

ROCHESTER HOCKEY, LLC TERMS & CONDITIONS OF USE

PLEASE READ THESE TERMS & CONDITIONS CAREFULLY.

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Rochester Hockey, LLC, together with its affiliates (hereinafter referred to as “RH,” “us,” “we,” “our,” or “Company”), has created the following Terms & Conditions of Use (“Terms & Conditions”) for when you visit our website at WWW.AMERKS.COM and related mobile applications, if any (hereinafter the “Services”).

These Terms & Conditions are written in the English language. We do not guarantee the accuracy of any translated versions of these Terms and Conditions. To the extent any translated versions of these Terms & Conditions conflict with the English language version, the English language version of these Terms & Conditions shall control.

I. GENERAL CONDITIONS

Please carefully read these Terms & Conditions before using our Services. By using our Services, you agree to be bound by the Terms & Conditions, **including the Binding Arbitration Clause and Class Action Waiver described in Section X**, and the Privacy Policy. If you do not agree to the Terms & Conditions, then you must not use our Services. If you violate the Terms & Conditions, we reserve the right to deny you access to our Services, together with any and all other legal remedies.

The headings used herein are included for convenience only and will not limit or otherwise affect these Terms & Conditions.

II. NON-EXCLUSIVE, NON-TRANSFERABLE LICENSE TO USE OUR SERVICES

We grant you a limited, revocable, non-exclusive, non-transferable license to review and in some instances print content, from our Services (e.g., our website) for your personal and educational purposes as long as they do not violate any aspect of these Terms & Conditions or applicable law, including our intellectual property and other proprietary rights in and to the Services or the intellectual property rights of another party. We reserve the right to terminate or limit your access to our Services and/or the licenses granted herein for any reason (or no reason) and in our sole discretion.

We reserve the right to, at any time, temporarily or permanently, modify or discontinue any features associated with the Services with or without notice and for any reason, including performing maintenance, repairs or upgrades. We will endeavor to provide notice before any scheduled upgrades. We (and our licensors) remain the sole owner of all rights, title, and interest in the Services. We will not be liable if for any reason all or any part of the Services are unavailable at any time or for any period.

III. INTELLECTUAL PROPERTY

All content, features, and functionality available through our Services, including but not limited to design, artwork, hyperlinks, text, videos, calendars, software, images, technical drawings, blog posts, podcasts, audio, images, art, code, configurations, graphics, other files, and their selection and arrangement (“Materials”) are either the proprietary property of us, our affiliates, or licensors and are protected by United States and international intellectual property and proprietary rights laws. We reserve any and all rights to the Materials. The Materials may not be modified, copied, distributed, framed, reproduced, republished, downloaded, displayed, posted, transmitted, or sold in any form or by any means in whole or in part without our prior written permission except you may download and print Materials for non-commercial uses that are not competitive with or derogatory to us, provided that you keep all copyright or other proprietary notices intact, do not alter such Materials, and do not further reproduce, publish or distribute such Materials. Please note that this limited consent may be revoked at any time by us and does not include consent to republish Materials on the Internet, or any Intranet or Extranet site, or to incorporate the Materials in any data base or other compilation. Any other use of the Materials is strictly prohibited. You further agree that you will not systematically extract, collect or harvest through electronic means or otherwise, any data or data fields from our Services, including but not limited to customer identities or Information (as defined in our [PRIVACY POLICY](#)).

All registered and unregistered trademarks visible or accessible through our Services are trademarks of the Company, or licensors and may not be copied, imitated, or used in whole or in part without the prior written permission of the Company, or its owners. All page headers, customer graphics, button icons,

and scripts are service marks, trademarks, and/or trade dress of ours or our affiliates or licensors and may not be copied, imitated or used in whole or in part without prior written permission of us.

