



DR WAVE

DR. WAVE, INC.

WEBSITE TERMS OF USE

1. SCOPE OF AGREEMENT

This Terms of Use Agreement (this “Agreement”) by and between DR. WAVE, INC. (“we”, “us”, “our” or “DR. WAVE, INC.”) and you (“you” or “your”) governs your use of the www.dr-wave.com website and other www.dr-wave.com owned or controlled websites (collectively, “www.dr-wave.com Websites”) together with all information, content, products, materials and services made available to you through the same by us and/or third parties (which together with the www.dr-wave.com Websites shall be collectively referred to as the “Services”). By using or otherwise accessing the Services, or any component thereof, in any manner whatsoever, you agree to be bound by and comply with the terms and conditions of this Agreement. If you do not agree to this Agreement, do not access or use the Services in any manner.

When we refer to the “use” of the Services in this Agreement, we mean any actual or attempted access or use of the Services, including, without limitation, any transmission, exchange of information or communication associated with the Services.

We may add, delete or modify any of our Services at any time in our sole discretion. We may similarly change this Agreement at any time and we will notify you of any changes by posting the changes on the www.dr-wave.com Websites. Changes will take effect immediately. You must also comply with any additional terms which apply to third-party content, material, information, software or other services.

2. INFORMATION AND PASSWORDS

You may be required to provide us with certain information in order to obtain access to and use of certain features and functions of the Services including, without limitation, your name or your company’s name, login credentials (e.g., your e-mail address and password), address, telephone number(s), e-mail address, and/or applicable payment data for orders placed for goods and services via the Services (e.g., credit card number, e-mail address, and expiration date) (collectively, your “Information”). You represent, warrant and covenant to us that any and all Information and any other information or data you provide to us, is and will be true, accurate and complete when given to us, that in providing such information to us you will not knowingly omit or misrepresent any

material facts or information. You further consent and authorize us to verify your Information as required for your use and access to the Services, as applicable.

Certain features and functions of the Services are not generally available to the public. In order to access and use such features and functions, we may require you to enter your email and password. Third parties may also, from time to time, provide you with additional codes or passwords necessary to perform certain transactions or otherwise access the Services. Your email, password, and any additional codes or passwords are collectively referred to herein as “IDs.” Your IDs are personal to you. You agree that you will not allow another person to use your IDs to access and use the Services under any circumstances.

You are solely responsible for maintaining the strict confidentiality of your IDs and for any charges, damages, liabilities or losses incurred or suffered as a result of your failure to do so. We are not liable for any harm caused by or related to the theft of your IDs, your disclosure of your IDs, or your authorization to allow another person to access and use the Services using your IDs. You agree to immediately notify us if you become aware of any unauthorized use of your IDs or other need to deactivate an ID due to security concerns.

3. ACCESS TO AND USE OF THE SERVICES

You may not use or allow others to use, your IDs and/or the Services, directly or indirectly, nor upload, distribute, transmit, communicate, link to, publish or access any data, information or material through, using or otherwise in connection with the Services, that: (a) is libelous, defamatory, vulgar or obscene, pornographic, sexually offensive or explicit, harmful or harassing, threatening, hateful, racially, culturally, ethnically or otherwise objectionable or offensive, discriminatory or abusive; (b) violates any law or regulation or the rights of others; (c) causes duress, distress or discomfort to another or is likely to deter or discourage others from using the Services; and/or (d) infringes any intellectual property, privacy or proprietary rights or confidentiality obligations of others. You are solely responsible and liable for any such activity, behavior, use and conduct. We have no liability and you bear the sole and exclusive risk associated with use of or reliance on the accuracy, quality, completeness, reliability or usefulness of any data, information or material in connection with your IDs.

You also may not use, nor allow others to use, your IDs, the Services, directly or indirectly, to: (a) attempt to or actually disrupt, impair or interfere with, alter or modify the Services or any information, data or materials posted and/or displayed by us or anyone else; (b) act in a way that affects or reflects negatively on us, the Services, or anyone else; (c) collect or attempt to collect any information from others including, without limitation, personally identifiable information, without such party’s prior consent. You agree to comply with all local, state, federal laws, statutes, rules and regulations, as well as any international treaties, which are applicable to your use of the Services.

You are prohibited from violating or attempting to violate the security of the Services, including, without limitation: (a) accessing data not intended for you or logging onto a processor,

communications or access device or account which you are not authorized to access; (b) attempting to probe, scan or test the vulnerability of the Services or to breach security or authentication measures, regardless of your motives or intent; (c) attempting to interfere with or disrupt the Services or services to any user, processor, host or network, including, without limitation, by submitting a virus, worm or Trojan horse; or (d) sending unsolicited e-mail or other information, including promotions or advertising. Violations of system or network security or this Agreement may result in civil or criminal liability. We have the right to investigate occurrences which may involve such violations and may involve, provide information to and cooperate with, law enforcement authorities in prosecuting users who are involved in such violations.

