

## **TERMS OF SERVICE**

**Updated: April 2022**

### **1. Overview**

The following terms and conditions constitute a legally binding agreement (together with any terms and conditions incorporated herein by reference, this “Agreement” or the “Terms”) between you (referred to herein as “you”, “your”, or “user”) and, 5 Star Reviews, LLC, a New York limited liability company (“5 Star Reviews”, “we”, “us”, or “our”). By entering into this Agreement or using our Service (as such term is defined below), you expressly acknowledge that you understand this Agreement and accept all of its terms. If you do not agree to the terms set forth in this Agreement, you must not use our Site or use our Services. If you are entering into this Agreement on behalf of an entity, such as your employer, you represent that you have the legal authority to bind that entity.

BY ACCESSING OR USING ANY PART OF THE SITE OR USING THE SERVICE, YOU AGREE THAT YOU HAVE READ, UNDERSTOOD AND AGREED TO BE BOUND BY THESE TERMS, WHICH CONTAIN A TERMS OF SALE AGREEMENT, AN ARBITRATION AGREEMENT, A WAIVER OF CLASS-ACTION RIGHTS, AND LIABILITY LIMITATIONS.

If you have any questions about these Terms, please contact us by email at [accounts@the5starreviews.com](mailto:accounts@the5starreviews.com).

### **2. Services.**

(a) Right to use. We grant you the right to access and use the Services in accordance with this Agreement.

(b) Nature of the Services. The 5 Star Review services consist of software that automatically contacts your customers to solicit reviews of your business. Those reviews will may be uploaded directly to your Google Business Profile.

(c) Manner of use. You may not:

- i. reverse engineer, decompile, disassemble or work around technical limitations in the Services, except to the extent that applicable law permits it despite these limitations;
- ii. disable, tamper with or otherwise attempt to circumvent any mechanism that limits your use of the Services;

- iii. rent, lease, lend, resell, transfer, or sublicense any Services or portion thereof to or for third parties, except as explicitly permitted herein or in license terms that accompany any Services component; or
- iv. use the Services for any purpose that is unlawful or prohibited by this Agreement.

(d) Updates. We may make changes to the Services from time to time, including: the availability of features; how long, how much or how often any given feature may be used; and feature dependencies upon other services or software.

### **3. Security, Privacy, and Customer Data.**

(a) Security. We maintain technical and organizational measures, internal controls, and data security routines intended to protect Customer Data against accidental loss or change, unauthorized disclosure or access, or unlawful destruction.

(b) Privacy and data location. We treat Customer Data in accordance with the terms herein and our Privacy Statement. We may transfer to, store, and process Customer Data in the United States or in any country where we or our Affiliates or subcontractors have. You will obtain any necessary consent or rights from customers or others whose data or personal information or other data you will be hosting in the Services.

(c) Rights to provide customer data. You are solely responsible for your Customer Data. You must have, and you hereby grant us, sufficient rights to use and distribute Customer Data (including Customer Data sourced from third parties) necessary for us to provide you the Services without violating the rights of any third party, or otherwise obligating 5 Star Reviews to you or to any third party. We do not assume any additional obligations that may apply to Customer Data except as required by applicable law.

(d) Ownership of Customer Data. You retain all right, title and interest in and to Customer Data. We acquire no rights in Customer Data other than as described in this Section 3.

(e) Use of Customer Data. We will not use Customer Data or derive information from it for any (1) advertising or (2) other commercial purposes (beyond providing you with the Services) without your consent.

(f) Customer Data return and deletion. You may delete your Customer Data at any time. We automatically delete Customer Data after 180 days. If you terminate your account, we may delete Customer Data immediately without any retention period. We have no additional obligation to continue to hold, export, or return Customer Data and have no liability whatsoever for deletion of Customer Data pursuant to this Agreement.

(g) Third party requests of Customer Data. We will not disclose Customer Data to a third party (including law enforcement, other government entity, or civil litigant, but excluding our subcontractors) except as you direct or unless required by law. We will ask any third-party

demanding access to your Customer Data to contact you directly using your basic contact information. We will promptly notify you and provide a copy of the demand unless legally prohibited. You are responsible for responding to requests by a third party regarding your use of Services.

(h) Subcontractors. We may hire other companies to provide limited services on our behalf, such as customer support. Any such subcontractors will be permitted to obtain Customer Data only to deliver the services we have retained them to provide. We remain responsible for our subcontractors' compliance with the obligations set forth in this Agreement.

