

# Terms and Conditions for KwikState™

## Terms of Service

**Last Updated: September 22, 2022**

Welcome to KwikState. To make these Terms easier to read, the website (Site), our services and web-based application are collectively called the “Services” and products sold through the Services are called “Products”. Please read these Terms of Service (the “Terms”) carefully because they govern your use of our Services.

If you do not agree to these Terms, do not use KwikState. We may revise the Terms periodically. The current version of our Terms will always be posted on our Terms page, so please check back regularly. By continuing to use KwikState after revisions become effective, you are agreeing to the revised Terms. Changes will become effective against you upon the conclusion of your then current term (i.e., 12-months). If you do not agree to the revised Terms, do not use KwikState.

## Arbitration Notice

Unless you opt out of arbitration within 30 days of the date you first agree to these terms by following the opt-out procedure specified in the “Arbitration” section below, and except for certain types of disputes described in the “Arbitration” section below, you agree that disputes between you and KwikState will be resolved by binding, individual arbitration and you are waiving your right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding.

## Return Policy

All sales final. There are no returns of products or services.

## Your KwikState Account

To use KwikState, you’ll need to create an account, either via KwikState online checkout or through a third-party service such as Google. In the latter case, personal information you provided to that third party, such as your name, email address and other information your privacy settings on that service allow us to access, will be used to create your KwikState account. You are responsible for safeguarding your KwikState login credentials. You are responsible for activity on your account, whether or not you authorized that activity. You should immediately notify us of any unauthorized use of your account that you’re aware of, and we’ll do the same.

## Using KwikState

The Site and any associated web applications are owned by KwikState and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws.

You understand and agree that the Services are not intended, designed, or implied to diagnose, prevent, or treat any condition or disease, to ascertain the state of your health, or to be a substitute for professional medical care. Not all activities described on the Services or Products are suitable for everyone. You understand and agree that you are solely responsible for your use of the Services. You may only use KwikState as permitted by law, including all applicable federal, state, local or international laws and regulations. You may not use KwikState in any manner that could reasonably cause harm to the Service, to KwikState or to any third party. For example, do not:

Use any engine, software, tool, agent, device, mechanism or the like to access, search, or download intellectual property from KwikState, or use KwikState in any way other than through our publicly supported interfaces;

Access, tamper with, or use non-public areas of KwikState, KwikState's computer systems, or the technical delivery systems of KwikState's providers; Probe, scan, or test the vulnerability of any KwikState system or network or breach any security or authentication measures;

Decipher, decompile, disassemble or reverse engineer any of the software used to provide KwikState;

Plant malware or use KwikState to distribute malware; Violate the privacy of others;

Impersonate or misrepresent your affiliation with any person or entity; or post or transmit anything that is fraudulent or misleading;

Send unsolicited communications, promotions, advertisements or spam or otherwise infringe on others' rights;

Interfere with the access of any user, host or network, including introducing any virus to, overloading, flooding, spamming, or mail-bombing KwikState, or introducing any other material or content which is malicious or technologically harmful;

Attack KwikState via a denial-of-service attack or a distributed denial-of-service attack; or otherwise attempt to interfere with the proper working of KwikState;

Attempt any of the above, or encourage or enable any other individual to do any of the above.

## **Confidentiality**

**Confidential Information.** From time to time, either party (the "Disclosing Party") may disclose or make available to the other party (the "Receiving Party") non-public, proprietary, and confidential information of the Disclosing Party ("Confidential Information"). Confidential Information includes any information that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including non-public business, product, technology, user/client, and marketing information. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of the Receiving Party's breach of this confidentiality section; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in the Receiving Party's possession prior to the Disclosing Party's disclosure hereunder; or (d) was or is independently developed by the Receiving Party without using any of the Disclosing Party Confidential Information.

**Protection and Use of Confidential Information.** The Receiving Party shall: (a) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but

in no event with less than a commercially reasonable degree of care; (b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under these Terms; and (c) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's service providers or financial/legal advisors who need to know the Confidential Information and are bound to confidentiality obligations at least as restrictive as those in these Terms.

Compelled Access or Disclosure. If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall to the extent lawful, prior to making such disclosure, use commercially reasonable efforts to notify the Disclosing Party of such requirements to afford the Disclosing Party the opportunity to seek, at the Disclosing Party's sole cost and expense, a protective order or other remedy.

## **Termination**

We may terminate or modify your access to and use of KwikState, at our sole but reasonable discretion, at any time and without notice to you, for example, if you are not complying with these Terms, or if you use KwikState in any way that would cause us legal liability or disrupt others' use of KwikState. Likewise, you may cancel your account at any time, and we will be sorry to see you go. If we suspend or terminate your use of KwikState, we will try to let you know in advance, though there may be cases (for example, flagrantly violating these Terms) where we may suspend you immediately.

## **Warranty Disclaimers**

THE KWIKSTATE SERVICE IS PROVIDED "AS IS," AT YOUR OWN RISK, WITHOUT EXPRESS OR IMPLIED WARRANTY OR CONDITION OF ANY KIND. WE ALSO DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. 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.

