

Member and Participant Agreement and Terms of Use

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY ACCESSING OR USING ANY OF OUR AMENITIES EITHER AS A MEMBER OR NON-MEMBER (INCLUDING, BUT NOT LIMITED TO, ACCESSING ANY OF OUR LOCALHOST FACILITIES, REGISTERING FOR A DUBUQUE ESPORTS LEAGUE ACCOUNT OR PARTICIPATING OR ATTENDING A DUBUQUE ESPORTS LEAGUE EVENT), YOU REPRESENT THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT

We are excited to have you ("**You**") as a Member of and/or participant in the Dubuque Esports League Network operated by Trash Panda, LLC, an Iowa limited liability company d/b/a Dubuque Esports League ("**DEL**"). Your membership and/or use connects you with our nationwide network of (i) permanent and temporary in-person facilities containing DEL Facilities Technology (defined below) whether branded as a Localhost or otherwise (our "**Facilities**"), (ii) in-person and online tournaments and other events whether organized, operated or sponsored in whole or in part by DEL ("**Events**") and (iii) websites (DBQEsports.org), mobile app(s), and all related sites, software, and services either provided by us or that link to or reference our Terms of Use (our "**Websites**" and together with the Facilities and Events, the "**DEL Network**"). **ALL TERMS AND REQUIREMENTS OF "MEMBERS" OUTLINED IN THIS AGREEMENT APPLY TO ANY PARTICIPANT, REGARDLESS OF WHETHER SUCH PARTICIPANT IS A MEMEBR OF DEL.**

Your access to the Facilities, use of our Wi-Fi networks, local areas networks, personal computers, gaming consoles or other connected devices ("**DEL Facilities Technology**"), Websites, and/or Material (defined in Section 24 and/or participation in Events confirms your agreement with this legally binding Member Agreement and Terms of Use ("**Terms of Use**") as may be modified from time to time by DEL and posted to the Websites, in the Facilities or at the Events. Your use of the DEL Network is governed by these Terms of Use as well as the Privacy Policy attached hereto as Exhibit A and incorporated into and made a part of these Terms of Use. In the event of a conflict between these Terms of Use and the Privacy Policy, these Terms of Use shall govern. **Please read these Terms of Use carefully before using the Facilities or DEL Facilities Technology, attending our Events or accessing our Websites or Material because these Terms of Use affect your legal rights and obligations.** Please regularly check the Websites to view the Terms of Use then in effect. Your continued use of any element of the DEL Network will be deemed as irrevocable acceptance of any revisions. You are responsible for any actions taken by your guests in breach of these Terms of Use and agree to be bound hereby.

If you do not agree with any of these Terms of Use please do not use the DEL Network. By using the DEL Network you will be deemed to have irrevocably agreed to these terms. Some aspects of the DEL Network may be subject to additional Terms of Use, which you should read carefully before making any use of those areas. Such additional terms will not change or replace these Terms of Use regarding use of the DEL Network, unless otherwise expressly stated.

These Terms of Use remain in full force and effect while you use or access the DEL Network and shall survive your departure from any of the Facilities or Events or your termination of the

use of the DEL Network. Notwithstanding the foregoing, if you used the DEL Network prior to the date you accepted the Terms of Use, you hereby acknowledge and agree that the Terms of Use commenced on the date you first used the DEL Network (whichever is earlier).

Please forward any comments or complaints about the DEL Network and any questions regarding any legal matters, including any privacy-related concerns to Susie Quinn at squinn@dbqesports.org.

I. MEMBERSHIP

1. **Registration.** To access the DEL Network or any of the resources it has to offer, you may be asked to provide registration details. It is a condition of use of the DEL Network that all the details you provide be correct, current, and complete. If we at DEL believe the details are not correct, current, or complete, we have the right to refuse you access to the DEL Network, or any of its resources, and to terminate or suspend your account. Unless we have received a properly completed and acceptable parental consent form governing your use of the DEL Network, we will assume (and by using the DEL Network you warrant that) you have legal capacity to enter into the agreement set out in these Terms of Use (i.e., that you are of sufficient age and mental capacity and are otherwise entitled to be legally bound in contract).
2. **Minors; Adult Supervision Required.**
 - a. **Ages 12 or Under.** All children under the age of 13 must remain with, and be supervised by, their parent or guardian at all times to participate.
 - b. **Ages 13 to 17.** If you are thirteen (13) to seventeen (17) years of age, the written, signed consent is necessary to participate.
 - c. **Additional Consent Requirements.** Certain games recommend heightened consent and/or supervision requirements, including but not limited to age 18 and above. DEL reserve the right to place additional supervision requirements in line with game ratings.
3. **Fee for the DEL Network.** Some portions of the DEL Network including the DEL Facilities Technology may require that you pay a fee in order to access it and some portions of the DEL Network may be provided "free of charge". We reserve the right to charge for access to any portion of the DEL Network at any time in the future.
4. **Welcoming Environment.** DEL's mission is to make esports accessible to everyone regardless of race, color, ancestry, national origin, gender, sexual orientation, marital status, religion, age, disability, gender identity, military service, genetic information or skill level. You are expected to treat everyone with respect and to ensure that your guests treat everyone with respect.

