

# Terms of Service

## Terms of Service

Last updated on August 1, 2018

This page describes the terms and conditions that govern your use of certain ESP Media, LLC digital products, including several interactive web sites (collectively, our “Web Sites”) and mobile applications, offered by ESP Media, LLC (“we”, “us” or “our”).

## 1. GENERAL RULES

1.1 If you choose to use our Web Sites, mobile sites and applications, any of the features of this site, including but not limited to RSS, API, software and other downloads (collectively, the “Services”), you will be agreeing to abide by all of the terms and conditions of these Terms of Service between you and ESP Media, LLC.

1.2 We may change, add or remove portions of these Terms of Service at any time. Any such changes shall become effective immediately upon posting. Therefore, it is your responsibility to review these Terms of Service prior to each use of our Web Sites and by continuing to use our Web Sites, you agree to any changes.

1.3 IF ANY OF THESE RULES OR ANY FUTURE CHANGES ARE UNACCEPTABLE TO YOU, YOU SHOULD DISCONTINUE YOUR USE OF THE SERVICES AND CANCEL YOUR SUBSCRIPTION BY CONTACTING US AT [sales@espmediasn.com](mailto:sales@espmediasn.com). YOUR CONTINUED USE OF THE SERVICES NOW, OR FOLLOWING THE POSTING OF NOTICE OF ANY CHANGES TO THESE TERMS OF SERVICE, WILL INDICATE YOUR ACCEPTANCE OF SUCH RULES AND CHANGES OR MODIFICATIONS THERETO.

1.4 We may change, suspend or discontinue any aspect of the Services at any time, including the availability of any Services feature, database, or content. We may also impose limits on certain features and services or restrict your access to parts or all of the Services without notice or liability. However, in no event will we make changes to paid Services without first providing you notice of such changes.

## 2. CONTENT OF THE SERVICES

2.1 The contents of the Services, including our Web Sites, are intended for your personal, noncommercial use. All materials published on the Services (including, but not limited to articles,

photographs, images, illustrations, audio clips and video clips, also known as the “Content”) are protected by copyright, and owned or controlled by ESP Media, LLC or the party credited as the provider of the Content. You shall abide by all additional copyright notices, information, or restrictions contained in any Content accessed through the Services.

2.2 The Services and Contents are protected by copyright pursuant to U.S. and international copyright laws. You may not modify, publish, transmit, participate in the transfer or sale of, reproduce (except as provided in Section 2.3 of these Terms of Service), create new works from, distribute, perform, display, or in any way exploit, any of the Content or the Services (including software) in whole or in part.

2.3 You may download or copy the Content and other downloadable items displayed on the Services for personal use only, provided that you maintain all copyright and other notices contained therein. Copying or storing of any Content for other than personal use is expressly prohibited without prior written permission from us or the copyright holder identified in the copyright notice contained in the Content.

2.4 The Content of the Services is owned or licensed to us.

2.5 ESP Media, LLC makes reasonable efforts to ensure its CMS is compliant with Web Content Accessibility Guidelines (WCAG) 2.0 requirements. This includes designing sites to be as inclusive as possible, so ESP Media, LLC partner schools have the opportunity to make all generated content accessible to their fans. In the event ESP Media, LLC does not meet the standards set forth by a school partner’s interpretation of WCAG 2.0, SIDEARM Sports will work with the school and its staff to address any concerns. While ESP Media, LLC can provide the above assurances, it cannot control nor is it responsible for any content that is uploaded to its CMS. This includes, but is not limited to, textual content, photos, graphics, audio, or video files. It is the responsibility of each school partner, and specifically the users of ESP Media, LLC system, to upload content that meets the above requirements.

### **3. ACCESS AND AVAILABILITY OF OTHER SERVICES AND LINKS**

3.1 The Services contain links to other related World Wide Web Internet sites, resources, and advertisers. Since we are not responsible for the availability of these outside resources, or their contents, you should direct any concerns regarding any external link to the administrator of such site.

#### **4. USER GENERATED CONTENT (INCLUDING COMMENTS)**

4.1 You shall not upload to, or distribute or otherwise publish on to the Services any libelous, defamatory, obscene, pornographic, abusive, or otherwise illegal material.

