Terms of Service

HAT PICKS™ TERMS OF SERVICE
The Hat Picks™ services are provided by Hat Picks LLC (“Hat Picks”). These Terms of Service govern the relationship between you and Hat Picks regarding your use of the Hat Picks service (the “Service”) which is accessed through www.hatpicks.com (the “Website”).

1. Agreement to Terms of Service and Privacy Policy
    1. By accessing or using the Service, you accept and agree to the Terms of Service. To use the Service, you must register for an account on the Service (the “Account”). IF YOU ARE NOT AT LEAST 18 YEARS OF AGE, YOU MUST NOT ACCESS OR USE THE SERVICE. Hat Picks may publish additional policies related to forums or other specific services. Your right to use such services is subject to those specific policies and the Terms of Service.
    2. The Hat Picks Privacy Policy applies to your use of the Service and is incorporated herein by reference. The Privacy Policy contains important information about how Hat Picks collects and uses your information. Please read the Privacy Policy and the Terms of Service carefully. If at any point you do not entirely agree to all of the Terms of Service or the Privacy Policy as each exists now or is amended in the future, or any other Hat Picks policy or code of conduct relating to your use of the Service, your license is automatically and immediately terminated and you must immediately stop using the Service.
    3. Hat Picks may change the Terms of Service and the Privacy Policy at any time by posting the amended Terms of Service or Privacy Policy on the Website. You may or may not also receive a message notifying you of changes. If you access or use the Service after the change is posted (or after the effective date of the change if an effective date is provided), you accept and agree to the amended Terms of Service or Privacy Policy. The Terms of Service and Privacy Policy cannot be changed or amended in any other manner except in a written amendment that is executed by hand (not by email) by you and by an authorized representative of Hat Picks. Hat Picks may revise other policies or codes of conduct at any time by posting them on the Website. If there is a conflict between the Terms of Service and the Privacy Policy on the one hand, and any other policy or code of conduct on the other hand, the Terms of Service and the Privacy Policy will control.
    4. Any violation of the Terms of Service may result in immediate termination of your license to use the Service and denial of access. You may also be subject to legal liability. For example and without limitation, attempting to disrupt or interfere with the Service may violate criminal and civil laws.
2. Limited License
    1. Subject to the Terms of Service, the Privacy Policy and any other policies and codes of conduct applicable to your use of the Service, Hat Picks grants you a non-exclusive, non-transferable, revocable, limited license to access and use the Service solely for your own non-commercial purposes and not for any other purpose. Without limiting the foregoing, use of the Service for the purpose of gambling, betting, conducting raffles or lotteries, or any other use involving any transfer or exchange of cash, prizes or any other product or service of value, is outside the scope of license and is strictly prohibited.
    2. Hat Picks reserves the right to stop offering or supporting all or any part of the Service at any time on a permanent or temporary basis without liability. You understand that the Service is an evolving

one. Hat Picks may update the Service at any time with or without notifying you. You may need to update third party software from time to time in order to receive the Service. It is entirely your responsibility to install and maintain anti-virus software and related protections against viruses, Trojan horses, worms, time bombs, any other malicious code.

