

IMPORTANT – PLEASE READ CAREFULLY

TERMS OF USE

These Terms of Use (“Terms”) were last updated on January 31st, 2024.

Please review these Terms carefully as they serve as an enforceable contract and contain important information about your legal rights, remedies, and obligations.

Turn5, Inc. d/b/a Eckler’s (“Turn5,” “we,” or “us”) provides this website (the “Site”), including all the products, services, information, and functionality it offers, subject to your agreement to these Terms. By using the Site in any way, including by signing up for promotional mailings, texts, or emails, purchasing products, entering contests, and/or creating or signing into your account, you agree to be bound fully by these Terms, without change. Additional terms may also apply depending on your use of the Site and they will be detailed in other locations on this Site.

BY AGREEING TO THESE TERMS, YOU AND TURN5 AGREE TO RESOLVE ALL DISPUTES BETWEEN THEM IN SMALL CLAIMS COURTS OR THROUGH BINDING INDIVIDUAL ARBITRATION ONLY, AND WE EACH WAIVE THE RIGHT TO PARTICIPATE IN ANY CLASS ACTION AND TO HAVE CLAIMS DECIDED BY A JURY, AS SET FORTH IN THE DISPUTE RESOLUTION SECTION BELOW.

As explained in the Privacy section below, please note that our website causes communications about your browsing activities to be sent to third parties that provide services to us. By agreeing to the Terms, you expressly consent to these communications.

We recommend you print out a copy of these Terms for your records. They can be downloaded [here](#). We each agree, upon request, to provide to each other a signed copy of these Terms.

FITMENT GUARANTEE

WE GUARANTEE our products will fit your vehicle provided that, as you shop for and order the products on Ecklers.com, you accurately select the features of your vehicle from the options Ecklers.com presents, and Ecklers.com does not display a notice saying the product will not fit the vehicle you selected. If, despite these conditions, a product does not fit, we will treat the product as defective under our return policy.

PRIVACY

Please read our **Privacy Policy** which is incorporated into these Terms and is a part of this contract. You agree with and consent to our Privacy Policy, including the information collection, transmittal, analysis, and usage practices it describes. Like most websites, our Site may cause information concerning you and your usage of and activities on the Site to be transmitted by your web browsing software to third parties including, but not limited to, advertising networks and content providers. By agreeing to the Terms, you consent fully to all such communications.

ADDITIONAL TERMS

To the extent that you have agreed to additional terms in connection with your use of the Site and those additional terms conflict with these Terms, the additional terms shall control except to the extent it would change in any way the requirements of the **Dispute Resolution section**, below. If the additional terms are silent as to matters covered by these Terms, these Terms shall control.

DISPUTE RESOLUTION

Turn5 is committed to using its best efforts to resolve disputes with its users, without the need for a formal legal claim to be filed. If an issue arises between us, you and Turn5 agree to first work diligently and in good faith to reach a resolution that's fair and equitable to both sides using the mandatory informal dispute resolution process described below. On occasion, a third party may be necessary to help resolve disputes between us. This section of the Terms (the "Arbitration Agreement") limits how these disputes can be resolved.

YOU AND TURN5 AGREE THAT ALL DISPUTES BETWEEN YOU AND TURN5 THAT CANNOT BE RESOLVED INFORMALLY SHALL BE RESOLVED ON AN INDIVIDUAL BASIS IN EITHER ARBITRATION OR SMALL CLAIMS COURT ONLY. YOU AND TURN5 AGREE TO WAIVE ANY AND ALL RIGHTS (1) TO A TRIAL BY JURY, (2) TO PARTICIPATE IN ANY WAY IN A CLASS ACTION OR CLASS ARBITRATION, AND (3) TO RESOLVE DISPUTES IN COURTS OTHER THAN STATE SMALL CLAIMS COURTS.

