

## Terms of Use

*These Terms of Use have been updated as of July 15, 2025, and supersede and replace all prior Terms & Conditions.*

### IMPORTANT NOTICE:

THESE TERMS OF USE INCLUDE AN ARBITRATION AND CLASS ACTION WAIVER AGREEMENT WHICH REQUIRES THAT ANY PAST, PENDING, OR FUTURE DISPUTES BETWEEN YOU AND US SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ON AN INDIVIDUAL BASIS ONLY AND FOR YOUR OWN LOSSES ONLY. YOU MAY NOT PROCEED AS A CLASS REPRESENTATIVE, MEMBER OR PART OF ANY PROPOSED CLASS, COLLECTIVE ACTION, MASS ARBITRATION, PRIVATE ATTORNEY GENERAL SUIT, QUI TAM ACTION OR ANY REPRESENTATIVE PROCEEDING, OR OTHERWISE SEEK TO RECOVER ON BEHALF OF OTHERS OR FOR THE BENEFIT OF OTHERS IN ANY TYPE OF CLAIM OR ACTION. ARBITRATION MEANS YOU WILL NOT BE ABLE TO SEEK DAMAGES IN COURT OR PRESENT YOUR CASE TO A JURY.

OPT-OUT. IF YOU DO NOT WISH TO BE SUBJECT TO ARBITRATION ON A RETROACTIVE BASIS AND AS TO ANY FUTURE CLAIMS, AND YOU HAVE NOT PREVIOUSLY AGREED TO AN ARBITRATION PROVISION WITH US IN CONNECTION WITH YOUR USE OF OUR SERVICES, YOU MAY OPT OUT OF THE ARBITRATION AGREEMENT WITHIN THIRTY (30) DAYS OF ENTERING THIS AGREEMENT BY FOLLOWING THE INSTRUCTIONS PROVIDED IN THE "BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER" – SEE SECTION 17 OF THESE TERMS, BELOW. OPT OUT REQUESTS SENT AFTER THE THIRTY (30) DAY PERIOD SHALL BE NULL AND VOID. EVEN IF YOU OPT OUT OF THE ARBITRATION AGREEMENT IN SECTION 17, ALL OTHER REMAINING SECTIONS OF THESE TERMS APPLY.

PLEASE READ THE FOLLOWING TERMS OF USE, THE ARBITRATION AGREEMENT AND CLASS ACTION WAIVER (SEE SECTION 17 BELOW), THE UNDERDOG [PRIVACY POLICY](#), AND THE [UNDERDOG FANTASY CONTEST RULES](#) CAREFULLY BEFORE USING THE SERVICES OFFERED IN CONNECTION WITH ANY UNDERDOG SERVICES OR WEBSITE OR APPLICATION. YOU AGREE THAT YOUR CONTINUED USE OR ACCESS OF THE SITE OR SERVICES SHALL BE SUBJECT TO THESE TERMS OF USE, WHICH FURTHER INCORPORATE AND INCLUDE THE [PRIVACY POLICY](#), THE [UNDERDOG FANTASY CONTEST RULES](#), AND ANY OTHER POLICIES THAT EXPRESSLY INCORPORATE THESE TERMS (COLLECTIVELY, "INCORPORATED POLICIES").

IT IS AN EXPRESS CONDITION OF THIS AGREEMENT THAT ANY CLAIMS YOU MAY HAVE AGAINST UNDERDOG ARISING FROM ANY PAST, PRESENT OR FUTURE USE OF TRACKING SOFTWARE, INCLUDING BUT NOT LIMITED TO USE OF A META PIXEL, "COOKIES," "GET REQUESTS" OR JAVASCRIPT IN HTML CODE OF UNDERDOG'S WEBSITE THAT INTERCEPTS, TRACKS, STORES, AND ANALYZES YOUR INTERACTIONS WITH UNDERDOG'S WEBSITE FOR PURPOSES OF OBTAINING DATA OR TARGETED ADVERTISEMENT ARE HEREBY FULLY WAIVED, RELEASED AND COMPROMISED. UNDERDOG SHALL HAVE NO LIABILITY TO YOU FOR ANY PAST CLAIMS ARISING OUT OF OR RELATED TO THE USE OF TRACKING TECHNOLOGY.

### 1. Acceptance of Terms

These Terms of Use form a binding agreement between you and Underdog Sports, LLC d/b/a Underdog Fantasy ("We", "Us", or "Underdog"). Underdog offers a number of different types of contests in different states based upon applicable laws and regulations (each, a "Contest"), and the eligible states may change from time to time. The types of Contests and available states are posted at <https://underdogfantasy.com/>.

Underdog provides a fantasy sports website located at [www.underdogfantasy.com](http://www.underdogfantasy.com) (the "Site") and related mobile apps – which include all of the text, images, audio, code, features, Contests and other material they contain or provide (collectively, the "Content"). The Site, the Content, the mobile apps, and any other features, tools, materials, or other services (including co-branded or affiliated services) offered from time to time by Underdog are referred to in this agreement as the "Services." Please read these Terms of Use (the "Terms" or "Terms of Use") carefully before using the Services. By creating your account ("Account"), using or otherwise accessing the Services, or clicking to accept or agree to these Terms, you consent to the collection, use, disclosure and other handling of information as described in our [Privacy Policy](#). If you do not agree to the Terms, then you may not access or use the Content or

Services. All of your activity on the Site and all of your transactions with Underdog, including all events which occurred before your acceptance of these Terms, are subject to these Terms.

Underdog may issue additional terms, rules and conditions of participation in particular contests ("Rules"). For example, Underdog may issue conditions as required by various state rules and regulations, which may impact your experience or participation on the Services. You agree to be subject to those additional rules if you participate in such contests. For [more information on the current rules governing Underdog's Fantasy Contests](#), please carefully review the [Underdog Fantasy Contest Rules](#).

## **2. Modification of Terms of Use**

Underdog reserves the right, at its sole discretion, to modify or replace the Terms of Use, its [Privacy Policy](#), and the [Underdog Fantasy Contest Rules](#) at any time. The most current version of these documents will be posted on our Site. You shall be responsible for reviewing and becoming familiar with any such modifications. Your continued use of the Services after any modification to these documents constitutes your acceptance of the modified terms. In the event of a change to the Terms, [Privacy Policy](#), or the [Underdog Fantasy Contest Rules](#) the most recent version to which you have agreed shall apply and replace all prior terms, which shall be deemed superseded and replaced by the modified version.

## **3. Fantasy Contests**

Underdog's Fantasy Contests, and those portions of the Services used to register for or compete in Fantasy Contests, are open only to eligible users.

Except as explicitly stated in connection with a particular Fantasy Contest, Underdog is the exclusive sponsor of all Fantasy Contests Offered through the Services.

### **i. Eligibility for Fantasy Contests**

Eligibility for all Underdog Contests is generally posted at <https://underdogfantasy.com/>.

You consent to the monitoring and recording by Underdog, or a third-party provider acting on behalf of Underdog, of any fantasy sports contest entry communication and geographic location information.

If you plan to access or participate in Fantasy Contests, you hereby represent and warrant that you are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations and warranties set forth in these terms and to abide by and comply with these terms.

By entering a Fantasy Contest, you are further representing and warranting that all of the following are true:

- you are 18 years of age (or the minimum age in your state of residence, which may also be 19 or 21) or older;
- you are a citizen or resident of the United States of America or Canada and that you have an address in the United States of America or Canada;
- at the time of contest entry, you are physically located in the United States of America or Canada in a jurisdiction in which participation in the Fantasy Contest is not prohibited by applicable law;
- you are not listed on any U.S. or Canadian Government list of prohibited or restricted parties;
- you are not physically located at the time of entry in a Fantasy Contest within any jurisdiction where Underdog is not available. Eligibility for Underdog contests is generally posted at <https://underdogfantasy.com/>;
- you are not subject to backup withholding tax because: (a) you are exempt from backup withholding, or (b) you have not been notified by the Internal Revenue Service (IRS) that you are subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified you that you are no longer subject to backup withholding;
- you are not prohibited from participating in a Fantasy Contest pursuant to a court order;

- you are not an employee or officer of Underdog or a relative of an Underdog employee with whom you share a household;
- you are not, solely while physically present in the State of Tennessee and attempting to play on the Underdog platform, (1) an independent contractor of Underdog, or (2) the parent, spouse, or child of an Underdog employee or independent contractor of Underdog. For purposes of this prohibition an “independent contractor of Underdog” means a contractor who has access to Underdog proprietary information or systems that may affect how a fantasy contest is played.
- when entering a Fantasy Contest, you are not an employee or operator of another daily fantasy site that charges entrance fees or offers cash prizes; AND
- you do not, by virtue of affiliation with another daily fantasy site or otherwise, have access to pre-release non-public confidential data about Fantasy Contest-related information.

If Underdog determines that you do not meet the eligibility requirements of this section, then you are not authorized to access or participate in Fantasy Contests. Underdog may require you to provide proof that you are eligible to participate according to this section prior to entering into Fantasy Contests on the Underdog Fantasy Contests Platform (“Platform”). You consent that Underdog, or a third-party provider acting on behalf of Underdog, may confirm your age and identity. This includes requesting that you fill out an affidavit of eligibility or other verification information (as discussed in Section 4(iii) below).

If Underdog otherwise determines that you do not meet the eligibility requirements of this section, in addition to any rights that Underdog may have in law or equity, Underdog reserves the right, in its sole discretion, to terminate your Account, restrict your Account from accessing or participating in Fantasy Contests, withhold or revoke the awarding of any Fantasy Prize Winnings associated with your Account or limit your ability to withdraw. In such a situation, Underdog may pay out any withheld or revoked Fantasy Prize Winnings to the other entrants in the relevant Fantasy Contest in a manner consistent with the prize structure of the Fantasy Contest, to be precisely determined by Underdog in its sole discretion. Underdog also reserves the right to withhold revoked Fantasy Prize Winnings to use in furtherance of its fraud prevention or anti-money laundering efforts.