3. Your Account
    1. If you are under the age of 18 you must not create an Account or access the Service. If you are at least 18 years of age, you will ensure that your Account is not used by any person under the age of 18.
    2. You may create only one Account. When creating or updating your Account, you must provide Hat Picks with certain personal information such as your name and email address. You give Hat Picks permission to contact you using your email or any other contact information that you provide. If you choose to join a Hat Picks group, you give members of your group permission to contact you by email through the Service. You will promptly update any information that changes. You represent and warrant that all information provided by you to Hat Picks at any time is current, accurate, and complete.
    3. When you create your Account, you must establish a password. You are solely responsible for maintaining the confidentiality and security of your password and Account. You understand and agree that you are individually and fully responsible for all actions and postings made from your Account regardless of whether authorized by you. Your Account is not transferrable. You will notify Hat Picks immediately if you become aware of any unauthorized use of your Account.
    4. Hat Picks may terminate, remove or reclaim your Account at any time and for any reason. You may cancel your Account at any time by following the instructions in the Service.
4. Content
    1. In addition to Hat Pick content, the Service may contain third party materials, such as without limitation, advertisements, twitter feeds, website links, and user-generated content. Hat Picks does not and cannot review all third party material made available on the Service or through websites linked from or to any part of the Service. However, Hat Picks has the absolute right (though not the obligation) to remove, without notice, any content posted. Any links to or from third-party websites that are not maintained by Hat Picks are provided solely as a convenience to you. Hat Picks generally has not reviewed such third-party sites and does not control and is not responsible for any such sites or their content. Hat Picks does not endorse or make any representations about them or any information, software, or other products or materials found there, or any results that may be obtained from using them. If you decide to access any such third-party websites, you do so entirely at your own risk. The existence of any link to or from the Service does not mean that Hat Picks endorses or is affiliated with any third-party website or service. Hat Picks has no liability or responsibility in connection with any third-party website or service.
    2. You are solely responsible for your interactions with other users of the Service. To the extent permitted under applicable laws, you hereby release Hat Picks, its affiliates, and any of their officers, directors, employees or agents, from any and all claims or liability related to any conduct or speech, whether online or offline, of any other user.
    3. IN NO EVENT WILL HAT PICKS, ITS AFFILIATES, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, BE LIABLE FOR ANY DAMAGES (WHETHER CONSEQUENTIAL, DIRECT, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR OTHERWISE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, ANY THIRD PARTY CONTENT, PRODUCTS OR SERVICES, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON CONTRACT, STRICT LIABILITY, TORT OR OTHER THEORIES OF LIABILITY, AND ALSO REGARDLESS OF WHETHER HAT PICKS WAS GIVEN ACTUAL OR CONSTRUCTIVE NOTICE THAT DAMAGES WERE POSSIBLE.
5. User Content

1. By posting any content, you represent and warrant that you have all right, title, and interest to the posted content or have obtained any and all consents, authorizations, releases, or licenses from any third party (including without limitation, in connection with rights of privacy or publicity) necessary for you to post, upload or submit the posted content. You further represent and warrant that posting such content does not infringe or misappropriate any patent, copyright, trademark, trade secret, right of privacy, right of publicity, moral rights, or other intellectual property right recognized by any applicable jurisdiction of any person or entity, or constitute the breach of any agreement with any other person or entity.
2. You will not post any of the following: (a) adult content, pornography, explicit sexual images, or nude images; (b) content containing explicit, vulgar, or obscene language; (c) content promoting hate, abuse or destructive actions; (d) content promoting illegal activities (including without limitation, gambling); (e) content promoting pirated software; or (f) content intending for phishing or spreading malware.
3. You hereby grant to Hat Picks a non-exclusive, royalty-free, perpetual, irrevocable, worldwide license to use any content you post to the Service in connection with the operation and promotion of the Service. This license includes, without limitation, the right to copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate and reformat your content, to incorporate it into a collective work, and to sublicense any or all of Hat Picks' license rights to others. To the extent permitted by applicable laws, you hereby waive any moral rights you may have in any content you post.
4. If you choose to organize a group using the Service, you will have the option of providing email addresses to invite other persons to participate. You will also have the ability to email members of the group you organized. You represent and warrant that you have obtained all permissions required for Hat Picks to send such emails to all email addresses that you provide. You will not use the email invitation portion of the Service for any purpose other than to organize a group using the Service. You will not email members of your group through the Service in a manner that violates paragraphs 5.1, 5.2 or 6.1 or any other term of this Agreement.

