THE BACH, INC. – TERMS OF SERVICE

Last Updated on October 1, 2013.

Welcome to TheBach.com website and our mobile site (the "Site"). The terms "we", "us", "our" and "The Bach" refer to The Bach, Inc., a Delaware corporation authorized to do business in New York. The term "you" and "your" refers to the customer visiting the Site and/or contributing content on this Site.

This Site is offered to you conditioned upon your acceptance without modification of any/all the terms, conditions, and notices set forth below (collectively, the "Agreement"). By accessing or using this Site in any manner (the "Services"), you agree to be bound by the Agreement. Please read the Agreement carefully. If you do not accept all of these terms and conditions, please do not use this Site. The Bach reserves the right at any time to modify this Agreement and to impose new or additional terms or conditions on your use of the Services. Such modifications and additional terms and conditions will be disclosed to you and will become effective immediately and incorporated into this Agreement. You may be asked to acknowledge and agree to any modifications to this Agreement before you may be permitted continued use of the Services.

1. Use of the Site:

As a condition of your use of this Site, you warrant that (i) all information supplied by you on this Site is true, accurate, current and complete, (ii) if you have an account with The Bach, you will safeguard your account information and will supervise and be completely responsible for any use of your account by anyone other than you and (iii) you are 18 years of age or older in order to register for an account and contribute to our Site. The Bach does not knowingly collect the information of anyone under the age of 13. We retain the right at our sole discretion to deny access to anyone to this Site and the Services we offer, at any time and for any reason, including, but not limited to, for violation of this Agreement.

2. Registration and User Account:

As part of your registration for use of the Services, The Bach requires that you provide certain registration information. By agreeing to the terms of this Agreement, you represent that all information you provide in connection with the creation of your account is truthful and accurate, and you agree to promptly inform The Bach of any changes to your information. In order to fully register, you must create a unique username and password, which may be used by you, and only you, to gain access to the Services for as long as you are permitted access. The Bach may delete any account if, in its sole discretion, it deems the username to be offensive or inappropriate. You agree not to share your username and password with anyone else; such unauthorized usage of your account by any individual other than yourself may lead to termination of your account and the denial of future access to The Bach and its Services. You agree to promptly notify The Bach of any unauthorized use of your account, breach of security or improper disclosure of your account information of which you become aware. The Bach reserves the right to deny access to or terminate your account at any time if The Bach is unable to verify the authenticity of your account information or your compliance with the terms and conditions of this Agreement.

3. <u>Electronic Contracting and Communications</u>:

You agree that your electronic consent to and acceptance of the terms of this Agreement is legally binding. Through your use of the Services, you agree to receive from The Bach all communications, materials, policies, notices, disclosures and other notifications electronically, even such communications generally required to be in writing.

4. User Content:

A. Community Areas:

The Bach offers a variety of methods by which you can contribute content ("User Content"), consisting of discussion forums, blog posts, guest feedback, bulletin boards, user reviews, photographs, your profile and other materials ("Community Areas"). You understand that you are solely responsible for your use of Community Areas and you use them at your own risk. It is solely your responsibility to ensure your compliance with any third party social media policy to which you may be bound (e.g., employer policies) prior to participating in any interactive areas of The Bach.

B. Responsibility for Your User Content:

You alone are responsible for your User Content, and once published, it cannot always be withdrawn immediately. You assume all risks associated with your User Content, including anyone's reliance on its quality, accuracy, or reliability, or any disclosure by you of information in your User Content that makes you personally identifiable. You represent that you own, or have the necessary permissions to use and authorize the use of your User Content as described herein. You may not imply that your User Content is any way sponsored by The Bach.

Note that you may expose yourself to liability if, for example, your User Content contains material that is false, intentionally misleading, or defamatory; violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property right or proprietary right; contains material that is unlawful, including illegal hate speech or pornography; exploits or otherwise harms minors; or violates or advocates the violation of any law or regulation.

C. Our Right to Use Your User Content:

We may use your User Content in a number of different ways, including publicly displaying it, reformatting it, incorporating it into advertisements and other works, creating derivative works from it, promoting it, distributing it, and allowing others to do the same in connection with their own websites and media platforms ("Other Media"). As such, you hereby irrevocably grant us world-wide, perpetual, non-exclusive, royalty-free, assignable, sublicensable, transferable rights to use your User Content for any purpose. Please note that you also irrevocably grant the users of the Site and any Other Media the right to access your User Content in the connection with their use of the Site and Other Media. Finally, you irrevocably waive, and cause to be waived, against The Bach and its users any claims and assertions of moral rights or attribution with respect to your User Content. By "use" we mean use, copy, publicly perform and display, reproduce, distribute, modify, translate, remove, analyze, commercialize and prepare derivative works of your User Content.