Further, Underdog may determine, in its sole discretion, to no longer provide its Services or certain Contests in a particular state or location or to modify its product offerings in a particular state or location. In the event Underdog discontinues its Services or certain Contests, Underdog reserves the right in its sole discretion to terminate a Contest in progress, terminate Accounts, restrict the use of Accounts to enter into certain Contests, and provide refunds as necessary.

Under no circumstances shall Underdog be required to refund or pay any amount with respect to a terminated contest other than your entry fee.

Underdog employees may only use the Services for the purpose of testing the user experience. Underdog consultants or promoters of the Services may play in Fantasy Contests without such limitation, but only if (i) their arrangement with Underdog does not permit them to have any access to non-public Services data or any other data not made available to all eligible players on the Services and (ii) they do not receive any other advantages in their play on the Services.

Employees or operators of other daily fantasy sites that charge entry fees or offer cash prizes who, by virtue of their affiliation with another daily fantasy site, have access to pre-release, non-public, and confidential user data from the other site which provides such persons an unfair advantage in a Contest may not enter any Fantasy Contests. If it is determined by Underdog, in its sole discretion, that such a person entered an Underdog Fantasy Contest with a Prize and possessed or utilized an unfair advantage due to their access to pre-release, non-public, and confidential user data from the another site, Underdog will disqualify the entry, will not award the person Fantasy Prize Winnings, and may report such person’s violation of this provision to the daily fantasy site for which the entrant is employed by, operates or affiliated with.

Additionally, Underdog may maintain information about the entrant sufficient to assist Underdog in blocking the user from entering future Underdog Fantasy Contests, unless and until Underdog determines, in its sole discretion, that the entrant is no longer an employee or operator of another daily fantasy site or no longer has access to pre-release non-public confidential data about game-related information by virtue of affiliation with a daily fantasy site.

All leagues or associations on which Underdog offers contests including but not limited to NFL, NBA, MLB, NHL, PGA, and NCAA (collectively, "League and Association"), and any athletes, coaches and other team management, team support personnel (e.g., without limitation, team physicians) and team owners of any League and Association may not participate in any Underdog Fantasy Contests. League and Association team owners, referees, league employees, commissioners, and other individuals who through an ownership interest or game-related employment may influence the gameplay are likewise ineligible.

#### **4. Conditions of participation**

##### **i. Registration**

In order to participate in the Services, including Fantasy Contests, you must register for an Account. By registering as a user of the Services, you agree to provide accurate, current and complete information about yourself as prompted (such information being the "Registration Data") and maintain and promptly update the Registration Data to keep it accurate, current and complete. If you provide any information that is inaccurate, not current or incomplete, or Underdog has reasonable grounds to suspect that such information is inaccurate, not current or incomplete, Underdog may deny you access to areas requiring registration, or terminate your Account, at its sole discretion.

You may establish, maintain, use and control only one Account on the Services. Each Account on the Services may only be owned, maintained, used and controlled by one individual. You acknowledge that as an authorized game participant, you are prohibited from allowing any other person to access or to use your Account.

For avoidance of doubt, users may not "co-own" Accounts on the Services. In the event Underdog determines that you have opened, maintained, used or controlled more than one Account, or allowed another person to use your Account, in addition to any other rights that Underdog may have, Underdog reserves the right to suspend or terminate any or all of your Accounts and terminate, withhold or revoke the awarding of any prizes.

You agree that the sole and specific purpose of creating an Account on Underdog is to participate in the Services. Underdog shall be entitled to suspend, limit or terminate your Account if we have reasonable grounds to believe (as determined in our sole discretion) that you are using the Services for an illegal or improper purpose. In such circumstances, we may also report such activity to relevant authorities.

##### **ii. Account Password and Security**

At the time of registration for online Account access, you must provide a valid email address and supply a Username and Password to be used in conjunction with your Account. You may not use a Username that promotes a commercial venture or a Username that Underdog in its sole discretion deems offensive. Many portions of the Services require registration for access (the "Restricted Areas"). You are responsible for maintaining the confidentiality of Password, and are fully responsible for all uses of your Username and Password, whether by you or others. You agree to (a) never to use the same Password for the Services that you use or have ever used outside of the Service; (b) keep your Username and Password confidential and not share them with anyone else; (c) immediately notify Underdog of any unauthorized use of your Username and Password or Account or any other breach of security; and (d) use only your own Username and Password to access the Services' Restricted Areas. Underdog cannot and will not be liable for any loss or damage arising from your failure to comply with this Section.

All data which you provide to Underdog or which is obtained or generated about you during your use of the Services shall be subject to the [Privacy Policy](#). The [Privacy Policy](#), and any changes to the same, is further deemed incorporated and part of these Terms.

You acknowledge and agree that Underdog is authorized to act on instructions received through the use of your Username and Password, and that Underdog may, but is not obligated to, deny access or block any transaction made through use of your Username and Password without prior notice if we believe your Username and Password are being used by someone other than you, or for any other reason.

Underdog may require you to change your password or Username or may unilaterally change your Username. Underdog recommends users to constantly consider the security and strength of the passwords and Underdog recommends users change their passwords on

a frequent basis of at least every 6 months.

### iii. User Account Funds and Withdrawals

By creating an Underdog Account, you agree to provide us with a valid mailing address, date of birth, and Social Security number as well as any other information we may require in order to run appropriate identity checks and comply with applicable rules and regulations. If necessary, you may be required to provide appropriate documentation that allows us to verify you.

Your participation in Contests, your ability to create or maintain an Account with us and your access to the Services are at all times subject to Underdog's existing policies and procedures for verification, including any age, location, or identity verification methods employed by Underdog or its third party providers. While your Account is pending verification, Underdog reserves the right in its sole discretion to prohibit you from depositing funds into your Account. You may not be able to participate in any Fantasy Contests until verification of your Account or identity is complete. If we are unable to verify your Account or identity at any point, we reserve the right in our sole discretion to terminate or suspend your Account and withhold any funds until such time as we have been able to successfully verify you.

If you participate in Fantasy Contests, all Fantasy Prize Winnings you obtain will be added to your Underdog Account balance, and such funds will be held in a separate, segregated bank Account by a subsidiary of Underdog. These funds belong to you, subject to review for evidence of fraud, verification or other prohibited conduct as described above, and Underdog may not use them to cover its operating expenses or for other purposes. Your withdrawals of Fantasy Prize Winnings will be made from this segregated bank Account, and any checks or other payments issued from that Account may bear the name of Underdog's subsidiary.

You can view your fantasy contest player activity, Account statement, contest history in the transaction history section of your Underdog Account. Account activity and winnings may be disclosed to any applicable state or federal entities. Underdog reserves the right in its sole discretion to limit the time period covered by, or access to, the Account history information to the minimum time period permissible under applicable law or regulation.

Underdog will endeavor to process withdrawal requests as fast and efficient as possible, typically within 10 business days after the request is received. We also may conduct checks for Terms compliance, including anti-fraud checks on playing and Services usage patterns prior to processing a withdrawal, and we may request additional information before permitting a withdrawal. Subject to such checks, you may close your Account and withdraw your Account balance at any time and for any reason.

Underdog may limit the amount of entry fees that a user can pay in accordance with state-imposed deposit limits and/or based on liability risk to our business. Determination of unacceptable liability risk to us for the purpose of this Rule is at our discretion.

Generally, deposit bonuses and promotions may occur from time to time and shall, in addition to these Terms, be subject to the posted rules for such bonuses and promotions, which may change from time to time. [The rules for bonuses and promotions are currently located at https://underdogfantasy.com/rules/promotions.](https://underdogfantasy.com/rules/promotions)

Generally, sweepstakes may occur from time to time and shall, in addition to these Terms, be subject to the posted rules for such sweepstakes promotion, available at [https://underdogfantasy.com/rules/sweepstakes.](https://underdogfantasy.com/rules/sweepstakes)

Your participation in any sweepstakes or promotions shall be governed by these Terms, and the posted rules shall be deemed incorporated in these Terms.

All payments by you are final and no refunds will be issued.

**Inactive Accounts.** Underdog may, in its sole discretion, for purposes of the Inactivity Fee (defined below), consider and treat your Account as inactive if you have not entered a contest, made a deposit, or made a withdrawal from your Account for eighteen (18) months. Unless prohibited by applicable law, Underdog may impose a fee of \$4.00 per month ("Inactivity Fee") on all inactive accounts until the Account is reactivated by entering a contest, making a deposit, or withdrawing from your Account. Upon reactivation, prior inactivity fees will not be refunded.

Underdog may, in its sole discretion, for purposes of dormant accounts, consider and treat your Account as inactive if there have been no log-ins to the Account or a lack of participation in a Contest for eighteen (18) months. If your Account remains inactive, your Account may be considered dormant by Underdog in its sole discretion, unless a longer period of time is required by applicable state law. For example, Accounts may be considered dormant in Arizona, Colorado, Indiana, Maine, Maryland and New York when they remain inactive for three (3) years. If an Account is inactive and contains unclaimed funds, Underdog may be required by state law to attempt to contact the Account holder at their last known mailing address and/or email address, and, if unsuccessful, the unclaimed funds may be considered abandoned. In such event, Underdog will remit such abandoned funds to the appropriate state agency as unclaimed property pursuant to state law. Underdog may also charge additional fees associated with the delivery of abandoned funds to the applicable state agency. If Underdog closes your Account prior to the period permitted by applicable state law, Underdog will return all funds remaining in your Account at the time of closure to you.

