

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY:

Morinaga America (“Morinaga”), together with its Affiliates (as defined below), provides you access and use of [www.hi-chew.com](http://www.hi-chew.com) (this “Site”) which is expressly conditioned on your acknowledgment and acceptance of the terms and conditions of this Site. By accessing, browsing and/or using this Site and/or any of the Services (as defined below), you irrevocably agree to be bound by the terms and conditions of this Site and all applicable laws. If you do not: (i) agree to be bound by the terms and conditions of this Site and applicable laws each time you access, browse and/or use this Site and/or any of the Services; or (ii) have the authority to agree to or accept the terms and conditions of this Site, please refrain from accessing, browsing and/or using this Site and/or any of the Services.

**HI-CHEW.COM AGREEMENT**

This HI-CHEW.COM AGREEMENT (this “Agreement”), together with all of its amendments, modifications, changes, updates and additional terms and conditions, is a legal and binding agreement between you and Morinaga (individually, the “Party” and collectively, the “Parties”), setting forth the terms and conditions for your use of this Site and the Services, with reference to the following facts:

- A. Morinaga desires to provide you with access and use of this Site and the Services pursuant to the terms and conditions set forth in this Agreement.
- B. You desire to access, browse and/or use this Site and the Services pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereby agree as follows:

1. Definitions.

1.1 “Affiliate” shall mean any corporation or business entity that, directly or indirectly, controls, is under common control with, or is controlled by Morinaga. For purposes of this definition, “control” (including, with its correlative meanings, “controlled by” and “under common control with”) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation or business entity, whether through ownership of voting securities or by contract or otherwise.

1.2 “Intellectual Property Rights” shall mean, collectively, all of the following worldwide intangible legal rights, acquired by ownership, license, or other legal operation: (i) all patents, patent applications, and patent rights, including all continuations, continuations-in-part, divisions, reissues, reexaminations, and extension hereof; (ii) all trademarks, trade names, logos, and service marks registered by or on behalf of Morinaga or its Affiliates; (iii) all rights associated with works of authorship, including copyrights, whether registered or not, copyright applications, copyright registrations, moral rights, mask work rights, mask work applications, and mask work registrations; (iv) all inventions, whether patentable or not, know-how, show-

how, formulae, processes, techniques, confidential business information, trade secrets, and other proprietary information, technology, and intellectual property rights; and (v) all rights to sue or make any claims for any past, present, or future misappropriation or unauthorized use of any of the foregoing rights and the right to receive income, royalties, damages, or payments that are now or will later become due with regard to the foregoing rights.

1.3 “Privacy Policy” shall mean that certain Privacy Policy which is posted on [http://www.hi-chew.com/privacy\\_policy](http://www.hi-chew.com/privacy_policy).

1.4 “Services” shall mean those certain services to be provided or coordinated by Morinaga through this Site.

1.5 “Site” shall mean Morinaga website located at <http://www.hi-chew.com>, and all associated sites linked to [www.hi-chew.com](http://www.hi-chew.com) by Morinaga and its Affiliates, including other Morinaga websites around the world.

1.6 “Site Code” shall mean any and all underlying patentable or copyrightable elements (or protectable as trade secrets or otherwise under intellectual property laws) of this Site, including but not limited to source code, script, object code, software, protocols, algorithms, computer programs, data and other sets of statements and instructions contained in this Site.

1.7 “Site Content” shall mean any and all other human readable audio and/or visual elements of this Site created or owned by Morinaga, its Affiliates, or third parties, including but not limited to any text, graphics, images, illustrations, photographs, animation, video, audio or audiovisual works (including, for example, movie trailers or episodic works, home movies and digital photography), designs, logos, information, and other content made available through this Site by either Morinaga on its own, or by Morinaga in concert with third parties, whether part of the design of this Site or otherwise.