You agree that you will not threaten or verbally abuse other users, use defamatory language, or deliberately disrupt discussions with repetitive messages, meaningless messages or “spam.”

You agree not to use language that abuses or discriminates on the basis of race, religion, nationality, gender, sexual preference, age, region, disability, etc. Hate speech of any kind is grounds for immediate and permanent suspension of access to all or part of the Services.

4.2 The Services shall be used only in a noncommercial manner. You shall not, without the express approval of ESP Media, LLC, distribute or otherwise publish any material containing any solicitation of funds, advertising or solicitation for goods or services.

4.3 You acknowledge that any submissions you make to the Services (i.e., user-generated content including but not limited to: comments, forum messages, text, video, audio and photographs, as well as computer code and applications) (each, a “Submission”) may be edited, removed, modified, published, transmitted, and displayed by ESP Media, LLC and you waive any rights you may have in having the material altered or changed in a manner not agreeable to you. Submissions made to the Services may also be included in our RSS feeds, APIs and made available for republishing through other formats.

4.4 You grant ESP Media, LLC a perpetual, nonexclusive, world-wide, royalty free, sub-licensable license to the Submissions, which includes without limitation the right for ESP Media, LLC or any third party it designates, to use, copy, transmit, excerpt, publish, distribute, publicly display, publicly perform, create derivative works of, host, index, cache, tag, encode, modify and adapt (including without limitation the right to adapt to streaming, downloading, broadcast, mobile, digital, thumbnail, scanning or other technologies) in any form or media now known or hereinafter developed, any Submission posted by you on or to the Services or any other of our Web Sites, including any Submission posted on or to the Services through a third party.

4.5 You are solely responsible for the content of your Submissions. However, while ESP Media, LLC does not and cannot review every Submission and is not responsible for the content of these messages, ESP Media, LLC reserves the right to delete, move, or edit Submissions that it, in its sole discretion, deems abusive, defamatory, obscene, in violation of copyright or trademark laws, or otherwise unacceptable.

4.6 By making a Submission, you are consenting to its display and publication on the Site and in the Services and for related online and offline promotional uses.

## **5. REPRESENTATIONS AND WARRANTIES**

5.1 You represent, warrant and covenant (a) that no materials of any kind submitted through your account will (i) violate, plagiarize, or infringe upon the rights of any third party, including copyright, trademark, privacy or other personal or proprietary rights; or (ii) contain libelous or otherwise unlawful material; and (b) that you are at least thirteen years old. You hereby indemnify, defend and hold harmless ESP Media, LLC and all officers, directors, owners, agents, information providers, affiliates, licensors and licensees (collectively, the “Indemnified Parties”) from and against any and all liability and costs, including, without limitation, reasonable attorneys’ fees, incurred by the Indemnified Parties in connection with any claim arising out of any breach by you or any user of your account of these Terms of Service or the foregoing representations, warranties and covenants. You shall cooperate as fully as reasonably required in the defense of any such claim. ESP Media, LLC reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by you.

5.2 We do not represent or endorse the accuracy or reliability of any advice, opinion, statement, or other information displayed, uploaded, or distributed through the Services by any user, information provider or any other person or entity. You acknowledge that any reliance upon any such opinion, advice, statement, memorandum, or information shall be at your sole risk. THE SERVICES AND ALL DOWNLOADABLE SOFTWARE ARE DISTRIBUTED ON AN “AS IS” BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU HEREBY ACKNOWLEDGE THAT USE OF THE SERVICES IS AT YOUR SOLE RISK.

## **6. REGISTRATION AND SECURITY**

6.1 As part of the registration or account creation process, you will create login credentials by selecting a password and providing an e-mail address. You also have to give us certain registration information, all of which must be accurate and updated.

Each registration is for a single user only. You are not allowed to share your registration login credentials or give your login credentials to anyone else. We may cancel or suspend your access to the Services if you share your login credentials. You are responsible for maintaining the confidentiality of your password, which you will not have to reveal to any representative or agent of ESP Media, LLC. You may not (i) select or use the login credentials of another person with the intent to impersonate that person; (ii) use login credentials in which another person has rights without such person’s authorization; or (iii) use login credentials that we, in our sole discretion, deem offensive.