#### **iv. Communications and Information Practices**

As a result of your registration for the Services, you may receive certain commercial communications from Underdog. You understand and agree that these communications are part of your registration, and that, to [the extent required by law, you may opt out of receiving these communications as set forth in our Privacy Policy. Following such an opt-out, we may still communicate with you via email to the extent permitted by applicable law.](#)

#### **v. Responsible Gaming & Self-Exclusion**

Underdog offers tools to encourage responsible player behavior, including self-exclusion and self-limitation options. We also allow third parties, who have concerns about a player's ability to manage his or her play, to contact customer service to make a report regarding that player's participation in Underdog Fantasy Contests. Underdog, in its sole discretion, may exclude individuals from using the Platform. Please see Underdog's [Responsible Gaming Page](#) for more information and resources.

**Self-Exclusion.** Underdog Fantasy offers you options to set responsible limits. If, at any point, you think you are depositing too much money, entering too many contests, or spending too much on entry fees, you have the option of setting responsible gaming limits. Setting responsible limits allows you to still play, however, within the parameters that you set for yourself. Underdog also provides customers the ability to self-exclude directly from the product. Underdog offers exclusion periods of 3 months, 6 months, 1 year, 3 years, 5 years, and 10 years. You may also terminate your Account at any time.

**How to Enroll in Self-Exclusion.** If you wish to review and select limits or other Self-Exclusion options, you may access these options while logged in to your Account. Please find and select the "Exclusion" tab within "Responsible gaming limits" in the mobile Application and the "Self-exclusion" tab if you access your Account from the Underdog website. If you need assistance finding the information for any reason, please email customer service at [support@underdogfantasy.com](mailto:support@underdogfantasy.com).

Individuals who enroll in self-exclusion, or are otherwise excluded from the use of the Platform, are prohibited from collecting any winnings, recovering any losses, or accepting complimentary gifts or services or any other thing of value from a licensee or operator. Any Contests that are in progress, pending, or otherwise unsettled at the time the self-exclusion is enabled will be settled upon the result of each Contest, unless otherwise prohibited by applicable laws, rules, or regulations. All winnings awarded during the exclusion period will be forfeited. Some jurisdictions may require the refund of contest entry fees associated with Contests that are in progress, pending, or otherwise unsettled at the time the self-exclusion is enabled, while other jurisdictions may require the forfeiture of any winnings or the recovery of any losses (including, but not limited to, contest entry fees) associated with Contests that are in progress, pending, or otherwise unsettled at the time the self-exclusion is enabled. Any real money deposit left in your Account at the time of enrollment or exclusion will be refunded to you within five (5) business days. During the exclusion period, an excluded user may not open another Account, deposit any funds, enter any contest, win any prizes, or receive any bonus or other reward, and any such funds deposited or awarded during the exclusion period will be voided and not returned to the excluded user.

When enrolling in self-exclusion you agree to release all of the following from harm, monetary or otherwise, that may arise as a consequence of the self-exclusion:

- The State, and/or jurisdiction which oversees the regulations of the state you are located in.



- The board or commission of the state you are located in.
- Underdog, its subsidiaries, officers, directors, employees, and agents.

Please contact Underdog support at [support@underdogfantasy.com](mailto:support@underdogfantasy.com) with any questions or concerns. Underdog further reserves the right to terminate or suspend the Account of any user suspected or reported as being unable to properly manage their use of the Services. You can learn more about our responsible play policies and tools at <https://underdogfantasy.com/Account/responsible-gaming-limits> or contact us at [support@underdogfantasy.com](mailto:support@underdogfantasy.com).

#### **vi. Cancellation**

Underdog also reserves the right, in its sole discretion, to cancel or void Fantasy Contests, in our sole discretion, without any restrictions. If you have paid an entry fee for a Fantasy Contest and Underdog cancels [the Fantasy Contest or you cancel your entry in accordance with these Terms and the Underdog Fantasy Contest Rules](#), Underdog will credit your Underdog fantasy Account balance for the amount of the entry fee.

#### **vii. Disconnections & Technical Errors**

Underdog is not responsible for technical, hardware, network connections, or incomplete or delayed computer transmissions, regardless of cause. If for any reason Fantasy Contests are not running as originally planned (e.g., if the Site becomes corrupted or does not allow the proper usage and processing of entries in accordance with the [Underdog Fantasy Contest Rules](#), or if infection by a computer virus, bugs, tampering, unauthorized intervention, actions by entrants, fraud, technical failures, or any other causes of any kind, in the sole opinion of Underdog corrupts or affects the administration, security, fairness, integrity or proper conduct of the Services), Underdog reserves the right, in its sole discretion, to disqualify any individual implicated in or relating to the cause and/or to cancel, terminate, extend, modify or suspend the Fantasy Contests, and select the winner(s) from all eligible entries received. If such cancellation, termination, modification or suspension occurs, notification may be posted on the Site.

If you become disconnected from the Platform while in the process of a contest entry, subject to the type of draft and Rules, the draft may continue to the extent possible. In such event, please login to your Account as soon as practicable and check the status of your Contest Entry. Underdog shall not have any responsibility for the your failure or inability to meet an Contest entry Deadline. Plan ahead and leave plenty of time!

#### **viii. Force Majeure**

The failure of Underdog to comply with any provision of these Terms due to circumstances beyond its control including but not limited to an act of God, hurricane, war, fire, riot, earthquake, weather, pandemic or endemic, terrorism, act of public enemies, strikes, labor shortage, actions of governmental authorities, technological failures or other force majeure event will not be considered a breach of these Terms, and Underdog's performance obligations, if any, shall be delayed until such time as performance becomes reasonably practicable and if performance is no longer possible.

#### **ix. Taxes**

Winnings may be subject to state or federal taxation. Please consult with your accounting professional. You are solely responsible for filing and paying applicable state and federal taxes on any winnings. Underdog does not provide tax advice, nor should any statements in this agreement or on the Services be construed as tax advice. To the extent required by applicable law, Underdog may issue a 1099-G to users whom have winnings in the aggregate derived from Fantasy Contests of \$600 or more over the previous year. If requested by Underdog, you shall provide all information necessary for Underdog to perform or evaluate any of its obligations under state or federal law, including any updated address, phone and social security number details to Underdog. These details will be used to allow Underdog to comply with tax regulations and may be shared with appropriate tax authorities. Lastly, you understand and authorize Underdog to withhold any amounts related to your Account if and to the extent Underdog determines that any amounts must be withheld under applicable law or regulations of the appropriate tax authorities.

#### **x. Publicity License and Release**

By entering a Fantasy Contest, you grant license and consent to Underdog's and its service providers' and business partners' use of your name, voice, likeness, image, location, photograph or video in connection with the development, production, distribution and/or exploitation (including marketing and promotion) of the selected Fantasy Contest and/or other Underdog Fantasy Contests and Underdog generally, unless otherwise prohibited by law. Underdog and its service providers and business partners reserve the right to make public statements about the entrants and winner(s), on-air, on the Internet, or otherwise, prior to, during, or following the Fantasy Contest. Entrants agree that Underdog may announce any winner's name on- air or on any of its websites or any other location at any time in connection with the marketing and promotion of Underdog or other Fantasy Contests or games operated by Underdog. You agree that participation in and (where applicable) the winning of Fantasy Prize Winnings in connection with a Fantasy Contest constitute complete compensation for your obligations under this paragraph, and you agree not to seek to charge a fee or impose other conditions on the fulfillment of these obligations, and expressly release and waive any [claims related to Underdog's use of the license granted in this subparagraph. The Underdog Fantasy Contest Rules may contain additional publicity obligations or may require a written signature on a separate publicity](#) waiver.

## **xi. Game Rules**

### **Underdog Fantasy: Rules**

Each Fantasy Contest is governed by the [Underdog Fantasy Contest Rules](#) ("Rules"), including with respect to scoring, controls, and guidelines for that Fantasy Contest, which shall be posted on the Site or Application. You agree that you shall be subject to the Rules in effect at the time of entry of a Fantasy Contest. Such Rules shall be deemed incorporated and part of these Terms and you agree that you shall comply with them in respect of each individual Fantasy Contest which you choose to enter.

### **Entry Requirements**

Fantasy Contests may require an entry fee or offer a prize. Each Fantasy Contest that has an entry fee will display the entry fee in US dollars. When you opt to participate in a Fantasy Contest with an entry fee, you will need to pay the required entry fee. Then, follow the links and instructions provided for entry.

In the event of a dispute regarding the identity of the person participating in a Fantasy Contest, the entry will be deemed submitted by the person in whose Username the entry was submitted, or if possession of the Username itself is contested and in Underdog's opinion sufficiently uncertain, the name in which the email address on file was registered with the email service provider. For Fantasy Contests, Underdog reserves the right not to award a prize to an individual it believes in its sole discretion did not submit the winning entry.

### **Fantasy Contest Term**

Underdog offers "Daily" Fantasy Contests for League and Association games generally taking place on a single day, and "Best Ball" Fantasy Contests for League and Association games taking place over a season. The duration of each Fantasy Contest may be found on the Lobby tab of the mobile app and on each Fantasy Contest page.

### **Prizes**

After each Fantasy Contest ends, the tentative winners are announced (generally by the following day) but remain subject to final verification. The players in each Fantasy Contest who accumulate the most fantasy points and comply with eligibility requirements and applicable rules will win prizes as set out in the posted Fantasy Contest details. Fantasy Prize Winnings are added to the winning player's Account balance once confirmed and verified by Underdog. In the event of a tie, the distribution of prizes will depend on the applicable provisions of the Rules.