## 2. Conditions Precedent to Accessing Site and Using Services.

### 2.1 Terms and Conditions.

(i) Acceptance. BY ACCESSING, BROWSING AND/OR USING THIS SITE AND/OR ANY OF THE SERVICES, YOU SIGNIFY YOUR IRREVOCABLE ACKNOWLEDGEMENT, ASSENT AND AGREEMENT TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. If you do not: (i) agree to be bound by any of the terms and conditions set forth in this Agreement and applicable laws each time you access, browse and/or use this Site and/or any of the Services; or (ii) have the authority to agree to or accept the terms and conditions set forth in this Agreement, please refrain from accessing, browsing and using this Site and/or the Services.

(ii) Modification. You specifically acknowledge and agree that Morinaga reserves the right, in its sole and absolute discretion, at any time and from time to time without notice to you, to change, modify, discontinue, enhance, add or remove any portion of this Site, any of the Services or any provision of the terms and conditions set forth in this Agreement, in whole or in part. Any changes to the terms and conditions set forth in this Agreement will be effective when posted on this Site. You agree to periodically review the then current version of

the terms and conditions set forth in this Agreement posted so that you are aware of any changes. Your continued use of this Site and/or any of the Services in any way after any changes to this Site or the terms and conditions set forth in this Agreement are made or posted will be considered acceptance and acknowledgment of those changes and will constitute your agreement to be bound thereby.

2.2 Privacy Policy. Except as otherwise expressly provided for in this Agreement, the Services are subject to the Privacy Policy, which is expressly made a part of this Agreement by this reference. Your access and/or use of this Site or any of the Services is expressly conditioned on your acceptance of all terms and conditions set forth in the Privacy Policy. By accessing, browsing and/or using this Site and/or the Services, you irrevocably agree to be bound by the terms and conditions set forth in the Privacy Policy.

2.3 Personal Use. Your use of this Site or any of the Services shall be restricted to your personal and individual use. You shall not use this Site and/or any of the Services for and/or on behalf of any other person, group of individuals and/or entity. You shall not use this Site and/or any of the Services in any manner which does or is intended to promote or generate revenue for any business enterprise or commercial activity.

2.4 Age. You have to be at least thirteen (13) years of age to access this Site and use any of the Services. If you are over thirteen (13) years of age but not yet eighteen (18) years of age, please read the terms and conditions set forth in this Agreement carefully with your parent and/or legal guardian to obtain a required consent from your parent and/or legal guardian. If you are not yet: (i) thirteen (13) years of age; or (ii) eighteen (18) years of age and able to obtain necessary consent from your parent and/or guardian, please refrain from accessing, browsing and/or using this Site and/or any of the Services. By accessing, browsing and/or using, or attempting to access, browse and/or use this Site and/or any of the Services, you represent and certify that you are of sufficient legal age to access, browse and/or use this Site and/or the Services and to accept the terms and conditions set forth in this Agreement as binding legal obligations for any liability you may incur as a result of the use of this Site and/or the Services.

2.5 Territory. The Services are currently available only in the United States and Canada, and are not available in any other location. You agree not to use or attempt to use the Services from outside of the United States and Canada, and that Morinaga may use technologies to verify your compliance.

2.6 System Requirement. Use of the Services requires a compatible device, Internet access (fees may apply), and certain software (fees may apply), and may require obtaining updates or upgrades from time to time. Because use of the Services involves hardware, software, and Internet access, your ability to use the Services may be affected by the performance of these factors. High speed Internet access is strongly recommended. You acknowledge and agree that such system requirements, which may be changed from time to time, are your sole and absolute responsibility. The Services are not part of any other products or offering, and no purchase or obtaining of any other products shall be construed to represent or guarantee your access to the Services.

3. Use of Site.

3.1 Grant of License. Morinaga hereby grants you a limited, non-exclusive, non-transferable and revocable license to access, use and privately display or exhibit this Site, the Services, Advertiser Content, Site Code and Site Content, in accordance with the terms and conditions set forth in this Agreement for the sole purpose of your personal noncommercial use.