(i) Compliance with law. We will comply with all laws applicable to our provision of the Services, including applicable security breach notification laws, but not including any laws applicable to you or your industry that are not generally applicable to software providers. You will comply with all laws applicable to your Customer Data, and use of the Services, including any laws applicable to you or your industry.

### **3. Content.**

(a) Intellectual Property Rights. By using our Site and Services, you expressly acknowledge and agree that all content, photographs, computer code, smart contract code, sound or videos, media, images, formulas, graphics, webinars, training materials, products, services and/or other information and materials, and selection and arrangements associated with the Services and/or located on our Site is copyrighted work under the United States and other copyright laws, and is the property of or licensed by 5 Star Reviews, LLC, made available on our Site or any information, materials, and content transferred via a downloadable file or link by us or other third parties (the "Content"). All trademarks, service marks, and trade names (collectively, the "Marks") are trademarks or registered trademarks of and are proprietary to 5 Star Reviews, LLC or other respective owners that have granted 5 Star Reviews, LLC the right to use such Marks. We reserve all rights that are not specifically granted to users.

(b) Feedback. You may choose to submit comments, bug reports, ideas or other feedback about the Site or Services, including, without limitation, about how to improve the Site (collectively, "Feedback"). By submitting any Feedback, you agree that we are free to use such Feedback in any way we choose without additional compensation to you and you hereby grant us a perpetual, irrevocable, nonexclusive, worldwide license to incorporate and use the Feedback for any purpose. You shall not, under any circumstances or for any reason, modify, publish, transmit, participate in the transfer or sale of, reproduce, create derivative works of, distribute, publicly perform, publicly display, or in any way exploit any of the materials or Content in whole or in part, without our express prior written consent, which consent may be granted, withheld, conditioned and/or delayed in our sole and absolute discretion. Modification of the Content or use of the Content for any other purpose is a violation of the copyright and other proprietary rights of 5 Star Reviews, as well as other authors who created the materials, and may be subject to monetary damages and penalties.

(c) Third-Party Content. Our Site contains Content that we create and may also include Content provided by third parties. We do not monitor, we do not endorse, and we are not

liable for any third-party content. There may be some inadvertent inaccuracies or errors in the Content and we do not guarantee the accuracy, integrity, completeness or quality of the Content on our Site or located at third party URLs that may be posted on our Site. 5 Star Reviews is not responsible for the content on any linked site or any link contained in a linked site. We do not endorse or accept responsibility for the content of such third-party sites.

(d) Third-Party Services. Third parties may offer their services directly to you through the Site. In such case, you may be required to agree to the third party's terms of service and/or privacy policy to use the service. 5 Star Reviews will not be liable in any way for the acts or omissions of such third party, the terms of service or privacy policy or its failure to adhere to its terms of services or privacy policy, or any loss, damages, liability or expenses (including attorneys' fees) that you may incur arising from or related to such third party's services or products

(e) You agree not to circumvent, disable or otherwise interfere with security-related features of the Site that prevent or restrict use or copying of any Content or enforce limitations on use of the Content. By accessing our Site, you agree not to use any data mining, robots, scraping or similar data gathering or extraction methods.

**4. Representations and Warranties.** By using our Site and Services, you expressly represent, warrant and acknowledge the following:

(a) You are not a citizen or resident of a state, country, territory or other jurisdiction that is embargoed by the United States or where your use of the Site would be illegal or otherwise violate any applicable law. Specifically, you represent that you are not located in, organized in, or a resident of Cuba, Iran, Syria, North Korea, Russia, the Crimea region, Venezuela, or any other jurisdiction where Applicable Law prohibits you from accessing or using the Site; and you represent that you are not, and have never been, named on the Office of Foreign Asset Control of the U.S. Department of the Treasury's Specially Designated and Blocked Persons List.

(b) BY ACCESSING THE SITE, YOU EXPRESSLY REPRESENT AND WARRANT THAT YOU (i) HAVE READ AND UNDERSTAND THIS AGREEMENT, (ii) ARE AT LEAST 18 YEARS OF AGE AND OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT, AND (iii) THAT YOU ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS.