Underdog offers a number of different types of Fantasy Contests. For each Fantasy Contest, we announce any applicable entry fees and/or prizes in advance on the Lobby tab of the mobile app and on the Fantasy Contest page. For a summary of entry fees and prizes for currently open Fantasy Contests please login and visit the Lobby tab.

Prize calculations are based on the results as of the time when final scoring is tabulated by Underdog. Once winners are initially announced by Underdog, the scoring results will not be changed in light of official adjustments made by leagues or associations,



including but not limited to the NFL, NBA, MLB, NHL, PGA, or NCAA, though we reserve the right to make adjustments based on errors or irregularities in the transmission of information to us from our stats provider or in our calculation of results. We also may make adjustments in the event of noncompliance with the Terms. Underdog has no obligation to delay the awarding of a prize in anticipation of any adjustment, and we reserve the right to reverse payments in the event of any adjustment. You agree to cooperate with our efforts to reverse payments. In short, you agree that the final decision and determination of the winner(s) of the Fantasy Contest shall be subject to the sole discretion of Underdog.

No substitution or transfer of a prize is permitted. The winner is solely responsible for all taxes associated with the receipt or use of any prize. In the event that the awarding of any prizes to winners of the Fantasy Contest is challenged by any legal authority, Underdog reserves the right in its sole discretion to determine whether or not to award or adjust such prizes. In all disputes arising out of the determination of the winner of Underdog Fantasy Contests, Underdog is the sole judge and its actions are final and binding in its sole discretion.

### **Notification**

Winners are generally posted on the Site after the conclusion of each Fantasy Contest by 1:00 PM ET on the following day. Winners may be requested to return via email or regular mail an affidavit of eligibility, a publicity agreement and appropriate tax forms by a specified deadline. Failure to comply with this requirement can result in disqualification. Any prize notification returned as undeliverable may result in disqualification and selection of an alternate winner.

### **5. User Conduct**

As a condition of use, you promise not to use the Services for any purpose that is unlawful, improper or prohibited by these Terms, or any other purpose not reasonably intended by Underdog.

Improper conduct includes, but is not limited to the following:

- i. abuse, harass, impersonate, intimidate or threaten other Underdog users;
- ii. post or transmit, or cause to be posted or transmitted, any Content that are infringing, libelous, defamatory, abusive, offensive, obscene, pornographic or otherwise violates any law or right of any third party;
- iii. use the Services for any unauthorized purpose, or in violation of any applicable law, including intellectual property laws;
- iv. post or transmit, or cause to be posted or transmitted, any communication or solicitation designed or intended to obtain password, Account, or private information from any Underdog user;
- v. create or submit unwanted email ("Spam") to any other Underdog users;
- vi. infringe upon the intellectual property rights of Underdog, its users, or any third party;
- vii. submit comments linking to affiliate programs, multi-level marketing schemes, sites repurposing existing stories or off-topic content;
- viii. post, email, transmit, upload, or otherwise make available any material that contains software viruses or any other computer code, files or programs designed or functioning to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
- ix. scrape, access, monitor, index, frame, link, or copy any content or information on the Services by accessing the Services in an automated way, using any robot, spider, scraper, web crawler, or using any method of access other than manually accessing the publicly-available portions of the Services through a browser or accessing the Services through any approved mobile application, application programming interface, or client application;
- x. violate the restrictions in any robot exclusion headers of the Services, if any, or bypass or circumvent other measures employed to prevent or limit access to the Services;

- xi. post material that advocates illegal activity or discusses illegal activities with the intent to commit them (in either case as determined by Underdog in its sole discretion);
- xii. post or otherwise make available any material that contains any software, device, instructions, computer code, files, programs and/or other content or feature that is designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment (including without limitation any time bomb, virus, software lock, worm, self-destruction, drop-device, malicious logic, Trojan horse, trap door, "disabling," "lock out," "metering" device or any malicious code);
- xiii. falsely state or otherwise misrepresent your affiliation with a person or entity, or impersonate any person or entity in a manner that does not constitute parody;
- xiv. through misrepresentation or otherwise, solicit personal or sensitive information from other users such as address, credit card or financial Account information, passwords or other Registration Data;
- xv. submit content linking to affiliate programs, multi-level marketing schemes, sites repurposing existing stories or off-topic content;
- xvi. violate the law or encourage conduct that would constitute a criminal offense or give rise to civil liability;
- xvii. use artificial means, including creating multiple user Accounts, to inflate your position and standing with the Underdog leader boards and community;
- xviii. use unauthorized scripts; all authorized scripts will be made available through the Fantasy Contests section of the Site prior to game entry;
- xix. advertise to, or solicit, any user to buy or sell any products or Services, or use any information obtained from the Services in order to contact, advertise to, solicit, or sell to users without their prior explicit consent;
- xx. sell or otherwise transfer, sell, or trade your Registration Data without written permission from Underdog;
- xxi. use or access a version of the Services or Registration Data that has been transferred, sold or traded from another user without written permission from Underdog, except as permitted by these Terms;
- xxii. attempt to influence the play in any sporting event from which athletes are available for selection in Underdog' Fantasy Contests in which you are involved or in which you have a direct or indirect interest;
- xxiii. enter into Fantasy Contests, by any means including use of multiple Accounts, for which you are ineligible (e.g., beginner Fantasy Contests when you are not a beginner);
- xxiv. use the Services in a way that violates or facilitates violations of these Terms, any other agreement or any guidelines or policies posted by Underdog.
- xxv. falsify personal information, including payment information, required to use the Services or claim a prize;
- xxvi. collude with any other individual(s) or engage in any type of syndicate play;
- xxvii. violate eligible payment method terms, including the terms of any cash rewards payment card;
- xxviii. use a single Account to participate in a Fantasy Contest on behalf of multiple entrants or otherwise collaborate with others to participate in a Fantasy Contest;
- xxix. tamper with the administration of the Services or try to in any way to tamper with the computer programs associated with the Service;
- xxx. use IP proxying or other methods to disguise your location or the place of your residence to circumvent geographical restrictions on Fantasy Contest participation;
- xxxi. obtain other entrants' information and spam other entrants;

xxxii. bonus abuse of any kind, including abuse of any offers or promotions;

xxxiii. abuse the Services in any way; or

xxxiv. otherwise violate these Terms of Use.

Underdog, in its sole discretion, may disqualify you from a Fantasy Contest, access to all Fantasy Contests, or the entire Services, refuse to award fantasy points or prizes and require the return of any Fantasy Prize Winnings, or suspend, limit, or terminate your Account if you engage in conduct Underdog deems, in its sole discretion, to be improper, unfair, fraudulent or otherwise adverse to the operation of the Services or in any way detrimental to other users.

You acknowledge and agree that Underdog may remove any User Content (as defined below) and terminate any Underdog Account at any time for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such User Content) in its sole discretion. To report Terms of Use violations, please contact us by sending an email to [support@underdogfantasy.com](mailto:support@underdogfantasy.com).

You acknowledge that the forfeiture and/or return of any Prize shall in no way prevent Underdog from informing the relevant authorities, and/or pursuing criminal or civil proceedings in connection with such conduct.

## **6. User Content**

The Services may enable you to submit, post, upload, or otherwise make available through the Services content such as profile information, communications with other users, whether privately or made publicly available, video clips, photographs, public messages, ideas, comments and other content (collectively, "User Content") that may or may not be viewable by other users. You understand that all User Content, whether privately transmitted or made publicly available, is the sole responsibility of the person from which such User Content originated. You further agree that you have all required rights to submit, post, upload or otherwise use or disseminate such User Content without violation of any third-party rights. This means that you, not Underdog, are entirely responsible for all User Content that you upload, post, share, email, transmit, or otherwise make available via the Services. Under no circumstances will Underdog be liable in any way for any User Content.

You acknowledge that Underdog may or may not pre-screen User Content, but that Underdog and its designees have the right (but not the obligation) in their sole discretion to pre-screen, refuse, permanently delete, undelete, modify and/or move any User Content available via the Services. Without limiting the foregoing, Underdog and its designees shall have the right to remove any User Content that violates these Terms or is otherwise objectionable in Underdog's sole discretion. You understand that by using the Services, you may be exposed to User Content that you may consider to be offensive or objectionable. You agree that you must evaluate, and bear all risks associated with, the use or disclosure of any User Content. You further acknowledge and agree that you bear the sole risk of reliance on any Content available on or through the Services.

With respect to User Content you submit or otherwise make available on or to the Services, you grant Underdog an irrevocable, fully sub-licensable, perpetual, world-wide, royalty-free, non-exclusive license to use, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display such User Content (in whole or in part), and to incorporate such User Content into other works, in any format or medium now known or later developed.

You are solely responsible for your interactions with other users of the Services. Underdog reserves the right, but has no obligation, to monitor disputes between you and other users.

You acknowledge and agree that Underdog does not verify, adopt, ratify, or sanction User Content, and you agree that you must evaluate and bear all risks associated with your use of User Content or your reliance on the accuracy, completeness, or usefulness of User Content. You understand that by using the Services, you may be exposed to User Content that you may consider offensive or objectionable. You also acknowledge that Underdog is a provider of an interactive computing service as set forth the Communications Decency Act, 47 U.S.C. §230. Underdog expressly reserves its rights to not be treated as the publisher or speaker of any information provided by another information content provider on or through the Services.

