



Last Modified: March 06, 2020

Acceptance of these Terms of Service

PNQ, LLC (“**PNQ**”, “**we**” or “**us**”) provides advanced classroom management systems for schools and teachers in order to better support the needs and development of students, through a platform of products which may include mobile applications, websites or desktop applications, that integrate cutting-edge technology with evidence-based practices to facilitate teacher-student relationships that empower, motivate, and engage students with their learning, while enabling teachers to record, measure, and respond to student performance in real time (the “**Platform**”).

The following terms and conditions, together with any documents they expressly incorporate by reference (collectively, these “**Terms of Service**”), govern your access to and use of the Platform, the website <http://www.classtars.com> (our “**Website**”), including any content, functionality and services offered on or through the Platform or our Website, and any of our other products or services (the Platform, our Website and any of our other products or services, collectively, referred to as the “**Services**”).

Please read these Terms of Service carefully before you start using any of the Services. By using the Services, you accept and agree to be bound and abide by these Terms of Service and our Privacy Policy, found at <https://www.classtars.com/privacypolicy/PNQ-PrivacyPolicy.pdf>, incorporated herein by reference. If you do not want to agree to these Terms of Service or the Privacy Policy, you must not access or use the Services.

The Services are offered and available to users who are 18 years of age or older. By using the Services, you represent and warrant that you are 18 years of age or older and are otherwise capable of forming a legally binding contract with PNQ. If you do not meet these requirements, you must not access or use the Services.

If you are entering into these Terms of Service as a school administrator, teacher, teacher aide, or other personnel (“**School Official**”) on behalf of a school, school district, or other similar educational institution (“**School**”), or otherwise on behalf of a company or other legal entity, you represent that you have the authority to bind the School or such other legal entity to these Terms of Service, in which case the terms “you” or “your” shall refer to the School or such other legal entity. If you do not have such authority, or if you do not agree with these Terms of Service, you must not use the Services.

If you are entering into these Terms of Service as an individual teacher, you represent that you are following all of your school’s privacy protocols and are not violating any of your school’s regulations by using this product.

Nothing in these Terms of Service supersedes or limits your rights under (i) the terms and conditions of any written agreement you or your School or other legal entity have entered into with PNQ regarding the use of the Services (a “**Master Services Agreement**”), or (ii) applicable laws or regulations to the extent these Terms of Service are prohibited by such laws or

regulations. In the event of any conflict between these Terms of Service and a Master Services Agreement, the terms and conditions of the Master Services Agreement shall control.

You acknowledge and confirm that (i) you have read and understand all of the terms, conditions, policies, provisions, disclosures and disclaimers contained herein, (ii) these Terms of Service have the same force and effect as a signed agreement, and (iii) you expressly accept and agree to be bound by the terms hereof.

Changes to these Terms of Service

We may revise and update these Terms of Service from time to time in our sole discretion. We will post notice of changes to these Terms of Service on this page. Changes will not apply retroactively and will only become effective when (i) you use the Services after you know about the change, or (ii) thirty days after they are posted (whichever is sooner). However, changes addressing new functions for a Service or changes made for legal reasons will be effective immediately. Your continued use of the Services following the posting of revised Terms of Service means that you accept and agree to the changes. You are expected to check this page frequently so you are aware of any changes, as they are binding on you. If you do not agree to the changes, you should discontinue your access or use of the Services.

PNQ will not change how Education Records (as defined below) are used or shared under these Terms of Service without advance notice and consent from a School Official or School.

Accessing and Using the Services

PNQ gives you permission to access and use the Services that you select through the applicable registration process, subject to your compliance with all of the terms and conditions of these Terms of Service and any Master Services Agreement, if applicable.

We are constantly changing and improving our Services. We reserve the right to add or remove functionalities or features of the Services, and we may suspend or stop a Service altogether, including, for example, if you do not comply with these Terms of Service or if we are investigating suspected misconduct. You can stop using our Services at any time. We may also stop providing Services to you or add or create new limits to our Services or restrict your access to all or a part of the Services at any time without notice or liability. We will not be liable if for any reason all or any part of the Services are unavailable at any time or for any period. The right to access and use the Services is revoked in jurisdictions where it may be prohibited, if any.