This Arbitration Agreement covers all complaints, demands, and claims of any kind, including, but not limited to, those arising out of or related to these Terms, the use and operation of the Site, communications from and promotions by or on behalf of Turn5, and any and all of your interactions with and doing business in any way with Turn5 (each a "Dispute," and, collectively, the "Disputes"). The term Dispute shall be interpreted in the broadest possible sense and shall include, but not be limited to, statutory, regulatory,

constitutional, contractual, common law, and tax-related claims, including claims alleging negligence, fraud, and misrepresentation.

This Arbitration Agreement is binding on you and Turn5 as well as all our respective agents, attorneys, contractors, subcontractors, service providers, employees, and all others acting for, or on behalf of, you and Turn5. This Arbitration Agreement is also binding on your and Turn5's respective heirs, successors, and assigns and all parents, subsidiaries, and sibling corporations of Turn5, and is governed exclusively by the Federal Arbitration Act. To the extent state law applies to any portion of a Dispute brought by you, the applicable law will be the law of the state of your residence, as determined based on your shipping address on file with Turn5.

If for any reason this Arbitration Agreement does not apply to a given Dispute, then the parties agree, to the fullest extent permitted by law, to the exclusive jurisdiction of the state and federal courts in Chester County, Pennsylvania to resolve such Disputes, unless otherwise agreed by them.

Mandatory Informal Dispute Resolution. Before you or Turn5 can seek to resolve a Dispute in arbitration or small claims court, this mandatory sixty (60) day informal process must be completed. To initiate this process, the claiming party must send to the other a short, written statement with their name, mailing address, and email address (a "Dispute Statement") explaining their Dispute in sufficient detail for the other party to understand and investigate it, along with a proposal for resolving it, including any money being claimed and how that dollar amount was calculated. You agree to send Dispute Statements by email to legal@turn5.com, or by certified mail, return receipt requested to:

ATTN: Turn5 Legal
600 N Cedar Hollow Rd
Paoli, PA 19301

Once a Dispute Statement is received by either you or Turn5, you and Turn5 shall work in good faith to resolve the Dispute for a period of sixty (60) days. At the conclusion of the sixty (60) day period, if the Dispute has not been resolved, you and Turn5 thereafter each have the right to resolve the Dispute either in small claims court or through arbitration in compliance with the requirements of this Arbitration Agreement as explained below. All applicable statutes of limitation shall be suspended during the sixty (60) day informal settlement process.

Arbitration Rules and Requirements. While there is no judge or jury in an arbitration, and certain rights of the parties may be more limited than in court, the arbitrator has the power to award the same individual relief as a court and must construe and apply the Terms in the same way a court would.

In addition, to the fullest extent permitted by law, the arbitrator shall have the sole authority to and shall address all claims or arguments by both you and Turn5 concerning the formation, legality, and enforceability of this Arbitration Agreement and the Terms, the scope of this Arbitration Agreement, and the arbitrability of any claim or issue arising between us.

If any cause of action, defense, or claim for relief cannot for any reason be addressed in arbitration, you and Turn5 agree that all court proceedings shall be stayed pending the final resolution in arbitration of all arbitrable causes of action, defenses, and claims for relief. The results of all arbitrations shall be binding in any court proceedings relating to or arising out of the underlying Dispute.

An arbitration award in any Dispute between us shall be binding only on you and Turn5 and shall have no preclusive effect in any other arbitration or proceeding involving a different parties.

Any court of competent jurisdiction will have the authority to enforce all aspects of this Arbitration Agreement (including the requirement to complete the informal settlement process described above before filing any claim in arbitration or small claims court) and, if necessary, to enjoin the filing or prosecution of arbitrations and/or the assessment of fees or costs by the American Arbitration Association (“AAA”) or any other arbitral organization or arbitrator which may be involved.

As explained below, the arbitration process will differ depending on whether your claim is pursued individually or as part of a mass arbitration as defined below. In the case of a mass arbitration, the mass arbitration rules will exclusively control.