## **7. Indemnity**

You agree to release and to indemnify, defend and hold harmless Underdog and its parents, subsidiaries, affiliates and agents, as well as the officers, directors, employees, shareholders and representatives of any of the foregoing entities, from and against any and all third-party losses, liabilities, expenses, damages (whether direct, indirect, special, consequential, exemplary, punitive or other), costs (including attorneys' fees and court costs) claims or actions of any kind whatsoever arising out of or resulting from your use of the Services, your Account, your access to the Site, your violation of these Terms of Use, your receipt, ownership, use or misuse of any prize, and any of your acts or omissions that implicate publicity rights, defamation or invasion of privacy. Underdog reserves the right, at its own expense, to choose counsel and control and assume exclusive defense and control of any matter otherwise subject to indemnification by you and, in such case, you agree to cooperate with Underdog in the defense of such matter. Further, in such case, you will not settle any claim under this Section 7 without the prior written consent of Underdog.

## **8. Warranty disclaimers**

You expressly understand and agree that your use of the Services is at your sole risk. THE SERVICES (INCLUDING THE SITE, ITS RELATED MOBILE APPS AND ALL CONTENT AND MATERIALS) ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE MAKE NO WARRANTY: (A) THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; (B) THAT DEFECTS OR ERRORS IN THE SERVICES WILL BE CORRECTED; (C) THAT THE SERVICES WILL BE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS; (D) AS TO THE QUALITY, ACCURACY, COMPLETENESS AND VALIDITY OF ANY INFORMATION OR MATERIALS IN CONNECTION WITH THE SERVICES; (E) THAT YOUR USE OF THE SERVICES WILL MEET YOUR

REQUIREMENTS; OR (F) THAT TRANSMISSIONS OR DATA WILL BE SECURE. You acknowledge that Underdog has no control over, and no duty to take any action regarding: which users gain access to or use the Service; what effects the Content may have on you; how you may interpret or use the Content; or what actions you may take as a result of having been exposed to the Content. You release the Released Parties (defined below) from all liability for you having acquired or not acquired Content through the Services. The Services may contain, or direct you to other websites containing information that some people may find offensive or inappropriate. Underdog makes no representations concerning any Content contained in or accessed through the Services, and Underdog will not be responsible or liable for the accuracy, copyright compliance, legality or decency of material contained in or accessed through the Services.

## **9. Limitation on liability**

YOU FURTHER ACKNOWLEDGE AND AGREE THAT YOU ASSUME FULL RESPONSIBILITY FOR YOUR USE OF THE SITE AND SERVICES. YOU ACKNOWLEDGE AND AGREE THAT ANY INFORMATION YOU SEND OR RECEIVE DURING YOUR USE OF THE SITE AND SERVICES MAY NOT BE SECURE AND MAY BE INTERCEPTED OR LATER ACQUIRED BY UNAUTHORIZED PARTIES. YOU ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE SITE AND SERVICES IS AT YOUR OWN RISK.

BY ACCESSING, USING OR DOWNLOADING THE SERVICES, YOU ACKNOWLEDGE AND AGREE THAT SUCH USE IS AT YOUR OWN RISK AND THAT NONE OF THE PARTIES INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES OR ANY OF UNDERDOG, ITS AFFILIATES, SUBSIDIARIES OR ANY OF THEIR EMPLOYEES, AGENTS OR CONTRACTORS (COLLECTIVELY "RELEASED PARTIES") ARE LIABLE FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES, OR ANY OTHER LOSSES, COSTS, OR EXPENSES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF DATA, LEGAL FEES, EXPERT FEES, COST OF PROCURING SUBSTITUTE SERVICES, LOST OPPORTUNITY, OR OTHER DISBURSEMENTS) WHICH MAY ARISE, DIRECTLY OR INDIRECTLY, THROUGH THE ACCESS TO, USE OF, RELIANCE ON ANY MATERIAL OR CONTENT ON THE SERVICES, OR BROWSING OF THE SERVICES OR THROUGH YOUR DOWNLOADING OF ANY MATERIALS, DATA, TEXT, IMAGES, VIDEO OR AUDIO FROM THE SERVICES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, THE TOTAL LIABILITY OF THE RELEASED PARTIES IS LIMITED TO THE TOTAL AMOUNT YOU HAVE PAID THE RELEASED PARTIES IN THE ONE HUNDRED AND EIGHTY (180) DAYS IMMEDIATELY PRECEDING THE DATE ON WHICH YOU FIRST ASSERT ANY SUCH CLAIM. WITHOUT LIMITING THE FOREGOING, THE RELEASED PARTIES ASSUME NO RESPONSIBILITY, AND WILL NOT BE LIABLE, FOR ANY DAMAGES RELATING TO OR CAUSED BY ANY VIRUSES, BUGS, HUMAN ACTION OR INACTION OF ANY COMPUTER SYSTEM, PHONE LINE, HARDWARE, SOFTWARE OR PROGRAM MALFUNCTIONS, OR ANY OTHER ERRORS, FAILURES OR

DELAYS IN COMPUTER TRANSMISSIONS OR NETWORK CONNECTIONS ON ACCOUNT OF YOUR ACCESS TO OR USE OF THE SERVICES. THE RELEASED PARTIES CANNOT AND DO NOT GUARANTEE CONTINUOUS, UNINTERRUPTED, OR SECURE ACCESS TO THE SERVICES.

BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IN SUCH STATES, LIABILITY OF UNDERDOG SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW. ADDITIONAL DISCLAIMERS MAY APPEAR WITHIN THE BODY OF THE SITE AND ARE INCORPORATED HEREIN BY REFERENCE. TO THE EXTENT ANY SUCH DISCLAIMERS PLACE GREATER RESTRICTIONS ON YOUR USE OF THE SITE OR THE MATERIAL CONTAINED THEREIN, SUCH GREATER RESTRICTIONS SHALL APPLY. THIS LIMITATION OF LIABILITY SHALL APPLY TO THIRD PARTY CLAIMS AS WELL AS CLAIMS BETWEEN THE PARTIES.

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. IF YOU ARE A NEW JERSEY RESIDENT, OR A RESIDENT OF ANOTHER STATE THAT PERMITS THE EXCLUSION OF THESE WARRANTIES AND LIABILITIES, THEN THE ABOVE LIMITATIONS SPECIFICALLY DO APPLY TO YOU.

#### **10. Our proprietary rights**

All title, ownership and intellectual property rights in and to the Services are owned by Underdog or its licensors. You acknowledge and agree that the Services contains proprietary and confidential information that is protected by applicable intellectual property and other laws. Except as expressly authorized by Underdog, you agree not to copy, modify, rent, lease, loan, sell, distribute, perform, display or create derivative works based on the Services, in whole or in part.

#### **11. Location and Push Notifications and Other Technologies**

To determine your eligibility to use the Services, you agree to allow Underdog or its service providers to determine your location using one or more reference points, such as GPS, IP address, Beacons and/or software within your personal computer, mobile device, consumer electronics device, video game device or console, or any other equipment. If you have set your device(s) to disable GPS, Bluetooth or other location determining software, use connection methods or systems that mask your location, such as a virtual private network, or do not authorize the Services to access your location data, the Services may not be able to determine your location and you will not be able to access the Services. Underdog reserves the right to suspend and/or terminate your Account if you prevent the Services from accurately determining your location. For more information about how the Services collects, uses and retains your information, please read the Underdog [Privacy Policy](#).

The Services also may make use of push notifications to devices that support the transmission of such notifications or alerts. Push notifications are used to send notification messages to you regarding offers, products, events, and other promotions and related alerts, as well as informational and/or administrative messages. After downloading the Services, you may be asked to accept or deny push notifications. If you deny, you will not receive any push notifications. If you accept, push notifications will be automatically sent to you. If you no longer wish to receive push notifications from this Services, you may opt out by changing your notification settings on your device or, if applicable, through the push notification service. For mobile devices, the device manufacturer, not Underdog, controls these notification settings.

#### **12. Links to Third Parties**

The Services provide, or third parties may provide, links to other Web sites, applications or resources. Because Underdog has no control over such sites, applications and resources, you acknowledge and agree that Underdog is not responsible for the availability of such external sites, applications or resources, and does not endorse and is not responsible or liable for any content, advertising, products or other materials on or available from such sites or resources. You further acknowledge and agree that Underdog shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

#### **13. Termination and Suspension**

You agree that Underdog shall not be liable to you or any third party for any modification, suspension or discontinuance of the Services or associated services.

We do not guarantee that any of our Services will be available at all times or at any given time or that we will continue to offer all or any of our Services for any particular length of time. We may change and update our Services without notice to you. We make no warranty or representation regarding the availability of our Services and reserve the right to modify or discontinue the Services in our sole discretion without notice, including for example, ceasing a contest or other Services for technical reasons (such as technical difficulties experienced by us or on the internet) or to allow us to improve user experience. NOTWITHSTANDING ANYTHING TO THE CONTRARY, YOU ACKNOWLEDGE AND AGREE THAT ANY OR ALL OF OUR SERVICES MAY BE TERMINATED IN WHOLE OR IN PART AT OUR SOLE DISCRETION WITHOUT NOTICE TO YOU. YOU ASSUME ANY AND ALL RISK OF LOSS ASSOCIATED WITH THE TERMINATION OF OUR SERVICES

Underdog, in its sole discretion, may terminate or suspend all or part of the Services and your Underdog Account immediately, without prior notice or liability, if you breach any of the terms or conditions of the Terms. Upon termination of your Account, your right to use the Services will immediately cease. If you wish to terminate your Underdog Account, you may contact us at [support@underdogfantasy.com](mailto:support@underdogfantasy.com) with a note to say you wish to terminate your Account.