To access or use the Services or some of the resources offered on or through the Services, you may be asked to provide certain registration details or other information. It is a condition of your use of the Services that all the information you provide is correct, current and complete. You agree that all information you provide to register with or use the Services or otherwise is governed by our Privacy Policy, found at <https://www.classtars.com/privacypolicy/PNQ-PrivacyPolicy.pdf>, and you consent to all actions we take with respect to your information consistent with our Privacy Policy.

To the extent that you provide any information, including but not limited to personal information or information related to any student of a School, to PNQ or its representatives, or access or seek access to any such information through the Services, you represent, warrant and covenant that (i) you are providing or accessing only your own information or the information of others which you are authorized to provide to third parties, and you have all required consents

and permissions required to share such information with PNQ; and (ii) the use of such information by PNQ and its representatives will not infringe upon or misappropriate the intellectual property rights or otherwise violate the rights of any third parties, or violate any applicable law, rule or regulation, including without limitation the Family Educational Rights and Privacy Act (“**FERPA**”), the Children’s Online Privacy Protection Act (“**COPPA**”) and the rules and regulations promulgated thereunder. You further represent, warrant and agree that you will not provide any information or otherwise use the Services in a manner that is harmful, fraudulent, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, or otherwise objectionable; or that jeopardizes the security of your account in any way.

You are responsible for determining whether the Services are suitable for you to use in light of any applicable laws and regulations, including but not limited to FERPA, COPPA, or any other federal or state privacy laws or regulations. If you are subject to any such laws or regulations and you use the Services, we will not be liable if the Services do not meet those requirements. By agreeing to these Terms of Service, and without limiting PNQ’s rights to indemnification or other rights under these Terms of Service, you agree to indemnify and hold PNQ, its affiliates, licensors and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns, harmless from any losses, including attorney fees, that result from your breach of any part of such laws or regulations.

NOTWITHSTANDING THE GENERALITY OF THE FOREGOING, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT TO THE EXTENT YOU SUBMIT, PROCESS OR TRANSMIT ANY EDUCATION RECORDS OR PERSONALLY IDENTIFIABLE INFORMATION OF A STUDENT (AS SUCH TERMS ARE DEFINED IN FERPA) IN OR THROUGH THE SERVICES, YOU HAVE OBTAINED ALL NECESSARY PERMISSIONS, CONSENTS, LICENSES AND AUTHORIZATIONS NECESSARY TO TRANSMIT, UPLOAD AND/OR USE EDUCATION RECORDS AND/OR STUDENT PERSONALLY IDENTIFIABLE INFORMATION IN CONNECTION WITH THE SERVICES OR OTHERWISE IN CONNECTION WITH THESE TERMS OF SERVICE.

PNQ HEREBY DISCLAIMS ANY AND ALL LIABILITY RELATED TO THE USE OR TRANSMISSION OF EDUCATION RECORDS AND/OR STUDENT PERSONALLY IDENTIFIABLE INFORMATION IN CONNECTION WITH THE SERVICES OR THESE TERMS OF SERVICE.

Account Security

If you choose, or are provided with, a user name, password or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity outside of your organization. You acknowledge and agree that, except with respect to your School or other organization, (i) your account is personal to you and you will not provide any other person with access to the Services using your user name, password or other security information, and (ii) you will notify us immediately of any unauthorized access to or use of your account or any other breach of security.

User Information and Content

In the course of using the Services, you and other users may provide or post certain data, content or other information which may be used by PNQ in connection with the Services and which may be visible to certain other users (“**User Content**”). Please visit our Privacy Policy, found at <https://www.classtars.com/privacypolicy/PNQ-PrivacyPolicy.pdf>, for additional information on the types of information different types of users are able to provide. Additionally, some User Content may be deemed an Education Record (as defined below).

You retain all ownership rights you have in any User Content. PNQ does not claim any ownership rights in the User Content.

In order to allow PNQ to provide the Services, you hereby grant to us a limited, non-exclusive, sublicensable (as necessary to perform the Services), worldwide, royalty-free, and transferable (only to a successor) right and license to (a) use, copy, store, distribute, publicly perform and display, modify, and create derivative works of (such as changes we make so that your content works better with our Services) such User Content as necessary to provide, improve and make the Services available to you and other users, including through any future media in which the Services may be distributed, (b) use and disclose metrics and analytics regarding the User Content in an aggregate or other non-personally identifiable manner (including for use in improving our Services or in marketing and business development purposes), (c) use any User Content (including any Education Record) that has been de-identified for any product development, research or other purpose (including after termination of your use of the Services); and (d) use any User Content for other purposes permitted by our Privacy Policy, found at <https://www.classtars.com/privacypolicy/PNQ-PrivacyPolicy.pdf>. You are responsible for making sure that you have all rights in the User Content, including the rights necessary for you to grant us the foregoing licenses to the User Content.

