TERMS AND CONDITIONS OF USE

RAPSODO

Rapsodo, Inc., a Delaware corporation, and its parent company, affiliates and subsidiaries (collectively referred to herein as "Rapsodo", "we", "us" or "our") offers sports monitors using high speed imaging and radar technology measuring ball flight information including but not limited to speed, spin, spin axis, break, launch angle, distance, trajectory height, strike zone position (together with any tripod or other apparatus manufactured by Rapsodo for the purpose of installing, mounting, holding or carrying such pitch monitor, the "Hardware") which are measured, presented and made accessible via the Rapsodo application (the "App" and, together with the Rapsodo website www.rapsodo.com, Hardware and all services made available to you through the App or for which you’ve subscribed, the "System").

These Terms and Conditions of Use (as the same are hereafter amended, supplemented or replaced, the "Terms") govern your access to, and use of, the System and/or the applicable data storage allotment as set forth in your purchase order or at the applicable Subscription (defined below) level. Please read the Terms carefully before using the System as it is a legally binding contract between you and us. You will be prompted to, and must, agree to the then-current Terms when you first access the App, including any updates; provided, however, that your access and use of the System (regardless of whether an account is actually created) constitutes your agreement to the Terms. By using the System, you represent and warrant you have complied with all obligations in these Terms. YOU ARE NOT AUTHORIZED TO ACCESS OR USE THE SYSTEM IF YOU DISAGREE WITH ALL OR ANY PART OF THE TERMS.

As a user of the System, you also agree to our Privacy Policy.

1. OUR TECHNOLOGY:

Rapsodo sports monitors use high speed cameras in conjunction with radar to take pictures of a ball during the flight and uses images and image processing algorithms to deduce parameters including but not limited to speed, spin, spin axis, launch angle, distance, trajectory height, vertical and horizontal break, 3D trajectory of the ball and the position of the ball at the point of strike zone. This data is presented via a Rapsodo application on a Personal Computer, a mobile tablet, smartphone or other capable electronic devices. Subsequently, the data is uploaded to and stored by Rapsodo and may be accessed and viewed via the App. The data may include information beyond what is measured including but not limited to geographical position of the user, video of the action, time and other relevant data.

2. RESTRICTION ON USE.

The System is only to be accessed by those over the age of 18. If you are under the age of 18, you may only use the System with the supervision and consent of a parent or guardian.

3. ACCOUNT REGISTRATION.

In order to access or use certain features of the System you may be required to create an account ("Account") and become a "Registered User" of the System. During the registration process you will be required to provide certain information and establish a username and a password. You agree to provide accurate, current and complete information during the registration process and at other times when you use the System and to update such information to keep it accurate, current and complete. Rapsodo reserves the right in its sole discretion to refuse to keep Accounts for, or provide services to, any person. Rapsodo reserves the right to suspend or terminate your Account if any information provided during the registration process or at other times proves to be inaccurate, not current or incomplete. You are responsible for safeguarding your password and account. You agree not to disclose your password to any third party and to take sole responsibility for any activities or actions under your Account, whether or not you have authorized such activities or actions. You will immediately notify Rapsodo of any unauthorized use of your Account. You agree that you will maintain no more than one (1) account per person.

Some portions of the Site are restricted and require authorization for access. Unauthorized use of or access to these areas is prohibited. Actual or attempted unauthorized use of or access to such areas may result in criminal and/or civil prosecution. Attempts to access such areas without authorization may be viewed, monitored and recorded and any information obtained may be given to law enforcement organizations in connection with any investigation or prosecution of possible criminal activity on this system. If you are not an authorized user of such areas or do not consent to continued monitoring, you should not attempt to access such areas.

4. UPDATES.

We reserve the right, from time to time as we see fit, to develop and provide updates, upgrades, modifications, bug fixes, patches and other error corrections and/or new features of the System ("Updates") and may suspend access to or use of the App during the installation of such Updates, without notice or liability. Failure to timely install Updates may cause all or certain features of the System to become inaccessible or ineffective. The Terms will apply to any and all Updates. Nothing in this Section shall imply or be deemed to require that we have an obligation to provide Updates or to continue to provide or enable any particular features or functionality of the System. For the App, Apple has no responsibility for updating, servicing, or maintaining the App.