D. Ownership:

As between you and The Bach, you own your User Content. We own The Bach Content, including but not limited to visual interfaces, interactive features, graphics, design, photos, video, text, music, sounds or other material and compilations, including, but not limited to, our compilation of User Content and other Site Content, computer code, products, software, aggregate user review ratings, and all other elements and components of the Site (collectively, "Content"), excluding your User Content and Third Party Content. We also own the copyrights, trademarks, service marks, trade names, and other intellectual and proprietary rights throughout the world ("IP Rights") associated with the Content and the Site, which are protected by copyright, trade dress, patent, trademark laws and all other applicable intellectual and proprietary rights and laws. As such, you may not modify, reproduce, distribute, create derivative works or adaptations of, publicly display or in any way exploit any of the Content in whole or in part except as expressly authorized by us. The logo, trade names, trademarks and service marks owned by The Bach, whether registered or unregistered, may not be used in connection with any product or service that is not ours, in any manner that is likely to cause confusion. Except as expressly and unambiguously provided herein, we do not grant you any express or implied rights, and all rights in and to the Site and the Content are retained by us.

You agree that if you post any Content through the Service, you automatically grant to The Bach a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license, to use, distribute, display, modify, publish, adapt, redistribute, sublicense and reproduce such Content to other users of the Service and to third parties with whom The Bach has a relationship. You also grant The Bach the right to authorize the downloading and printing in whole or in part of any Content that you post to the Site.

E. Advertising:

The Bach may publicly display advertisements and other information adjacent to or included with your User Content. You are not entitled to any compensation for such advertisements. The manner, mode and extent of such advertising are subject to change without specific notice to you.

F. Other:

User Content (including any that may have been created by users employed or contracted by The Bach) does not necessarily reflect the opinion of The Bach. We reserve the right to remove, screen, edit, or reinstate User Content from time to time at our sole discretion for any reason or no reason, and without notice to you.

5. Third Party Content:

The Bach, through its Services, will offer products and services of third parties ("Third Party Offerings"). The Services may contain hyperlinks, advertisements or content related to third party websites, products, including Third Party Offerings, services or stores. The Bach may redirect you automatically to third party websites or services and your usage of such will be governed, pending your acceptance, by their additional terms and conditions or policies, if applicable. You agree that The Bach is not responsible, nor shall The Bach be liable, for verifying the validity or accuracy of any third party material, content, products, including Third

Party Offerings, advertisements, websites, services or other related materials. You agree that you will not use any third party materials or any Services in a manner that would infringe upon or violate the rights of any other party and that The Bach is not in any way responsible for any such use by you.

6. Requirements and Restrictions:

In order to access The Bach's content, including the Services, you are required to register an account and have compatible devices, operating systems, software and web browsers. These necessary requirements are solely your responsibility, and any fees or updates required to maintain compatibility shall be your responsibility. The Services are available for individuals at least eighteen (18) years of age. You agree not to use or attempt to use the Services if you are under the age of eighteen (18). The Bach may use technologies to verify your compliance with the terms of this Agreement, and in the event that The Bach discovers any use of the Services that are prohibited by this Agreement, it will promptly take the necessary steps towards removal. If The Bach discovers that you are using the Services for an unauthorized or prohibited use, it has the ability and authority to deactivate your account, forbid future use for an undefined period of time, and the taking of the foregoing actions shall not limit its ability to seek any and all legal and equitable remedies.

You agree not to do the following on or through The Bach Services:

- Post, transmit, or otherwise make available, through or in connection with the Services anything that is or may be:
 - Unlawful, threatening, harassing, degrading, abusive, hateful or intimidating;
 - Defamatory; libelous or invasive of another's privacy;
 - Fraudulent or tortious;
 - Vulgar, obscene, indecent, sexually explicit, pornographic or otherwise objectionable;
 - Protected by copyright, trademark, trade secret, right of publicity or other proprietary right without the express prior consent of the owner of such right; or
 - A virus, worm, Trojan Horse, easter egg, time bomb, spyware, cancelbot, or other computer code, file, or program that is harmful or invasive or that may or is intended to damage or hijack the operation of, or to monitor the use of, any hardware, software or equipment;
 - An unsolicited or unauthorized advertising, promotional material, "junk mail,"
 "spam," "chain letter," "pyramid scheme", survey, contest, or investment
 opportunity;
 - Any other form of solicitation, or use any distribution lists including any person who has not given specific permission to be included in such a process (commercial or otherwise);
 - Material that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements).
- Use the Services to defame, abuse, harass, stalk, threaten or otherwise violate the legal rights of others, including without limitation others' privacy rights or rights of publicity,