IV. PROHIBITED USES

In addition to other prohibitions as set forth in the Terms & Conditions, you are prohibited from using the Services or its related content: (a) for any unlawful or fraudulent purpose, including but not limited to, the use of fraudulent credit card information; (b) to solicit others to perform or participate in any unlawful or prohibited acts; (c) to violate any international, federal, provincial or state regulations, rules, laws, or local ordinances; (d) to infringe upon or violate our intellectual property rights or the intellectual property rights of others or delete the copyright or other proprietary rights notice from any content; (e) to harass, abuse, insult, harm, defame, slander, annoy, disparage, intimidate, or discriminate based upon gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability; (f) to submit false or misleading information or otherwise attempt to mislead or impersonate another; (g) to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Services including our website (or related website, other websites, or the Internet) or Services; (h) to collect or track the personal information of others; (i) to send advertising or promotion materials, spam, phish, pharm, pretext, spider, crawl, scrape or facilitate the use of any malware or ransomware; (j) for any damaging, obscene or immoral purpose; (k) to interfere with or circumvent the security features of the website (or related website, other websites or the Internet) and/or Services, including those to prevent copying of content or that limit use; (l) to transmit, or procure the sending of, any advertising or promotional material, including any "junk mail," "chain letter," "spam" or any other similar solicitation; (m) systematically retrieve data or other content from the Services to create or compile, directly or indirectly, a collection, compilation, database, or directory without written permission from us; (n) make any unauthorized use of the Services, including collecting usernames and/or email addresses of users by electronic or other means for the purpose of sending unsolicited email, or creating user accounts by automated means or under false pretenses; (o) use a buying agent or purchasing agent to make purchases on the website; (p) use the Services to advertise or offer to sell goods and services; (q) engage in unauthorized framing of or linking to the Services; (r) engage in any automated use of the system, such as using scripts to send comments or messages, or using any data mining, robots, or similar data gathering and extraction tools; (s) interfere with, disrupt, or create an undue burden on the website or the networks or services connected to the Services; (t) sell or otherwise transfer your profile; (u) use the Services as part of any effort to compete with us or otherwise use the Services and/or the content for any revenue-generating endeavor or commercial enterprise; (v) decipher, decompile, disassemble, or reverse engineer any of the software comprising or in any way making up a part of the website; (w) copy or adapt the Services' software, including but not limited to Flash, PHP, HTML, JavaScript, or other code; (x) upload or transmit (or attempt to upload or to transmit) viruses, Trojan horses, malicious code, or other material, including excessive use of capital letters and spamming (continuous posting of repetitive text), that interferes with any party's uninterrupted use and enjoyment of the Services or modifies, impairs, disrupts, alters, or interferes with the use, features, functions, operation, or maintenance of the Services; (y) upload or transmit (or attempt to upload or to transmit) any material that acts as a passive or active information collection or transmission mechanism, including without limitation, clear graphics interchange formats ("gifs"), 1x1 pixels, web bugs, cookies, or other similar devices (sometimes referred to as "spyware" or "passive collection mechanisms" or "pcms"); (z) except as may be the result of standard search engine

or Internet browser usage, use, launch, develop, or distribute any automated system, including without limitation, any spider, robot, cheat utility, scraper, or offline reader that accesses the Services, or using or launching any unauthorized script or other software; or (aa) in any way that may be deemed a breach or violation of any of our Terms & Conditions or Privacy Policy. We reserve the right to terminate your use of the Services or any related website for violating any of the prohibited uses.

V. CHILDREN'S INFORMATION

Our Services, including our website and any mobile applications are intended only for users over the age of eighteen (18).

We do not target our Services to minors, who are under thirteen (13) (or a higher age threshold where applicable). You agree that you are not under thirteen (13) years of age. We do not intend to collect or process any information from anyone under the age of thirteen (13). If we become aware that a user is under thirteen (13) (or a higher age threshold where applicable) and has provided us with information, we will take steps to comply with any applicable legal requirement to remove such information. [CONTACT US](#) if you believe that we have mistakenly or unintentionally collected information from a person under the age of thirteen (13).

