



LAST UPDATED: April 21, 2008

Terms of Use

PLEASE READ THIS TERMS OF USE AGREEMENT CAREFULLY BEFORE USING THE EQUALS SOFTWARE OR ANY SERVICE PROVIDED BY EQUALS, INC.

Equals, Inc. ("Company," "we," "us") provides communications software (which includes software that you may have embedded on a third party website) ("Software") and related services, including through our U.S. website at <http://www.equals.com> (the "Site") (the services and the Site, collectively the "Services"), subject to your compliance with the terms and conditions set forth in this agreement (the "Agreement"). It is important that you read carefully and understand the terms and conditions of this Agreement. BY USING THE SOFTWARE AND/OR SERVICES OR BY CLICKING, CHECKING OR OTHERWISE INDICATING ACCEPTANCE OF THIS AGREEMENT, YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, PLEASE DO NOT CLICK, CHECK OR OTHERWISE INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT. IF YOU DO NOT ACCEPT THIS AGREEMENT, YOU WILL NOT BE ALLOWED TO USE THE SOFTWARE OR THE SERVICES.

1. Age Requirement. In order to use the Software and/or Services, you must be at least 13 years of age. You represent that you are at least 13 years old. If you are not at least 13 years old, please do not click, check or otherwise indicate acceptance of this Agreement and do not attempt to use any of the Software and/or Services.

2. Changes. We reserve the right at any time to:

- Change the Software and/or Services, including eliminating or discontinuing any feature of the Software and/or Services; or
- Change any fees or charges for use of the Software and/or Services.



We reserve the right to update or make changes to this Agreement from time to time in our sole discretion, which changes we may provide to you by any reasonable means, including without limitation posting the revised draft of this Agreement to our Site. You can determine when this Agreement was last revised by referring to the "*LAST UPDATED*" legend at the top of this page. Your continued use of the Software and/or Services following such changes will be deemed acceptance of such changes.

3. Registration. You may be required to be or become a Company member and create a Company account. When and if you register to become a member, you agree to (a) provide accurate, current and complete information about yourself as prompted by our registration form (including your email address) and (b) maintain and update your information (including your email address) to keep it accurate, current and complete. You acknowledge that, if any information provided by you is untrue, inaccurate, not current or incomplete, we reserve the right to terminate this Agreement and your use of the Software and/or Services.

As part of the registration process, you may be asked to select a username and password. We may refuse to grant you a username that impersonates someone else, is or may be illegal, is or may be protected by trademark or other proprietary rights law, is vulgar or otherwise offensive, or may cause confusion, as determined by us in our sole discretion. You will be responsible for the confidentiality and use of your username and password and agree not to transfer or resell your use of or access to the Software and/or Services to any third party. YOU ARE ENTIRELY RESPONSIBLE FOR MAINTAINING THE CONFIDENTIALITY OF YOUR USERNAME AND PASSWORD AND FOR ANY AND ALL ACTIVITIES (INCLUDING PURCHASES, AS APPLICABLE) THAT ARE CONDUCTED THROUGH YOUR ACCOUNT.

4. Limited License. Subject to the terms and conditions of this Agreement, during the term of this Agreement, Company hereby grants to you a non-exclusive, non-transferable, nonsublicensable, limited right and license to access and use the Software and Services as made available by Company, solely in accordance with this Agreement and solely for your own personal purposes.



5. Restrictions. Except as expressly provided herein, you shall not, and shall not permit any third party to: (a) copy all or any portion of the Software and/or the Services; (b) decompile, disassemble or otherwise reverse engineer the Software and/or Services, or any portion thereof, or determine or attempt to determine any source code, algorithms, methods, or techniques used or embodied in the Software and/or Services or any portion thereof; (c) modify, translate, or create any derivative works based upon the Software and/or Services; (d) distribute, market, or otherwise transfer the Software and/or Services, in whole or in part, to any third party; (e) incorporate the Software and/or Services or any portion thereof into any other products or services; or (f) use the Software and/or Services for any purpose other than in accordance with the terms and conditions of this Agreement. If you violate this Section 5, Company may immediately terminate this Agreement and your use of the Software and/or Services.