3.2 No Implied License. No other licenses, expressed or implied, are granted (or deemed to be granted) by Morinaga to you and all rights (including but not limited to the Intellectual Property Rights) in and to this Site, the Services, Site Code and Site Content, not licensed hereunder are expressly reserved by Morinaga directly, or indirectly through its Affiliates. Notwithstanding anything to the contrary set forth in this Agreement, without Morinaga's prior written consent, you may not edit, alter or remove any subtitles, credits or warnings or any copyright, trademark or other proprietary notices, or otherwise cut or alter the Site Content.

3.3 Prohibited Acts. The access, use, display or exhibit of this Site, the Services, Site Code and Site Content for commercial purposes is unauthorized and may constitute infringement. This license does not include any rights to: (i) sell, resell, lend, lease, rent or otherwise commercially use this Site, Services, Site Content, Site Code or any other material or information contained therein; (ii) collect or use any product listings, descriptions or any prices for any reason; (iii) create derivative works from the Site Content, Site Code or any other materials or information contained therein; or (iv) download or copy account information of any third party for the benefit of another merchant.

3.4 Rules of Conduct. Your use of this Site and/or any of the Services is subject to all applicable local, state and national laws and regulations and, in some cases, international treaties. You shall not use, allow, or enable others to use this Site, or knowingly condone use of this Site by others, in any manner that is, attempts to, or is likely to:

(i) be libelous, defamatory, indecent, vulgar or obscene, pornographic, sexually explicit or sexually suggestive, racially, culturally or ethnically offensive, harmful, harassing, intimidating, threatening, hateful, objectionable, discriminatory or abusive, or which may or may not appear to impersonate anyone else;

(ii) affect Morinaga and/or its Affiliates adversely or reflect negatively on Morinaga and/or its Affiliates, this Site, Morinaga's and/or its Affiliates' goodwill, names or reputation or cause duress, distress or discomfort to Morinaga and/or its Affiliates or anyone else, or discourage any person, firm or enterprise from using all or any portion, features or functions of this Site, or from advertising, linking or becoming a supplier to Morinaga and/or its Affiliates in connection with this Site;

(iii) send or result in the transmission of junk e-mail, chain letters, duplicative or unsolicited messages, or so-called "spamming" and "phishing";

(iv) be used for commercial or business purposes, including, without limitation, advertising, marketing or offering goods or services, whether or not for financial or any other form of compensation or through linking with any other website or webpages;

(v) transmit, distribute or upload programs or material that contain malicious code, such as viruses, timebombs, cancelbots, worms, trojan horses, spyware, or other potentially harmful programs or other material or information;

(vi) forge any TCP/IP packet header or part of the header information in any email or newsgroup posting for any reason;

(vii) violate any laws, regulations (including, without limitation, laws regarding the transmission of technical data or software exported from the United States), judicial or governmental order, any treaties or violate or infringe upon any Intellectual Property Rights, rights of publicity or privacy, or any other rights of ours or of any other person, firm or enterprise; gain unauthorized access to this Site, other accounts, names, passwords, personally identifiable information or other computers, websites or pages, connected or linked to this Site or to use this Site in any manner which violates or is inconsistent with the terms and conditions set forth in this Agreement;

(viii) modify, disrupt, impair, alter or interfere with the use, features, functions, operation or maintenance of this Site or the rights or use and enjoyment of this Site by any other person, firm or enterprise; or

(ix) collect, obtain, compile, gather, transmit, reproduce, delete, revise, view or display any material or information, whether personally identifiable or not, posted by or concerning any other person, firm or enterprise, in connection with their or your use of this Site, unless you have obtained the express, prior permission of such other person, firm or enterprise to do so.