ACCOUNT MONITORING.

We reserve the right to monitor your Account and/or use of the System. We may change, suspend, or discontinue your access to the App at any time, if we, in our sole discretion, determine that: (A) you are or have been in violation of these Terms, (B) in response to requests by law enforcement or other government agencies, or by court order, (C) upon discontinuance or material modification of the System, or any part thereof, or (D) due to incurable defects in the System.

6. USE OF THE APP

You must have a compatible device to use or access the App. We do not guarantee that the App will be compatible with, or available on, your device. Further, normal messaging, data, and other rates and fees may apply, which you are solely responsible for paying. You must comply with all applicable third-party terms of service when using the App.

Each account is for the exclusive use of the named member. You are solely responsible for maintaining the confidentiality of your
password, and for restricting access to your account. Be aware that you represent the information that you supply to Rapsodo, so please ensure that the information is complete and accurate.

Only registered users have full access to the App. Users are not allowed to link to third parties access to this part of the website or the information on the pages. Any unauthorized use or abuse by you may terminate your user profile and access to the App. Rapsodo reserves the right to terminate accounts or remove or edit content, in our sole discretion.

Although Rapsodo attempts to ensure that all information generated by the System is correct and complete, we accept no liability for errors or omissions, and we reserve the right to change or alter content at any time.

Rapsodo reserves the right to make changes to the App and these terms and conditions at any time without notice. We recommend that you check these terms and conditions regularly. If you choose to continue to use the App, you agree that by doing so you accept the new terms and conditions.

Without in any way limiting the other conditions and restrictions of use contained in these Terms, you agree not to use the System in any of the following manners:

- Post, upload, publish, submit or transmit any content (including any links thereto) that: (A) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (B) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (C) is fraudulent, false, misleading or deceptive; (D) is defamatory, obscene, pornographic, vulgar or offensive; (B) promotes discrimination, bigotry, racism, hatred, harassment or harm against any Individual or group; (F) is violent or threatening or promotes violence or actions that are threatening to any other person; or (C) promotes illegal or harmful activities or substances.
- Use, display, mirror or frame the App display;
- Access, tamper with, or use non-public areas of the App, Rapsodo's computer systems, or the technical delivery systems of Rapsodo's providers;
- Attempt to probe, scan, or test the vulnerability of any Rapsodo system or network or breach any security or authentication measures;
- Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Rapsodo or any third party (including another user) to protect the System or the content stored or displayed thereon;
- Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the System;
- Interfere with, or attempt to interfere with, the access of any user, host or network;
- Violate any applicable law, regulation, or contractual obligation with a third-party;
- Conduct or attempt to conduct any benchmarking or other performance testing of the App;
- Attempt to gain unauthorized access to any portion of the System, other accounts, computer systems or networks connected to any server or to any of the websites through hacking, password mining or any other means;
- Obtain or attempt to obtain any materials or information through any means not intentionally made available through the System;
- Use data mining, robots, screen scraping or similar data gathering and extraction tools on the System;
- Use any metatags or any other “hidden text” utilizing our name, service or trademarks or trade dress without our express written consent;
- Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others;
- Upload, or otherwise make available files that contain images, photographs, software or other material protected by intellectual property laws, including, by way of example and not as limiting, copyright or trademark laws or (by rights of privacy or publicity) unless you own or control the rights thereto or have received all necessary consent to do so the same;
- Use any material or information, including images or photographs, which are made available through the website in any manner that infringes any copyright, trademark, patent, trade secret or other proprietary right of any party;
- Upload files that contain viruses, Trojan horses, worms, time bombs, cancel bots, corrupted files, or any other similar software or programs that may damage the operation of another's computer or property of another;
- Harvest or otherwise collect information about others, including but not limited to e-mail addresses;
- Use the System in connection with surveys, contests, pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise);
- Direct traffic, post links, advertise, or engage in any similar conduct related to other websites, companies, competitors, or services;
- use the System if you are not able to form legally binding contracts; or
- Encourage or enable any other individual to do any of the foregoing.