6. Ownership. Company will retain all right, title and interest in and to the patent, copyright, trademark, trade secret and any other intellectual property rights in the Software and/or Services and any derivative works thereof, subject only to the limited license set forth in this Agreement. You do not acquire any other rights, express or implied, in the Software and/or Services other than those rights expressly granted under this Agreement. Company's trade names, trademarks and service marks include without limitation "Equals," "Buzz Me!," "What's the buzz?," "Party Line," and any associated logos ("**Trademarks**"). The Trademarks owned by Company, whether registered or unregistered, may not be used in connection with any product or service that is not provided by Company. Nothing contained herein should be construed as granting, by implication, estoppel or otherwise, any license or right to use any Trademark.

7. No Support. Company has no obligation to provide support, maintenance, upgrades, modifications or new releases for the Software and/or Services.

8. Privacy. All personal information gathered from you (directly or indirectly through a third party website or service) in connection with your use of the Software and/or Services will be governed by the Company's Privacy Policy,



which can be found on our Site, the terms of which are incorporated herein by reference. You consent to the use of your personal information in accordance with the Privacy Policy.

9. Code of Conduct. In connection with your use of the Software and/or Services, you agree not to:

- Use the Software and/or Services to defame, abuse, harass, stalk, threaten or otherwise violate the legal rights of others, including without limitation others' privacy rights or rights of publicity;
- Impersonate any person or entity, falsely state or otherwise misrepresent your affiliation with any person or entity;
- Restrict or inhibit any other visitor or member from using the Software and/or Services, including, without limitation, by means of "hacking" the Company's website and/or servers;
- Express or imply that any statements you make are endorsed by us;
- Transmit (a) any content or information that is unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene or otherwise objectionable, or infringes our or any third party's intellectual property or other rights; (b) any material, non-public information about companies without the authorization to do so; (c) any trade secret of any third party; or (d) any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities or other unsolicited commercial communication (other than as provided by Company);
- Transmit any content or information that is pornographic or sexually explicit, or contains nudity or sexually suggestive imagery, or link to content that is pornographic or sexually explicit, or contains nudity or sexually suggestive imagery;
- Engage in spamming or flooding;
- Transmit any software or other materials that contain any viruses, worms, trojan horses, defects, date bombs, time bombs or other items of a destructive nature;



- Remove any copyright, trademark or other proprietary rights notices contained in the Software and/or Services;
- Harvest or collect information about other Software and/or Services users.

While using the Software and/or Services, you agree to comply with all applicable laws, rules and regulations. Company reserves the right to terminate your access to and use of the Software and/or Services at any time if you fail to comply with the Code of Conduct.

10. Submissions. You may submit images, sounds, videos or other communications or materials through the Software and/or Services, including to our user Forums and blogs (collectively, "Submissions"). You will be solely responsible for such Submissions, and agree to indemnify and hold Company harmless from and against any claims, damages, losses, costs and other expenses that arise directly or indirectly out of or from such Submissions. You represent and warrant that you have all rights, consents and licenses to submit such Submissions and to grant the following license to Company in connection with such Submissions. By using the Software and/or Services in connection with such Submissions, you grant us and our designees a worldwide, non-exclusive, sublicenseable (through multiple tiers), assignable, royalty-free, fully paid-up, perpetual, irrevocable right to use, reproduce, distribute (through multiple tiers), create derivative works of, and publicly display such Submissions, solely in connection with such Software and/or Services. Except for the foregoing license, we do not claim ownership of any copyright in your Submissions. We will only use the Submissions in connection with the Software and/or Services. None of the Submissions will be subject to any obligation, whether of confidentiality, attribution or otherwise, on our part and we will not be liable for any use or disclosure of any Submissions. You acknowledge and agree that we may (but are not obligated to) do one or all of the following, at our discretion: (a) monitor and/or filter any Submissions through the Software and/or Services (including without limitation by means of blocking or replacing expletives or other language that may be deemed harmful or offensive or obscene); (b) alter, remove, or refuse to send, transmit or



otherwise use any Submission in connection with the Software and/or Services; and/or (c) disclose any Submissions, and the circumstances surrounding the transmission or use thereof, to any third party in order to operate the Software and/or Services; to protect our affiliates, distributors, partners, licensors, advertisers, sponsors, and users; to comply with legal obligations or governmental requests; to enforce this Agreement; or for any other reason or purpose.