II. MEMBER CONDUCT IN FACILITIES AND AT EVENTS

5. **No Bad Manners.** Inappropriate conduct, harassment or bullying including, without limitation, abusive, offensive, insulting or demeaning language, lewd conduct or any conduct that harasses, intimidates or is otherwise bothersome to other Members, guests or DEL employees is prohibited and will not be tolerated.

6. **No Cheating.** You and your guest are expected to compete in Events to the best of your own skill and ability. Any form of cheating by any Member or guest will not be tolerated. Any activities intended to improperly impact the outcome of an Event, as determined by the sole discretion of DEL, are prohibited. Examples of cheating or improperly impacting an Event include (i) collusion or match-fixing, (ii) attempts to interfere with another player's connection to the game, (iii) allowing a person, other than the registered participant, to compete on behalf of the registered participant, (iv) hacking of game servers, (v) use of unauthorized or restricted items, (vi) violent, harassing or threatening behavior, or (vii) using bots or other mechanisms to influence the outcome of a game.
7. **No Weapons.** No weapons of any kind are permitted in Facilities or at in-person Events. In addition, no weapons of any kind are permitted on property owned or leased by DEL except as otherwise expressly permitted by applicable law. Weapons include, but are not limited to, firearms, handguns, rifles, automatic weapons, ammunition, gunpowder, knives that can be used as weapons, martial arts paraphernalia, stun guns/tasers, tear gas, fireworks, explosives, gasoline and other dangerous articles and substances.
8. **No Drugs or Alcohol.** Member and their guests are not permitted to bring any drugs or alcohol to, or consume any drugs or alcohol or be impaired under the influence of any drugs or alcohol while at, any Facilities or in-person Events, regardless of whether such substance is legal in the state of the Facility or Event.
9. **Equipment.** You are welcome and encouraged to bring your own headphones, keyboard, mouse into our Facilities or to our Events. You are also permitted to bring your own consoles, such as an Xbox or PlayStation, but only a member of the DEL staff may set up the console at the Facility. For security reasons, you are not permitted to bring your own personal computers or to use our Ethernet cables for your own personal computers or laptops.
10. **No Photographic or Video Equipment.** No photography, videotaping, filming or audio recording in Facilities, at Events or of Material is permitted without prior written permission of management.
11. **No Smoking or Vaping.** Smoking and/or vaping are not permitted in any Facilities or at any in-person Events, except in designated outdoor smoking areas.
12. **No Solicitation.** No solicitation is permitted in Facilities or at Events or at any other time when interacting with the DEL Network, whether for profit, political purposes or any other reason.
13. **Compliance with All Applicable Laws.** You must comply with local, state, federal and international laws and regulations, including, but not limited to, copyright and intellectual property rights laws when engaging with the DEL Network, whether in person or online.

14. **Responsibility for Damage to Facilities or the DEL Facilities Technology.** In order to continue making our Facilities and Events available to you and other Members, we require that our members treat our Facilities and the DEL Facilities Technology with respect, and refrain from any conduct that may damage or destroy such Facilities or DEL Facilities Technology. In the event you damage or destroy any element of the Facilities or the DEL Facilities Technology, you agree that you shall fully reimburse DEL for all costs, expenses, damages, liabilities and losses, including any attorneys' fees, incurred by DEL in connection with any such damage or destruction.

III. MEMBER CONDUCT WHEN ENGAGING WITH DEL FACILITIES TECHNOLOGY OR WEBSITES.

15. **Engaging with the DEL Facilities Technology.** Please act responsibly when engaging with the DEL Network and Websites.
- a. You agree to be responsible for and to bear all risk and consequences for (i) the accuracy, completeness, reliability and/or usefulness of any content that is not a part of the DEL Network and that is available through the DEL Facilities Technology and (ii) all communications that you send or receive via the DEL Facilities Technology.
 - b. You may only use the DEL Network and its contents for lawful purposes and in accordance with applicable law and you are prohibited from storing, distributing or transmitting any unlawful material through the DEL Network. You may not collect or store personal information regarding other users. You recognize that storing, distributing or transmitting unlawful material could expose you to criminal and/or civil liability. You agree that if a third-party claims that material you have contributed to the DEL Network is unlawful, you will bear the burden of establishing that it is lawful. You understand and agree that all materials publicly posted (other than by DEL) or privately transmitted on or through the DEL Network are the sole responsibility of the sender, not DEL, and that you are responsible for all material you upload, post or otherwise transmit to or through the DEL Network.
 - c. We require that you do not post e-mails or submit to or publish through Forums (as defined in Section 28) or otherwise make available on or through the DEL Network any content, or act in a way, which in our opinion:
 - i. libels, defames, invades privacy, stalks, is obscene, pornographic, racist, abusive, harassing, threatening or offensive; disparages, criticizes, belittles, parodies or otherwise portrays in a negative light any actor other person appearing in the content;
 - ii. seeks to exploit or harm children by exposing them to inappropriate content, asking for personally identifiable details or otherwise;