6. Use of the Service
    1. You will not use your Account for commercial purposes including without limitation to advertise, solicit, or transmit any commercial advertisements, including chain letters, junk e-mail or repetitive messages (spim and spam). You will not use your Account to engage or assist in any illegal conduct. Without limiting the foregoing, use of the Service for the purpose of gambling, betting, conducting raffles or lotteries, or any other use involving any transfer or exchange of cash, prizes or any other product or service of value, is strictly prohibited.
    2. You will not engage or assist in any virus distribution, denial of service attacks, or other attempts to disrupt the Service or any other person's use or enjoyment of the Service. You will not attempt to circumvent the security of the Service or gain unauthorized access to the Service or to the accounts of others. You will not upload or transmit spyware or other material that acts as a passive or active information collection or transmission mechanism, such as without limitation, clear graphics interchange formats ("gifs"), 1x1 pixels, web bugs, or cookies. You will not use manual or automated software, devices, scripts, robots, or other means or processes to access, "scrape," "crawl," or "spider" any pages contained in the Service. You will not engage in "framing," "mirroring," or otherwise simulating the appearance or function of the Service. You will not hyperlink to the Service from any other website without Hat Picks' prior written consent, which consent may be withdrawn at any time.
    3. HAT PICKS MAY LIMIT, SUSPEND, TERMINATE, MODIFY, OR DELETE YOUR ACCOUNT OR ACCESS TO THE SERVICE IN WHOLE OR IN PART IF YOU FAIL, OR HAT PICKS SUSPECTS THAT YOU ARE FAILING, TO COMPLY WITH ANY OF THE TERMS OF SERVICE OR FOR ANY ACTUAL OR SUSPECTED ILLEGAL OR IMPROPER USE OF

THE SERVICE, WITH OR WITHOUT NOTICE TO YOU.

7. Ownership
    1. The Service consists of copyrighted works owned by Hat Picks. Hat Picks reserves all rights, including without limitation, all intellectual property rights or other proprietary rights, in connection with the Service. The Hat Picks service mark, and other service marks, trademarks, trade names or other trade designations appearing on the Service are owned by Hat Picks or by licensors or suppliers of Hat Picks. You agree not to display or otherwise use any trade designations of Hat Picks or any third party appearing on the Service in any manner. Except to the extent expressly permitted by law or applicable open source licenses, you will not reverse engineer, decompile, disassemble, decipher or otherwise attempt to derive the source code for any underlying software or other intellectual property used to provide the Service. You will not copy, modify or distribute offers or other content from the Service. All offers and content are for your personal use only and cannot be sold or otherwise transferred.
    2. The Service may include various features where you can post or submit content, including your suggestions and comments. If you submit suggestions, comments or other material within the Service or to Hat Picks by any other means (including without limitation by email) you understand and agree that: (a) Hat Picks has no obligation to keep your submissions confidential; (b) Hat Picks has no obligation to return or respond to your submissions; and (3) Hat Picks may use your submissions for any purpose in any way without notice or compensation to you. Hat Picks may reject or delete any content you post in its sole discretion. However, Hat Picks cannot guarantee that other persons or entities accessing or using the Service will not use your submissions. Therefore, if you have an idea or information that you would like to keep confidential, do not post it on the Service. Hat Picks has no liability or responsibility for any misappropriation of any content that you post or submit to the Service.
    3. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE NO OWNERSHIP OR OTHER PROPERTY INTEREST IN YOUR ACCOUNT, AND ALL RIGHTS IN AND TO YOUR ACCOUNT ARE OWNED BY AND INURE TO THE BENEFIT OF HAT PICKS.
8. Copyright Claims
    1. Hat Picks' Designated Agent to receive notification of alleged infringement under the Digital Millennium Copyright Act (“DMCA”) is:

Hat Picks, LLC
P.O. Box 1410
Greenwood, IN 46142
Attn: DMCA Agent
Email: dmca@hatpicks.com
Provide the following information in writing (preferably via email with “Copyright Claim” in the subject line):

a. Identify the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
b. Identify the material on the Service that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Hat Picks to locate the material;
c. Information reasonably sufficient to permit Hat Picks to contact the complaining party, such as an address, telephone number, and, if available, an email address at which the complaining party may be contacted;
d. The following statement: “I have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law”;

e. The following statement: “I swear, under penalty of perjury, that the information in the notification is accurate, and that I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed”; and
f. A physical or electronic signature of the owner or a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

You may be liable for damages (including costs and attorneys' fees) if you materially misrepresent that material is infringing your copyrights, therefore, if you are unsure about whether your material has been infringed, you should first contact and attorney.