We will only share and use your personally identifiable information in accordance with our Privacy Policy, found at <https://www.classtars.com/privacypolicy/PNQ-PrivacyPolicy.pdf>.

You understand and acknowledge that you are responsible for any User Content you submit or contribute, and you, not PNQ, are fully responsible for such content, including its legality, reliability, accuracy and appropriateness. We are not responsible, or liable to any third party, for the content or accuracy of any User Content posted by you or any other user of the Services. We cannot guarantee the identity of any other users with whom you may interact in the course of using the Services, or the authenticity of any data which users may provide about themselves. You acknowledge that all content accessed by you using the Services is at your own risk and you will be solely responsible for any damage or loss to any party resulting therefrom.

You acknowledge and agree that we may use any feedback or suggestions you may provide with respect to the Services without any obligation to compensate you for them.

Monitoring and Enforcement; Termination

We have the right to: (i) remove or refuse to post any User Content for any or no reason in our sole discretion; (ii) take any action with respect to any User Content that we deem necessary or appropriate in our sole discretion, including if we believe that such User Content violates these Terms of Service, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the Services or the public or could create liability for PNQ; (iii) disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy; (iv) take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the Services; and (v) terminate or suspend your access to all or part of the Services for any or no reason, including without limitation, any violation of these Terms of Service or any Master Services Agreement, if applicable.

YOU WAIVE AND HOLD HARMLESS PNQ AND ITS AFFILIATES, LICENSEES AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY SUCH PARTIES DURING

OR AS A RESULT OF ITS INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES.

We have no liability or responsibility to anyone for performance or nonperformance of the activities described in this section.

Schools and School Officials

Under FERPA, a school may not generally disclose personally identifiable information from an eligible student's education records ("**Education Records**") to a third party without written consent of the parent and/or eligible student or without meeting one of the exemptions set forth in FERPA, including the exemption for information that may be considered directory information under FERPA ("**Directory Information**") or for disclosure to school officials with a legitimate educational interest ("**FERPA Exemption**").

As a School Official or School providing any Education Records or Directory Information to PNQ, you represent, warrant and covenant to PNQ, as applicable, that your School has complied in all respects with a FERPA Exemption or obtained all necessary parental or eligible student written consent to share the Education Records and Directory Information with PNQ, in each case, solely to enable PNQ's operation of the Services. Furthermore, you acknowledge and agree that (i) you are acting on behalf of (or have permission from) your School to enter into these Terms of Service, you will use the Services solely for your School-related classroom management activities, and you will provide all requested assistance to PNQ in the implementation and functionality of the Services; (ii) only School Officials who are current employees of the School may use the Services on the School's behalf, and upon termination of a School Official's employment with the School, such individual must return and cease using all login details and student access he or she has in his or her possession; and (iii) if at any time you learn a user of the Services claims to be affiliated with your School who is not, in fact, affiliated with your School, you will notify us immediately.

PNQ will never share Education Records with third parties except (i) as directed by a PNQ user (i.e., teacher sharing with another teacher or parent); or (ii) to our service providers that are necessary for us to provide the Services, as stated in our Privacy Policy. Education Records are never used or disclosed for third party advertising or any kind of behaviorally-targeted advertising to students or parents. Additionally, PNQ does not collect information directly from a student, and personal information collected from a School or School Official about a student is never sold or rented to anyone. This section shall not be construed (i) to prohibit PNQ from marketing or advertising directly to parents so long as the marketing or advertising did not result from the use of Education Records to provide behaviorally targeted advertising or (ii) to limit the ability of PNQ to use student information or Education Records for adaptive learning or customized student learning purposes.

PNQ may use Education Records that have been de-identified for product development, research or other purposes ("**De-Identified Data**"). De-Identified Data will have all direct and indirect personal identifiers removed, including, but not limited to, name, date of birth, demographic information, location information and school identity. PNQ agrees not to attempt to re-identify the De-Identified Data and not to transfer the De-Identified Data to a third party unless that party agrees not to attempt re-identification.