The following provisions of the Terms survive any termination of these Terms or your Account: CONDITIONS OF PARTICIPATION (except for Registration and Account Password and Security); GAME RULES (only Bonuses and Promotions); CONDUCT (only User Content); INDEMNITY; WARRANTY DISCLAIMERS; LIMITATION ON LIABILITY; OUR PROPRIETARY RIGHTS; LINKS; TERMINATION; NO THIRD-PARTY BENEFICIARIES; BINDING ARBITRATION AND CLASS ACTION WAIVER; GENERAL INFORMATION.

If your Account is subject to a suspension, you must respect the restrictions and limitations imposed on your Account as part of the suspension, and you should communicate with Underdog regarding restoration of your Account only via [support@underdogfantasy.com](mailto:support@underdogfantasy.com).

#### **14. Third-party beneficiaries**

You agree that, except as otherwise expressly provided in these Terms, there shall be no third-party beneficiaries to the Terms, with the exception that these terms are intended to cover and benefit any claims by your estate or made by you or any other person for the benefit or for the use of your spouse, children or next of kin.

#### **15. Notice and Procedure for Making Claims of Copyright Infringement**

Underdog may, in appropriate circumstances and at its discretion, disable and/or terminate the Accounts of users who infringe the intellectual property of others. If you believe that your copyright or the copyright of a person on whose behalf you are authorized to act has been infringed, please provide Underdog's Copyright Agent a written Notice meeting all of the requirements of the Digital Millennium Copyright Act ("DMCA"). Your notice should contain the following information:

- i. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- ii. a description of the copyrighted work or other intellectual property that you claim has been infringed;
- iii. a clear description of where the material that you claim is infringing is located on the Service;
- iv. your address, telephone number, and email address;
- v. 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
- vi. a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.



Before you file your Notice, please carefully consider whether or not the use of the copyrighted material at issue is protected by the Fair Use doctrine. If you file a DMCA Notice when there is no infringing use, you could be liable for costs and attorneys' fees.

Underdog's Copyright Agent can be reached in the following ways:

Mail:

DMCA Copyright Agent 150 Waterbury Street

Brooklyn, NY 11206

Email: [copyright@underdogfantasy.com](mailto:copyright@underdogfantasy.com)

To be valid, a Notice must be in writing and must follow the instructions above. You also may use the contact information in this Section to notify us of alleged violations of other intellectual property rights.

## **16. Complaints and Customer Support**

i. Our Customer Support Department is available at [support@underdogfantasy.com](mailto:support@underdogfantasy.com) to address any concerns you may have regarding the Services. Our Customer Service Department is able to resolve most concerns quickly to our players' satisfaction. Underdog will provide a written response to any complaint within 48 hours of receipt of the initial complaint. The parties shall use their best efforts through this Customer Service process to settle any dispute, claim, question, or disagreement and engage in good faith negotiations which shall be a condition to either party initiating a lawsuit or arbitration.

### **ii. Initial Dispute Resolution Procedure**

Before you assert any claim for damages or relief of any kind in a formal proceeding as provided for in this Section, the parties shall make a good faith attempt to resolve the dispute by following the procedure in this Section 16(ii). The parties agree, before either party may initiate or demand a formal proceeding against the other, we will meet and confer in a good-faith effort to resolve informally any claim covered by these Terms. Multiple individuals with disputes cannot participate in the same informal telephonic dispute resolution conference. If you are represented by counsel (which such representation will be at your sole cost and expense), your counsel may participate in the conference, but you shall also attend and participate in the conference.

The party initiating the claim must give notice to the other party in writing of its intent to initiate an informal dispute resolution conference, which shall occur within thirty (30) days after the other party receives such notice or within a time period required by law, unless an extension is mutually agreed upon by the parties. To notify Underdog that you intend to initiate an informal dispute resolution conference, send us a communication in writing to our Customer Support Department, [support@underdogfantasy.com](mailto:support@underdogfantasy.com), with "Complaint" in the Subject Line, and text including the following information:

- your username;
- your first and last name, as registered on your Customer Account;
- a detailed explanation of the complaint/claim;
- any specific dates and times associated with the complaint/claim (if applicable); and
- the remedy or action you are seeking from Underdog

If we wish to initiate a Complaint, we will send a similar communication to you at the email and/or land address associated with your Account.

Failure to submit a written communication with the information outlined above may result in a delay in our ability to identify and respond to your complaint/claim in a timely manner, and will extend the time period for resolution before a formal proceeding may be commenced, as permitted by these Terms. Upon receipt of Your Complaint, we will endeavor to reply to your communication within 48 hours. Further, best efforts will be made to resolve any complaint/claim promptly and, at a maximum, within 30 days.

After 30 days have passed since the submission of your Complaint which included all of the information required in this Section 16(ii), if for some reason you are not satisfied with the resolution of your complaint/claim, you may then, and only then, pursue a formal claim as provided in Section 17 below. The same rule and requirement applies to Underdog.

The parties shall use their best efforts to settle any dispute, claim, question, or disagreement and engage in good faith negotiations which shall be a condition to either party initiating a formal claim as provided in these Terms. If the parties do not reach an agreed upon solution within a period of thirty (30) days, or any such time period as required by law, from the time informal dispute resolution begins, then either party may initiate binding arbitration, to the extent permitted by law, as the sole means to resolve claims, subject to these Terms. Certain jurisdictions may require specific dispute resolution processes, and to that extent, the parties agree to comply with applicable laws and regulations. The aforementioned informal dispute resolution process is a prerequisite and condition precedent to commencing any formal dispute resolution proceeding, including litigation if you have successfully opted-out of the arbitration agreement or if required by the governing jurisdiction. The parties agree that any relevant limitations period and filing fees or other deadlines will be tolled solely by the amount of time the parties initiate and engage in this informal dispute resolution process.

In the event of any claim or arbitration between us, as set forth in Section 17 below, the Company may, in its sole discretion, terminate your Account. Regardless of whether you decide to opt out of arbitration, pursuant to the Binding Arbitration and Class Action Waiver Agreement, the terms set forth in this Section 16(ii) Initial Dispute Resolution shall remain in full force and effect.

## **17. BINDING ARBITRATION AND CLASS ACTION WAIVER AGREEMENT**

**PLEASE READ THIS ARBITRATION & CLASS ACTION WAIVER AGREEMENT (THE "AGREEMENT") CAREFULLY BECAUSE IT MAY REQUIRE YOU AND UNDERDOG TO ARBITRATE CERTAIN DISPUTES AND CLAIMS ON AN INDIVIDUAL BASIS ONLY AND LIMITS THE MANNER IN WHICH YOU AND UNDERDOG CAN SEEK RELIEF FROM EACH OTHER. THIS AGREEMENT APPLIES TO ANY CLAIMS YOU MAY CURRENTLY POSSESS AND ANY CLAIMS YOU MAY RAISE IN THE FUTURE. WHILE YOU MUST AGREE TO THESE TERMS OF USE IN ORDER TO USE THE SERVICES, IF YOU HAVE NOT PREVIOUSLY AGREED TO AN ARBITRATION PROVISION IN CONNECTION WITH YOUR USE OF OUR SERVICE, THERE IS AN OPTION, DESCRIBED BELOW IN SECTION 17(xiii)-(xv), TO OPT OUT OF THE ARBITRATION AND CLASS WAIVER PROVISIONS. THE OPTION TO OPT-OUT IS TIME-LIMITED TO THIRTY (30) DAYS OF ENTERING THIS AGREEMENT AND REQUIRES YOUR IMMEDIATE ATTENTION.**

**If you reside in or access the Service at any time while located in the United States, this Section 17 (Binding Arbitration Agreement and Class Action Waiver Agreement) shall be construed under and be subject to the Federal Arbitration Act, notwithstanding any other choice of law set out in these Terms of Service.**

**THIS AGREEMENT INCLUDES AN ARBITRATION PROVISION WHICH SETS FORTH HOW PAST, PENDING OR FUTURE DISPUTES BETWEEN YOU AND Underdog SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ON AN INDIVIDUAL BASIS ONLY AND FOR YOUR OWN LOSSES ONLY.**

**UNDER THIS AGREEMENT, YOU MAY NOT PROCEED AS A CLASS REPRESENTATIVE, AS A MEMBER OR PART OF ANY PROPOSED CLASS, COLLECTIVE ACTION OR MASS ARBITRATION, AS A PRIVATE ATTORNEY GENERAL, QUI TAM ACTION OR UNDER ANY REPRESENTATIVE PROCEEDING, AND YOU MAY NOT OTHERWISE SEEK TO RECOVER ON BEHALF OF OTHERS OR FOR THE USE OR BENEFIT OF OTHERS IN ANY TYPE OF CLAIM OR ACTION. YOU AND Underdog FURTHER AGREE THAT ANY ARBITRATION PURSUANT TO THIS AGREEMENT SHALL NOT PROCEED AS A CLASS, GROUP OR REPRESENTATIVE ACTION.**

**ARBITRATION MEANS YOU WILL NOT BE ABLE TO SEEK DAMAGES IN COURT OR PRESENT YOUR CASE TO A JURY.**

**i. Acceptance of Terms.** By using, or otherwise accessing the Service, or clicking to accept or agree to the Terms where that option is made available, you confirm that you have read and accept and agree to this Agreement. Except to the extent that you may opt-out as provided below, all of your activity on the Website or Platform and all of your transactions with Underdog, including all events which occurred before your acceptance of this Agreement, shall be subject to this Agreement.