- or harvest or collect personally identifiable information, including email addresses, about users of the Services.
- Harm minors in any way.
- Impersonate any person or entity, including without limitation any of our officials, forum leaders, guides or hosts; falsely state or otherwise misrepresent your affiliation with any person or entity; or express or imply that we endorse any statement you make.
- Interfere with or disrupt the operation of the Site or the servers or networks used to make the Services available; or violate any requirements, procedures, policies or regulations of such networks.
- Restrict or inhibit any other person from using the Site, including without limitation by hacking or defacing any portion of the Site; or disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other users of the Site or an Interactive Forum are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges.
- Use the Sites to distribute or otherwise publish or post any material containing any solicitation of funds, promotion, advertising, or solicitation for goods or services without our express prior written consent; or use the Site in a commercial manner, unless otherwise expressly allowed by The Bach.
- Use the Site to distribute or otherwise publish or post any material that is pornographic, obscene, contains hate speech, is racist, promotes or encourages violence, is illegal or promotes illegal behavior, violates anyone's intellectual property rights, or is otherwise offensive or inappropriate as determined in The Bach's sole discretion.
- Reproduce, duplicate, copy, sell, resell or otherwise exploit for any commercial purposes, any portion of, use of or access to the Site.
- Use, download, or otherwise copy, or provide (whether or not for a fee) to a person or entity that is not a user of the Services any directory of The Bach's users or usage information or any portion thereof other than in the context of your use of the Services as permitted under these Terms of Service.
- Attempt to gain unauthorized access to the Services, other accounts, computer systems or networks connected to the Site, through password mining or any other means.
- Remove any copyright, trademark or other proprietary rights notice from the Site or Content or materials originating from the Site.
- Frame or mirror any part of the Site or Services without our express prior written consent; or forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Site.
- Create a database by systematically downloading and storing Content from the Site.
- Intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law.
- Use any robot, spider, site search/retrieval application or other manual or automatic device to retrieve, index, "scrape," "data mine" or in any way gather Content or materials from the Site or reproduce or circumvent the navigational structure or presentation of the Services.

• Engage in any other conduct which, in The Bach's sole discretion, is considered inappropriate, unauthorized or objectionable.

In addition, you agree to comply with all applicable laws, regulations, and ordinances as a condition of use of the Site.

In order to permit us to protect the quality of our products and services, you hereby consent to our employees and representatives being able to access your account and records for any reason, in our sole discretion. We also reserve the right, but do not assume the responsibility, to monitor or review your conduct while using the Site. Your use of the Sit is subject to all applicable local, state, national and international laws and regulations.

7. <u>Inappropriate Content</u>:

Through use of the Services, you may encounter material or language that you deem inappropriate, offensive or objectionable, either through The Bach or through hyperlinks, advertisements or content related to third party websites, products, Third Party Offerings, services or marketplaces. Due to the nature of the Content provided on The Bach, you may encounter material or language pertaining to alcohol consumption and adult entertainment that may be deemed inappropriate for certain audiences. You understand that the foregoing may occur and your use of the Site and the Services is at your sole risk, and The Bach will not be liable to you for any such content.

8. Data Security:

The Bach has implemented certain physical, technical and administrative safeguards designed to prevent accidental loss and unauthorized access to and use of data associated with individual user accounts. However, The Bach does not guarantee that unauthorized third parties will be unable to obtain access to data pertaining to individual users, and you acknowledge that all data stored in your account is done so at your own risk. Further, you are responsible for ensuring that you have backed up any data in the event of any data loss in your account.

9. Privacy:

The Bach's Privacy Policy is located on the Website and is incorporated herein by reference. You agree to allow The Bach to collect, use and sell data and other information regarding you and your use of the Site and the Services in accordance with and pursuant to The Bach's Privacy Policy. See **Privacy Policy** for additional information on this subject.