Non-Mass Arbitration Rules. Arbitrations shall be before a single neutral arbitrator. Arbitrations brought by consumers (“Consumer Disputes”) shall be governed by this Arbitration Agreement and the **AAA’s Consumer Arbitration Rules**. All other arbitrations shall be governed by this Arbitration Agreement and the **AAA’s Commercial Arbitration Rules** and **Optional Appellate Rules**. To the extent there is a conflict between this Arbitration Agreement and any applicable AAA rules, the provisions of this Arbitration Agreement shall control to the fullest extent permitted by law.

Unless otherwise agreed by Turn5 and you, all Consumer Disputes addressed in arbitration must be resolved exclusively through a binding, non-appearance-based arbitration based solely on the written submissions of the parties, including sworn statements, and will not involve personal appearances by the parties, witnesses, or counsel unless you and Turn5 so agree. Judgment on an arbitrator’s award may be entered in any court that has jurisdiction to do so.

If the AAA is, for any reason, unavailable, unable, or unwilling to handle an arbitration assigned to it under this Arbitration Agreement, and you and Turn5 cannot agree on an alternative arbitrator, you or Turn 5 may petition a court of competent jurisdiction to

appoint an organization or individual to conduct the arbitration consistent with the requirements of this Arbitration Agreement.

To begin a consumer arbitration proceeding, you must send a letter requesting arbitration and describing your claim to the AAA, please follow these **directions** on the AAA's website. The instructions for non-consumer cases are also available at the AAA's website.

Mass Arbitration Rules. If twenty-five (25) or more claimants file or indicate collectively or through counsel an intention to file demands for arbitration against Turn5 raising a substantially similar Dispute, and counsel for the claimants are the same or coordinated across such Disputes (a "Mass Arbitration"), these special rules apply.

Claimants that are part of a Mass Arbitration (each a "Mass Arbitration claimant") must first complete the sixty (60) day informal settlement process (described above) before proceeding to arbitration. The Mass Arbitration claimants and Turn5 agree to the submission of a single Dispute Statement for all Mass Arbitration claimants submitted through counsel for the Mass Arbitration claimants, provided that the statement identifies each Mass Arbitration claimant by name, mailing address, and email address.

If the informal settlement process is unsuccessful, counsel for Mass Arbitration claimants and Turn5 shall each select three (3) Mass Arbitration claimants to proceed to arbitration (each a "bellwether arbitration"), each with a different arbitrator, followed by a mandatory mediation involving all Mass Arbitration claimants. All statutes of limitation shall be suspended for all Mass Arbitration claimants for the duration of the informal settlement process, the bellwether arbitrations, and mediation.

The six (6) bellwether arbitrations shall be conducted before the AAA in accordance with the Non-Mass Arbitration Rules set forth above. If any demands for arbitration have been filed by Mass Arbitration claimants other than those selected for the six (6) bellwether arbitrations (the "non-bellwether arbitrations"), such non-bellwether arbitrations shall promptly be dismissed without prejudice and without fees or costs to Turn5 before the bellwether arbitrations may proceed.

All bellwether arbitrations shall require a reasoned decision from the arbitrator and be completed within one hundred twenty (120) days after commencement unless otherwise ordered by the arbitrator or agreed to by the parties. Upon the resolution of all six (6) bellwether arbitrations, counsel for the Mass Arbitration claimants and Turn5 shall participate promptly and in good faith in non-binding confidential mediation for a period of not less than sixty (60) days in a good faith effort to resolve all Disputes of the Mass Arbitration claimants under **Mediation Procedures of the AAA** or such other mediation rules as to which counsel the Mass Arbitration claimants and Turn5 may agree.

If the bellwether arbitrations and the mandatory mediation are unsuccessful in resolving all the Disputes of all Mass Arbitration claimants, those Mass Arbitration claimants whose

claims have not been resolved must pursue their individual claims with FairClaims, Inc. (“FairClaims”) through a document-only arbitration under their **Small Claims Rules and Procedure** only which is described **here**.