1. If Hat Picks removes or disables any content or access to the Service as a result of a DMCA notice, Hat Picks will attempt to contact the owner or administrator of the affected site or content so that they may make a counter notification pursuant to the DMCA. To file a counter notification with Hat Picks, you must provide Hat Picks's Designated Agent the following information in writing (preferably via email with “Copyright Counter Notification” in the subject line):
    a. Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
    b. Your name, address, and telephone number;
    c. The following statement: "I consent to the jurisdiction of Federal District Court for the [insert the federal judicial district in which your address is located]";
    d. The following statement: "I will accept service of process from [insert the name of the person who submitted the infringement notification] or his/her agent";
    e. The following statement: "I swear, under penalty of perjury, that I have a good faith belief that the affected material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled"; and
    f. Your signature, in physical or electronic form.
2. Upon receipt of such counter notification, Hat Picks will promptly provide the person who provided the original infringement notification with a copy of the counter notification, and inform that person that Hat Picks will replace the removed material or cease disabling access to it in 10 business days. Hat Picks will replace the removed material and cease disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notice, unless our Designated Agent first receives notice from the person who submitted the original infringement notification that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on our system or network.
3. In accordance with the DMCA, and in appropriate circumstances, Hat Picks will disable or terminate accounts of users who are repeat infringers.

1. <u>DISCLAIMER AND LIMITATION OF LIABILITY</u>
    1. YOU EXPRESSLY AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK AND IS PROVIDED ON AN "AS IS" BASIS WITHOUT REPRESENTATIONS, WARRANTIES, GUARANTEES OR INDEMNITIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, NEITHER HAT PICKS, ITS AFFILIATES, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS (COLLECTIVELY, THE “HAT PICKS PARTIES”), WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.
    2. TO THE FULLEST EXTENT PERMITTED BY ANY APPLICABLE LAW, THE DISCLAIMERS OF LIABILITY CONTAINED HEREIN APPLY TO ANY AND ALL

DAMAGES OR INJURY WHATSOEVER CAUSED BY OR RELATED TO USE OF, OR INABILITY TO USE, THE SERVICE UNDER ANY CAUSE OR ACTION WHATSOEVER OF ANY JURISDICTION, INCLUDING, WITHOUT LIMITATION, ACTIONS FOR BREACH OF WARRANTY, BREACH OF CONTRACT OR TORT (INCLUDING NEGLIGENCE). HAT PICKS HAS NO RESPONSIBILITY OR LIABILITY FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OF THE SERVICE, INCLUDING, BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES. YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH HAT PICKS IS TO STOP USING THE SERVICE AND TO CANCEL YOUR ACCOUNT. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK.

3. YOU FURTHER SPECIFICALLY ACKNOWLEDGE THAT THE HAT PICKS PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD THE HAT PICKS PARTIES LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING WITHOUT LIMITATION OTHER USERS OF THE SERVICE AND OPERATORS OF EXTERNAL SITES, AND THAT THE RISK OF USE OF THE SERVICE AND EXTERNAL SITES RESTS ENTIRELY WITH YOU.
4. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. THEREFORE, SOME OF THE ABOVE DISCLAIMERS OR LIMITATIONS MAY NOT APPLY TO YOU. IN SUCH EVENT, THE LIMITATIONS AND EXCLUSIONS HEREIN WILL BE THE MAXIMUM PERMITTED BY LAW.

2. Indemnification
    1. You agree to indemnify and hold Hat Picks, its affiliates, and their officers, directors, employees, and agents, harmless from and against any and all claims, losses, damages, and liabilities, including legal fees and expenses, arising out of your use or misuse of the Service, any violation by you of the Terms of Service, or any breach of the representations, warranties, and covenants made by you herein. Hat Picks reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Hat Picks, and you agree to cooperate with Hat Picks' defense. Hat Picks will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it.
3. Dispute Resolution
    1. You are solely responsible for your interactions with other users of the Service, third parties advertising through the Service, and with any other parties with whom you interact through the Service. Hat Picks may in its sole discretion become involved with these disputes, but has no obligation to do so. If you have a dispute with one or more users, advertisers or other parties with whom you interact through the Service, you release Hat Picks from any and all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes, including damages for loss of profits, goodwill, use or data. If you are a California resident, you waive California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor."
    2. This Agreement and any dispute arising out of or related to it or the Service will be governed in all respects by the laws of the State of Indiana as they apply to agreements entered into and to be performed entirely within Indiana between Indiana residents, without regard to conflict of law provisions. You agree that any claim or dispute you may have against Hat Picks must be resolved exclusively by a state or federal court located in Marion County, Indiana, except as otherwise agreed by the parties or as described below with respect to arbitrated claims. You submit to the personal jurisdiction of these courts for the purpose of litigating all such claims or disputes and