#### 4. Postings.

4.1 Postings. Your comments, suggestions and information are important to this Site, the Services and Morinaga. Portions of this Site may provide you and other users an opportunity to submit, post, display, transmit and/or exchange information, ideas, opinions, photographs, images, video, creative works or other information, messages, transmissions or material to us, this Site or other users ["Post" or "Posting(s)"]. You understand, acknowledge and agree that such Postings are the sole responsibility of the person from which such Postings originated. This means that you, the user, and not Morinaga, are entirely responsible for the consequences of all Postings that you upload, post, email, transmit or otherwise make available via this Site. Postings do not reflect the views of Morinaga or any of its Affiliates. We do not monitor, endorse, edit or screen any Postings, although we specifically reserve the right to do so, nor shall we be liable for any Posting that is in violation of the terms and conditions set forth in this Agreement. In no event shall Morinaga or any of its Affiliates have or be construed to have any responsibility or liability for or in connection with any Postings whatsoever; however, if we determine, in our sole and absolute discretion, that any Posting does or may violate any of the terms and conditions set forth in this Agreement, we reserve the right, at any time and without limiting any and all other rights we may have under this Agreement, at law or in equity, to: (i) refuse to allow you to Post; (ii) remove and delete any Postings; (iii) revoke your right to use this Site and/or any of the Services; and/or (iv) use any technological, legal, operational or other means available to us to enforce the terms and conditions set forth in this Agreement, including,

without limitation, blocking specific IP addresses or deactivating your registration on this Site and/or the Services.

4.2 Your Agreement. If a Posting originates from you, you hereby agree that: (i) you are placing the Posting in the public domain without reservation of any rights or further control over the Posting or its use and you specifically authorize this Site and Morinaga to use such Posting in whole or in part, throughout the universe, in perpetuity in or on any and all media, now known or hereafter devised, and alone or together or as part of other information, content and/or material of any kind or nature; (ii) you represent and warrant that: (a) the Posting is original to you or fully cleared for use as contemplated herein, (b) the Posting does and will not, in any way, violate or breach any of the terms and conditions set forth in this Agreement, (c) the Posting does not contain libelous, tortious, or otherwise unlawful information, infringe or violate any copyright or other right, or contain any matter the publication or sale of which will violate any federal or state statute or regulation, (d) the Posting is not obscene or in any other manner unlawful, (e) the Posting shall not be injurious to the health of the user, and (f) we shall not be required to pay or incur any sums to any person or entity as a result of our use or exploitation of the Posting; (iii) if your Posting incorporates the name, logo, brand, service or trademark, voice, likeness or image of any person, firm or enterprise, you specifically represent and warrant that you have the right to place such Posting in the public domain and grant Morinaga the right to use such Posting as described above; (iv) Morinaga has the right to delete, re-format and/or change your Posting in any manner that we may determine (although you will not be responsible for any such changes made); and (v) you will not be entitled to any compensation because of the use or exploitation by us or any third party of any videos and other Postings you make to us or any ideas or concepts contained therein, and the submission of a video or other Posting, and/or any posting or display thereof, is not an admission of novelty, priority or originality. Even if you subsequently see or learn of a presentation, motion picture, still photograph, film, video or any other Site Content which appears to incorporate any idea or concept or include anything similar or identical to that contained in any video or other Posting that you or anyone else submits to or through this Site, you acknowledge and agree that you shall not be entitled to any compensation therefor.

4.3 Limitation on Storage Space. The amount of storage space on this Site per user is limited. Some Postings may not be processed due to space constraints or outbound message limitations. You understand, acknowledge and agree that we assume no responsibility for deletion of Postings or any failure to store, receive or deliver Postings in a timely manner or any other matter relating to Postings.

4.4 Noncommercial Purpose. Posting is for noncommercial purposes only and you may not Post in any manner which does or is intended to promote or generate revenue for any business enterprise or commercial activity.

4.5 Violation of Terms and Conditions. If you believe that any of the Site Content on this Site (including, without limitation, Postings) violates any of the terms and conditions set forth in this Agreement, please click [here](#) to send us a message about it. We cannot guarantee that we will respond to your message and we reserve the right to take or refrain from taking any or all steps available to us once we receive any such message.