Following termination or deactivation of a school account, we may retain information and content for backup, archival, audit or other business purposes, or otherwise in accordance with

applicable laws. We may maintain anonymized, de-identified or aggregated data, including usage data, for analytics purposes. If you have any questions about data retention or deletion, please e-mail info@pnqsys.com.

Intellectual Property Rights

The Services and all past, present and future content of the Services, including all software, hardware (including tablet devices) and technology used to provide the Services (including our proprietary code and third-party software), user interfaces, materials displayed or performed on the Services, such as text, graphics, articles, photographs, images, illustrations and the design, structure, sequence and “look and feel” of the Services, and all other intellectual property, including all trademarks, service marks, logos, or any other trade name, trademarks, service marks and other distinctive or proprietary brand features of PNQ, are (i) owned by PNQ, its licensors or other providers of such material, (ii) protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws, (iii) are intended solely for the personal, non-commercial use of our users, and (iv) may only be used in accordance with these Terms of Service.

You may not use, store, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, create derivative works from, display, license, sell or otherwise exploit any content on the Services for any purposes other than as expressly permitted under these Terms of Service. You may not decompile, reverse engineer, or otherwise attempt to obtain the source code of any content on the Services.

Using our Services does not give you ownership of any intellectual property rights in our Services or any content on the Services. You may not use content from our Services, including User Content, unless you obtain permission from its owner or are otherwise permitted by law. These terms do not grant you the right to use any of our technology or intellectual property. You may not remove, obscure, or alter any copyright or other legal notices displayed in or along with our Services.

No right, title or interest in or to the Services or any content on the Services is transferred to you, and all rights not expressly granted are reserved by PNQ. Any use of the Services not expressly permitted by these Terms of Service is a breach of these Terms of Service and may violate copyright, trademark and other laws.

Prohibited Uses

You may use the Services only for lawful purposes and in accordance with these Terms of Service. You agree not to:

- Use the Services in any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries).
- Use the Services for the purpose of exploiting, harming, intimidating or harassing any person or entity in any way.
- Collect, use or disclose data, including personal information, about any other person or entity without their consent and/or any required consent under applicable law or regulations, or for unlawful purposes or in violation of applicable law or regulations,

or collect, solicit or otherwise obtain login information or access an account belonging to someone else.

- Transmit, or procure the sending of, any advertising or promotional material, including any “junk mail,” “chain letter” or “spam” or any other similar solicitation on or through the Services.
- Impersonate or attempt to impersonate PNQ, a PNQ employee, another user or any other person or entity (including, without limitation, by using e-mail addresses or user names associated with any of the foregoing).
- Use the Services to do anything unlawful, deceptive, misleading, illegal, unethical, malicious, or discriminatory, or post content that is hate speech, discriminating, threatening, or pornographic, incites violence, or contains nudity or graphic or gratuitous violence.
- Use the Services in any manner that could disable, overburden, damage, or impair the Services or interfere with any other party’s use of the Services, including their ability to engage in real time activities through the Services.
- Use any robot, spider or other automatic device, process or means to access the Services for any purpose, including monitoring or copying any of the material on the Services.
- Use any manual process to monitor or copy any of the material on the Services or for any other unauthorized purpose without our prior written consent.
- Use any device, software or routine that interferes with the proper working of the Services.
- Introduce any viruses, trojan horses, worms, logic bombs or other material which is malicious or technologically harmful.
- Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Services, the server on which the Services is stored, or any server, device or database connected to the Services.
- Attack the Services via a denial-of-service attack or a distributed denial-of-service attack.
- Otherwise attempt to interfere with the proper working of the Services, or engage in any other conduct that restricts or inhibits anyone’s use or enjoyment of the Services, or which, as determined by us, may harm PNQ or users of the Services or expose them to liability.

Any violation of the above may be grounds for termination of your right to access or use the Services.

Copyright Infringement

We respect the intellectual property of others and we expect our users of the Services to do the same. We may, in appropriate circumstances and at our discretion, disable and/or terminate the accounts of users who infringe the intellectual property rights of others. If you believe that

your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide the following information to PNQ's agent for notice of claims of copyright or other intellectual property infringement (the "**Copyright Agent**"): (i) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest; (ii) a description of the copyrighted work or other intellectual property that you claim has been infringed (the "**Disputed Material**"); (iii) a description of where the Disputed Material is located on the Services; (iv) your address, telephone number, and e-mail address; (v) a statement by you that you have a good faith belief that use of the Disputed Material is not authorized by the copyright owner, its agent, or the law; and (vi) a statement by you, made under penalty of perjury, that the information in your notice is accurate and that you are the owner of the Disputed Material, or are authorized to act on behalf of the owner of the Disputed Material.