**ii. Scope of Agreement to Arbitrate.** You and Underdog agree that any past, pending, or future dispute, claim or controversy arising out of or relating to any purchase or transaction by you, your access to or use of any Platform or the Service, or to this Agreement, the Terms of Use, or Privacy Policy (including without limitation any dispute concerning the breach, enforcement, construction, validity,

interpretation, enforceability, or arbitrability of this Agreement or the Terms of Use) (a "Dispute"), shall be determined by arbitration, including claims that arose before acceptance of any version of this Agreement. In addition, in the event of any Dispute concerning or relating to this Agreement — including the scope, validity, enforceability, or severability of this Agreement or its provisions, as well as the arbitrability of any claims—you and Underdog agree and delegate to the Arbitrator the exclusive jurisdiction to rule on their own jurisdiction over the Dispute, including any objections with respect to the scope, validity, enforceability, or severability of this Agreement or its provisions, as well as the arbitrability of any claims or counterclaims presented as part of the Dispute.

**iii.** Notwithstanding the above provision and Agreement to Arbitrate, all parties retain the right to seek relief in a small claims court for disputes or claims solely within the scope of a small claim's court jurisdiction.

**iv. Lack of Estoppel or Preclusive Effect.** The parties agree that any issues determined in arbitration or any other proceeding between the parties shall be conducted and decided for the benefit of the parties or express third party beneficiaries only and shall have no preclusive or estoppel effect against a party in any subsequent or other arbitration or litigation matter, such that all issues shall be decided anew in any subsequent or other proceedings involving either party. The parties reach this agreement in order to narrowly and efficiently tailor their legal positions without concern that any third party may attempt to offensively use any finding or determination of fact or law against You or Underdog.

**v. Third-Party Beneficiaries.** You further agree and intend that this Agreement and the Terms are entered into for the express benefit of your spouse, heirs, children and next-of-kin and shall bind same to the extent of any claims arising from your use of the Service which is brought by them or by any person for the use or benefit of your spouse, heirs, children and next-of-kin. Underdog agrees also that this Agreement is intended to benefit and shall bind any successor-in-interest or assignee of Underdog.

**vi. Intellectual Property.** Notwithstanding the requirement to arbitrate in this Section 17, you and Underdog are NOT required to arbitrate any claims for the alleged unlawful use of copyrights, trademarks, trade names, trade dress, logos, trade secrets, or patents, and the parties agree that in the event of infringement of copyrights, trademarks, trade names, trade dress, logos, trade secrets, or patents of a party, they shall also be entitled to seek injunctive relief from a court of competent jurisdiction, and the parties shall not be able to hold out a user's access to the Service as a basis to enforce this arbitration agreement as to such claims.

**vii. Separate Agreement.** The parties acknowledge that this Agreement is a separate agreement between the parties governed by the Federal Arbitration Act, and that any alleged or determined invalidity or illegality of all or any part of the Terms of Use, the Service, the Platform, or the Privacy Policy shall have no effect upon the validity and enforceability of this Agreement.

**viii. Applicable Law.** While the Federal Arbitration Act shall control, to the extent the law of any state is applied or considered with respect to issues bearing upon the enforceability or scope of this Agreement, the parties agree with respect to any claim or dispute in any way pertaining to or arising from the Services or any Contest or Contests, that these Terms of Use and the rights and claims of the parties regarding the Services and the relationship of the parties shall be governed by and construed in accordance with the laws of the State or States in which Underdog offered the Contest(s) and You properly accessed the Services. For sake of clarity, if you enter Contests from more than one state in which Underdog offered the Contests, then the law of each of those states would apply with respect the Contests you entered from each respective state. To the extent this governing law provision is finally determined to be inapplicable or unenforceable as it relates to the use of the Services or any Contest, the parties agree that the governing law shall then, and only then, be the applicable law in the jurisdiction in which the user who is a party to the dispute resides. This rule and agreement concerning governing law shall apply without regard to principles of conflicts of law or choice of law. Nothing herein is intended to limit a party's right to appeal a determination by a court of law that the laws of any state are unenforceable. Furthermore, the parties agree that this governing law provision shall apply retroactively to any past Contests you have entered.

## **INITIATING ARBITRATION UNDER JAMS RULES**

**ix.** Following the conclusion of the initial dispute resolution process required by Section 16, you or Underdog may seek arbitration of a Dispute in accordance with the provisions of this Agreement. You and Underdog agree that JAMS ("JAMS") will administer the arbitration under its Comprehensive Arbitration Rules and Procedures ("JAMS Rules") in effect at the time arbitration is sought ("JAMS Rules"). The parties further agree that, to the extent applicable, the JAMS Mass Arbitration Procedures and Guidelines shall apply. The

JAMS Rules referenced above are available at <https://www.jamsadr.com/adr-rules-procedures/>. Any arbitration proceeding shall be commenced and administered in New York, New York.

x. You and Underdog further agree:

- Arbitration will proceed on an individual claim basis only.
- The arbitration will be handled by a sole arbitrator. The parties agree that the JAMS arbitrator must have the following minimum qualification: practicing attorneys or retired federal court judges who have at least ten years of substantive expertise in litigating and resolving of complex business disputes, including motions to compel arbitration and litigation or adjudication regarding whether disputes are arbitrable;
- For purpose of Sections 16.1 and 16.2 of the JAMS Rules, the JAMS Streamlined Arbitration Rules and Procedures and JAMS Expedited Procedures shall not apply to unless otherwise explicitly agreed to by all parties to the Dispute;
- In lieu of JAMS Rule 15, the parties shall be presented with a list of eight (8) potential arbitrators, be allowed three (3) strikes and the parties shall rank those potential arbitrators in order of preference. JAMS shall select the arbitrator with the highest combined preference (e.g., if both parties select a potential arbitrator as their top preference, that arbitrator will be selected);
- In lieu of JAMS Rule 18, the parties shall have the right to submit a dispositive motion at the outset of the arbitration to the Arbitrator. The submission and scheduling of such motions shall be addressed at a conference held before the JAMS arbitrator, and the Parties agree that any dispositive motions shall be resolved and the remainder of the arbitral proceeding stayed pending resolution, absent good cause and immediate necessity to proceed.
- Unless and only to the extent prohibited under JAMS Rules, the arbitration will be held in the County of New York, State of New York or, at either your or our election, will be conducted telephonically or via other remote electronic means;
- The JAMS Rules will govern payment of all arbitration fees, currently available at <https://www.jamsadr.com/arbitration-fees>, You will only be required to pay arbitration fees of \$250 in connection with any arbitration initiated under this Section 17, but You will still be responsible for paying your own attorneys' fees;
- Except as otherwise waived or limited under the Terms or this Agreement, the JAMS arbitrator shall be authorized to award any remedies, including equitable or injunctive relief, that would be available in an individual lawsuit except:
- In any arbitration arising out of or related to this Agreement, the arbitrator(s) are not empowered to award punitive or exemplary damages, and the parties waive any right to recover any such damages; and
- **In any arbitration arising out of or related to this Agreement, the arbitrator(s) may not award any incidental, indirect or consequential damages, including damages for lost profits;**
- **The arbitration decision and award shall consist of a written statement signed by the Arbitrator regarding the disposition of each claim and the relief, if any, as to each claim. Unless the parties agree otherwise, the award shall be a reasoned award and contain a concise written statement of the reasons for the award;**
- Except as and to the extent otherwise may be required by law, the arbitration proceeding, pleadings, and any award shall be treated as confidential and shall not be used by the parties except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its confirmation and enforcement;
- In the event JAMS is unavailable or unwilling to hear the dispute in accordance with this Agreement, the parties shall agree to, or a court shall select, another arbitration provider subject to the procedural agreements of this Section 17; a
- You and Underdog agree that any award issued by the Arbitrator in excess of \$50,000 in favor of either party, or any award which grants any form of declaratory or equitable relief that would significantly impact other Underdog users or the operation of the Platform, may be appealed in accordance with the JAMS Optional Arbitration Appeal Procedures at either party's election. The JAMS Optional Arbitration Appeal Procedures are available at <https://www.jamsadr.com/adr-rules-procedures/>.

**xi. Batch Arbitration.** To increase efficiency of resolution, in the event 20 or more similar arbitration demands against Underdog, presented by or with the assistance of the same law firm or organization or group of law firms or organizations working in coordination, are submitted to JAMS in accordance with the rules described above within a 60-day period, JAMS shall consolidate those arbitrations as contemplated in the JAMS Rules by (a) grouping the arbitration demands into batches of no more than 25 demands per batch (plus, to the extent there are fewer than 25 arbitration demands left over after the batching described above, a final batch consisting of the remaining demands); and (b) providing for resolution of each batch as a single arbitration with one set of filing and administrative fees and one arbitrator assigned per batch. For avoidance of doubt, consolidation does not require that all arbitrations in a single batch be decided the same, nor does it impair your right to present any evidence or argument that you think particular to your case, so long as consistent with JAMS Rules. You agree to cooperate in good faith with Underdog and JAMS to implement such a batch approach to resolution and fees.

**xii.** By signing a demand for arbitration, a party certifies, to the best of their knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that: (i) the demand for arbitration is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of dispute resolution; (ii) the claims and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law; and (iii) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. The Arbitrator shall be authorized to afford any relief or impose any sanctions available under Federal Rule of Civil Procedure 11 or any applicable state law for either party's violation of this requirement.