- iii. infringes any intellectual property or other right of any entity or person, including violating anyone's copyrights or trademarks or their rights of publicity;
- iv. violates any law or may be considered to violate any law;
- v. you do not have the right to transmit under any contractual or other relationship (e.g., inside information, proprietary or confidential information received in the context of an employment or a non-disclosure agreement);
- vi. advocates or promotes illegal activity;
- vii. impersonates or misrepresents your connection to any other entity or person or otherwise manipulates headers or identifiers to disguise the origin of the content;
- viii. advertises any commercial endeavor (e.g., offering for sale products or services) or otherwise engages in any commercial activity (e.g., conducting raffles or contests, displaying sponsorship banners, and/or soliciting goods or services) except as specifically authorized on the DEL Network;
- ix. solicits funds, advertisers or sponsors;
- x. includes programs which contain viruses, worms and/or 'Trojan horses' or any other computer code, files or programs designed to interrupt, overload, collapse, destroy or limit the functionality of any computer software or hardware or telecommunications;
- xi. disrupts the normal flow of dialogue, causes a screen to scroll faster than other users are able to type, or otherwise act in a way which affects the ability of other people to engage in real time activities via the DEL Network;
- xii. copies any other pages or images on the DEL Network except with appropriate authority;
- xiii. includes MP3 format files;
- xiv. amounts to a 'pyramid' or similar scheme;
- xv. amounts to 'data warehousing' (i.e., using any web space made available to you as storage for large files or large amount of data which are only linked from other sites). You must provide a reasonable amount of content

to accompany such material in order that at least some of the traffic to your site comes directly via us;

- xvi. disobeys any policy or regulations established from time to time regarding use of the DEL Network or any networks connected to the DEL Network; or
- xvii. contains links to other sites that contain the kind of content, which falls within the descriptions set out at (i) to (xvii) above.

In addition, you are prohibited from removing any sponsorship banners or other material inserted by DEL anywhere on the DEL Network (e.g., on any web or mobile app space made available for your use).

- d. Without limitation, you agree not to send, create or reply to so called "mailbombs" (i.e., emailing copies of a single message to many users, or sending large or multiple files or messages to a single user with malicious intent) or engage in "spamming" (i.e., unsolicited emailing for business or other purposes) or undertake any other activity which may adversely affect the operation or enjoyment of the DEL Network by any other person. You may not reproduce, sell, resell or otherwise exploit any resource, or access to any resource, contained on the DEL Network.

16. Acceptable Use Policy.

- a. All users of the DEL Facilities Technology must comply with this Acceptable Use Policy ("AUP"). This AUP is intended to prevent unacceptable uses of the DEL Facilities Technology. We do not actively monitor the use of all portions of the DEL Facilities Technology under normal circumstances. Similarly, we do not exercise editorial control or review the content of any non-DEL owned web site, electronic mail transmission, newsgroup or other material created or accessible over or through the DEL Facilities Technology. However, we may remove, block, filter or restrict by any other means any materials that, in our sole discretion, may be illegal, may subject us to liability or may violate this AUP. We may cooperate with legal authorities and/or third parties in the investigation of any suspected or alleged crime or civil wrong. Violation of this AUP may result in the suspension or termination of your access to the DEL Facilities Technology.
- b. **The following constitute examples of violations of this AUP.** You agree not to use the DEL Facilities Technology to:
 - i. Transmit any material (by uploading, posting, email or otherwise) that is unlawful, threatening, abusive, harassing, tortious, defamatory, obscene, libelous, invasive of another's privacy, hateful or racially, ethnically or otherwise objectionable;

- ii. Harm, or attempt to harm, minors in any way;
- iii. Impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity; forge headers or otherwise manipulate identifiers to disguise the origin of any material transmitted through the DEL Facilities Technology;
- iv. Transmit any material (by uploading, posting, email or otherwise) that you do not have a right to make available 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 non-disclosure agreements);
- v. Transmit any material (by uploading, posting, email or otherwise) that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party;
- vi. Transmit (by uploading, posting, email or otherwise) any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes" or any other form of solicitation;
- vii. Transmit any material (by uploading, posting, email or otherwise) that contains software viruses, or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- viii. Interfere with or disrupt the DEL Facilities Technology or servers or networks connected to the DEL Facilities Technology, or disobey any requirements, procedures, policies or regulations of networks connected to the DEL Facilities Technology;
- ix. Intentionally or unintentionally violate any applicable local, state, national or international law, or any regulations having the force of law;
- x. "Stalk" or otherwise harass another; or collect or store, or attempt to collect or store, personal data about third parties without their knowledge or consent;
- xi. Resell the DEL Facilities Technology without our written authorization; and
- xii. Use the DEL Facilities Technology for high volume data transfers, especially sustained high volume data transfers, hosting a web server, IRC server, or any other server. You understand and agree that we may disclose your communications and activities relating to your use of the DEL

Facilities Technology in response to lawful requests by governmental authorities, including Patriot Act requests, and judicial orders.