PNQ's Copyright Agent can be reached as follows:

Copyright Agent
c/o PNQ, LLC
6 Elm St.
Woodmere, NY 11598
Phone: 516-419-3008
E-mail: support@pnqsys.com

Reliance on Information Posted

The information presented on or through the Services is made available solely for general information purposes. We do not warrant the accuracy, completeness or usefulness of this information. Any reliance you place on such information is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such materials by you or any other user of the Services, or by anyone who may be informed of any of its contents.

Changes to our Website

We may update the content on our Website from time to time, but its content is not necessarily complete or up-to-date. Any of the material on our Website may be out of date at any given time, and we are under no obligation to update such material.

Third Parties and User Interactions

The Services may contain links to third party websites that are not owned or controlled by PNQ, and includes features that allow you to interact and communicate with third parties. When you access third party websites or interact or communicate with third parties through the Services, you do so at your own risk. PNQ has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any third party websites, or which are posted to or through the Services by other users. Your interactions with organizations and/or individuals found on or through the Services are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline interaction with any other person.

PNQ is not responsible for the actions, content, information or data of any third parties, including other users. You are solely responsible for your interactions with other users of the Services, and any other parties with whom you interact through the Services. We reserve the right, but have no obligation, to become involved in any way with these disputes.

If you have a dispute with one or more users, you release us (and our officers, directors, agents, subsidiaries, joint ventures and employees) from 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, privacy 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." And, if you are not a California resident, you waive any applicable state statutes of a similar effect.

Geographic Restrictions

The owner of the Services is based in the United States. We provide the Services for use only by persons located in the United States. We make no claims that the Services or any associated content is accessible or appropriate outside of the United States. Access to the Services may not be legal in certain countries. If you access the Services from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

Disclaimer of Representations and Warranties

YOUR USE OF THE SERVICES AND ANY CONTENT ON THE SERVICES IS AT YOUR OWN RISK. THE SERVICES AND ANY ASSOCIATED CONTENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER PNQ NOR ANY PERSON ASSOCIATED WITH PNQ MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY OR AVAILABILITY OF THE SERVICES OR ANY ASSOCIATED CONTENT. WITHOUT LIMITING THE FOREGOING, NEITHER PNQ NOR ANYONE ASSOCIATED WITH PNQ REPRESENTS OR WARRANTS THAT THE SERVICES OR ANY ASSOCIATED CONTENT WILL BE ACCURATE, RELIABLE, ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT THE SERVICES WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS. IN ADDITION, YOU ACKNOWLEDGE AND AGREE THAT IN NO EVENT SHALL PNQ BE RESPONSIBLE OR LIABLE FOR (I) MAINTAINING, STORING OR TRANSMITTING DATA GENERATED THROUGH YOUR USE OF THE SERVICES, INCLUDING WITHOUT LIMITATION DATA YOU INPUT REGARDING STUDENTS' BEHAVIOR; AND (II) ANY CHANGES OR MODIFICATIONS TO SETTINGS FOR THE SERVICES OR MODIFIED FUNCTIONALITY OF THE SERVICES. IT IS YOUR SOLE RESPONSIBILITY TO BACK-UP ALL DATA, INCLUDING WITHOUT LIMITATION EDUCATION RECORDS AND PERSONAL INFORMATION, INPUT, SUBMITTED OR OTHERWISE PROVIDED THROUGH THE SERVICES BY YOU, AND YOU ACKNOWLEDGE AND AGREE THAT PNQ SHALL NOT BE RESPONSIBLE OR LIABLE FOR PROVIDING ANY COPIES THEREOF TO YOU. YOU ACKNOWLEDGE AND AGREE THAT UPON CONCLUSION OR TERMINATION OF THE TRIAL PERIOD OR TERM OF THE SERVICES, ANY AND ALL DATA, INCLUDING WITHOUT LIMITATION EDUCATION RECORDS AND PERSONAL INFORMATION, INPUT, SUBMITTED OR OTHERWISE PROVIDED THROUGH THE SERVICES BY YOU MAY BE DELETED AND DESTROYED, AND COPIES OF SUCH INFORMATION AND DATA MAY NOT BE AVAILABLE TO SHARE WITH YOU.