#### **OPTION AND PROCEDURE TO OPT OUT OF ARBITRATION**

**xiii. IF YOU HAVE NOT PREVIOUSLY AGREED TO AN ARBITRATION PROVISION IN CONNECTION WITH YOUR USE OF OUR SERVICE, YOU MAY OPT OUT OF THE AGREEMENT TO ARBITRATE BY FOLLOWING THE INSTRUCTIONS BELOW. IF YOU DO NOT OPT-OUT, THE ARBITRATION PROVISIONS WILL APPLY RETROACTIVELY TO ALL CLAIMS YOU MAY POSSESS, WHETHER ASSERTED TO DATE OR NOT.**

**xiv. OPT-OUT. IF YOU DO NOT WISH TO AGREE TO THE PROVISIONS OF THIS SECTION 17 AGREEMENT REQUIRING ARBITRATION AND CLASS ACTION WAIVER AND YOU HAVE NOT PREVIOUSLY AGREED TO AN ARBITRATION PROVISION IN CONNECTION WITH YOUR USE OF OUR SERVICE, YOU MUST, WITHIN THIRTY (30) DAYS OF ENTERING THIS AGREEMENT, SEND AN EMAIL TO [SUPPORT@UNDERDOGFANTASY.COM](mailto:SUPPORT@UNDERDOGFANTASY.COM) WITH THE SUBJECT "OPT-OUT." \*\*REQUESTS TO OPT OUT AFTER THE 30 DAY PERIOD SHALL NOT BE EFFECTIVE.\*\***

**xv.** Whether to agree to arbitration is an important decision. It is your decision to make and you are not required to rely solely on the information provided in these terms of use. You should take reasonable steps to conduct further research and to consult with counsel (at your expense) regarding the consequences of your decision.

#### **WAIVER OF CLASS RELIEF AND COLLECTIVE ACTION**

**xvi. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER YOU NOR UNDERDOG SHALL BE ENTITLED TO BRING, CONSOLIDATE, JOIN OR COORDINATE DISPUTES BY OR AGAINST OTHER INDIVIDUALS OR ENTITIES, OR PARTICIPATE IN ANY COLLECTIVE ARBITRATION OR ARBITRATE OR LITIGATE ANY DISPUTE IN A REPRESENTATIVE CAPACITY. YOU MAY ONLY ARBITRATE OR LITIGATE ON AN INDIVIDUAL BASIS ONLY AND FOR YOUR OWN LOSSES ONLY. UNDER THIS AGREEMENT, YOU MAY NOT PROCEED IN ARBITRATION OR COURT AS A CLASS REPRESENTATIVE, MEMBER OR PART OF ANY PROPOSED CLASS, COLLECTIVE ACTION OR MASS ARBITRATION, PRIVATE ATTORNEY GENERAL SUIT, QUI TAM ACTION OR ANY REPRESENTATIVE PROCEEDING, OR OTHERWISE SEEK TO RECOVER ON BEHALF OF OTHERS OR FOR THE BENEFIT OR USE OF OTHERS IN ANY TYPE OF CLAIM OR ACTION. YOU AND UNDERDOG ARE EACH WAIVING RESPECTIVE RIGHTS TO PARTICIPATE IN A CLASS ACTION. BY ACCEPTING THIS AGREEMENT, YOU GIVE UP YOUR RIGHT TO PARTICIPATE IN ANY PAST, PENDING OR FUTURE CLASS ACTION OR ANY OTHER CONSOLIDATED OR REPRESENTATIVE PROCEEDING, INCLUDING ANY PROCEEDING EXISTING AS OF THE DATE YOU AGREED TO THIS AGREEMENT.**

**xvii. Severability.** This Agreement applies solely to the extent permitted by law. If for any reason any provision of this Agreement or portion thereof, is found to be unlawful, void, or unenforceable, that part of this Agreement will be deemed severable and shall not

affect the validity and enforceability of the remainder of this Agreement which shall continue in full force and effect. To the fullest extent allowable by law and equity, the parties agree that any such provision may be blue-penciled or otherwise construed by the forum presiding over any dispute to give effect to the intent of the parties and consistent with the overall purpose and intent of the agreement, and may be deemed replaced by an enforceable provision that comes closest to the intention underlying the unenforceable provision.

## **END OF SECTION 17 ARBITRATION AGREEMENT**

### **18. Waiver of Jury Trial**

EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE PLATFORM OR SERVICES OR ANY TRANSACTIONS BETWEEN THE PARTIES, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY.

### **19. Governing Law**

With respect to any claim or dispute in any way pertaining to or arising from the Services or any Contest or Contests, the parties agree that these Terms of Use and the rights and claims of the parties regarding the Services and the relationship of the parties shall be governed by and construed in accordance with the laws of the State or States in which Underdog offered the Contest(s) and You properly accessed the Services. For sake of clarity, if you enter Contests from more than one state in which Underdog offered the Contests, then the law of each of those states would apply with respect to the Contests you entered from each respective state. To the extent this governing law provision is finally determined to be inapplicable or unenforceable as it relates to the use of the Services or any Contest, the parties agree that the governing law shall then, and only then, be the applicable law in the jurisdiction in which the user who is a party to the dispute resides. This rule and agreement concerning governing law shall apply without regard to principles of conflicts of law or choice of law. Nothing herein is intended to limit a party's right to appeal a determination by a court of law that the laws of any state are unenforceable. Furthermore, the parties agree that this governing law provision shall apply retroactively to any past Contests you have entered.

### **20. Application License**

Subject to your compliance with these Terms, Underdog grants you a limited non-exclusive, non-transferable license to download and install a copy of Underdog's mobile app on a device that you exclusively control and to run such copy of the app solely for your own personal use. Underdog reserves all rights in and to the app not expressly granted to you under these Terms. You will not run any version of the app on a jailbroken device.

If you have downloaded our app, you agree to promptly download and install any new version that we make available through the iTunes App Store or Google Play store, as applicable. Some new versions may contain updated Terms. Some new versions may contain security fixes and service improvements, whether or not we disclose that they do; accordingly, failure to promptly update your version of the App may in some cases expose you to increased security risks or Services malfunctions.

### **21. Additional Terms for Our California Consumers**

Under California Civil Code Section 1789.3, California consumers are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 N. Market Blvd., Suite N – 112, Sacramento, CA 95834, or by telephone at 1(800) 952 – 5210.

### **22. Additional Terms for Our iOS App**

You acknowledge and agree that: (i) these Terms are binding between you and Underdog only; (ii) Apple, Google, Android, and Facebook ("App Parties") are not parties to, or sponsors of, these Terms, and the App Parties are not responsible for fulfilling any obligations under these Terms; (iii) as between Underdog and the App Parties, it is Underdog that is responsible for the mobile app and the content thereof. You must use the iOS app only on an Apple-branded product that runs iOS. Your use of the app must comply with the terms of use applicable to the Apple source from which you obtain it (including the Usage Rules set forth in the Apple App Store Terms of Service). You acknowledge that the App Parties have no obligation to furnish you with any maintenance and support services with respect to the app.



You acknowledge that the App Parties are not responsible for addressing any claims you have or any claims of any third party relating to the app or your possession and use of the app, including, but not limited to (i) product warranty or liability claims; (ii) any claim that the app fails to conform to any applicable legal or regulatory requirement; (iii) claims arising under consumer protection or similar legislation; or (iv) claims that the app infringes a third party's intellectual property rights.

The App Parties and their subsidiaries are third-party beneficiaries of these Terms. Upon your acceptance of the Terms, the App Parties will have the right (and will be deemed to have accepted the right) to enforce the Terms against you as a third-party beneficiary thereof. There are no other third-party beneficiaries of the Terms.

## **23. Age Restrictions**

Fantasy Contests are generally restricted to users over the age of 18, but some states impose a higher minimum age. If you are under 18 or the minimum age in your state of residence, you may not access the Services.

## **24. Information Third Parties Provide About You**

You authorize your wireless carrier to use or disclose information about your Account and your wireless device, if available, to Underdog or its service provider for the duration of your business relationship, solely to help them identify you or your wireless device and to prevent fraud. See our [Privacy Policy](#) for how we treat your data.

## **25. General Information**

### **i. Entire Agreement**

These Terms (and any additional terms, rules and conditions of participation in particular Fantasy Contests that Underdog may post on the Services) constitute the entire agreement between you and Underdog with respect to the Services and supersedes any prior agreements, oral or written, between you and Underdog. In the event of a conflict between these Terms and the additional terms, rules and conditions of participation in particular Fantasy Contests, the latter will prevail over the Terms to the extent of the conflict, with the exception of the Arbitration Agreement set forth in Section 17 of these Terms, which shall control over any express or perceived conflict.

### **ii. Waiver and Severability of Terms**

The failure of Underdog to exercise or enforce any right or provision of the Terms shall not constitute a waiver of such right or provision. If any provision of the Terms is found by an arbitrator or court of competent jurisdiction to be invalid, the parties nevertheless agree that the arbitrator or court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms shall remain in full force and effect.

### **iii. Statute of Limitations**

You and Underdog agree that any claims or lawsuits, regardless of form, arising out of or related to the Site (including Services) or these Terms of Use or [Privacy Policy](#) must BE FILED within ONE (1) YEAR of the action, omission, event or occurrence giving rise to the claim or suit, after which such claims will be time- barred and prohibited, without regard to any longer period of time which may be provided by any period of limitation or repose by law or statute. This statute of limitations provision does not apply to residents of New Jersey.

### **iv. Loss Recovery Claims**

For purposes of any loss recovery act statute or claim, including claims created by state statutes for the recovery of putative gambling losses by you, or successors, or third-parties, you agree (1) that any losses incurred by you on the Underdog platform are not gambling losses or recoverable under any such claim or statute; (2) that you expressly waive any and all claims to recover putative gambling losses; and (3) that you have knowingly waived any and all such claims on your own behalf and on behalf of your successors, assigns, or any third parties attempting to recover any putative gambling losses.

### **v. Section Titles**

The section titles in the Terms are for convenience only and have no legal or contractual effect.

#### **vi. Communications**

Users with questions, complaints or claims with respect to the Services may contact us using the relevant contact information set forth above.

Thank you for using Underdog!