7. SUBSCRIPTION SERVICES.

Use of the App and the functions and services available thereon are billed on a subscription basis ("Subscription(s)"). You will be billed in advance on a recurring, periodic basis (each, a “billing cycle”). Billing cycles are typically monthly or annual, depending on what subscription plan you select when purchasing a Subscription. Your Subscription will automatically renew at the end of each billing cycle unless you provide written notice of cancellation to Rapsodo at support@rapsodo.com or by turning off your auto-renewal option in your account settings at least twenty-four (24) hours in advance of when your then-current Subscription expires. If you have not canceled your Subscription, your account will be charged for any automatic renewal within the final twenty-four (24) hours of your Subscription. For App Store purchases, your payment will be charged to your iTunes Account. If you have a free subscription through the App Store and then purchase a paid subscription, your free trial will automatically end. However, if you have a free trial obtained through our website and later purchase a paid subscription via our website, the term of your paid subscription will start after your free trial ends.

If you have used any free trial of the System and elect to purchase a Subscription, your free trial period will be added to your initial subscription period.

You will be notified when your data storage has reached your subscribed limit. Unless otherwise stated, you will be required to subscribe for additional storage or to permanently delete certain existing content stored by Rapsodo. Failure to subscribe for additional data allotment or to remove existing media may result in the applicable service being limited, suspended, or terminated (subject to applicable legal requirements), which may result in a loss of your data associated with that service. You acknowledge and agree that the Internet, and communications over it, may not be absolutely secure and that connecting to it presents inherent risks. Refusing to provide or unauthorized access to computer systems, networks, and all data stored therein. Data transmitted through the Internet or stored on any equipment through which data is transmitted may not remain confidential. All facilities used to store and process any customer data will adhere to reasonable security standards. Except as expressly set forth herein, Rapsodo does not make any representation or warranty regarding privacy, security, authenticity, or non-corruption or destruction of any such data.

8. CONTENT.

1. Rapsodo Content. All copyright, trademarks, design rights, patents and other intellectual property rights (registered and unregistered) in, to and on the System belong to Rapsodo or applicable third parties.

During your Subscription period, you may use the App to access the data generated by the System pursuant to the Terms. Rapsodo retains all right, title, and interest in and to the App and any service made available to you in connection therewith, including without limitation all software used to provide such services and all logos and trademarks reproduced through such services, and you are not granted any intellectual property rights in such services, the App or any of its components.
You acknowledge and agree that the System, any necessary software used in connection with the App, and any content or data included therein (the "Rapsodo Content") contain proprietary and confidential information that is protected by applicable intellectual property and other laws. We grant you a limited, revocable, personal, non-transferable, and non-exclusive right during your Subscription period to access and use the System and the Rapsodo Content, provided that you do not (and do not allow any third-party to) copy, modify, create a derivative work from, reverse engineer, sell, assign, license, sublicense, grant a security interest in, otherwise transfer any right therein to anyone else, or violate any other of the Terms. The System is intended only for your personal, non-commercial use. You may not use the System to sell a product or service, increase traffic to your or any third-party website for commercial reasons, such as advertising sales, or otherwise undertake any endeavor aimed at deriving revenue. You may only use the System for legally permitted purposes. We make no representations or warranties as to the accuracy, reliability, completeness or timeliness of any content available through the System, and we make no commitment to update such content.

1. User Content. Each user retains ownership, responsibility for, and/or other applicable rights in the content that they create using the Hardware (the "User Content"). When you provide User Content to Rapsodo through the App, you grant Rapsodo and its assigns a non-exclusive, irrevocable (except as mandated by applicable law), royalty-free, freely transferable, sublicenseable, worldwide right and license to use, host, store, cache, reproduce, publish, display (publicly or otherwise), perform (publicly or otherwise), distribute, transmit, modify, adapt (including, without limitation, in order to conform to the requirements of any network, devices, services, or media through which the App is available), sell, commercialize, create derivative works of, and otherwise exploit such User Content, to the maximum extent permitted by applicable law. You acknowledge and agree that (a) we have the right to arrange the posting of User Content in any way we desire; (b) we have no obligation to provide you with any credit when using your User Content; and (c) you are not entitled to any compensation or other payment from us in connection with the use of your User Content.

When you install the App, you may be asked to allow access to your device’s location data. If you grant such permission, we may collect information about your location and may use that information to customize the System with location-based information and features.