PNQ 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.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

Limitation on Liability

IN NO EVENT WILL PNQ, ITS AFFILIATES OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS BE LIABLE, UNDER ANY LEGAL THEORY, FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE, ARISING OUT OF OR IN CONNECTION WITH (I) YOUR USE, OR INABILITY TO USE, THE SERVICES OR ANY ASSOCIATED CONTENT OR USER CONTENT, OR (II) ANY INTERACTION WITH ANY THIRD PARTY THROUGH OR IN CONNECTION WITH THE SERVICES, INCLUDING OTHER USERS.

IN NO EVENT PNQ, ITS AFFILIATES OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS BE LIABLE TO YOU IN THE AGGREGATE (FOR ALL POTENTIAL CLAIMS BY YOU) FOR ANY DAMAGES INCURRED IN EXCESS OF THE GREATER OF ANY FEES YOU HAVE ACTUALLY PAID TO PNQ FOR USE OF THE SERVICES IN THE SIX (6) MONTHS PRIOR TO THE EVENTS GIVING RISE TO THE CLAIM, OR ONE HUNDRED DOLLARS (\$100).

THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

Indemnification

You agree to defend, indemnify and hold harmless PNQ, its affiliates, licensors and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys' fees) arising out of or relating to (i) your access to, use, or misuse of the Services, (ii) your violation of these Terms of Service (including any failure to obtain or provide any necessary consent and/or violation of applicable laws or regulations), or (iii) the infringement by you or any third party using your account of any intellectual property or other right of any person or entity, including in connection with your User Content.

Governing Law and Dispute Resolution

These Terms of Service and the relationship between the parties shall be governed by the laws of the State of New York without regard to its conflict of law. To the extent any dispute arising from or relating to the subject matter of these Terms of Service is permitted to be brought in a court of law, such claim shall be subject to the exclusive jurisdiction of the state and federal courts located in New York, New York, and for all purposes of these Terms of Service, you and PNQ consent to the exclusive jurisdiction and venue of such courts.

Initiating a Formal Claim

Any and all disputes or claims (including the interpretation and scope of this clause, and the arbitrability of the dispute or claim) between you and PNQ shall be resolved by the processes set forth in these Terms of Service. PNQ provides the Services to you on the condition that you accept the dispute resolution provisions described below. Accordingly, if you initiate any claim against PNQ in any other manner, you shall be in violation of these Terms of Service and you agree that PNQ shall be entitled to have such action dismissed or otherwise terminated. You further agree to reimburse PNQ for its reasonable costs incurred in defending against such improperly initiated claim. You agree that prior to initiating any formal proceedings against PNQ, you will send us a notice to info@pnqsys.com and state that you are providing a “**Notice of Dispute.**” Upon receipt of a Notice of Dispute, you and we shall attempt to resolve the dispute through informal negotiation within thirty (30) days from the date the Notice of Dispute is sent. If the dispute remains unresolved, either you or we may initiate formal proceedings according to these Terms of Service.

Alternative Dispute Resolution Process

Subject to any applicable laws, if a claim arises between you and PNQ with a total value of less than \$10,000, the party initiating the claim may elect to have the dispute resolved pursuant to a binding arbitration process that does not require attendance in person. This “**Alternative Dispute Resolution Process**” shall be initiated by either party sending notice to the other, in which event you and PNQ agree to use our reasonable efforts to agree within thirty (30) days upon an individual or service to manage the Alternative Dispute Resolution Process (the “**Arbitration Manager**”) according to the following requirements: (i) neither party shall be required to attend any proceeding in person, (ii) the proceeding will be conducted via written submissions, telephone or online communications or as otherwise agreed upon, (iii) the fees for the Arbitration Manager will be borne equally by the parties or be submitted to the Arbitration Manager to determine as part of the dispute and (iv) the judgment rendered by the Arbitration Manager may be entered in any court of competent jurisdiction for enforcement.

Arbitration Agreement

Except as otherwise provided herein, you and PNQ agree that any and all disputes or claims that have arisen or may arise between us shall be resolved exclusively through final and binding arbitration, rather than in court. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement.