5. Advertising. From time to time, you may communicate with, receive communications from, be re-directed to, interact with, or participate in or use the services or obtain goods and services of or from, third parties such as our advertisers, sponsors, or promotional partners (collectively, the “Advertisers”) as a result of your use of this Site. All such communication, interaction and participation is strictly and solely between you and such Advertisers and we shall not be responsible or liable to you in any way in connection with these activities or transactions (including, without limitation, any representations, warranties, covenants, contracts or other terms or conditions that may exist between you and the Advertiser or any goods or services you may purchase or obtain from any Advertiser).

6. Contests, Sweepstakes, Auctions and Promotions. From time to time, Morinaga, or this Site’s operational service providers, suppliers and advertisers may conduct promotions on or through this Site, including, without limitation, auctions, contests and sweepstakes (“Promotions”). Each Promotion may have additional terms and/or rules which will be posted or otherwise made available to you and, for purposes of each Promotion, will be deemed incorporated into and form a part of this Agreement.

7. Ownership.

7.1 Site and Services. You acknowledge and agree that Morinaga, its Affiliates, licensors and/or content providers retain the sole and exclusive right, title and interest in and to this Site, the Services, Featured Content, Site Codes and Site Content, and are protected by applicable domestic and international copyright laws.

7.2 Intellectual Property Rights. You acknowledge and agree that Morinaga and/or its Affiliates retain the sole and exclusive right, title, and interest in and to the Intellectual Property Rights in this Site, the Services, Featured Content, Site Codes and Site Content and all copies thereof, in whole or in part. All ideas, techniques, inventions, systems, formulae, discoveries, technical information, programs, prototypes and similar developments (the “Developments”) developed, created, discovered, made, written, or obtained by you in the course of or as a direct or indirect result of accessing or using this Site and/or the Services, and all related industrial property, copyrights, patent rights, trade secrets and other forms of protection thereof, shall be and remain the property of Morinaga, and/or its Affiliates. You agree to execute or cause to be executed such assignments and applications, registrations and other documents and to take such other action as may be requested by Morinaga and/or its Affiliate to enable them to protect their rights to any such Developments.

8. Third Party Sites. This Site may contain links to other independent third-party internet sites, resources and/or sponsors of this Site (collectively, the “Linked Sites”). The Linked Sites are provided solely as a convenience to our visitors. Such Linked Sites are not under Morinaga’s control, and Morinaga is not responsible for and does not endorse the content of such Linked Sites, including any information or materials contained on such Linked Sites. Morinaga does not verify, warrant, endorse or take responsibility for the availability, accuracy, completeness or quality of these Linked Sites themselves or content contained in these Linked Sites. Providing links to the Linked Sites does not constitute Morinaga’s approval of the content, policies or practices of these Linked Sites. You will need to make your own independent judgment regarding your interaction with these Linked Sites.

9. Violation of Terms and Conditions.

9.1 Morinaga may disclose any information we have about you (including your identity) if we determine that such disclosure is necessary in connection with any investigation or complaint regarding your use of this Site, or to identify, contact or bring legal action against someone who may be causing injury to or interference with (either intentionally or unintentionally) Morinaga's rights or property, or the rights or property of visitors to or users of this Site, including Morinaga's customers and Advertisers. Morinaga reserves the right at all times to disclose any information that Morinaga deems necessary to comply with any applicable law, regulation, legal process or governmental request. Morinaga also may disclose your information when Morinaga determines that applicable law requires or permits such disclosure, including exchanging information with other companies and organizations for fraud protection purposes.

9.2 You acknowledge and agree that Morinaga may preserve any transmittal or communication by you with Morinaga through this Site or any of the Services, and may also disclose such data if required to do so by law or if Morinaga determines that such preservation or disclosure is reasonably necessary to: (i) comply with legal process; (ii) enforce these terms and conditions set forth in this Agreement; (iii) respond to claims that any such data violates the rights of others; or (iv) protect the rights, property or personal safety of Morinaga, its employees, users of or visitors to this Site and the public.