11. Forums. We host message boards and other forums on our Site ("**Forums**"). Our Forums are designed to provide information to users and/or developers of the Software and/or Services. Information on our Forums is provided by our staff and other contributors, some of whom use anonymous screen names and are people not otherwise connected with the Company. You acknowledge that information is available in our Forums and that people participating in such Forums occasionally post messages or make statements, whether intentionally or unintentionally, that are inaccurate, misleading or deceptive. We neither endorse nor are responsible for such messages or statements, or for any opinion, advice, information or other utterance made or displayed on the Site or Forums by third parties, whether such third parties are visitors to the Site, users of the Software and/or Services or others. The opinions expressed in the Forums reflect solely the opinion(s) of the participants and may not reflect the opinion(s) of Company. We have no obligation to monitor the Site or the Forums. We are not responsible for any errors or omissions in articles or postings, for hyperlinks embedded in messages or for any results obtained from the use of such information. Under no circumstances will we or our affiliates, partners, suppliers or agents be liable for any loss or damage caused by your reliance on such information obtained through the Forums and the Site.

12. Making purchases. If you wish to purchase Services provided by Company, you will be asked by Company to supply certain information applicable to your purchase, including, without limitation, payment and other information. You understand that any such information will be treated by Company in the manner described in our Privacy Policy, which can be found on our Site. You agree that all information that you provide to Company or the Company's third party provider will be accurate, current and complete. You agree to pay all



charges incurred by you or any users of your account and credit card (or other applicable payment mechanism) at the price(s) in effect when such charges are incurred. You will also be responsible for paying any applicable taxes relating to your purchases. Verification of information applicable to a purchase may be required prior to Company's acceptance of any order. Price and availability of any Service are subject to change without notice. Current rates for any Service provided by Company may be found on our Site.

13. Third Party Websites, Phone Numbers, Software and Services. The Software and/or Services may direct you to websites, phone numbers, software or services owned or operated by third parties. Company has not reviewed all of the websites, phone numbers, software or services to which you may be directed and Company has no control over such websites, phone numbers, software and services. Company is not responsible for (a) the content and operation of such websites, phone numbers, software and/or services, including without limitation, the delivery of text or email messages or reliability/quality of voice calls and other services through third party service providers, or (b) the privacy or other practices of such websites, software services or third parties. The fact that Company directs you to such websites, phone numbers, software and/or services does not indicate any approval or endorsement of such website, phone number, software and/or service. Company directs you to such website, phone number, software and/or services only as a convenience. You are responsible for the costs associated with such third party websites, phone numbers, software or services, including the costs of sending and receiving text messages and voice calls in connection with your use of the Software and/or Services. Accordingly, we strongly encourage you to become familiar with the terms of use and practices of any such website, software service or third party.

14. Third Party Advertising. You acknowledge and agree that use of the Software and/or Services may involve the transmission of third party advertising to you, including without limitation, voice advertising during phone calls initiated using the Software and/or Services. You consent to receive phone calls and text and/or email messages containing such third party advertising as part of the Software and/or Services. In the future, we may elect to offer an option to



use such Software and/or Services without third party advertising. We reserve the right to charge a fee for any such advertising-free Software and/or Services, and the right to change any such fee in our discretion.

15. Access By Minors. Pursuant to 47 U.S.C. Section 230 (d), as amended, we hereby notify you that parental control protections (such as computer hardware, software or filtering services) are commercially available that may assist you in limiting access to material that is harmful to minors. Information identifying current providers of such protections is available at the website of the Internet Education Foundation/GetNetWise (<http://www.getnetwise.org/>).

16. Export Controls. The Software is subject to United States export controls. You will comply fully with all relevant export laws and regulations of the United States, including, without limitation, the U.S. Export Administration Regulations. You will not export, direct or transfer the Software, (a) into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria or any other country to which the U.S. has embargoed goods; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. You represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

17. Termination. This Agreement shall remain effective until terminated in accordance with its terms. We may immediately terminate this Agreement, and/or your access to and use of the Software and/or Services or any portion thereof, at any time and for any reason, with or without cause. Upon termination of this Agreement, you will cease all use of the Software and/or Services and delete any Software in your possession. Except for the license granted to you in Section 4, and as expressly provided herein, the terms of this Agreement will survive termination.

