

# AVKARE, INC. SERVICE AGREEMENT/TERMS OF USE

## 1. ACCEPTANCE OF TERMS

The services that AvKARE, Inc. provides to User are subject to the following Terms of Use ("TOU"). AvKARE, Inc. reserves the right to update the TOU at any time without notice to User. The most current version of the TOU can be reviewed by clicking on the "Terms of Use" hypertext link located at the bottom of our home page.

- A. This Agreement, which incorporates by reference other provisions applicable to use of AvKARE, Inc. including, but not limited to, supplemental terms and conditions set forth hereof ("Supplemental Terms") governing the use of certain specific material contained in AvKARE, Inc. sets forth the terms and conditions that apply to use of AvKARE, Inc. by User. By using AvKARE, Inc. (other than to read this Agreement for the first time), User agrees to comply with all of the terms and conditions hereof. The right to use AvKARE, Inc. is personal to User and is not transferable to any other person or entity. User is responsible for all use of User's Account (under any screen name or password) and for ensuring that all use of User's Account complies fully with the provisions of this Agreement. User shall be responsible for protecting the confidentiality of User's password.
- B. AvKARE, Inc. shall have the right at any time to change or discontinue any aspect or feature of AvKARE, Inc. including, but not limited to, content, hours of availability, and equipment needed for access or use.

## 2. CHANGED TERMS

AvKARE, Inc. shall have the right at any time to change or modify the terms and conditions applicable to User's use of AvKARE, Inc. or any part thereof, or to impose new conditions, including, but not limited to, adding fees and charges for use. Such changes, modifications, additions or deletions shall be effective immediately upon notice thereof, which may be given by means including, but not limited to, posting on AvKARE, Inc. or by electronic or conventional mail, or by any other means by which User obtains notice thereof. Any use of AvKARE, Inc. by User after such notice shall be deemed to constitute acceptance by User of such changes, modifications or additions.

## 3. DESCRIPTION OF SERVICES

Through its Web property, AvKARE, Inc. provides User with access to a variety of resources. The services, including any updates, enhancements, new features, and/or the addition of any new Web properties, are subject to the TOU.

## 4. EQUIPMENT

User shall be responsible for obtaining and maintaining all telephone, computer hardware, software and other equipment needed for access to and use of AvKARE, Inc. and all charges related thereto.

## 5. USER CONDUCT

- A. User shall use AvKARE, Inc. for lawful purposes only. User shall not post or transmit through AvKARE, Inc. any material which violates or infringes in any way upon the rights of others, which is unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane or otherwise objectionable, which encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law, or which, without AvKARE, Inc.'s express prior approval, contains advertising or any solicitation with respect to products or services. Any conduct by a user that in AvKARE, Inc.'s discretion restricts or inhibits any other User from using or enjoying AvKARE, Inc. will not be permitted. User shall not use AvKARE, Inc. to advertise or perform any commercial solicitation, including, but not limited to, the solicitation of users to become subscribers of other on-line information services competitive with AvKARE, Inc.
- B. The foregoing provisions of Section 5 are for the benefit of AvKARE, Inc. its subsidiaries, affiliates and its third party content providers and licensors and each shall have the right to assert and enforce such provisions directly or on its own behalf.

## 6. USE OF SERVICES

The Services may contain e-mail services, bulletin board services, chat areas, news groups, forums, communities, personal web pages, calendars, photo albums, file cabinets and/or other message or communication facilities designed to enable User to communicate with others (each a "Communication Service" and collectively "Communication Services"). User agrees to use the Communication Services only to post, send and receive messages and material that are proper and, when applicable, related to the particular Communication Service. By way of example, and not as a limitation, User agrees that when using the Communication Services, User will not:

- Use the Communication Services in connection with surveys, contests, pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise).
- Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
- Publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, obscene, indecent or unlawful topic, name, material or information.
- Upload, or otherwise make available, files that contain images, photographs, software or other material protected by intellectual property laws, including, by way of example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) unless User own or control the rights thereto or have received all necessary consent to do the same.
- Use any material or information, including images or photographs, which are made available through the Services in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of any party.
- Upload files that contain viruses, Trojan horses, worms, time bombs, cancel bots, corrupted files, or any other similar software or programs that may damage the operation of another's computer or property of another.
- Advertise or offer to sell or buy any goods or services for any business purpose, unless such Communication Services specifically allows such messages.

- Download any file posted by another user of a Communication Service that User know, or reasonably should know, cannot be legally reproduced, displayed, performed, and/or distributed in such manner.
- Falsify or delete any copyright management information, such as author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded.
- Restrict or inhibit any other user from using and enjoying the Communication Services.
- Violate any code of conduct or other guidelines which may be applicable for any particular Communication Service.
- Harvest or otherwise collect information about others, including e-mail addresses.
- Violate any applicable laws or regulations.
- Create a false identity for the purpose of misleading others.
- Use, download or otherwise copy, or provide (whether or not for a fee) to a person or entity any directory of users of the Services or other user or usage information or any portion thereof.

AvKARE, Inc. has no obligation to monitor the Communication Services. However, AvKARE, Inc. reserves the right to review materials posted to the Communication Services and to remove any materials in its sole discretion. AvKARE, Inc. reserves the right to terminate User's access to any or all of the Communication Services at any time, without notice, for any reason whatsoever. AvKARE, Inc. reserves the right at all times to disclose any information as it deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in AvKARE, Inc.'s sole discretion.