9.3 You agree that Morinaga may, in its sole and absolute discretion and without prior notice, prohibit or restrict your access to this Site and/or block your future access to this Site if Morinaga determines that you have violated these terms and conditions set forth in this Agreement or other agreements or guidelines which may be associated with your use of this Site. You also agree that any violation by you of these terms and conditions set forth in this Agreement will constitute an unlawful and unfair business practice, and will cause irreparable harm to Morinaga, for which monetary damages would be inadequate, and you consent to Morinaga obtaining any injunctive or equitable relief that Morinaga deems necessary or appropriate in such circumstances. These remedies are in addition to any other remedies which Morinaga may have at law or in equity.

9.4 You agree that Morinaga may, in its sole and absolute discretion and without prior notice, prohibit or restrict your access to this Site, for cause, including but not limited to: (i) requests by law enforcement or other government agencies; (ii) a request by you (self-initiated account deletions); (iii) discontinuance or material modification of this Site or any service offered on or through this Site; or (iv) unexpected technical issues or problems.

9.5 If Morinaga does take any legal action against you as a result of your violation of these terms and conditions set forth in this Agreement, Morinaga will be entitled to recover from you, and you agree to pay, all reasonable attorneys' fees and costs of such action, in addition to any other relief granted to Morinaga. You agree that Morinaga will not be liable to you or to any third party for termination of your access to this Site as a result of any violation of these terms and conditions set forth in this Agreement.

10. Indemnification. You shall defend, indemnify and hold harmless Morinaga, and each of

its current, former and future parent corporations, subsidiaries, Affiliates, employee benefit plans, and related entities or corporations, and their past and present officers, directors, shareholders, employees, creditors, fiduciaries, agents, employees, partners, attorneys, representatives, promoters, heirs, predecessors, successors and assigns (collectively, the “Released Party”), from any and all claims, demands, costs, expenses, obligations, damages or causes of action of any nature, including reasonable attorneys’ fees and costs, arising directly or indirectly from: (i) your breach of any of your representations or warranties set forth in this Agreement; (ii) your breach of any other term or condition set forth in this Agreement; (iii) your violation of any federal, state or local law in connection with this Agreement; and/or (iv) damages to any third party caused by your negligent or intentional acts or omissions in connection with this Agreement.

## 11. Disclaimer.

11.1 Objectionable Material. You understand that by accessing and using this Site and any of the Services, you may encounter Site Content that may be deemed offensive, indecent or objectionable, which Site Content may or may not be identified as having explicit language. Nevertheless, you agree to access and use this Site and any of the Services at your sole and absolute risk and that Morinaga shall have no liability to you for Site Content that may be found to be offensive, indecent or objectionable. Site Content types (including genres, sub-genres and categories and sub-categories and the like) and descriptions are provided for convenience, and you acknowledge and agree that Morinaga does not guarantee their accuracy.

11.2 Disclaimer of Warranty. MORINAGA DOES NOT PROMISE THAT THIS SITE OR ANY CONTENT, SERVICES OR FEATURES OF THIS SITE WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT ANY DEFECTS WILL BE CORRECTED, OR THAT YOUR USE OF THIS SITE WILL PROVIDE SPECIFIC RESULTS. THIS SITE AND ITS CONTENT IS DELIVERED ON AN “AS-IS” AND “AS-AVAILABLE” BASIS. ALL INFORMATION PROVIDED ON THIS SITE IS SUBJECT TO CHANGE WITHOUT NOTICE. MORINAGA CANNOT ENSURE THAT ANY FILES OR OTHER DATA YOU DOWNLOAD FROM THIS SITE WILL BE FREE OF VIRUSES OR CONTAMINATION OR DESTRUCTIVE FEATURES. MORINAGA DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF ACCURACY, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MORINAGA DISCLAIMS ANY AND ALL LIABILITY FOR THE ACTS, OMISSIONS AND CONDUCT OF ANY THIRD PARTIES IN CONNECTION WITH OR RELATED TO YOUR USE OF THIS SITE AND/OR ANY OF THE SERVICES. YOU ASSUME TOTAL RESPONSIBILITY FOR YOUR USE OF THIS SITE AND ANY LINKED SITES. YOUR SOLE REMEDY AGAINST MORINAGA FOR DISSATISFACTION WITH THIS SITE OR ANY CONTENT IS TO STOP USING THIS SITE OR ANY SUCH CONTENT. THIS LIMITATION OF RELIEF IS A PART OF THIS AGREEMENT BETWEEN THE PARTIES.