**7. Disclaimers and Limitation of Liability.**

(a) YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR ACCESS TO AND USE OF THE SITE AND SERVICES IS AT YOUR SOLE RISK, AND THAT THE SITE IS PROVIDED "AS IS" AND "AS AVAILABLE" WITH ALL FAULTS AND WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, WE MAKE NO EXPRESS WARRANTIES AND HEREBY DISCLAIM ALL IMPLIED WARRANTIES REGARDING THE SITE AND/OR THE SERVICES AS A WHOLE, AND ANY PART OF EACH

(INCLUDING, WITHOUT LIMITATION, THE SITE OR ANY EXTERNAL WEBSITES), INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, CORRECTNESS, ACCURACY, OR RELIABILITY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE, OUR SUBSIDIARIES, AFFILIATES, AND LICENSORS DO NOT REPRESENT OR WARRANT TO YOU THAT: (i) YOUR ACCESS TO OR USE OF THE SITE WILL MEET YOUR REQUIREMENTS, (ii) YOUR ACCESS TO OR USE OF THE SITE WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, (iii) USAGE DATA PROVIDED THROUGH THE SITE WILL BE ACCURATE, (iv) THE SITE OR ANY CONTENT OR FEATURES MADE AVAILABLE ON OR THROUGH THE SITE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR (V) THAT ANY DATA THAT YOU DISCLOSE WHEN YOU USE THE SITE WILL BE SECURE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES IN CONTRACTS WITH CONSUMERS, SO SOME OR ALL OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

(b) YOU ACCEPT THE INHERENT SECURITY RISKS OF PROVIDING INFORMATION AND DEALING ONLINE OVER THE INTERNET AND AGREE THAT WE HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY BREACH OF SECURITY UNLESS IT IS DUE TO OUR WILLFUL MISCONDUCT.

(c) YOU UNDERSTAND AND AGREE THAT WE WILL NOT BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES WHICH YOU MAY INCUR, HOWSOEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS (WHETHER INCURRED DIRECTLY OR INDIRECTLY), LOSS OF GOODWILL OR BUSINESS REPUTATION, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR ANY OTHER INTANGIBLE LOSS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(d) YOU AGREE THAT OUR TOTAL, AGGREGATE LIABILITY TO YOU FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR YOUR ACCESS TO OR USE OF (OR YOUR INABILITY TO ACCESS OR USE) ANY PORTION OF THE SITE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, IS LIMITED TO THE GREATER OF (a) THE AMOUNTS YOU ACTUALLY PAID US UNDER THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE DATE THE CLAIM AROSE, OR (b) \$500.

(e) YOU ACKNOWLEDGE AND AGREE THAT WE HAVE MADE THE SITE AVAILABLE TO YOU AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON YOUR REPRESENTATIONS AND WARRANTIES, THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH HEREIN. WE WOULD NOT BE ABLE TO PROVIDE THE SITE TO YOU WITHOUT THESE LIMITATIONS.

## **9. Indemnification and Release.**

(a) You agree to indemnify, defend and hold harmless 5 Star Reviews, LLC and its Affiliates, licensors, suppliers and sponsors, and each of their respective directors, officers, members, shareholders, managers, agents, contractors, partners, advisors, employees, licensors, content creators, and suppliers (collectively, the “5 Star Reviews Indemnified Parties”) from and against any claim, liability, loss, damage (actual and consequential) of any kind or nature, suit, judgment, litigation cost, and attorneys’ fees (collectively, “Liabilities”) arising out of or in any way related to (i) your breach of this Agreement, (ii) your violation of any intellectual property right or other rights of another party, and/or (iii) your violation of Applicable Laws, rules or regulations in connection with your access to or use of the Site or Services. This indemnity shall be applicable without regard to the negligence of any party, including any indemnified person, and shall survive any termination of this Agreement.

(b) To the maximum extent permitted by Applicable Law, you hereby irrevocably and unconditionally release and waive all claims against any 5 Star Reviews Indemnified Parties from any and all Liabilities of every kind and nature, arising out of or in any way connected with your use of the Site or the Services. To the extent that you do have any claims against 5 Star Reviews, LLC, you agree that: (i) any and all disputes, claims and causes of action against 5 Star Reviews, LLC arising out of or connected with your use of the Site and/or the Services shall be resolved individually, without resort to any form of class action; and (ii) any and all claims, judgments and awards shall be limited to actual and documented damages and out-of-pocket costs incurred, but shall in no event include attorneys’ fees or litigation costs (*e.g.*, court filing fees and related costs).