agree that such courts are a convenient forum for adjudication. YOU AND HAT PICKS EACH HEREBY WAIVE TRIAL BY JURY IN CONNECTION WITH ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE TERMS OF SERVICE.

3. For any claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than $10,000, either party may elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration. A party that elects arbitration will initiate the arbitration though the American Arbitration Association ("AAA"). The arbitration will be conducted solely by any or all of the following means: telephone, online, and written submissions. The arbitration will not involve any personal appearance by the parties or witnesses unless otherwise the parties mutually agree otherwise. Any judgment on the award rendered by the arbitrator shall be final and may be entered in any court of competent jurisdiction.
4. You acknowledge that the rights granted and obligations made under the Terms of Service to Hat Picks are of a unique and irreplaceable nature, the loss of which shall irreparably harm Hat Picks and which cannot be replaced by monetary damages alone. Accordingly, Hat Picks shall be entitled to injunctive or other equitable relief (without the obligations of posting any bond or surety or proof of damages) in the event of any breach or anticipatory breach by you.
5. You irrevocably waive all rights to seek injunctive or other equitable relief, or to enjoin or restrain the operation, promotion, use or exploitation of the Service, any offers provided in connection with the Service, or advertising or other content used, provided or displayed through the Service.

4. Miscellaneous

1. If any provision of the Terms of Service is held to be invalid, illegal, or unenforceable, such provision will be considered stricken from the Terms of Service and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired. Hat Picks will not, by mere lapse of time, without giving notice or taking other action hereunder, be deemed to have waived any breach of any of the provisions of the Terms of Service. Further, the waiver by Hat Picks of a particular breach of the Terms of Service will not be construed as nor constitute a continuing waiver of such breach or of breaches of the same or other provisions of the Terms of Service. All terms of this Agreement which, by their nature, are intended to survive termination of this Agreement will survive termination, including without limitation, all ownership terms, indemnification obligations, disclaimers and limitations of liability.
2. The failure of Hat Picks to require or enforce strict performance by you of any provision of the Terms of Service or the Hat Picks Privacy Policy or failure to exercise any right under them shall not be construed as a waiver or relinquishment of Hat Picks' right to assert or rely upon any such provision or right in that or any other instance. The express waiver by Hat Picks of any provision, condition, or requirement of the Terms of Service or the Hat Picks Privacy Policy does not constitute a waiver of any future obligation to comply with such provision, condition or requirement.
3. Hat Picks may assign or delegate the Terms of Service or the Hat Picks Privacy Policy, in whole or in part, to any person or entity at any time with or without your consent. You may not assign or delegate any rights or obligations under the Terms of Service or Privacy Policy without Hat Picks's prior written consent, executed by hand (not by email) by an officer of Hat Picks. Any unauthorized assignment or delegation by you is void and without force or effect.
4. Hat Picks may notify you via postings on the Service, and via e-mail or any other communications means using any contact information you provide. All notices given by you or required from you under the Terms of Service or the Hat Picks Privacy Policy will be in writing and addressed to:

Hat Picks, LLC
P.O. Box 1410
Greenwood, IN 46142
Attn: Hat Picks Legal Notice

Any notices that you provide that do not comply with the above requirements will have no force or effect.

1. The Terms of Service, the Website Terms of Use, and any supplemental policies and any documents expressly incorporated by reference herein (including without limitation the Privacy Policy), contain the entire understanding of you and Hat Picks with respect to the Service, and supersede all prior understandings, whether electronic, oral or written, or whether established by custom, practice, policy or precedent.