4. INTERACTIVE SERVICES

As a part of and in connection with your use of the Services, you may have access to and use of discussion groups, chat rooms, bulletin boards and other interactive functionality (“Interactive Services”). If you participate in or use any Interactive Services, you are responsible for any information, data, text, software, music, sound, photographs, graphics, video, messages or other materials (“Content”) you upload, post, link to or otherwise transmit (collectively “transmit”) and the consequences thereof. **YOU CAN BE HELD LEGALLY LIABLE FOR WHAT YOU TRANSMIT.** If you choose to transmit any Content using such Interactive Services, you agree to do so solely for lawful purposes, in compliance with all applicable laws, and in a professional manner. You expressly agree that we have no responsibility for or control over the Content you may transmit using these Interactive Services. We make no representation that your use of the Interactive Services will comply with applicable laws or that they were designed to comply with the applicable laws. Additionally, we do not represent, warrant or guarantee the truthfulness, accuracy, quality, or reliability of any of the Content posted, displayed, linked to or otherwise transmitted via any Interactive Services. We also do not endorse any opinions expressed in or through any Interactive Services. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content.

You hereby grant to us a non-exclusive, worldwide, royalty-free, perpetual license, with right to sublicense, to reproduce, distribute, transmit, create derivative works of, publicly display and publicly perform any Content you submit via the Interactive Services by all means and, in any media, now known or hereafter developed for any use or purpose. In addition, by using the Services, you agree to release www.dr-wave.com and its advertisers from any liability arising from Content transmitted by anyone on the Interactive Services, and you agree to **release, hold harmless, indemnify and defend www.dr-wave.com and its advertisers from any and all legal or civil actions and penalties and costs, including without limitation attorneys’ fees, arising from any Content you transmit.**

5. SHOPPING

All goods and services offered for sale on the www.dr-wave.com Websites (collectively, “Products”) are guaranteed by the manufacturer, licensor or distributor against defects in material and workmanship for 30 days from the date of purchase. Within that time period, you must contact Customer Service (858) 255-1812 and we will coordinate attempts to correct, repair or replace the defective Product. Except as otherwise specifically set forth herein, you may return any un-opened, unused Product in its original packaging within 30 days following the date of purchase for a refund (less shipping and handling). No returns shall be accepted following such 30-day period.

We have no responsibility or liability whatsoever for goods you may obtain from or through other websites or web pages, even if you were directed or linked to such a site or page through the www.dr-wave.com Websites, nor are we responsible for assisting you in correcting any problem you may experience with Products if you do not notify us within the 30-day period noted above or for any goods not obtained directly on the www.dr-wave.com Websites. You agree that your sole and exclusive remedy and our sole, exclusive and maximum liability arising from or relating in any way to any Product shall be the amount you actually paid us for it.

If a Product is listed at an incorrect price or with incorrect information, we reserve the right to refuse or cancel orders placed for that Product, whether or not the order has been confirmed and even if your account has been charged (in which event we will issue a credit to your account in the amount of the charge).

Our creation or transmission of an order confirmation does not signify acceptance of your order, nor constitute a binding confirmation of an offer to sell any Product and we reserve the right to accept or decline your order for any reason up until the time the Product is actually delivered to you. We reserve the right at any time, without prior notice, to limit or reduce the quantity you ordered of any Product and we will notify you if we do so. Products are offered for sale only to end user customers or as personal gifts to end user customers and not for resale.

You are responsible for any taxes imposed on the sale or use of Products and applicable taxes may be added to the amount charged for Products purchased on the www.dr-wave.com Websites. If an order consists of multiple items, they may be shipped separately depending on availability.

6. INTELLECTUAL PROPERTY

The content displayed or otherwise made available via the Services (directly or indirectly), including, without limitation, all text, graphics, images, button icons, programs, software and other data, content, information and materials, tangible and intangible, and all intellectual property rights in and to the same, excluding the Content you upload, post or otherwise transmit via Interactive Services (the “Material”), are owned by or licensed to us or our third-party partners. In addition, all names, service marks, logos, brands, brand names, trade dress and trade names, and any other distinctive identification are trademarks (the “Trademarks”) owned by us in the U.S. and other countries or licensed to us or our third-party partners.

You have no rights in or to such Material or Trademarks and you will not use any Material or Trademarks, except as specifically permitted under this Agreement. You may not do or allow anyone else to do anything with the Material or the Trademarks which is not specifically permitted under this Agreement. You may not use or display our Trademarks in any manner without our prior written permission. Our Trademarks may not be used in connection with any product that does not belong to us, or in any manner that is likely to cause confusion among customers, or in any manner that disparages or discredits us.

7. LINKS

The Services may provide, or third parties may provide, links to other World Wide Websites or resources. Because we have no control over such sites and resources, you acknowledge and agree that we are not responsible for the availability of such external sites or resources, and do not endorse and are not responsible or liable for any Content, advertising, products, services or other materials on or otherwise made available via such sites or resources. You further acknowledge and agree that we 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 made available on or through any such site or resource.

8. PRIVACY

www.dr-wave.com respects your right to privacy of your personal information. Please review our Privacy Policy details on the manner in which we collect, use, disclose and otherwise manage your personal information.