If for any reason FairClaims is unable or unwilling to hear any arbitrations brought by Mass Arbitration claimants under this paragraph, then and only then those arbitrations shall be resolved before the AAA under its 2024 **Mass Arbitration Supplemental Rules** and the **AAA’s Consumer Mass Arbitration and Mediation Fee Schedule** with the appointment of a process arbitrator. These arbitrations shall be resolved exclusively through a binding, non-appearance-based arbitration based solely on the written submissions of the parties, including sworn statements, and will not involve personal appearances by the parties, witnesses, or counsel unless you and Turn5 so agree.

If these Mass Arbitration Rules are determined to be unenforceable for any reason in a decision of any arbitrator or court as to which further review is foreclosed and all motions, appeals, and petitions for review have been resolved fully (a “Final Determination”), then you and Turn5 agree that all unresolved Disputes between Mass Arbitration claimants and Turn5 must be filed in court only (including on a class action basis if the Dispute qualifies), and shall not be filed in, pursued further, or resolved through arbitration or otherwise be subject to any contractual obligation to arbitrate. You and Turn5 agree that any such court action must be filed in the state or federal courts in Chester County, Pennsylvania, which shall have exclusive jurisdiction to hear and resolve such actions.

To the extent that any arbitrations filed by or on behalf of Mass Arbitration claimants are still pending after a Final Determination, those claimants shall immediately dismiss such arbitrations without prejudice. A finding that these Mass Arbitration Rules are unenforceable for any reason, including any Final Determination, shall have no effect on the validity or enforceability of any other provisions of these Terms including this Arbitration Agreement.

Fees and Costs. You and Turn5 will each bear its own arbitration costs, arbitral fees, and attorneys’ fees; however, either party may seek to recover fees and costs to the extent permitted by applicable law. If an arbitrator determines that a claim has been brought in bad faith or for an improper purpose, or that the demand was frivolous, the arbitrator may award costs, arbitration fees, and attorneys’ fees to the party defending against the claim.

Changes. If Turn5 changes this Dispute Resolution section after the date you last indicated acceptance to the Terms, you may reject any such change by providing Turn5 written notice of such rejection by mail or hand delivery to:

ATTN: Turn5 Legal
600 N Cedar Hollow Rd
Paoli, PA 19301

within 30 days of the date such change became effective, as indicated by the "last updated" language above. To be effective, the notice must include your full name and clearly indicate your intent to reject changes to this "Dispute Resolution" section. By rejecting changes, you are agreeing that you will arbitrate any dispute between you and Turn5 in accordance with the Terms as of the date you last accepted them.

Improperly Commenced Arbitration. If either party believes that the other has initiated an arbitration in violation of this Arbitration Agreement, if such an arbitration is threatened, or if either party has reason to believe an improperly commenced arbitration is imminent, the party against whom the arbitration has been or will be initiated may seek an order from a court of competent jurisdiction enjoining the arbitration from being filed or continued, and awarding its fees and costs, including reasonable attorneys' fees, incurred in connection with seeking the order.

ORDER ACCEPTANCE

The receipt of an order number or an email order confirmation does not constitute the acceptance of an order or a confirmation of an offer to sell. Turn5 reserves the right, without prior notification, to limit the order quantity on any item and/or to refuse service to any customer. Verification of information may be required prior to the acceptance of an order. Prices and availability of products on the Site are subject to change without notice. Errors will be corrected when discovered and Turn5 reserves the full right to revoke any stated offer, acceptance, or confirmation, and to correct any error, inaccuracy, or omission (including after an order has been submitted or an order confirmation has been sent), at any time and without legal obligation. Certain orders constitute improper use of the Site. Turn5 reserves the right, at its sole discretion, to refuse or cancel any order for any reason. Your account may also be restricted or terminated for any reason, at Turn5's sole discretion.