18. Disclaimers. THE SOFTWARE AND THE SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, COMPANY AND ITS AFFILIATES, DISTRIBUTORS, PARTNERS, LICENSORS,



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19. Limitation of Liability. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, NEITHER COMPANY NOR ANY OF OUR AFFILIATES, DISTRIBUTORS, PARTNERS, LICENSORS, ADVERTISERS OR SPONSORS, NOR OUR OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS OR OTHER REPRESENTATIVES, ARE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF DATA OR LOST PROFITS), UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY WAY TO THE SERVICES OR THE SOFTWARE. YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH THE SERVICES OR SOFTWARE IS TO STOP USING THE SERVICES AND/OR SOFTWARE. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, THE MAXIMUM LIABILITY OF COMPANY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE AND THE SERVICES, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, SHALL BE THE TOTAL AMOUNT PAID BY YOU DURING THE ONE (1) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY, IF ANY, FOR THE SOFTWARE AND/OR THE SERVICES. Some



states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

20. Indemnification. You agree to indemnify, defend and hold Company, our affiliates, distributors, partners, licensors, advertisers and sponsors, and our and their directors, officers, employees, consultants, agents and other representatives, harmless from and against any and all claims, damages, losses, costs (including reasonable attorneys' fees) and other expenses that arise directly or indirectly out of or from (a) your breach of this Agreement, including any violation of the Code of Conduct, above; and/or (b) your use of the Software and/or Services, including without limitation, any related activities in connection with the Software and/or Services.

21. Questions. If you have any questions, comments or complaints regarding the Software and/or Services, feel free to contact us at Equals, Inc., 1301 Shoreway Road, Suite 155, Belmont, CA 94002, or info@equals.com.

22. Notice for California Users. Under California Civil Code Section 1789.3, California users of the Services 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 400 R Street, Suite 1080, Sacramento, California 95814, or by telephone at (916) 445-1254 or (800) 952-5210.

23. Claims of Copyright Infringement. The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you believe in good faith that materials used by Company through the Software and/or Services infringe your copyright (for example, materials posted by Company on one of our Forums), you (or your agent) may send us a notice requesting that the material be removed, or access to it blocked. The notice must include the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;



(b) identification of the copyrighted work claimed to have been infringed (or if multiple copyrighted works used by the Software and/or Services are covered by a single notification, a representative list of such works); (c) identification of the material that is claimed to be infringing or the subject of infringing activity, and information reasonably sufficient to allow Company to locate the material on the Site or the Software and/or Services; (d) the name, address, telephone number and email address (if available) of the complaining party; (e) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (f) a statement that the information in the notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. If you believe in good faith that a notice of copyright infringement has been wrongly filed by Company against you, the DMCA permits you to send Company a counter-notice. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA; see <http://www.loc.gov/copyright/> for details. Notices and counter-notices with respect to the Software and/or Services should be sent to: Equals, Inc., 1301 Shoreway Road, Suite 155, Belmont, CA 94002, or to info@equals.com.

We suggest that you consult your legal advisor before filing a notice or counter-notice. Also, be aware that there can be penalties for false claims under the DMCA.

24. Miscellaneous. This Agreement is governed by and construed in accordance with the laws of the State of California, United States of America, without regards to its principles of conflicts of law. You agree to submit to the exclusive jurisdiction of any State or Federal court located in the County of Santa Clara, California, United States of America, and waive any jurisdictional, venue or inconvenient forum objections to such courts. If any provision of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, such provision shall be enforced to the maximum extent



possible, or, if incapable of such enforcement, shall be deemed to be deleted from this Agreement, and the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. This is the entire agreement between us relating to the subject matter herein and supersedes any and all prior or contemporaneous written or oral agreements between us with respect to such subject matter. This Agreement is not assignable, transferable or sublicenseable by you except with Company's prior written consent. This Agreement may not be modified or amended except as set forth in Section 2. Any heading, caption or section title contained in this Agreement is inserted only as a matter of convenience and in no way defines or explains any section or provision hereof.

BY CLICKING, CHECKING OR OTHERWISE INDICATING ACCEPTANCE OF THIS AGREEMENT, YOU ACKNOWLEDGE THAT (1) YOU HAVE READ AND REVIEWED THIS AGREEMENT IN ITS ENTIRETY, (2) YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, (3) THE INDIVIDUAL SO CLICKING HAS THE POWER, AUTHORITY AND LEGAL RIGHT TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOU AND, BY SO CLICKING, CHECKING OR OTHERWISE INDICATING ACCEPTANCE OF THIS AGREEMENT, THIS AGREEMENT CONSTITUTES BINDING AND ENFORCEABLE OBLIGATIONS OF YOU.