9. DISCLAIMER OF WARRANTY

THE WWW.DR-WAVE.COM WEBSITES AND SERVICES ARE PROVIDED TO YOU ON AN "AS IS, AS AVAILABLE" BASIS, AND YOUR USE THEREOF IS ENTIRELY AT YOUR OWN RISK. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE WWW.DR-WAVE.COM WEBSITES AND SERVICES, ANY PRODUCTS MADE AVAILABLE TO YOU IN CONNECTION THEREWITH, OR YOUR ACCESS TO OR USE OF ANY OF THE FOREGOING, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND/OR NON-INFRINGEMENT, OR ANY WARRANTIES ARISING BY COURSE OF DEALING OR CUSTOM OF TRADE. WE MAKE NO REPRESENTATION OR WARRANTY THAT ANY MATERIAL, CONTENT, PRODUCTS OR SERVICES DISPLAYED ON OR OFFERED THROUGH THE WWW.DR-WAVE.COM WEBSITES AND/OR OUR SERVICE ARE ACCURATE, COMPLETE, APPROPRIATE, RELIABLE, OR TIMELY. WE ALSO MAKE NO REPRESENTATIONS OR WARRANTIES THAT THE SERVICES WILL MEET YOUR REQUIREMENTS AND/OR YOUR ACCESS TO AND USE OF THE WWW.DR-WAVE.COM WEBSITES AND SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, FREE OF VIRUSES, MALICIOUS CODE, OR OTHER HARMFUL

COMPONENTS, OR OTHERWISE SECURE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. ACCORDINGLY, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

10. LIMITATION OF LIABILITY AND RELEASE

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER WWW.DR-WAVE.COM, ITS LICENSORS, SUPPLIERS, PARTNERS, AFFILIATES OR THIRD-PARTY SERVICE PROVIDERS SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY OTHER FORM OF DAMAGES IN ANY MANNER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF THE WWW.DR-WAVE.COM WEBSITES AND SERVICES, REGARDLESS OF THE FORM OF ACTION OR THE BASIS OF THE CLAIM OR WHETHER OR NOT WWW.DR-WAVE.COM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

IN THE EVENT YOU HAVE ANY DISPUTE WITH ONE OR MORE THIRD PARTIES AS A RESULT OF YOUR USE OF THE MATERIAL OR THE SERVICES (INCLUDING THE INTERACTIVE SERVICES), OR ARE IN ANY WAY DAMAGED AS A RESULT OF ANY THIRD PARTY IN CONNECTION THEREWITH, YOU HEREBY RELEASE AND COVENANT NOT TO SUE OR OTHERWISE MAKE A CLAIM, DEMAND OR FILE ANY LEGAL ACTION OR INSTITUTE ANY LEGAL OR REGULATORY PROCEEDINGS AGAINST US, OUR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES AND SUPPLIERS FROM, FOR ANY CLAIMS, ACTIONS, DEMANDS OR DAMAGES (WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL), OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, WHETHER FORESEEABLE OR NOT, DISCLOSED OR UNDISCLOSED.

11. INDEMNIFICATION

You agree to defend, indemnify and hold us harmless against any losses, expenses, costs or damages (including our reasonable attorneys' fees, expert fees' and other reasonable costs of litigation) arising from, incurred as a result of, or in any manner related to any claim or action based upon (a) your breach of the terms and conditions of this Agreement, (b) your use of the Services, and/or (c) the use of the Services by any other person using your IDs. We may, if necessary, participate in the defense of any such claim or action and any negotiations for its settlement or compromise. No settlement which may adversely affect our rights or obligations shall be made without our prior written approval. We reserve the right, at our own expense and on

notice to you, to assume exclusive defense and control of any such claim or action and then your corresponding indemnification obligation will end.

12. TERMINATION

We may terminate this Agreement, restrict, suspend or terminate your access to and use of the Services immediately and without notice or liability, with or without cause, and it will not limit any other rights or remedies which are available to us.

13. GOVERNING LAW AND INTERPRETATION

This Agreement and your use of the Services, will be interpreted under and governed by the substantive laws of the State of California, excluding its conflicts-of-law rules. You agree that exclusive jurisdiction and venue of any dispute with www.dr-wave.com or its licensors, or any of their respective affiliates, officers, directors, employees, contractors, agents, representatives or suppliers, arising out of or in any way relating to this Agreement shall reside in the federal and state courts sitting in the State of California. You expressly consent to the exercise of personal jurisdiction by such courts and agree that you will not object to jurisdiction of or venue in such courts on the grounds of lack of personal jurisdiction, forum non-convenience or otherwise. The parties hereby agree to opt out from and expressly exclude any applicability of the Uniform Computer Information Transactions Act (“UCITA”). This Agreement may not be modified by anyone except in writing signed by an authorized officer of www.dr-wave.com. No failure or delay in enforcing any provision, exercising any option or requiring performance, shall be construed to be a waiver of that or any other right in connection with this Agreement. You may not assign your rights under this Agreement without our prior written permission and any attempt by you to do so shall be void. If any term of this Agreement is held invalid, illegal or unenforceable, the remaining portions shall not be affected. Any provision of this Agreement which by its nature must survive the termination of this Agreement in order to give effect to its meaning shall survive such termination.