IV. DEL REMEDIES FOR BREACH OF THESE TERMS OF USE

17. **DEL Remedies.** Without limiting any other provision in the Terms of Use, if you or your guest violates any of the rules or policies in these Terms of Use, in DEL's sole discretion, DEL shall have the right to take any or all of the following actions:

- i. Disqualify you and your teammates from any Event;
- ii. Ban you from any future Event;
- iii. Ban your teammates from any future Event;
- iv. Cause you and your teammates to forfeit prizes or points related to any Event;
- v. Cause you and your guests to leave the Facility or Event without a refund;
- vi. Terminate your membership with DEL;
- vii. Ban you from the Facility;
- viii. Cancel any hours you logged during the visit in which you violated these Terms of Use; and
- ix. Cancel any historical hours logged by you; and

DEL will have sole discretion over whether to reinstate a person whose membership was terminated.

For violations of the Terms of Use or other actions which threaten the health, safety and well-being of any DEL Members, guests or employees, or potentially violate applicable law, at DEL's sole and exclusive discretion, DEL and any employee or representative of DEL may notify, and refer the Member to, law enforcement.

18. **Investigations.** DEL reserves the right to investigate suspected violations of these Terms of Use, including without limitation any violation arising from any submission, posting or emails you make or send to any Forum or through the DEL Network. DEL may seek to gather information from the user who is suspected of violating these Terms of Use, and from any other user. DEL may suspend any users whose conduct or postings are under investigation and may remove such material from its servers as it deems appropriate and without notice. If DEL believes, in its sole discretion, that a violation of these Terms of Use has occurred, it may edit or modify any submission, posting or e-mails, remove the material permanently, cancel postings, warn users, suspend users and passwords, terminate accounts or take other corrective action it deems appropriate. DEL will fully

cooperate with any law enforcement authorities or court order requesting or directing DEL to disclose the identity of anyone posting any e-mails or publishing or otherwise making available any materials that are believed to violate these Terms of Use. BY ACCEPTING THESE TERMS OF USE YOU WAIVE AND HOLD HARMLESS ALL MEMBERS OF THE DEL PARTIES FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY MEMBER OF THE DEL PARTIES DURING OR AS A RESULT OF ITS INVESTIGATIONS AND/OR FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER A MEMBER OF THE DEL PARTIES OR LAW ENFORCEMENT AUTHORITIES.

19. **Termination of access to the DEL Facilities Technology.** DEL may terminate your access to the DEL Network and cancel your access to the DEL Facilities Technology at any time, without notice and for any reason including, but not limited to, violation of any of the Terms of Use, security or safety reasons, and/or using the DEL Facilities Technology to perform any illegal activity. You further agree that in the event of termination for any reason, we will have no liability to you.

V. RELEASE OF LIABILITY; ASSUMPTION OF RISK RELATED TO COVID-19; MEDICAL TREATMENT

20. Release of Liability and Assumption of Risk Related to for Illness.

- a. You are aware of risk that you may be exposed to or contract any number of airborne or contact illness(s) or disease(s), including but not limited to influenza, chickenpox (varicella), meningitis, COVID-19, Respiratory Syncytial Virus Infection (RSV), Staphylococcus aureus (Staph), and tuberculosis (TB) by visiting any of our Facilities or attending any of our in-person Events. You are further aware that such exposure may result in serious illness, personal injury, disability or death. While the Company has implemented measures to reduce the risk of spread of such illnesses, you acknowledge that DEL cannot guarantee that you will not become infected with any such illness during your visit to our Facility or attendance at our Event, and that your risk of contracting an airborne or contact illness may be increased by visiting our Facility or attending our Event. NOTWITHSTANDING THESE RISKS, YOU ACKNOWLEDGE THAT YOU ARE VOLUNTARILY VISITING THE FACILITY OR ATTENDING THE EVENT WITH KNOWLEDGE OF THE DANGERS INVOLVED. YOU HEREBY AGREE TO ACCEPT AND ASSUME ALL RISKS OF INJURY, ILLNESS, DISABILITY OR DEATH ARISING FROM YOUR VISIT TO OUR FACILITY OR ATTENDANCE AT OUR EVENT WHETHER CAUSED BY THE ORDINARY NEGLIGENCE OF THE COMPANY OR OTHERWISE.
- b. You expressly waive and release any and all claims, now known or hereafter known, against DEL and its shareholders, members, directors, managers, subsidiaries, affiliates, officers, employees, agents, partners, distributors, service providers, landlords, property managers and licensors (collectively the "**DEL Parties**") on account of any illness, disability or death arising out of or

attributable to my visit to any Facility or attendance at any Event, whether arising out of the ordinary negligence of DEL or any DEL Party or otherwise. You covenant and agree not to make or bring any claim against DEL or any DEL Party and forever release and discharge DEL and the DEL Parties from liability under such claims. This waiver and release does not extend to claims for gross negligence or willful misconduct if prohibited by applicable law.