RISK OF LOSS

All items purchased from Turn5 are made pursuant to a shipment contract. This means that the risk of loss and title for such items pass to you upon our delivery to the carrier.

PRODUCT DESCRIPTIONS

Turn5 attempts to be as accurate as possible. However, Turn5 does not warrant that product descriptions or other content on the Site, including prices, are accurate, complete, reliable, current or error-free. Such errors shall not be binding on Turn5 in any way. If a product offered by Turn5 is not as described, your sole remedy is to return the product.

PERMISSIBLE USES OF SITE

Subject to the terms of this Agreement, Turn5 grants you a limited, non-transferable, non-exclusive, license to access and make personal use of the Site. This license does not include the right to access or use the Site for any of the restricted purposes set forth below. Turn5 may terminate this license at any time for any reason.

The rights granted to you in this Agreement are subject to the following restrictions: (a) you shall not use the Site to place an order on behalf of yourself or a third party for resale to that third party; (b) you shall not license, sublicense, reproduce, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Site, its products or its content without the express written consent of Turn5; (c) you shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Site; (d) you shall not access the Site in order to build a similar or competitive service, or to download, copy or collect content or account information for the benefit of another merchant; (e) except as expressly stated herein, no part of the Site may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means without Turn5's express written consent; and (f) you shall not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information or content (including images and text descriptions) of the Site without Turn5's express written consent.

Turn5 reserves the right, at any time, to modify, suspend, or discontinue the Site or any part thereof with or without notice. You agree that Turn5 will not be liable to you or to any third party for any modification, suspension, or discontinuance of the Site or any part thereof.

INTELLECTUAL PROPERTY RIGHTS

The Site contains valuable trademarks and service marks owned and used by Turn5. Any use of the Turn5 Marks without the prior written permission of Turn5 is strictly prohibited. The arrangement and layout of the Site, including but not limited to, the Turn 5 Marks, images, text, graphics, buttons, screenshots, and other content or material (collectively, the "Site Content") are the sole and exclusive property of Turn5.

UNAUTHORIZED COPYING, REPRODUCING, MODIFYING, REPUBLISHING, UPLOADING, DOWNLOADING, POSTING, TRANSMITTING, MAKING DERIVATIVE WORKS OF OR DUPLICATING ALL OR ANY PART OF THE SITE IS PROHIBITED.

Turn5 uses a network of independent product and content suppliers, distributors and other such third parties to supply some of the products and content advertised on the Site. All other trademarks, service marks, product names, package designs and company names or logos associated with these products, and other such third parties, that are not owned by Turn5 but appear on the Site are the property of their respective owners.

LIMITATIONS REGARDING INFORMATION ARTICLES AND ADVICE

Turn5 offers information, articles and advice to vehicle enthusiasts through this Site for educational purposes only. Turn5 does not warrant this advice and you agree to hold Turn5 harmless in the event information is inaccurate, even in the event of it causing damage to personal property, injury, or death.

ACCEPTABLE USE POLICY

You agree not to use the Site to collect, upload, transmit, display, or distribute any User Content (a) that violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy rights, right of publicity, or any other intellectual property or proprietary right; (b) that is unlawful, harassing, abusive, tortious, threatening, harmful, abusive, invasive of another's privacy, vulgar, defamatory, false, intentionally misleading, trade libelous, pornographic, obscene, patently offensive (e.g., material that promotes racism, bigotry, hatred, or physical harm of any kind against any group or individual) or otherwise objectionable material of any kind or nature or which is harmful to minors in any way; or (c) in violation of any law, regulation, or obligations or restrictions imposed by any third party.