**10. Termination.** We reserve the right, in our sole and absolute discretion, to refuse, suspend, restrict or terminate your access to the Site, or any portion thereof, without notice to you and for any reason or no reason. You acknowledge that we have the right, but not the obligation, exercisable in our sole and absolute discretion, to suspend or terminate your access to all or part of the Site or Services: (i) at the request of law enforcement or other government agencies; (ii) if the Site or Services are discontinued or materially modified; (iii) upon the occurrence of any technical or security issues or problems; (iv) if you engage in any conduct that we believe, in our sole and absolute discretion, violates any provision of this Agreement or other incorporated agreements or guidelines or violates the rights of 5 Star Reviews or third parties; or (v) upon any breach by you of this Agreement. The exercise of our right to restrict or terminate your access to the Site and/or the Services, whether or not ultimately determined to be justified, will not, under any circumstances, constitute our breach under this Agreement. Neither the exercise or nor the failure to exercise such right to restrict or terminate your access to the Site and/or our Services will constitute an election of remedies or limit us in any manner in the enforcement of any other remedies available to us.

**11. Modifications.** We reserve the right to make changes to the Terms, at any time and from time to time, at our sole and absolute discretion. If any changes are made to this Agreement, we will provide you with written notice of such changes by sending you an e-mail, providing a notice on our Site, or updating the date at top of this Agreement. Any changes made to this Agreement will go into effect on the date they are made, and your continued access to the Site, or

use after the Terms have been updated with constitute your binding acceptance of these updates. If you do not agree to the revised Terms, you may not access or use our Site.

**12. Severability.** If any term or provision of this Agreement is deemed invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**13. Governing Law.** This Agreement and all matters related to it shall be governed by, construed, and enforced in accordance with the laws of the State of New York, as they are applied to agreements entered and to be performed entirely within New York and without regard to conflict of law principles, except to the extent that law is inconsistent with or preempted by federal law.

**14. Dispute Resolution; Arbitration.** All disputes arising out of or in connection with this Agreement, including without limitation your access or use of the Site, will be referred to and finally resolved by arbitration under the rules of the American Arbitration Association. The case will be adjudicated by a single arbitrator and will be administered by the American Arbitration Association in accordance with its applicable rules. Each party will cover its own fees and costs associated with the arbitration proceedings. The place of arbitration will be New York, New York. The award of the arbitrator will be final and binding, and any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, we may seek and obtain injunctive relief in any jurisdiction in any court of competent jurisdiction. WITH RESPECT TO ANY DISPUTE ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION DISPUTES RELATED TO THE SITE AND/OR THE SERVICES: (i) YOU HEREBY EXPRESSLY GIVE UP YOUR RIGHT TO HAVE A TRIAL BY JURY; AND (ii) YOU HEREBY EXPRESSLY GIVE UP YOUR RIGHT TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS IN ANY LAWSUIT, INCLUDING BUT NOT LIMITED TO CLASS ACTION LAWSUITS INVOLVING ANY SUCH DISPUTE.

**15. Limitation on Time to File Claims.** ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF USE OR THE WEBSITE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

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

**17. Definitions.**

(a) “Affiliate” means, with respect to any specified Person (as defined below), any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including without limitation any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person.

(b) “Applicable Law” means any domestic or foreign law, rule, statute, regulation, by-law, order, protocol, code, decree, or other directive, requirement or guideline, published or in force which applies to, or is otherwise intended to govern or regulate, any Person, property, transaction, activity, event or other matter, including any rule, order, judgment, directive or other requirement or guideline issued by any Governmental Authority (as defined below) having jurisdiction over the 5 Star Reviews, you, or as otherwise duly enacted, enforceable by law, the common law or equity.

(c) “Customer Data” means your customers’ contact information, including names, phone numbers, and e-mail addresses.

(g) “Governmental Authority” includes any domestic or foreign federal, provincial or state, municipal, local or other governmental, regulatory, judicial or administrative authority.

(i) “Person” means an individual, a partnership, a joint venture, a limited liability company or partnership, a corporation, a trust, an unincorporated organization or a government or any department or any agency or political subdivision thereof.

(j) “Privacy Policy” means our privacy policy located at 40 Maple Avenue, Rockville Centre, NY 11570

(k) “Service” refers to, in the aggregate, the 5 Star Reviews software, our Site (as defined below), and social media accounts, and any features, functions, services, products, rewards, offers, content, materials or information available on or through our Site.

(m) “Site” means the website located at <https://the5starreviews.com/>.