Failure to comply with the foregoing shall constitute a breach of these Terms of Service, which may result in immediate suspension or termination of your account.

6.2 Please notify sales@espmediasn.com of any known or suspected unauthorized use(s) of your account, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of your password or credit card information.

6.3 You must be 13 years or older to subscribe to all parts of the Services.

6.4 You are responsible for all usage or activity on your subscription account, including use of the account by any third party authorized by you to use your login credentials. Any fraudulent, abusive, or otherwise illegal activity may be grounds for termination of your account, at our sole discretion, and we may refer you to appropriate law enforcement agencies.

## **7. FEES AND PAYMENTS**

7.1. We reserve the right at any time to charge fees for access to portions of the Services or the Services as a whole. However, in no event will you be charged for access to the Services unless we obtain your prior agreement to pay such charges. Thus, if at any time we require a fee for portions of the Services that are now free, we will give you advance notice of such fees. You may cancel your account at any time. All new fees, if any, will be posted prominently on our Web Sites and in other appropriate locations on the Service. You shall pay all fees and charges incurred through your account at the rates in effect for the billing period in which such fees and charges are incurred, including, but not limited to charges for any digital products or services offered for sale through the Services by us or by any other vendor or service provider. All fees and charges shall be billed to and paid for by you. You shall pay all applicable taxes relating to use of the Services through your account.

## **8. COMMUNICATIONS BETWEEN SIDEARM SPORTS AND USERS**

8.1 If you indicate on your registration form that you want to receive such information, we, our owners and assigns, will allow certain third party vendors to provide you with information about products and services.

8.2 We reserve the right to send electronic mail to you for the purpose of informing you of changes or additions to the Services.

8.3 We reserve the right to disclose information about your usage and demographics, provided that it will not reveal your personal identity in connection with the disclosure of such information.

Advertisers and/or Licensees on our Web Sites may collect and share personal information about you only if you indicate your acceptance. For more information please read our Privacy Policy.

8.4 We may contact you via e-mail regarding your participation in user surveys, asking for feedback on current Services or prospective products and services. This information will be used to improve the Services and better understand our users.

## **9. SOFTWARE LICENSES**

9.1 You shall have no rights to the proprietary software and related documentation, or any enhancements or modifications thereto, provided to you in order to access the Services (“Software”). You may not sublicense, assign or transfer any licenses granted by our Web sites, and any attempt at such sublicense, assignment or transfer shall be null and void. You may make one copy of such software for archival purposes only. You may not otherwise copy, distribute, modify, reverse engineer, or create derivative works from Software.

## **10. TERMINATION**

10.1 You may terminate your account at any time by contacting us at [sales@espmediasn.com](mailto:sales@espmediasn.com). If you are a paying subscriber and are unsatisfied with the quality of the product or Services we provided, we will void your transaction and refund you the full cost of the purchase within 48 hours of receiving your notice of termination. If you are a paying subscriber of yearly or multi-month services and are unsatisfied with the quality of the product or Services we provided, we will issue you a pro-rated refund of the purchase.

10.2 ESP Media, LLC may, in its sole discretion, terminate or suspend your access to all or part of the Services for any reason, including, without limitation, breach or assignment of these Terms of Service.

## **11. MISCELLANEOUS**

11.1 These Terms of Service have been made in and shall be construed and enforced in accordance with Ohio law. Any action to enforce these Terms of Service shall be brought in the federal court located in the Southern District of Ohio or in the state court located in Hamilton County.

11.2 Notwithstanding any of the foregoing, nothing in these Terms of Service will serve to preempt the promises made in the ESP Media, LLC Privacy Policy.

11.3 Correspondence should be sent to [sales@espmediasn.com](mailto:sales@espmediasn.com).

11.4 You agree to report to us any copyright violations of the Terms of Service as soon as you become aware of them. In the event you have a claim of copyright infringement with respect to material that is contained in our Web Sites’ service, please notify [sales@espmediasn.com](mailto:sales@espmediasn.com).

11.5 ESP Media, LLC will not be responsible for any failure or delay in its performance due to causes beyond its reasonable control, including but not limited to labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, riot, act of God or governmental action.