We reserve the right to monitor, remove or modify User Content for any reason and at any time, including User Content that we believe violates these Terms.

Upon termination of your Subscription, Rapsodo will continue to store your User Content, but you will not be able to access it. If you re-subscribe within one (1) year after the date of termination, your historical User Content will be restored to your Account (subject to available data storage limit / Subscription level).

9. DATA AND PRIVACY POLICY.

1. Rapsodo Data. We collect Rapsodo data from your use of the System. For example, we collect multiple points of pitch data (such as pitch velocity, spin rate and lift axis) and analyze and present that data in multiple ways, including strike-zone analysis, horizontal and vertical break and 3D trajectory. Depending upon the sports monitor used, we will collect other similar types of data. This data is linked to your Account and made available for review in the App during your Subscription period.

We primarily use your Rapsodo data for statistical purposes (aggregated and de-identified data) where we do not reveal your identity. There are certain circumstances, however, where we use personal information. See, our Privacy Policy referred in subsection B below.

Following termination of your Account, or if you remove any User Content from the System, we may retain your User Content for a commercially reasonable period of time for backup, archival, or audit purposes, or as otherwise required or permitted by law.

Additionally, Rapsodo may use your Rapsodo data, in perpetuity, for research and System development purposes. Accordingly, note that the above license to your User Content continues even if you stop using the System.

1. Personal Data. Your privacy is very important to us. Please review the Rapsodo Privacy Policy (which can be found at https://rapsodo.com/privacy-policy) and is incorporated herein, in its entirety, by this reference. This document discloses how we collect, protect, use and share your information with others.

UPON TERMINATION OF YOUR SUBSCRIPTION, RAPSODO SHALL HAVE NO FURTHER OBLIGATION TO STORE, OR MAKE AVAILABLE TO YOU, YOUR RAPSODO DATA OR PERSONAL DATA GATHERED BY RAPSODO IN CONNECTION WITH YOUR SUBSCRIPTION.

10. WARRANTIES.

EXCEPT WHERE PROHIBITED BY LAW, RAPSODO EXPRESSLY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND GUARANTEES OF ANY KIND, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT TO THE FULLEST EXTENT PERMISSIBLE UNDER THE LAW. THE SYSTEM AND ALL CONTENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" WITH ALL FAULTS BASIS. WITHOUT LIMITING THE FOREGOING, YOU UNDERSTAND THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE MAKE NO WARRANTY REGARDING THE QUALITY, ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY OF THE RAPSODO CONTENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DO NOT WARRANT THAT (A) THE SYSTEM WILL MEET YOUR REQUIREMENTS, (B) THE OPERATION OF THE SYSTEM WILL BE UNINTERRUPTED, VIRUS- OR ERROR-FREE OR FREE FROM OTHER HARMFUL ELEMENTS, OR (C) ERRORS WILL BE CORRECTED. ANY ORAL OR WRITTEN ADVICE PROVIDED BY OUR AGENTS OR US DOES NOT AND WILL NOT CREATE ANY WARRANTY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE ALSO MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO CONTENT; USER CONTENT, IN PARTICULAR, IS PROVIDED BY AND IS SOLELY THE RESPONSIBILITY OF THE USER PROVIDING THAT CONTENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED THROUGH THE SYSTEM, OR OUR SUPPORT OF THE SYSTEM, WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. YOU THEREFORE EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SYSTEM IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU.

11. RETURN POLICY.

If your delivery is incomplete or damaged in transportation, please contact us at support@rapsodo.com or call 844-727-7763. Rapsodo offers a thirty (30) -day money back guarantee on orders placed from our web-store. If you have bought the System for your own private use as a consumer and want to exercise your right to cancel the contract and return the Hardware, you can return it within thirty (30) calendar days after the date of receipt of the delivery and correctly follow the instructions on www.rapsodo.com/support. Make sure that the merchandise is in its original packaging and returned in a shipping box. Once your return is received and processed, you will receive an email confirming your order has been successfully refunded. Returns or replacements of parts and/or products may be subject to shipping, handling, replacement and/or restocking fees. There is no refund for the purchase of Subscriptions of the App.