In addition, you agree not to use the Site to: (a) upload, transmit, or distribute any computer viruses, worms, or any software intended to damage or alter a computer system or data; (b) send unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (c) harvest, collect, gather or assemble information or data regarding other users, including e-mail addresses, without their consent; (d) interfere with or disrupt servers or networks connected to the Site or violate the regulations, policies or procedures of such networks; (e) attempt to gain unauthorized access to the Site, other computer systems or networks connected to or used together with the Site, through password mining or other means; or (f) harass or interfere with another user's use and enjoyment of the Site.

We reserve the right (but have no obligation under this Agreement) to review any User Content, investigate, and/or take appropriate action against you, at our sole discretion, if you violate the Acceptable Use Policy or any other provision of this Agreement, including removing or modifying your User Content, terminating your Turn5 account, and/or reporting you to law enforcement authorities. We may also remove or modify your User Content if it, in our sole judgment, violates the rights of, harms, or threatens the safety of any other person, or creates liability for us or any other person. To cooperate with legitimate governmental requests, subpoenas or court orders, or to protect our business and members, we may access and disclose any information we consider necessary or appropriate, including your Turn5 account username and password, IP address and traffic information, usage history, and your User Content.

THIRD PARTY SITES AND OTHER USERS

The Site may contain links to, or advertisements for, third-party web sites (collectively, "Third-Party Sites") (for example, social media sites such as Facebook, YouTube, Twitter, or Pinterest). Such Third-Party Sites are not under the control of Turn5 and Turn5 is not responsible for any Third-Party Sites. Turn5 provides links to these Third-Party Sites only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third Party Sites. You agree that you use all Third-Party Sites at your own risk. When you link to a Third-Party Site, the applicable service provider's terms

and policies, including privacy and data gathering practices govern. You should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any Third-Party Site. You explicitly agree that by entering into this Agreement, you will abide by and agree to be bound to YouTube's Terms found here: (<https://www.youtube.com/t/terms>).

Each Site user is solely responsible for all its User Content. Because we do not control User Content, you acknowledge and agree that we are not responsible for any User Content and we make no guarantees regarding the accuracy, currency, suitability, or quality of any User Content, and we assume no responsibility for any User Content. Your interactions with other Site users are solely between you and such user. You agree that Turn5 will not be responsible for any loss or damage incurred as the result of any such interactions. If there is a dispute between you and any Site user, we are under no obligation to become involved.

You hereby release Turn5, its officers, employees, agents, affiliates, subsidiaries, parents, joint ventures, successors and any other companies under common control with us from claims, demands for any and all losses, damages, rights, claims, and actions of any kind including personal injuries, death, and property damage, that are either directly or indirectly related to or arise out of any interactions with or conduct of other Site users or Third-Party Sites.

DISCLAIMER OF WARRANTIES

Turn5 intends for the information and data contained in the Site to be accurate and reliable but since the information and data have been compiled from a variety of sources, they are provided "AS IS" and "AS AVAILABLE." You expressly agree that your use of the Site and any information contained therein is at your sole risk.

NEITHER TURN5 NOR ITS THIRD PARTIES WARRANT THE ACCURACY, OR COMPLETENESS OF THE CONTENT PROVIDED ON THIS SITE OR THE PRODUCTS OR SERVICES OFFERED FOR SALE ON THIS SITE. WE CANNOT AND DO NOT WARRANT THAT YOUR USE OF THIS SITE WILL BE UNINTERRUPTED, SECURE, OR ERROR FREE.

ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TURN5 EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, ACCURACY, MERCHANTABILITY AND FITNESS FOR A PURPOSE, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

SOME JURISDICTIONS, INCLUDING NEW JERSEY, DO NOT ALLOW THE DISCLAIMER OF WARRANTIES SO SUCH DISCLAIMERS MAY NOT APPLY TO YOU.