10. <u>Intellectual Property:</u>

A. Property of The Bach:

You understand and agree that The Bach owns all right, title, and interest in the intellectual property related to The Bach and its Services, including, without limitation, all trademarks, trade names, copyrights, logos, graphics, software, data and documentation. You agree to assign to The Bach any and all rights to any digital content compilation created by you, including any and all catalogs or formularies, and you acknowledge that your sole and exclusive right to any such

content compilation shall be a right to use any such compilation for purposes of your use of the Services. You also agree not to decompile, disassemble, reverse engineer, modify, copy, relicense, resell, rent, transfer, remove or export any software owned by The Bach or its Affiliates or agents. Unless you receive prior written consent from The Bach, you are not permitted to use or reproduce any intellectual property owned by The Bach, or its Affiliates or agents. Your use of the software by way of Services is through a non-exclusive right to use subject to the terms of this Agreement. Any use other than the intended use is prohibited and may subject you to civil and criminal penalties.

B. Property of Third Party Offering Developers and Licensors:

You understand that The Bach may display or use other trademarks, trade names, copyrights, logos, or graphics owned by other copyright holders, for which The Bach has attained permission. These displays are for purposes of and related to the provision of the Services. You are not granted any right or license to use any of the aforementioned copyrighted material of third parties by virtue of you having an account with The Bach.

11. Permission to List as a User of The Bach:

You agree that The Bach may list your name and profile information (to the extent provided) on its website in a list of registered members.

12. Advertisements:

The Bach disclaims all liability for any advertisements that you may receive or any actions that you may take or refrain from taking as a result of any advertisement directed to you or The Bach end user or any enterprise community at large, from any third party directly or indirectly in connection with or through The Bach, the Services, or any Third Party Offering. It is solely your responsibility for assessing and verifying the identity and trustworthiness of the source and content of any such third party advertisement. The Bach assumes no responsibility for verifying, and makes no representations or warranties regarding, the identity or trustworthiness of the source or content of any third party advertisement.

13. Termination:

You or The Bach may terminate this Agreement at any time, which includes the cancellation of your registered account and the termination of your access to the Site. The Bach retains the right to terminate your registered account with or without notice to you. Your account may also be terminated if, through The Bach's internal audit and monitoring, it is determined by The Bach that you have engaged in any unauthorized use of The Bach, the Services, or a Third Party Offering. The Bach reserves the right to terminate or suspend, at any time and effective immediately, your account for violation of any provision of this Agreement. In the event your account is terminated by The Bach for a violation of this Agreement, you shall discontinue use of, destroy or discard any Content of or relating to, The Bach, the Services, and any restricted Third Party Offerings, or the Services and/or such Third Party Offerings may be disabled remotely by The Bach or your employer or organization.

14. <u>DISCLAIMERS AND LIMITATIONS OF LIABILITY</u>

PLEASE READ THIS SECTION CAREFULLY SINCE IT LIMITS THE LIABILITY OF THE BACH TO YOU. EACH OF THE SUBSECTIONS BELOW ONLY APPLIES UP TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. NOTHING HEREIN IS INTENDED TO LIMIT ANY RIGHTS YOU MAY HAVE WHICH MAY NOT BE LAWFULLY LIMITED. IF YOU ARE UNSURE ABOUT THIS OR ANY OTHER SECTION OF THESE TERMS, PLEASE CONSULT WITH A LEGAL PROFESSIONAL PRIOR TO ACCESSING OR USING THE SITE. BY ACCESSING OR USING THE SITE, YOU REPRESENT THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO THESE TERMS, INCLUDING THIS SECTION. YOU ARE GIVING UP SUBSTANTIAL LEGAL RIGHTS BY AGREEING TO THESE TERMS.