21. **Medical Treatment.** I hereby consent to receive medical treatment deemed necessary if I am injured or require medical attention while engaging in any way with the DEL Network. I understand and agree that I am solely responsible for all costs related to such medical treatment and any related medical transportation and/or evacuation. I hereby release, forever discharge, and hold harmless DEL from any claim based on such treatment or other medical services.

VI. YOUR USE OF AND ACCESS TO THE DEL NETWORK

22. **Description of DEL Facilities Technology/Service Availability.** We provide access to the DEL Facilities Technology at our physical locations. Not all DEL Facilities Technology may be available in all of our locations or in all areas of our locations and may not always be operational for any reason.
23. **Service.** DEL reserves the right to modify or discontinue, temporarily or permanently, all or any part of the DEL Network and/or any DEL Facilities Technology, software, facilities and services on the DEL Network, with or without notice, and/or to establish general guidelines and limitations on their use.
24. **No Right or License in or to DEL IP.** The DEL Network and materials incorporated by DEL on the DEL Network ("Material") are protected by copyrights, patents, trade secrets or other proprietary rights ("Intellectual Property"). Some of the characters, logos or other images incorporated by DEL on the DEL Network are also protected as registered or unregistered trademarks, trade names and/or service marks owned by DEL or others ("Trademarks"). DEL respects the intellectual property rights of others and asks that members of the DEL Network do the same. You acknowledge and agree that your membership in the DEL Network does not grant you any rights in or to the Intellectual Property or Trademarks of DEL and you agree to not use Intellectual Property or Trademarks of DEL without our prior written consent.
25. **Your Use of Material.** Your right to make use of the DEL Network and any Material or other content appearing on it is subject to your compliance with these Terms of Use. Modification or use of the Material or any other content available through the DEL Network for any purpose not permitted by these Terms of Use may be a violation of the Intellectual Property rights and/or Trademarks of DEL and/or its licensors and is prohibited. You may access and display Material and all other content displayed on the DEL Network for noncommercial, personal or entertainment use. The Material and all other content on the DEL Network may not otherwise be copied, reproduced, republished, uploaded, posted, transmitted, distributed or used in any way unless

specifically authorized by DEL. Any authorization to copy Material granted by DEL in any part of the DEL Network for any reason is restricted to making a single copy for non-commercial, personal, entertainment use on a single computer and mobile device only, and is subject to your keeping intact all copyright and other proprietary notices. Using any Material on any other web site or networked computer environment is prohibited. Also, decompiling, reverse engineering, disassembling, or otherwise reducing the code used in any software on the DEL Network into a readable form in order to examine the construction of such software and/or to copy or create other products based (in whole or in part) on such software, is prohibited.

26. **Name Image and Likeness (NIL).** Members may be compensated for the use of their names, images and likeness for promotional purposes as a result of gaming. You acknowledge and agree that your participation in DEL and use of the DEL Network contributes to your success and notoriety in gaming and in turn proceeds through NIL. **In consideration of such participation and use, you agree to compensate DEL—at the discretion of DEL—up to 10% of any NIL proceeds over \$5,000. You acknowledge and agree such sums constitute fair consideration for the benefits you will receive through your participation in DEL and use of the DEL Network.**

27. **Access to Internet.** We may screen and/or restrict access to content, goods or services which we may consider improper, inaccurate, misleading, defamatory, obscene or otherwise offensive content placed on and/or accessible through the internet. If we do screen or restrict access, we do not, however, make any guarantees as to the quality or accuracy of screening or restricting of content. By accessing these services, you acknowledge that if you access the internet you may receive or be exposed to content, goods or services which you consider to be improper, inaccurate, misleading, defamatory, obscene or otherwise offensive. You agree that DEL is not liable for any action or inaction with respect to any such content on the internet accessible through the DEL Facilities Technology.

28. **Third-Party Sites**
 - a. The DEL Network may link you to other mobile apps or sites on the internet. These mobile apps and sites may contain information or material that some people may find inappropriate or offensive. These other sites are not under the control of DEL, and you acknowledge that (whether or not such sites are affiliated in any way with DEL) DEL is not responsible for the accuracy, copyright compliance, legality, decency, or any other aspect of the content of such sites. The inclusion of such a link does not imply endorsement of any site by DEL or any association with its operators.

 - b. DEL cannot ensure that you will be satisfied with any products or services that you purchase from any third-party site that links to or from DEL since other shop channels are owned and operated by independent retailers. DEL does not endorse any of the merchandise, nor has DEL taken any steps to confirm the accuracy or reliability of any of the information contained in such third-party sites. DEL does

not make any representations or warranties as to the security of any information (including, without limitation, credit card and other personal information) you might be requested to give any third party, and you irrevocably waive any claim against us with respect to such sites. We strongly encourage you to make whatever investigation you feel necessary or appropriate before proceeding with any online transaction with any of these third parties.