Our arbitration proceedings would be conducted by the American Arbitration Association (“**AAA**”) under its rules and procedures applicable at that time, including the AAA’s Supplementary Procedures for Consumer-Related Disputes (to the extent applicable), as modified by this Arbitration Agreement. You may review those rules and procedures, and obtain a form, known as a “**Demand for Arbitration,**” for initiating arbitration proceedings at www.adr.org. The arbitration shall be held in New York, New York. If the value of the relief sought is \$10,000 or less, either of us may elect to have the arbitration conducted according to the Alternative Dispute Resolution Process described above.

The arbitrator will decide the substance of all claims in accordance with the laws of the State of New York, including recognized principles of equity, and will honor all claims of privilege recognized by law. The arbitrator shall not be bound by rulings in prior arbitrations involving different users of the Services, but is bound by rulings in prior arbitrations involving the same

user to the extent required by applicable law. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court possessing jurisdiction over the parties, except for a limited right of appeal under the Federal Arbitration Act.

The AAA rules will govern the payment of all filing, administration and arbitrator fees, unless our Arbitration Agreement expressly provides otherwise. If the amount of any claim in an arbitration is \$10,000 or less, PNQ will pay all filing, administration and arbitrator fees associated with the arbitration, so long as (i) you make a written request for such payment of fees and submit it to the AAA with your Demand for Arbitration and (ii) your claim is not determined by the arbitrator to be frivolous. In such case, we will make arrangements to pay all necessary fees directly to the AAA. If the amount of the claim exceeds \$10,000 and you are able to demonstrate that the costs of arbitration will be prohibitive as compared to the costs of litigation, PNQ will pay as much of the filing, administration and arbitrator fees as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive. If the arbitrator determines the claim(s) you assert in the arbitration are frivolous, you agree to reimburse PNQ for all fees associated with the arbitration paid by PNQ on your behalf, which you otherwise would be obligated to pay under the AAA's rules.

YOU AND PNQ AGREE, AS PART OF THE ARBITRATION AGREEMENT, THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS PART OF ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING (REFERRED TO HEREIN AS THE "PROHIBITION OF CLASS AND REPRESENTATIVE ACTIONS"). UNLESS BOTH YOU AND WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN YOUR OR OUR CLAIM WITH ANOTHER PERSON'S OR PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE OR CLASS PROCEEDING. THE ARBITRATOR MAY ONLY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER USERS OF THE SERVICES.

Except with respect to the Prohibition of Class and Representative Actions described above, if a court decides that any part of this Arbitration Agreement is invalid or unenforceable, the other parts of this Arbitration Agreement shall continue to apply. If a court decides that the Prohibition of Class and Representative Actions is invalid or unenforceable, then this entire Arbitration Agreement shall be null and void. The remainder of these Terms of Service and this section will continue to apply.

Notwithstanding the foregoing, either you or we may bring an individual action in small claims court. Further, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark, or trade secret shall not be subject to this Arbitration Agreement. Such claims shall be exclusively brought in the state or federal courts located in New York, New York. Additionally, notwithstanding this Arbitration Agreement, either party may seek emergency equitable relief before the state or federal courts located in New York, New York in order to maintain the status quo pending arbitration, and hereby agree to submit to the exclusive personal jurisdiction of the courts located within New York, New York for such purpose. A request for interim measures shall not be deemed a waiver of the right to arbitrate.

Limitation on Time to File Claims

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF SERVICE OR THE SERVICES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

Waiver and Severability

No waiver by PNQ of any term or condition set forth in these Terms of Service shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of PNQ to assert a right or provision under these Terms of Service shall not constitute a waiver of such right or provision.

If any provision of these Terms of Service is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms of Service will continue in full force and effect.

Entire Agreement

These Terms of Service, our Privacy Policy, and any Master Services Agreement, if applicable, constitute the sole and entire agreement between you and PNQ with respect to the Services and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the Services.

Miscellaneous

PNQ shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond PNQ's reasonable control. These Terms of Service and any subsequent versions of these Terms of Service posted to the Website will be deemed a legally binding contract signed by both parties. No agency, partnership, joint venture, or employment is created as a result of these Terms of Service and you do not have any authority of any kind to bind PNQ in any respect whatsoever.

Contact Information

This website is operated by PNQ, LLC. All feedback, comments, requests for technical support and other communications relating to the Services should be directed to us at:

PNQ, LLC
6 Elm St.
Woodmere, NY 11598
Phone: 516-419-3008
E-mail: info@pnqsys.com