12. INDEMNIFICATION.

To the maximum extent permitted by applicable law, you agree to indemnify and hold Rapsodo, its subsidiaries, suppliers and other partners harmless from any claim or demand, including reasonable accounting and attorneys’ fees, made by any third party due to or arising out of: (A) the User Content you create using the Hardware, access or share through the App; (B) your use of the System; (C) your athletic activities in connection with the System; (D) your connection to the App; (E) your violation of these Terms; (F) your use or misuse of Hardware; (G) any violation of the rights of any other person or entity by you; or (H) any location data which may be shared by you through the System. We reserve the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us under the Terms, and you agree to cooperate with our defense of these claims.

13. LIMITATION OF LIABILITY.
To the maximum extent permitted by applicable law, under no circumstances (including, without limitation, its own negligence) shall Rapsodo, its subsidiaries, partners or any wireless carrier be liable to you or any third party for: (A) any indirect, incidental, special, reliance, exemplary, punitive, or consequential damages of any kind whatsoever; (B) loss of profits, revenue, data, use, goodwill, or other intangible losses; (C) damages relating to your access to, use of, or inability to access or use the System; or (D) damages relating to any conduct or content of any third party or athlete using the System. To the maximum extent permitted by applicable law, this limitation applies to all claims, whether based on warranty, contract, tort, or any other legal theory, whether or not Rapsodo has been informed of the possibility of such damage, and further where a remedy set forth herein is found to have failed its essential purpose. To the maximum extent permitted by applicable law, the total liability of Rapsodo, for any claim under these Terms, including for any implied warranties not expressly disclaimed herein (or for which such disclaimer may be ineffective), is limited to the greater of One Hundred Dollars ($100.00) or the amount you have actually paid to Rapsodo for the Hardware and use of the System over the prior twelve (12) months from the date of the claim.

In particular, to the extent permitted by applicable law, we are not liable for any claims arising out of: (A) your use of the System (including but not limited to your participation in any activities promoted by the System); (B) the use, disclosure, display, or maintenance of your personal data and/or User Content; (C) any other interactions with us or any other person using the Systems, even if we have been advised of the possibility of such damages; or (D) other content, information, services or goods received through or advertised on the App.

To the extent permitted by applicable law, you acknowledge and agree that we offer the System and set the price(s) therefor in reliance upon the warranty disclaimers, releases, and limitations of liability set forth in the Terms. To the extent permitted by applicable law, you also acknowledge and agree that these warranty disclaimers, releases, and limitations of liability reflect a reasonable and fair allocation of risk between you and us and that these warranty disclaimers, releases, and limitations of liability form an essential basis of the bargain between you and us. We would not be able to provide the System to you on an economically reasonable basis without these warranty disclaimers, releases, and limitations of liability.

If you are a resident of California: You waive your rights with respect to California Civil Code Section 1542, which says “a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor.”

14. GOVERNING LAW AND DISPUTE RESOLUTION.

14.1 Governing Law and Dispute resolution

These Terms shall be governed by and construed in accordance with the laws of the State of Delaware and controlling U.S. federal law as applicable, without regard to its conflict of law principles.

To the maximum extent permitted by applicable law, you and Rapsodo agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If a dispute arises from or relates to this contract or the breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration. The parties further agree that any unresolved controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Claims shall be heard by a panel of three arbitrators. Within fifteen (15) days after the commencement of arbitration, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. The place of arbitration shall be Wilmington, Delaware unless the parties agree to an alternative location. The arbitration shall be governed by the laws of the State of Delaware. Depositions shall be limited to a maximum of 1 per party and shall be held within 30 days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrators, and for good cause shown. Each deposition shall be limited to a maximum of 4 hours duration. The arbitration will be based on the submission of documents and there shall be no in-person or oral hearing. Time is of the essence for any arbitration under this agreement and arbitration hearings shall take place within 90 days of filing and awards rendered within 120 days. Arbitrator(s) shall agree to these limits prior to accepting appointment. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party’s actual damages, except as may be required by statute. The arbitrator(s) shall not award consequential damages in any arbitration initiated under these Terms. Any award in an arbitration initiated under these Terms shall be limited to monetary damages and shall include no injunction or direction to any party other than the direction to pay a monetary amount. The standard provisions of the Commercial Rules shall apply. Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but only will have the authority to allocate attorneys’ fees if a particular law permits them to do so or as otherwise provided herein. The award of the arbitrators shall be accompanied by a reasoned opinion. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that party to present evidence or cross-examine a witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.