29. **Forums.** THE MATERIALS, INFORMATION AND OPINIONS INCLUDED AND/OR EXPRESSED IN OR ON BULLETIN BOARDS, CHAT ROOMS, COMMUNITY PAGES OR OTHER FORUMS ON THE DEL NETWORK ("FORUMS") ARE NOT NECESSARILY THOSE OF DEL OR ITS CONTENT PROVIDERS. DEL DOES NOT UNDERTAKE TO MONITOR OR REVIEW FORUMS, AND THE CONTENT OF FORUMS IS NOT THE RESPONSIBILITY OF DEL. DEL MAY REMOVE OR MODIFY ANY CONTENT WITHOUT NOTICE OR LIABILITY AT ANY TIME IN ITS SOLE DISCRETION. ANY USE OF THE FORUMS WILL BE AT YOUR OWN RISK AND WILL BE SUBJECT TO THE DISCLAIMERS AND LIMITATIONS ON LIABILITY SET OUT ABOVE.
30. **Proprietary Online Services.** Any area of the DEL Network that is accessed through any proprietary online service is subject to the rules, policies and guidelines of such proprietary online service.
31. **Submissions, Postings and E-mails.** You acknowledge and agree that any questions, comments, suggestions, ideas, feedback, or other information regarding the DEL Network ("Submissions") provided by you to DEL are non-confidential and shall become our sole property. DEL shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any lawful purpose, commercial or otherwise, without acknowledgement or compensation to you. You hereby waive all moral rights to any such Submissions, and you hereby warrant that any such Submissions are original to you, or that you have the right to submit such Submissions. You agree there shall be no recourse against the DEL Parties for any alleged or actual infringement of misappropriation of any proprietary right in your Submissions.
32. **Our Use of User Content.** By posting or uploading any content to the DEL Network and/or providing any communication or material to DEL ("User Content"), you automatically and irrevocably: (a) grant and assign to DEL a royalty-free, perpetual, non-exclusive, unrestricted, worldwide license to any and all rights in the User Content including without limitation all copyright, together with all consents (if any) necessary to enable its reproduction, distribution, modification, publishing and/or other exploitation by DEL and/or by any person authorized by DEL, by any means and in all media now known or hereafter devised, without payment or other reference to you or any other person, and to advertise and promote such exploitation, for the full period of all such rights (together with any extensions and renewals) and insofar as possible in perpetuity; (b) waive all moral rights in the User Content which may be available to you in any part of the world and confirm that no such rights have been asserted; (c) appoint DEL as your

agent with full power to enter into any document and/or do any act DEL may consider appropriate to confirm the grant and assignment, consent and waiver set out above; (d) warrant that you are the owner of the User Content and entitled to enter into these Terms of Use; (e) confirm that no such User Content will be subject to any obligation, of confidence or otherwise, to you or any other person and that DEL shall not be liable for any use or disclosure of such User Content.

33. **Claims of Infringement.** If you believe that any content appearing on the DEL Network infringes your copyrights, we at DEL want to hear from you. Please forward the following information in writing to the Copyright Agent at the address and/or email address listed below:

- a. your name, address, telephone number, and e-mail address;
- b. a description of the copyrighted work that you claim has been infringed;
- c. the exact URL or a description of each place where alleged infringing material is located;
- d. a statement by you that you have a good faith belief that the disputed use has not been authorized by you, your agent, or the law;
- e. your electronic or physical signature or the electronic or physical signature of the person authorized to act on your behalf; and
- f. a statement by you made under penalty of perjury, that the information in your notice is accurate, that you are the copyright owner or authorized to act on the copyright owner's behalf.

34. **Copyright Agent.** c/o DEL, 3220 Dodge Street, Suite 109, Dubuque, IA 52003. DEL seeks to preserve any and all exemptions from liability that may be available under the copyright law but does not necessarily stipulate that it is a service provider as defined in USC section 512(c) or elsewhere.

VII. EVENTS

34. **Tournaments, Contests and Sweepstakes.** Your participation in any tournaments, contests or sweepstakes hosted or sponsored by DEL will be governed by the rules, regulations or other Terms of Use relating to each applicable tournament, contest and/or sweepstakes.

35. **Prizes.**

- a. **Cash Prizes.** To claim a cash prize associated with an Event, the Member shall arrange within 30 days to claim such prize in person or make alternative arrangement with DEL. Further, to claim such prize, the Member will need to

execute a W9 and a statement confirming the prize. If a Member does not claim his or her prize within thirty (30) calendar days of an Event, the Member forfeits his or her right to such prize and shall have no further claim thereto.

- b. **Points.** Member acknowledges and agrees that any points earned by Member shall be awarded at DEL's sole discretion and that such points do not have any cash value and cannot be redeemed by Member with DEL or any other party for cash or any other items of value.

