENT CONTAINED THEREIN) WILL BE ACCURATE, RELIABLE, PROMISE**

**ANY SPECIFIC RESULTS, BE ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, OR THAT THE WEBSITE OR SERVICES OBTAINED THROUGH THE WEBSITE (INCLUDING ANY CONTENT CONTAINED THEREIN) OR THE SERVER OR NETWORK CONNECTIONS OR SOFTWARE THAT MAKE THE WEBSITE OR SERVICES (INCLUDING ANY CONTENT CONTAINED THEREIN) AVAILABLE ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE WEBSITE OR SERVICE (INCLUDING ANY CONTENT CONTAINED THEREIN) WILL OTHERWISE MEET USER'S NEEDS OR EXPECTATIONS. COMPANY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE. NO VERBAL OR WRITTEN REPRESENTATIONS, INFORMATION OR ADVICE GIVEN BY COMPANY OR ITS AUTHORIZED REPRESENTATIVE AT ANY TIME SHALL LIMIT THIS DISCLAIMER OF WARRANTIES OR OTHERWISE CREATE A WARRANTY OR INCREASE THE SCOPE OF THIS WARRANTY. COMPANY EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY FOR MEMBER CONTENT POSTED, UPLOADED OR OTHERWISE TRANSMITTED TO THE PAY SUBSCRIPTION SERVICES SECTION OF THE WEBSITE. NOTHING CONTAINED HEREIN SHALL AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.**

### **LIMITATION OF LIABILITY**

**IN NO EVENT WILL COMPANY (OR ITS LICENSORS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS) BE LIABLE TO ANY USER OR THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM ANY LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, WHETHER OR NOT THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ANY OTHER THEORY LOSS, ARISING FROM ANY USER'S USAGE OF THE WEBSITE OR SERVICE (INCLUDING ANY CONTENT CONTAINED THEREIN) OR ANY SOFTWARE OR HARDWARE USED TO MAKE THE WEBSITE OR SERVICES (INCLUDING ANY CONTENT CONTAINED THEREIN) AVAILABLE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, USER'S EXCLUSIVE REMEDY AND COMPANY'S TOTAL**



**LIABILITY TO YOU, IF ANY, FOR ANY CLAIM WHATSOEVER, REGARDLESS OF THE CLAIM THEORY (WHETHER BASED ON CONTRACT, TORT, WARRANTY, INDEMINIFICATION OR OTHERWISE) OR THE EXISTENCE OF MULTIPLE CLAIMS, WILL AT ALL TIMES BE LIMITED TO AN AMOUNT EQUAL TO THE AMOUNT PAID, IF ANY, BY USER TO THE COMPANY FOR ONE MONTH'S ACCESS TO THE WEBSITE OR SERVICE (INCLUDING ANY CONTENT CONTAINED THEREIN).**

**THIRD PARTY LINKS, THIRD PARTY ADVERTISING LINKS AND SERVICES OR PRODUCTS OFFERED**

The Company's Website and Service (and any Content contained therein) may contain links to other websites which are not operated by the Company and which may or may not offer goods or services for sale or lease ("Third Party Links"). In addition, the Company from time to time may include links to third party advertising, sponsorship or promotional materials on the Website or Service (including any Content contained therein) ("Third Party Advertising Link Content" or "Third Party Advertiser Link"). Third Party Links or Advertisers are responsible for ensuring that material submitted for inclusion on our Website and Service (including any Content contained therein) is accurate and complies with applicable laws. The Company does not monitor the accuracy of the material provided or the products or services provided by Third Party Links or Advertisers

**COMPANY DOES NOT ENDORSE, GUARANTEE, WARRANTY, OR RECOMMEND ANY PRODUCTS OR SERVICES OR PROMOTIONS OFFERED BY SUCH THIRD PARTY LINKS OR THIRD PARTY ADVERTISER LINKS AND WE MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT ANY PRODUCT, PROMOTION OR SERVICE CONTAINED IN THIRD PARTY LINKS OR THIRD PARTY LINK ADVERTISING CONTENT CONTAINED ON THE WEBSITE OR SERVICE (INCLUDING ANY CONTENT CONTAINED THEREIN).** Users acknowledge that the foregoing disclaimer applies without limitation to any and all written or oral references or mere mentions of goods, products, services, promotions or other information even if, solely or in combination, by use of such third party's trade name, trademark, manufacturer, supplier, advertiser or otherwise.

Users acknowledge that, in leaving the Website or Service (including any Content contained therein) to use such Third Party Links or Third Party Advertising Links or purchasing a product from a Third Party Link or Third Party Advertising Link, it does so at its own risk. Such Third Party Links and Third Party Link Advertisers each operate its own processing, fulfillment, billing and customer service, and a User's

purchases of goods or services is governed solely by terms and conditions of sale established by such Third Party Link or Third Party Advertising Link (including any and all warranties, (whether express or implied), disclaimer of warranties, limitation of liability) and any privacy policies.

### **PRIVACY POLICY**

The Company's Privacy Policy is considered an integral part of these Terms of Use and is incorporated herein by reference. The Company's Privacy Policy is available on the Website by clicking the link "Privacy Policy".

### **USER INDEMNIFICATION**

User agrees to hold harmless, defend and indemnify the Company (including its agents, officers, directors, employees, and successors and assigns) from and against any and all loss damage and expense (including for reasonable attorneys fees) from any third party claim, demand or action arising out of User's breach of any of its obligations, warranties or representations under this Agreement

### **ARBITRATION**

Any controversy or claim between User and Company arising out of or relating to the Website or Service shall be addressed solely by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, excluding, however: a) any and all Company claims by the Company against a User to collect any sums due under these Terms of Service or any Monthly Subscription Fee due under the Monthly Subscription Agreement; b) any and all actions by the Company to recover damages from a User for a violation of these Terms of Use or the Monthly Subscription Agreement's terms and conditions and; c) any action by the Company to enjoin and prohibit User from engaging in behavior in contravention of these Terms of Use on or in connection with the Website or Service (including any Content contained therein).

Any such controversy or claim not excluded under the immediately preceding subparagraphs a), b) or c) shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party.

Any arbitration proceeding shall be conducted in the County of Cameron, Texas and any arbitration award may be enforceable in any court having jurisdiction thereof. Either party may seek an interim or preliminary protective order from a court of competent jurisdiction in the City or County of Cameron Texas pending the

completion of arbitration. Each party shall split the arbitration fees and costs on a 50-50 basis, provided however, that each party will bear its own attorney fees.

### **General Terms**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. User agrees to submit to the personal jurisdiction and venue of such courts. If any of the terms and conditions contained in these Terms of Use or the Monthly Subscription Agreement are held by a court of competent jurisdiction or an arbitration award to be contrary to law, such interpretation shall be changed and interpreted such that it best accomplishes the intent and objectives of the original provision to the fullest extent allowed by law, with the understanding that all other non-conflicting provisions will remain in full force and effect. The Company's failure to enforce or insist upon strict performance of any User's obligations or the Company's failure to exercise any of its rights or remedies under these Terms of Use or the Monthly Subscription Agreement shall not constitute a waiver of rights and remedies in any individual or multiple number of instances. Any and all provisions of these Terms of Use and the Monthly Subscription Agreement shall survive any termination or expiration of this Agreement.