- A. THE SITE IS MADE AVAILABLE TO YOU ON AN "AS IS", "WITH ALL FAULTS" AND "AS AVAILABLE" BASIS, WITH THE EXPRESS UNDERSTANDING THAT THE BACH MAY NOT MONITOR, CONTROL, OR VET USER CONTENT. AS SUCH, YOUR USE OF THE SITE IS AT YOUR OWN DISCRETION AND RISK. THE BACH MAKES NO CLAIMS OR PROMISES ABOUT THE QUALITY, ACCURACY, OR RELIABILITY OF THE SITE, ITS SAFETY OR SECURITY, OR THE SITE CONTENT. ACCORDINGLY, THE BACH IS NOT LIABLE TO YOU FOR ANY LOSS OR DAMAGE THAT MIGHT ARISE, FOR EXAMPLE, FROM THE SITE'S INOPERABILITY, UNAVAILABILITY OR SECURITY VULNERABILITIES OR FROM YOUR RELIANCE ON THE QUALITY, ACCURACY, OR RELIABILITY OF THE BUSINESS LISTINGS, RATINGS, REVIEWS, METRICS OR REVIEW FILTER FOUND ON, USED ON, OR MADE AVAILABLE THROUGH THE SITE.
- B. THE BACH MAKES NO CLAIMS OR PROMISES WITH RESPECT TO ANY THIRD PARTY, SUCH AS THE BUSINESSES OR ADVERTISERS LISTED ON THE SITE OR THE SITE'S USERS. ACCORDINGLY, THE BACH IS NOT LIABLE TO YOU FOR ANY LOSS OR DAMAGE THAT MIGHT ARISE FROM THEIR ACTIONS OR OMISSIONS, INCLUDING, FOR EXAMPLE, IF ANOTHER USER OR BUSINESS MISUSES YOUR CONTENT, IDENTITY OR PERSONAL INFORMATION, OR IF YOU HAVE A NEGATIVE EXPERIENCE WITH ONE OF THE BUSINESSES OR ADVERTISERS LISTED OR FEATURED ON THE SITE. YOUR PURCHASE AND USE OF PRODUCTS OR SERVICES OFFERED BY THIRD PARTIES THROUGH THE SITE IS AT YOUR OWN DISCRETION AND RISK.
- C. THE BACH EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES AS TO THE PRODUCTS OR SERVICES OFFERED BY BUSINESSES LISTED ON THE SITE, AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED TO YOU BY A REPRESENTATIVE OF THE BACH SHALL CREATE A REPRESENTATION OR WARRANTY.

- D. YOUR SOLE AND EXCLUSIVE RIGHT AND REMEDY IN CASE OF DISSATISFACTION WITH THE SITE, RELATED SERVICES, OR ANY OTHER GRIEVANCE SHALL BE YOUR TERMINATION AND DISCONTINUATION OF ACCESS TO, OR USE OF THE SITE.
- E. THE BACH DISCLAIMS LIABILITY FOR ANY (i) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, RELIANCE, OR CONSEQUENTIAL DAMAGES, (ii) LOSS OF PROFITS, (iii) BUSINESS INTERRUPTION, (iv) REPUTATIONAL HARM, OR (v) LOSS OF INFORMATION OR DATA.

15. <u>Indemnification:</u>

You agree to defend and indemnify The Bach and its affiliates and any of their officers, directors, employees and agents from and against any claims, causes of action, demands, recoveries, losses, damages, fines, penalties or other costs or expenses of any kind or nature including but not limited to reasonable legal and accounting fees, brought by third parties as a result of:

- A. Your breach of this Agreement or the documents referenced herein;
- B. Your violation of any law or the rights of a third party; or
- C. Your use of this Site.

16. Copyright and Copyright Notices:

We respect the intellectual property of others, and we ask our users to do the same. We may, in appropriate circumstances, and at our discretion, terminate the accounts of users who infringe the intellectual property rights of others. If you believe that your work has been copied in a way that constitutes copyright infringement, please provide our office with the following information:

- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- A description of the copyrighted work that you claim has been infringed;
- A description of where the material that you claim is infringing is located on the site;
- Your address, telephone number, and email address;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- A statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Please contact The Bach regarding claims of copyright infringement at the address below and include the subject line, "Copyright Infringement":

The Bach, Inc. 125 Genung Circle Ithaca, NY 14850 hello@thebach.com

17. Jurisdictional Issues:

The Site is controlled and operated by The Bach from the United States, and is not intended to subject The Bach to the laws or jurisdiction of any territory other than that of the United States. The Bach does not represent or warrant that the Site or any part thereof is appropriate or available for use in any particular jurisdiction. Those who choose to access the Site do so on their own initiative and at their own risk, and are responsible for complying with all local laws, rules and regulations. We may limit the Site's availability, in whole or in part, to any person, geographic area or jurisdiction we choose, at any time and in our sole discretion.

19. Governing Law:

Your use of The Bach and its Services shall be governed in all respects by the laws of the State of New York, without giving effect to the conflict of law principles thereof, and venue shall be proper only in a court of competent jurisdiction located in the State of New York. You agree to be subject to personal jurisdiction in and consent to the service of process issued by a court in which venue is proper as defined in this Section. Your use of any Third Party Offerings, websites or services may also be subject to other local, state, national, or international laws.

19. Inquiries: Please direct your questions regarding The Bach and our Services, this Agreement or any other policies issued by The Bach to: hello@thebach.com, The Bach, Inc., 125 Genung Circle, Ithaca, NY 14850.