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### **-TERMS OF SERVICE-**

"Terms of Service," also known as "Terms of Use," and "Terms and Condition," describe the rules which one must agree to abide by in order to use such service. The terms of service is a legally binding agreement between a website or mobile application provider and its users.

#### **QUESTION**

What does a "Terms of Service" agreement consist of?

#### **ANSWER**

The content of a "Terms of Service" agreement will depend upon the types of services provided, and the applicable laws of the state or the country. At a minimum, it should include:

- A statement indicating the intent of the agreement and expectations of users. (for example: "By using [website's name], you agree to these conditions. Please read them carefully. If you do not agree with these terms, you must immediately cease all use of the Services and un-install any applications"),
- Definition of terms used in the agreement,
- Start date of the agreement,
- The term of the agreement,
- Payment details (for example: membership or subscription fees),
- Proper method of usage and what constitutes misuse,
- Disclaimer of warranties,
- Waiver of liability,
- Dispute resolution (for example: mandatory arbitration),
- User notification details upon modification of terms, and
- Third party links and contacts.

### **QUESTION**

How do I increase my chances of having a legally enforceable "Terms of Service" agreement?

### **ANSWER**

Consider the suggestions below. However, keep in mind this area of law is still developing, so you should consult an attorney before publishing your "Terms of Service" agreement.

- Provide clear and conspicuous notice of all terms,
- Require the users to scroll through to the bottom of the terms and then expressly and actively agree to the terms. For example, you could require users to type in their name in a signature box or click an "I Agree" button,
- Prohibit the users from using the website or mobile application prior to such express and active agreement, and
- Periodically ask the users to reconfirm their agreement to the terms.

Ask yourself, "would a reasonable person become aware of these terms?" and "would a reasonable person understand that they are agreeing to these terms?" The answer to both of these questions should be "yes."

### **QUESTION**

Are there any limitations on the enforceability of terms listed in a "Terms of Service" agreement?

### **ANSWER**

Usually, the provisions of a "Terms of Service" agreement are enforceable. However, if those terms are "inherently unfair" or "unconscionable," the courts may refuse to enforce them. Unfortunately, it is impossible to predict with certainty whether a court would find a certain term unconscionable. Generally, it is best to avoid unreasonably one-sided clauses when dealing with consumers.

### **QUESTION**

Can any of the terms in the "Terms of Service" agreement survive after a user's service has been terminated?

### **ANSWER**

Yes. But the terms that survive the termination must be clearly listed and unless otherwise necessary, should have a finite duration. For example, "x and y terms will survive for one year following the termination of the agreement."