

# WEBSITE SERVICE AGREEMENT/TERMS OF USE

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## 1. ACCEPTANCE OF TERMS

The services that Colormagic Limited provides to User is subject to the following Terms of Use ("TOU"). Colormagic Limited reserves the right to update the TOU at any time without notice to User. The most current version of the TOU can be reviewed by clicking on the "Terms of Use" hypertext link located at the bottom of our Web pages.

- A. This Agreement, which incorporates by reference other provisions applicable to use of the Colormagic website, including, but not limited to, supplemental terms and conditions set forth hereof ("Supplemental Terms") governing the use of certain specific material contained in the Colormagic website, sets forth the terms and conditions that apply to use of the Colormagic website by User. By using the Colormagic website (other than to read this Agreement for the first time), User agrees to comply with all of the terms and conditions hereof. The right to use the Colormagic website is personal to User and is not transferable to any other person or entity. User is responsible for all use of User's Account (under any screen name or password) and for ensuring that all use of User's Account complies fully with the provisions of this Agreement. User shall be responsible for protecting the confidentiality of User's password(s), if any.
- B. Colormagic Limited shall have the right at any time to change or discontinue any aspect or feature of the Colormagic website, including, but not limited to, content, hours of availability, and equipment needed for access or use.

## 2. CHANGED TERMS

Colormagic Limited shall have the right at any time to change or modify the terms and conditions applicable to User's use of the Colormagic website, or any part thereof, or to impose new conditions, including, but not limited to, adding fees and charges for use. Such changes, modifications, additions or deletions shall be effective immediately upon notice thereof, which may be given by means including, but not limited to, posting on the Colormagic website, or by electronic or conventional mail, or by any other means by which User obtains notice thereof. Any use of the Colormagic website by User after such notice shall be deemed to constitute acceptance by User of such changes, modifications or additions.

## 3. DESCRIPTION OF SERVICES

Through its Web property, Colormagic Limited provides User with access to a variety of resources, including download areas, communication forums and product information (collectively "Services"). The Services, including any updates, enhancements, new features, and/or the addition of any new Web properties, are subject to the TOU.

## 4. EQUIPMENT

User shall be responsible for obtaining and maintaining all telephone, computer hardware, software and other equipment needed for access to and use of the Colormagic website and all charges related thereto.

## 5. USER CONDUCT

- A. User shall use the Colormagic website for lawful purposes only. User shall not post or transmit through the Colormagic website any material which violates or infringes in any way upon the rights of others, which is unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane or otherwise objectionable, which encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law, or which, without Colormagic Limited 's express prior approval, contains advertising or any solicitation with respect to products or services. Any conduct by a User that in Colormagic Limited 's discretion restricts or inhibits any other User from using or enjoying the Colormagic website will not be permitted. User shall not use the Colormagic website to advertise or perform any commercial solicitation, including, but not limited to, the solicitation of users to become subscribers of other on-line information services competitive with Colormagic Limited .
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- D. The foregoing provisions of Section 5 are for the benefit of Colormagic Limited, its subsidiaries, affiliates and its third party content providers and licensors and each shall have the right to assert and enforce such provisions directly or on its own behalf.

## 6. USE OF SERVICES

The Services may contain email services, bulletin board services, chat areas, news groups, forums, communities, personal web pages, calendars, photo albums, file cabinets and/or other message or communication facilities designed to enable User to communicate with others (each a "Communication Service" and collectively "Communication Services"). User agrees to use the Communication Services only to post, send and receive messages and material that are proper and, when applicable, related to the particular Communication Service. By way of example, and not as a limitation, User agrees that when using the Communication Services, User will not:

- Use the Communication Services in connection with surveys, contests, pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise).
- Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
- Publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, obscene, indecent or unlawful topic, name, material or information.
- Upload, or otherwise make available, files that contain images, photographs, software or other material protected by intellectual property laws, including, by way of example, and not as limitation, copyright or trademark laws (or by rights of privacy or publicity) unless User own or control the rights thereto or have received all necessary consent to do the same.
- Use any material or information, including images or photographs, which are made available through the Services in any manner that infringes any copyright, trademark, patent, trade secret, or other proprietary right of any party.
- Upload files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of another's computer or property of another.
- Advertise or offer to sell or buy any goods or services for any business purpose, unless such Communication Services specifically allows such messages.
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- Violate any code of conduct or other guidelines which may be applicable for any particular Communication Service.
- Harvest or otherwise collect information about others, including email addresses.
- Violate any applicable laws or regulations.
- Create a false identity for the purpose of misleading others.
- Use, download or otherwise copy, or provide (whether or not for a fee) to a person or entity any directory of users of the Services or other user or usage information or any portion thereof.

Colormagic Limited has no obligation to monitor the Communication Services. However, Colormagic Limited reserves the right to review materials posted to the Communication Services and to remove any materials in its sole discretion. Colormagic Limited reserves the right to terminate User's access to any or all of the Communication Services at any time, without notice, for any reason whatsoever. Colormagic Limited reserves the right at all times to disclose any information as it deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in Colormagic Limited's sole discretion.

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## **7. MEMBER ACCOUNT, PASSWORD, AND SECURITY**

If any of the Services requires User to open an account, User must complete the registration process by providing Colormagic Limited with current, complete and accurate information as prompted by the applicable registration form. User also will choose a password and a user name. User is entirely responsible for maintaining the confidentiality of User's password and account. Furthermore, User is entirely responsible for any and all activities that occur under User's account. User agrees to notify Colormagic Limited immediately of any unauthorized use of User's account or any other breach of security. Colormagic Limited will not be liable for any loss that User may incur as a result of someone else using User's password or account, either with or without User's knowledge. However, User could be held liable for losses incurred by Colormagic Limited or another party due to someone else using User's account or password. User may not use anyone else's account at any time, without the permission of the account holder.

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#### **16. INDEMNIFICATION**

User agrees to defend, indemnify and hold harmless Colormagic Limited, its affiliates and their respective directors, officers, employees and agents from and against all claims and expenses, including attorneys' fees, arising out of the use of Colormagic Limited by User or User's Account.

## **17. TERMINATION**

Either Colormagic Limited or User may terminate this Agreement at any time. Without limiting the foregoing, Colormagic Limited shall have the right to immediately terminate User's Account in the event of any conduct by User which Colormagic Limited, in its sole discretion, considers to be unacceptable, or in the event of any breach by User of this Agreement.

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