LIMITATION ON LIABILITY

IN NO EVENT SHALL TURN5, OUR OFFICERS, EMPLOYEES, AGENTS, AFFILIATES, SUBSIDIARIES, PARENTS, JOINT VENTURES, SUCCESSORS AND ANY OTHER COMPANIES

UNDER COMMON CONTROL WITH US, OR ANY INDEPENDENT CONTRACTORS, BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFIT OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR IN ANY WAY RELATED TO YOUR RELATIONSHIP WITH TURN5, YOUR USE OF THE SITE, PRODUCTS, OR THIRD PARTY SITES, OR YOUR INTERACTION WITH OR RELIANCE ON ANY ADVICE FROM ANY SUCH PERSON OR ENTITY EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF, THE SITE, PRODUCTS AND THIRD-PARTY SITES AND ANY INTERACTIONS WITH OR RELIANCE ON ADVICE FROM ANY SUCH PERSON OR ENTITY ARE AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA RESULTING THEREFROM. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR IN ANY WAY RELATED TO YOUR RELATIONSHIP WITH TURN5, ANY INTERACTIONS WITH OR RELIANCE ON ADVICE FROM ANY SUCH PERSON OR ENTITY, OR THIS AGREEMENT (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO THE GREATER OF (A) FIFTY US DOLLARS (\$50) OR (B) AMOUNTS YOU'VE PAID TURN5 IN THE PRIOR 12 MONTHS. TO THE FULLEST EXTENT PERMITTED BY LAW, YOU AND TURN5 AGREE THAT ANY CLAIM BETWEEN US MUST BE BROUGHT WITHIN TWO (2) YEARS.

SOME JURISDICTIONS, INCLUDING NEW JERSEY, DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OF CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

INDEMNITY

You agree to indemnify and hold Turn5, our officers, employees, agents, affiliates, subsidiaries, parents, joint ventures, successors, independent contractors, and any other companies under common control with us harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of (a) your use of the Site or Products, (b) your User Content, (c) your violation of this Agreement, or (d) your interaction with such independent contractors or reliance on any advice provided by them. Turn5 reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. You agree not to settle any matter without the prior written consent of Turn5. Turn5 will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

TERM AND TERMINATION

Subject to this Section, this Agreement will remain in full force and effect while you use the Site. We may (a) suspend your rights to use the Site (as well as your Turn- 5 account) or (b) terminate this Agreement, at any time for any reason at our sole discretion, including for any use of the Site in violation of this Agreement or if we believe you are younger than 18 years of age. Upon termination of this Agreement, your Turn5 account and right to access

and use the Site will terminate immediately. You understand that any termination of your Turn5 account may involve deletion of any User Content you may have posted. Turn5 will not have any liability whatsoever to you for any termination of this Agreement, including for termination of your Turn5 account or deletion of your User Content.

The provisions herein related to our intellectual property rights, user content, acceptable use, disclaimer of warranties, indemnity, limitation and liability, and arbitration together with any other rights and obligations which by their nature are reasonably intended to survive such termination, including the end of any other aspect of the relationship between you and Turn5, including your decision to stop purchasing from Turn5 or the cancellation or end of any participation in any service, program, or promotion offered by Turn5, will survive any termination of these Terms of Use.

GENERAL

We reserve the right to make changes to our Site, this Agreement and other service terms, such as our Privacy Policy, and other miscellaneous policies, at any time. Each time you use our Site, you should visit and review the then current Terms and Policies that apply to your transactions and use of our Site. If you do not agree to be bound by the then current Terms and Policies, your sole remedy is not to use our Site. If any terms of this Agreement or other service terms are deemed invalid, void, or for any reason unenforceable, any such term shall be deemed severable and shall not affect the validity and enforceability of any other terms.

Our failure to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. This Agreement is governed by the laws of the State of Pennsylvania without regard to conflict of law provisions. The section titles in this Agreement are for convenience only and have no legal or contractual effect. The word "including" means including without limitation. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be unimpaired, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. This Agreement, and your rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by you without Turn5's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. The terms of this Agreement shall be binding upon assignees.