## **Mutual Limitation of Liability**

(A) TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE AFFILIATES, OFFICERS, EMPLOYEES, MEMBERS, SHAREHOLDERS, AGENTS, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, PROFIT, DATA, GOOD WILL, SERVICE INTERRUPTIONS, COMPUTER DAMAGE OR SYSTEM FAILURE), REGARDLESS OF LEGAL THEORY, WHETHER OR NOT A PARTY HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE; (B) THE AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO OR ARISING OUT OF THE SERVICE SHALL NEVER EXCEED THE GREATER OF \$99.00 OR THE AMOUNTS PAID BY YOU TO KWIKSTATE FOR THE TERM OF THE SERVICES IN QUESTION.

## **Terms of Billing and Payment**

You may purchase the Services via the KwikState website.

**Billing and Payment.** If you purchase the Services via credit card, debit card or other payment card (collectively, "Credit Card"), you hereby authorize KwikState (or its designee) to automatically charge your Credit Card in accordance with the applicable Service pricing. You acknowledge that certain Credit Cards may charge you foreign transaction fees or other charges. If your payment is not successfully settled for any reason, you remain responsible for any amounts not remitted to KwikState. Any Service tier upgrade or products beyond the scope of the initial Service, as applicable, will incur an additional charge, and will be included in a true-up invoice or charged automatically via Credit Card, as applicable. If you have any concerns or objections regarding charges, you agree to raise them with a KwikState representative first and you agree not to cancel or reject any credit card or third-party payment processing charges unless you have made a reasonable attempt at resolving the matter directly with KwikState.

**Taxes and Fees.** You are responsible for all sales, use, value added or other taxes of any kind, other than taxes based on KwikState's net income. You are also responsible for any payment-related fees such as wire transfer or Credit Card processing fees.

**Expenses.** You are responsible for all fees or expenses related to accessing or using the Services that are extrinsic to the Services. This includes, without limitation, your own internet service provider fees.

## **Changes to Price Terms**

KwikState reserves the right to change its pricing terms at any time.

## **Rights in Web App Granted by KwikState**

Subject to your compliance with these Terms, KwikState grants you a limited non-exclusive, non-transferable, non-sublicenseable license to access and use the KwikState web App solely for your own personal non-commercial purposes. KwikState reserves all rights in and to the App not expressly granted to you under these Terms. You may not copy the App. 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.

## **Agreement to Arbitrate**

You and KwikState 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, Products or Content (collectively, "Disputes") will be settled by binding arbitration, except that each party retains the right: (i) to bring an individual action in small claims court and (ii) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights (the action described in the foregoing clause (ii), an "IP Protection Action"). Without limiting the preceding sentence, you

will also have the right to litigate any other Dispute if you provide KwikState with written notice of your desire to do so by contacting a KwikState representative within thirty (30) days following the date you first agree to these Terms (such notice, an “Arbitration Opt-out Notice”). If you don’t provide KwikState with an Arbitration Opt-out Notice within the thirty (30) day period, you will be deemed to have knowingly and intentionally waived your right to litigate any Dispute except as expressly set forth in clauses (i) and (ii) above. The exclusive jurisdiction and venue of any IP Protection Action or, if you timely provide KwikState with an Arbitration Opt-out Notice, will be the state and federal courts located in the Wilmington, Delaware and each of the parties hereto waives any objection to jurisdiction and venue in such courts. Unless you timely provide KwikState with an Arbitration Opt-out Notice, you acknowledge and agree that you and KwikState are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding. Further, unless both you and KwikState otherwise agree in writing, the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this “Dispute Resolution” section will be deemed void. Except as provided in the preceding sentence, this “Dispute Resolution” section will survive any termination of these Terms.

### **Arbitration Rules**

The arbitration will be administered by the American Arbitration Association (“AAA”) in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the “AAA Rules”) then in effect, except as modified by this “Dispute Resolution” section. (The AAA Rules are available at [www.adr.org/arb\\_med](http://www.adr.org/arb_med) or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

### **Arbitration Process**

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a general Demand for Arbitration form and a separate form for Demand for Arbitration for California residents.) The arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the AAA’s roster of arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

### **Arbitration Location and Procedure**

Unless you and KwikState otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of the documents that you and KwikState submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

## **Arbitrator's Decision**

The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award of damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law. KwikState will not seek, and hereby waives all rights it may have under applicable law to recover, attorneys' fees and expenses if it prevails in arbitration.

## **Fees**

Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, KwikState will pay all such fees unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

## **Changes**

Notwithstanding the provisions of the "Modification" section above, if KwikState changes this "Dispute Resolution" section 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 contacting customer support) within 30 days of the date such change became effective, as indicated in the "Last Updated" date above or in the date of KwikState'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 KwikState in accordance with the provisions of this "Dispute Resolution" section as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

## **General Terms**

These Terms and any action related thereto will be governed by the laws of the State of Delaware without regard to its conflict of laws provisions. All claims arising out of or relating to these terms or the services or software must be litigated exclusively in the state and federal courts located in Wilmington, Delaware and each of the parties hereto waives any objection to jurisdiction and venue in such courts. You agree that any claim you may have against us, including our past and present employees and agents, shall be brought individually and you shall not join such claim with claims of any other person or entity or bring, join or participate in a class action against us. These Terms constitute the entire and exclusive agreement between you and KwikState, and supersede and replace any other agreements, terms and conditions. These Terms create no third-party beneficiary rights. A party's failure to enforce a provision is not a

waiver of its right to do so later. If a provision is found unenforceable, the remaining provisions of these Terms will remain in full effect and an enforceable term will be substituted reflecting our intent as closely as possible. 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.

## **Contact Information**

If you have any questions about these Terms, please contact KwikState customer support.