VIII. MEMBER INFORMATION AND PRIVACY

- 36. **Information We Collect.** We may collect information about your use of the DEL Facilities Technology, including Personal Information (as such term is defined in our Privacy Policy) you provide for access and authentication as well as information about your usage of the DEL Facilities Technology. We and our third-party vendors, such as authentication gateway partners and network service providers, may use this information to facilitate your use of the DEL Facilities Technology; to remember your access information; for technical support purposes; for service improvement; for service and customer analytics and as otherwise set forth in our Privacy Policy.
- 37. **Monitoring.** Activity in the Facilities or at Events may be recorded for security purposes.
- 38. **Security.** Any usernames and passwords used for the DEL Network are for individual use only. You shall be responsible for the security of your username and password (if any). DEL shall be entitled to monitor your username and password and, at its discretion, require you to change it. If you use a username and password that DEL considers insecure, DEL will be entitled to require this to be changed and/or terminate your account. You are prohibited from using any services or facilities provided in connection with the DEL Network to compromise security or tamper with system resources and/or accounts. The use or distribution of tools designed for compromising security (e.g. password guessing programs, cracking tools or network probing tools) are strictly prohibited. If you become involved in any violation of system security, DEL reserves the right to release your details to system administrators at other sites in order to assist them in resolving security incidents.
- 39. **Local Regulations.** DEL makes no representation that Materials or other content in the DEL Network are appropriate or available for use outside the United States, its territories, possessions and protectorates. If you choose to access the DEL Network from other locations you do so on your own initiative and at your own risk. You are responsible for complying with local laws, if and to the extent local laws are applicable. You specifically agree to comply with all applicable laws concerning the transmission of technical data exported from the United States or the country you reside in.

IX. DISCLAIMERS; LIMITATIONS OF LIABILITY; DISPUTE RESOLUTION.

40. **Disclaimer of Liability from Member Interactions.** DEL PARTIES ARE NOT RESPONSIBLE FOR THE CONDUCT OF OTHER MEMBERS OR THEIR GUESTS.

41. **Disclaimer of Warranties.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT Your access to the Facilities, use of the DEL Facilities Technology, Websites, and/or Material and/or participation in Events ARE AT YOUR OWN RISK. THE FACILITIES, DEL FACILITIES TECHNOLOGY, WEBSITES and MATERIALS ARE PROVIDED "AS IS", "AS AVAILABLE" AND "WHEN AVAILABLE", WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT POSSIBLE PURSUANT TO APPLICABLE LAW, DEL AND ALL DEL PARTIES DISCLAIM ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE DEL PARTIES DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE DEL NETWORK (INCLUDING ANY DEL FACILITIES TECHNOLOGY) WILL BE AVAILABLE, UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE DEL FACILITIES TECHNOLOGY, THE SITE(S) OR THE SERVERS THAT MAKE THE DEL NETWORK AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE DEL PARTIES DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE MATERIAL, THE DEL FACILITIES TECHNOLOGY, INFORMATION, SOFTWARE, FACILITIES, SERVICES, OR OTHER CONTENT ON THE DEL NETWORK OR ANY WEB SITES OR MOBILE APPS LINKED TO THE DEL NETWORK IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. THE DEL PARTIES MAKE NO WARRANTIES THAT YOUR USE OF THE DEL FACILITIES TECHNOLOGY, MATERIALS, INFORMATION, SOFTWARE, FACILITIES, SERVICE OR OTHER CONTENT IN THE DEL NETWORK OR ANY WEB SITE OR MOBILE APP WILL NOT INFRINGE THE RIGHTS OF OTHERS AND THE DEL PARTIES ASSUME NO LIABILITY OR RESPONSIBILITY FOR ERRORS OR OMISSIONS IN THE DEL FACILITIES TECHNOLOGY OR ANY SUCH MATERIALS, INFORMATION, SOFTWARE, FACILITIES, SERVICE OR OTHER CONTENT OF THE DEL NETWORK OR ANY OTHER WEB SITE OR MOBILE APP. IF APPLICABLE LAW DOES NOT ALLOW THE EXCLUSION OF SOME OR ALL OF THE ABOVE IMPLIED WARRANTIES TO APPLY TO YOU, THE ABOVE EXCLUSIONS WILL APPLY TO YOU ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.

42. Limitation of Liability.

- a. EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW, IN NO EVENT SHALL ANY DEL PARTIES BE LIABLE FOR ANY INDIRECT, PUNITIVE, ACTUAL, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES RESULTING FROM ANY USE OF, OR ACCESS TO, THE DEL NETWORK REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR THE LEGAL OR EQUITABLE THEORY UPON WHICH THE CLAIM IS BASED. Except in the event of gross negligence or

willful misconduct by any of the DEL Parties, the DEL PARTIES shall not BE LIABLE TO YOU FOR AN AMOUNT EXCEEDING THE TOTAL AMOUNT PAID TO DEL BY YOU DURING THE ONE-YEAR PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY.