11.3 Scope of Disclaimer. The above disclaimer applies to any damages, liabilities or injuries caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction of or unauthorized access to, alteration of, or use, whether for breach of contract, tort, negligence or any other cause of action.

11.4 Reservation of Rights. Morinaga reserves the right to do any of the following, at any time, without notice: (i) to modify, suspend or terminate operation of or access to this Site, or any portion of this Site, for any reason; (ii) to modify or change this Site, or any portion of this Site, and any applicable policies or terms; and (iii) to interrupt the operation of this Site, or any portion of this Site, as necessary to perform routine or non-routine maintenance, error correction, or other changes.

12. Limitation of Liability. Except where prohibited by law, in no event will Morinaga be liable to you for any indirect, consequential, exemplary, incidental or punitive damages, including lost profits, even if Morinaga has been advised of the possibility of such damages. If, notwithstanding the other provisions of these terms and conditions set forth in this Agreement, Morinaga is found to be liable to you for any damage or loss which arises out of or is in any way connected with your use of this Site or any of the Services, Morinaga's liability shall in no event exceed the greater of: (i) the total of any subscription or similar fees with respect to any of the Services on this Site paid in the six (6) months prior to the date of the initial claim made against Morinaga; or (ii) One Hundred United States Dollars (US \$100.00). Some jurisdictions do not allow limitations of liability, so the foregoing limitation may not apply to you.

13. Termination.

13.1 Termination. Your right to access and use this Site and/or the Services automatically terminates if you violate these terms and conditions set forth in this Agreement or any rules or guidelines posted in connection with this Site. Morinaga also reserves the right, in its sole and absolute discretion, to terminate your access or use of this Site and/or the Services, for any reason, with or without notice.

13.2 Effect of Termination.

(i) Rights and Obligations Cease. All rights and obligations of the Parties under this Agreement shall cease upon termination or expiration of this Agreement. Neither Party shall be liable to the other Party for damages of any kind, including without limitation incidental or consequential damages, resulting from the termination or expiration of this Agreement.

(ii) Survival of Certain Rights and Obligations. The following provisions shall survive the termination or expiration of this Agreement: Sections 1,2,7,9,10,11,12, 13 and 14 of this Agreement.

14. General Provisions.

14.1 Entire Agreement. This Agreement: (i) constitutes the final, complete, and exclusive understanding and agreement between the Parties with respect to the subject matter of this Agreement; and (ii) supersedes all prior and contemporaneous understandings or agreements between the Parties, whether written or oral, with respect to the subject matter of this Agreement. Neither Party to this Agreement has been induced to enter into this Agreement by, nor is either Party to this Agreement relying on, any representation or warranty outside those expressly set forth in this Agreement.

14.2 Modification. This Agreement, all agreements ancillary to this Agreement, and any related documents to be entered into in connection with this Agreement may be supplemented, amended or modified only by a written agreement by Morinaga. No supplement, amendment or modification of this Agreement, any agreement ancillary to this Agreement and any related document to be entered into in connection with this Agreement shall be binding unless it is in writing and signed by Morinaga.

14.3 Severability. If any provision of this Agreement is held to be invalid for whatever reason by any arbitrator, court, governmental agency, body or tribunal, the remaining provisions of this Agreement shall continue in full force and effect. Upon any such determination of invalidity, Morinaga shall replace the invalid provision with a valid provision that effects the original intent of the Parties as closely as possible in a mutually acceptable manner.