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## **7. MEMBER ACCOUNT, PASSWORD, AND SECURITY**

If any of the Services requires User to open an account, User must complete the registration process by providing AvKARE, Inc. with current, complete and accurate information as prompted by the applicable registration form. User also will be assigned a password and a user name. User is entirely responsible for maintaining the confidentiality of User's password and account. Furthermore, User is entirely responsible for any and all activities that occur under User's account. User agrees to notify AvKARE, Inc. immediately of any unauthorized use of User's account or any other breach of security. AvKARE, Inc. will not be liable for any loss that User may incur as a result of someone else using User's password or account, either with or without User's knowledge. However, User could be held liable for losses incurred by AvKARE, Inc. or another party due to someone else using User's account or password. User may not use anyone else's account at any time.

## **8. NOTICE SPECIFIC TO DOCUMENTS AVAILABLE ON THIS WEB SITE**

Permission to use Documents (such as white papers, press releases, datasheets and FAQs) from the Services is granted, provided that (1) the below copyright notice appears in all copies and that both the copyright notice and this permission notice appear, (2) use of such Documents from the Services is for informational and non-commercial or personal use only and will not be copied or posted on any network computer or broadcast in any media, and (3) no modifications of any Documents are made. Accredited educational institutions, such as universities, private/public colleges, and state community colleges, may download and reproduce the Documents for distribution in the classroom. Distribution outside the classroom requires express written permission. Use for any other purpose is expressly prohibited by law, and may result in severe civil and criminal penalties. Violators will be prosecuted to the maximum extent possible.

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- E. IN ADDITION TO THE TERMS SET FORTH ABOVE NEITHER, AVKARE, INC., NOR ITS AFFILIATES, INFORMATION PROVIDERS OR CONTENT PARTNERS SHALL BE LIABLE REGARDLESS OF THE CAUSE OR DURATION, FOR ANY ERRORS, INACCURACIES, OMISSIONS, OR OTHER DEFECTS IN, OR UNTIMELINESS OR UNAUTHENTICITY OF, THE INFORMATION CONTAINED WITHIN AVKARE, INC., OR FOR ANY DELAY OR INTERRUPTION IN THE TRANSMISSION THEREOF TO THE USER, OR FOR ANY CLAIMS OR LOSSES ARISING THEREFROM OR OCCASIONED THEREBY. NONE OF THE FOREGOING PARTIES SHALL BE LIABLE FOR ANY THIRD-PARTY CLAIMS OR LOSSES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, PUNITIVE OR CONSEQUENTIAL DAMAGES.
- F. FORCE MAJEURE – NEITHER PARTY WILL BE RESPONSIBLE FOR ANY FAILURE OR DELAY IN PERFORMANCE DUE TO CIRCUMSTANCES BEYOND ITS REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, ACTS OF GOD, WAR, RIOT, EMBARGOES, ACTS OF CIVIL OR MILITARY AUTHORITIES, FIRE, FLOODS, ACCIDENTS, SERVICE OUTAGES RESULTING FROM EQUIPMENT AND/OR SOFTWARE FAILURE AND/OR TELECOMMUNICATIONS FAILURES, POWER FAILURES, NETWORK FAILURES, FAILURES OF THIRD PARTY SERVICE PROVIDERS (INCLUDING PROVIDERS OF INTERNET SERVICES AND TELECOMMUNICATIONS). THE PARTY AFFECTED BY ANY SUCH EVENT SHALL NOTIFY THE OTHER PARTY WITHIN A MAXIMUM OF FIFTEEN (15) DAYS FROM ITS OCCURENCE. THE PERFORMANCE OF THIS AGREEMENT SHALL THEN BE SUSPENDED FOR AS LONG AS ANY SUCH EVENT SHALL PREVENT THE AFFECTED PARTY FROM PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT.

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### **14. MONITORING**

AvKARE, Inc. shall have the right, but not the obligation, to monitor the content of AvKARE, Inc. including chat rooms and forums, to determine compliance with this Agreement and any operating rules established by AvKARE, Inc. and to satisfy any law, regulation or authorized government request. AvKARE, Inc. shall have the right in its sole discretion to edit, refuse to post or remove any material submitted to or posted on AvKARE, Inc. Without limiting the foregoing, AvKARE, Inc. shall have the right to remove any material that AvKARE, Inc. in its sole discretion, finds to be in violation of the provisions hereof or otherwise objectionable.

### **15. INDEMNIFICATION**

User agrees to defend, indemnify and hold harmless AvKARE, Inc., its affiliates and their respective directors, officers, employees and agents from and against all claims and expenses, including attorneys' fees, arising out of the use of AvKARE, Inc. by User or User's Account.

## **16. TERMINATION**

Either AvKARE, Inc. or User may terminate this Agreement at any time. Without limiting the foregoing, AvKARE, Inc. shall have the right to immediately terminate User's Account in the event of any conduct by User which AvKARE, Inc. in its sole discretion, considers to be unacceptable, or in the event of any breach by User of this Agreement.

## **17. MISCELLANEOUS**

This Agreement and any operating rules for AvKARE, Inc. established by AvKARE, Inc. constitute the entire agreement of the parties with respect to the subject matter hereof, and supersede all previous written or oral agreements between the parties with respect to such subject matter. This Agreement shall be construed in accordance with the laws of the state of Tennessee in The United States of America, without regard to its conflict of laws rules. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for convenience only and shall not be given any legal import.

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