You also acknowledge and understand that, with respect to any dispute with us arising out of or relating to your use of the System:

- You are giving up your right to have a trial by jury;
- You are giving up your right to serve as a representative, as a private attorney general, or in any other representative capacity, or to participate as a member of a class of claimants, in any lawsuit involving any such dispute; and
- You must file any claim within one (1) year after such claim arose or it is forever barred.

If this arbitration provision is found (in a final, non-appealable order) by a court of competent jurisdiction to be null and void, then all disputes arising under the Terms between us will be subject to the jurisdiction of the state and federal courts located in Wilmington, Delaware, and you and we hereby submit to the personal jurisdiction and venue of these courts.

This agreement to arbitrate will not preclude you or Rapsodo from seeking provisional remedies in aid of arbitration, including without limitation orders to stay a court action, compel arbitration or confirm an arbitral award, from a court of competent jurisdiction. Furthermore, this agreement to arbitrate will not preclude you or Rapsodo from: (A) applying to the appropriate court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary; or (B) seeking relief in any state or federal court for disputes related to a violation or possible violation of Rapsodo’s intellectual property rights.

15. REPORT ABUSE.

If you have any reason to believe that content on the System violates any law, that any user of the System is using System services to violate the law, or that any user is violating the Terms or Privacy Policy you agree to promptly inform us in writing about the facts and circumstances of the alleged abuse/violations by writing to the address at the bottom of this Policy. We may, but are not obligated, to
conduct an investigation into the allegations. We reserve the right to remove accounts, content, or postings that we, in our sole discretion, believe are offensive, illegal, or otherwise inappropriate.

16. OTHER MISCELLANEOUS TERMS.

You agree that no joint venture, partnership, employment, or agency relationship exists between you and us as a result of the Terms or your use of the System. The Terms constitute the entire agreement between you and us with respect to your use of the System. Our failure to exercise or enforce any right or provision of the Terms does not constitute a waiver of such right or provision. If any provision of the Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties’ intentions as reflected in the provision, and the other provisions of the Terms remain in full force and effect.

You may not assign, delegate, or otherwise transfer your account or your obligations under these Terms without our prior written consent. We have the right, in our sole discretion, to transfer or assign all or any part of our rights under these Terms and will have the right to delegate or use third-party contractors to fulfill our duties and obligations under these Terms and in connection with the System.

Our notice to you via email, regular mail (in either instance at the last address provided for your Account), or notices or links displayed in connection with the App constitutes acceptable notice to you under the Terms. We are not responsible for your failure to receive notice if email is quarantined by your email security system (e.g., “junk” or “spam” folder) or if you fail to update your email address. Notice will be considered received forty-eight hours after it is sent if transmitted via email or regular mail. In the event that notice is provided via links displayed in connection with the App, then it will be considered received twenty-four hours after it is first displayed. You agree to comply with all applicable governmental laws, ordinances, rules, and regulations related to the retention of records. Under no circumstances will we be liable to you for your failure to retain necessary records, nor will our (non-)retention of records act to alleviate your duty under the law.

Except as expressly provided herein, nothing in these Terms is intended to confer upon any third-party any rights, remedies, obligations, or liabilities. If we make enforce these Terms or prevail in any action, suit, or proceeding arising from or based upon the Terms, we shall be entitled to recover our reasonable attorneys’ fees in connection therewith in addition to court costs and other fees and disbursement incurred in such action, suit, or proceeding.

These Terms are enforceable to the maximum extent allowable by applicable law, and with the respect to the App, the maximum extent allowable pursuant to Apple’s terms and conditions with us as an App developer.

The headings in this TOU are for convenience only. The heading of any section shall not affect the interpretation of any provision of the rights or obligations of the parties.

You may notify us using the following contact information:
Rapsodo Inc.
15 Seven Oaks Drive
Chesterfield, MO 63005

17. MLM REFFERAL REWARDS PROGRAM

The Rapsodo Referral Rewards program ("The Program") allows an individual ("Referrer") to earn rewards ("Rewards") by referring friends to become new customers of the Rapsodo Mobile Launch Monitor. Rewards can be limited to gift cards, Rapsodo merchandise, or monetary value and subject to Rapsodo’s sole discretion.