14.4 Waiver. No waiver of any breach, failure of any condition or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and executed by the Party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

14.5 Assignments. Neither this Agreement, nor any right or interest conferred by this Agreement may be sold, assigned or transferred by a Party, except with the written permission of the non-assigning Party obtained in advance, which permission may be arbitrarily withheld; provided, however, that either Party may assign this Agreement upon notice to a purchaser of all or substantially all of its assets as a going concern and may transfer this Agreement if it merges or consolidates with a successor entity, subject to the credit worthiness of the transferee.

14.6 Successors and Assigns. Except as otherwise provided in this Agreement, the terms and conditions set forth in this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any Party, other than the Parties to this Agreement or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

14.7 Time of Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive the Party of the benefits of any grace or use period allowed in this Agreement.

14.8 Injunctive Relief. You acknowledge that, in view of the uniqueness of the transactions contemplated by this Agreement, Morinaga and its Affiliates shall have an adequate remedy at law for money damages in the event that this Agreement is not performed in accordance with its terms, and therefore you agree that Morinaga and its Affiliates shall be entitled to specific enforcement of the terms hereof in addition to any other remedy to which it may be entitled, at law or in equity. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

14.9 Force Majeure. Morinaga and/or its Affiliates shall not be liable for any delay in the performance of its obligations hereunder that is due to circumstances or causes beyond Morinaga's and/or its Affiliates' reasonable control, such as fires, strikes, disputes with workers, delays in transportation, governmental demands or requirements, or acts of God (a "Force Majeure Event"). If a Force Majeure Event continues for more than ninety (90) days and Morinaga and/or its Affiliates remain unable to perform their obligations in accordance with this Agreement, or if a Force Majeure Event will continue for more than ninety (90) days, you may terminate this Agreement upon written notice to Morinaga.

14.10 Notices. All notices, requests, demands, waivers, consents and other communications hereunder shall be in writing, shall be delivered either in person, by telegraphic, facsimile, or other electronic means, by overnight air courier or by mail, and shall be deemed to have been duly given and to have become effective: (i) upon receipt if delivered in person or by telegraphic, facsimile or other electronic means calculated to arrive on any business day prior to 5:00 p.m., local time, or on the next succeeding business day if delivered on a non-business day or after 5:00 p.m., local time; (ii) one (1) business day after having been delivered to Morinaga by an air courier for overnight delivery; or (iii) three (3) business days after having been deposited in the mail as certified or registered mail, return receipt requested, all fees prepaid.

14.11 Governing Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflicts of law rules of such state.

14.12 Arbitration by AAA. Any controversy or claim arising out of or relating to this Agreement or the transactions contemplated hereby shall be resolved by arbitration before the American Arbitration Association ("AAA") under its then-prevailing commercial arbitration rules. Arbitration under this Section shall be initiated by a written demand for arbitration specifying the controversy or claim on which arbitration is sought, as well as the relief requested. Service of the demand shall be effective if made pursuant to the notification provisions contained in this Agreement. The arbitration shall be held in Los Angeles County unless the Parties mutually select another venue. The decision of the arbitrator shall be non-appealable, final and binding upon the Parties hereto, and judgment upon the award rendered by the arbitrator may be entered into any court having jurisdiction. Notwithstanding the foregoing, either Party may seek equitable relief by court action before or after instituting arbitration, including, without limitation, seeking and obtaining temporary restraining orders, injunctions or other provisional or ancillary remedies, and the institution and maintenance of any such action shall not constitute a waiver of the right to arbitrate any controversy or claim. The arbitrator shall award the costs and expenses of arbitration, including attorneys' fees, to the prevailing Party as part of its award, in addition to all other relief granted. This arbitration provision is intended by the Parties to be self-executing.

14.13 Attorneys' Fees. In the event of any proceedings or actions by a Party to enforce the terms and provisions of this Agreement, the prevailing Party shall be entitled, in addition to all other relief granted or awarded in any suit or proceeding, to a reasonable sum for attorneys' fees and costs incurred in connection therewith.

14.14 Expenses. Each Party shall pay and discharge, at its own expense, any and all expenses, charges, fees and taxes arising out of or incidental to the carrying on of its own affairs.