- b. NOTWITHSTANDING SECTION 42(a), THE DEL PARTIES DISCLAIM ALL LIABILITY WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND DO NOT ACCEPT ANY LIABILITY FOR ANY LOSS OR DAMAGE (DIRECT, INDIRECT, PUNITIVE, ACTUAL, CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR OTHERWISE) RESULTING FROM ANY USE OF, OR INABILITY TO USE, THE DEL FACILITIES TECHNOLOGY, THE WEBSITES OR ANY OTHER WEB SITE, MOBILE APP, OR THE MATERIAL, INFORMATION, SOFTWARE, FACILITIES, SERVICES OR OTHER CONTENT ON THE DEL NETWORK OR ANY OTHER WEB SITE OR MOBILE APP, REGARDLESS OF THE BASIS UPON WHICH LIABILITY IS CLAIMED AND EVEN IF ANY MEMBER OF THE DEL PARTIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. WITHOUT LIMITATION, YOU (AND NOT ANY MEMBER OF THE DEL PARTIES) ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION IN THE EVENT OF ANY SUCH LOSS OR DAMAGE. IF APPLICABLE LAW DOES NOT ALLOW ALL OR ANY PART OF THE ABOVE LIMITATION OF LIABILITY TO APPLY TO YOU, THE LIMITATIONS WILL APPLY TO YOU ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.
43. **Indemnification.** You agree to indemnify and hold DEL and each of the DEL Parties harmless from and against any and all claims, demands, liabilities, costs and expenses (including reasonable attorneys' fees) relating to or arising out of: (a) your breach or violation of the Terms of Use or any of your representations or warranties; (b) your breach or violation of any rights of another person, including privacy rights, of any other person (whether a natural person or an entity); (c) your breach or violation of any applicable foreign, federal, state or local, laws, rules, regulations, ordinances or orders; and (d) your placement or transmission of any content onto DEL' servers, and/or from any and all use of your account. DEL reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with DEL in asserting any available defenses. You agree that the provisions in this section will survive any termination of your Membership, or your access to the Facilities and Services.
44. **Binding Arbitration.** Without limiting any other provision of these Terms of Use, you agree to the following:
- a. **Purpose.** Any and all Disputes (as defined below) involving you and DEL will be resolved through individual arbitration. In arbitration, there is no judge or jury and there is less discovery and appellate review than in court. This Section (the

"Arbitration Provision") shall be broadly interpreted. Notwithstanding anything to the contrary in these Terms of Use, the Arbitration Provision does not apply to an action by either party to enjoin the infringement or misuse of its intellectual property rights, including copyright, trademark, patent or trade secret rights.

- b. **Definitions.** The term "Dispute" means any claim or controversy related to the DEL Network, including but not limited to any and all: (1) claims for relief and theories of liability, whether based in contract, tort, fraud, negligence, statute, regulation, ordinance, or otherwise; (2) claims that arose before these Terms of Use or any prior agreement; (3) claims that arise after the expiration or termination of these Terms of Use; and (4) claims that are currently the subject of purported class action litigation in which you are not a member of a certified class. As used in this Arbitration Provision, "DEL" means Trash Panda LLC and any of its predecessors, successors, assigns, parents, subsidiaries and affiliated companies and each of their respective officers, directors, employees and agents, and "you" means you and any users or beneficiaries of your access to the DEL Network.
- c. **Right to Sue in Small Claims Court.** Notwithstanding anything in this Arbitration Provision to the contrary, either you or DEL may bring an individual action in a small claims court in the area where you access the DEL Network if the claim is not aggregated with the claim of any other person and if the amount in controversy is properly within the jurisdiction of the small claims court.
- d. **Waiver of Class Actions and Collective Relief.** THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION, JOINT OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS, OR OTHER PERSONS. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT INDIVIDUAL PARTY'S CLAIM. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING.
- e. **Severability and Waiver of Jury Trial.** If any part of subsection (f) of this Arbitration Provision is found to be illegal or unenforceable, the entire Arbitration provision will be unenforceable and the Dispute will be decided by a court in Philadelphia, PA. WHETHER IN COURT OR IN ARBITRATION, YOU AND DEL AGREE TO WAIVE THE RIGHT TO A TRIAL BY JURY TO THE FULLEST EXTENT ALLOWED BY LAW. If any other clause in this Arbitration Provision is found to be illegal or unenforceable, that clause will be severed from this Arbitration Provision and the remainder of this Arbitration Provision will be given full force and effect.

- f. **Continuation.** This Arbitration Provision will survive the termination or expiration of these Terms.

X. MISCELLANEOUS

45. **Severability.** If any part or parts of these Terms of Use are found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Terms of Use shall continue in full force and effect.
46. **Assignment.** The Terms of Use, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated, or otherwise transferred by you without DEL's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.
47. **Governing Law.** The laws of the United States and the State of Iowa, excluding Iowa's conflict of laws rules, will apply to any disputes arising out of or relating to these Terms of Use and/or the DEL Network.
48. **Notice.** Any updates to these Terms of Use shall be posted from time to time following the date hereof on the Websites. You will be deemed to have received notice of any amendments or modifications to these Terms of Use and the Privacy Policy when and as posted on our Websites.
49. **Waiver.** Any waiver or failure to enforce any provision of the Terms of Use on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
50. **Severability.** If any provision of the Terms of Use is, for any reason, held to be invalid or unenforceable, the other provisions of the Terms of Use will remain enforceable, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.