To participate, Referrer must agree to these terms, which become part of the Rapsodo Terms and conditions.

How to Earn Referral Rewards

Eligible Referrals: The Referral Rewards are available to any Referrer with a valid email address. To earn Rewards, you must:

1. Provide us with a valid email address
2. Be an individual person, 18 years or older, and reside in the United States or Canada.

Participation in the Program is prohibited where void by applicable law or regulation.

Referrers can earn Rewards if: a referred individual ("Referred Purchaser") uses custom referral link and or code to purchase a Rapsodo Mobile Launch Monitor. The referrer cannot earn Referral Rewards for any purchase that is not completed, or which is canceled, returned or refunded.

The referrer will be credited with a reward with each qualifying purchase. A Referrer can earn multiple rewards if the Referred Purchaser(s) purchases more than one (1) Mobile Launch Monitor.

Rewards will not be issued if the referrer does not follow the provided referral link or fails to enter promo code upon purchase. There is a 30-day review period for all qualifying referral purchases.

Rapsodo is not responsible for any delay or failure to receive Rewards for any reason, including inactive email account, technical difficulties associated therewith, or Referrer’s failure to adequately monitor any email account. Gift cards and gift certificates or any physical Reward are subject to the terms and conditions of the issuer. Rewards cannot be transferred, redeemed for cash or substituted by the Referrer. Rapsodo reserves the right in its sole and absolute discretion to award a substitute Reward of equal or greater value if a Reward is unavailable or cannot be awarded, in whole or in part, for any reason. The Approximate Retail Value ("ARV") of the prize represents Rapsodo’s good faith determination. That determination is final and binding and cannot be appealed. If the actual value of the prize turns out to be less than the stated ARV, the difference will not be awarded in cash. Rapsodo makes no representation or warranty concerning the appearance, safety or performance of any Award. Restrictions, conditions, and limitations may apply. Rapsodo will not replace any lost or stolen or damaged Reward items.

Referrer is responsible for any and all taxes imposed by any jurisdiction in connection with the receipt of the Rewards. Referrer is responsible for any loss or damage to any Reward that may result from Referrer’s actions.

Referrer Purchasers

Refereed Purchasers who have received a referral code and purchase the MLM will be provided a 15% discount of the Mobile Launch Monitor. Coupon codes are not automatically applied and must be entered during checkout. Coupon codes may not be transferred to another person, exchanged for cash, or combined with other Rapsodo products or services. Each coupon code may only be used on www.rapsodo.com/mim.

Coupon codes do not expire. Rapsodo reserves the right to any remedy, including cancellation of your order(s), if fraud, tampering, violations of these terms or Rapsodo’s Terms and Conditions, or technical errors are suspected. Void where prohibited. If your order later qualifies for a refund, the maximum refund you may receive is the amount you actually paid.

Multiple Referrals

A Referrer can earn multiple Referral Rewards. A Referrer Purchaser can earn only one (1) Referral Reward per purchase. If a Referrer Purchaser receives referral links from multiple Referrers, only the Referrer associated with the referral link actually used by the Referrer Purchaser will receive the Reward.

The Program may not be combined with other Rapsodo Referral Programs, coupons or incentives. Customers may not stack or apply multiple referral code(s) to any sale or discount at Rapsodo.com.

Termination and Changes

Rapsodo may suspend or terminate the Referrer or Referrer Purchaser the ability to participate in The Program at any time for any reason.

We reserve the right to suspend accounts or remove Referral Rewards if we notice any activity that we believe is abusive, fraudulent, or in violation of the Rapsodo and Conditions. We reserve the right to review and investigate all referral activities and to suspend accounts or modify referrals in our sole discretion as deemed fair and appropriate.
The scope, variety, and type of services and products that you may obtain as a Reward can change at any time.

Updates to the Terms
We can update these terms at any time without prior notice. If we modify these terms, we will post the modification on the Rapsodo.com website, applications, or services, which are effective upon posting. Continued participation in the Program after any modification shall constitute consent to such modification.