VI. ACCURACY, COMPLETENESS & TIMELINESS OF INFORMATION

You agree that we, our affiliates, and/or third party service providers with whom we collaborate and contract may communicate with you regarding our Services via electronic messages, including email, text message, or mobile push notification to, for example, send you information relating to our products and Services that we think may be of interest to you, communicate with you about contests, sweepstakes, offers, promotions, rewards, upcoming events, and other news about products and services provided by or through us through permissible targeted advertisements offered by us, our parent companies, our subsidiaries, our affiliates, and other business partners. See Your Choices, below, for how you can update the way we contact you.

A. Errors, Inaccuracies, & Omissions

Our Services, including our website and application, may contain typographical errors, inaccuracies, or omissions that may relate to Company offerings, promotions, packages, programs, events, and materials. We do not warrant the accuracy, completeness or usefulness of this information. We disclaim all liability and responsibility placed on such information by you, or by anyone who may be informed of any of its contents.

We reserve the right to correct any errors, inaccuracies or omissions, and to change or update information or cancel orders or programs if any information about the Services or on any related website or mobile application is inaccurate at any time without prior notice (including after you have submitted your order, request, submission, payment, form, etc.).

We do not take on any obligation to update, amend, or clarify information in the Services or on any related website or mobile application, including without limitation, pricing, dates, availability, location, products, and services, except as required by law.

No specified update or refresh data applied in the Services or on any related website or mobile application should be taken to indicate that all information in the Services or on any related website or mobile application has been modified or updated.

B. Links to the Services

You may not create a link to any page of our Services without our prior written consent. If you do create a link to a page of our Services, you do so at your own risk and the exclusions and limitations set out above will apply to your use of our Services by linking to it.

C. Links on the Services

Our Services might include links to other websites, mobile applications, or social media platforms. We are not responsible for examining or evaluating the content or accuracy of any other website and do not warrant and will not have any liability or responsibility for any other party's materials or websites or for any other materials, products, or services of other websites. We are not liable for any harm or damages related to the purchase or use of goods, services, resources, content, or any other transactions made in connection with any other party's websites or other platforms. Please review carefully other party's website's policies and practices and make sure you understand them before you engage in any transaction. Claims, complaints, questions, or concerns regarding other parties should be directed to that party.

VII. CONTENT SUBMISSION AND REMOVAL

To the extent our Services allow you to submit Information, we will use your Information consistent with the terms of our Privacy Policy and these Terms & Conditions. We reserve the right to remove, screen, edit, or reinstate your Information (as defined in the Privacy Policy) from time to time at our sole discretion for any reason or no reason, and without notice to you. You shall be solely responsible for your Information and the consequences of submitting and publishing your Information on our Services. You affirm, represent, and warrant that you own, or have the necessary licenses, rights, consents, and permissions to publish any Information that you submit; and you license to us all patent, trademark, trade secret, copyright or other proprietary rights in and to your Information for publication on the Services pursuant to these Terms & Conditions.

You further agree that your Information will not contain third party copyrighted material, or material that is subject to other third party proprietary rights, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to post the material and to grant us all of the license rights granted herein. We do not permit copyright infringing activities and infringement of intellectual property rights on the Services, and we will remove content if properly notified that such content infringes on another's intellectual property rights. We reserve the right to remove content without prior notice subject to the applicable laws.

We will use reasonable efforts to investigate notices of alleged infringement. If we in our sole discretion reasonably believe an infringement has taken place, and consistent with applicable laws, will take appropriate action, which may include removing or disabling access to the content claimed to be infringing and/or terminating accounts and access to the website and Services.

VIII. WARRANTY DISCLAIMER

OUR SERVICES, AND THE INFORMATION ON OR AVAILABLE THROUGH OUR SERVICES, IS PROVIDED ON AN "AS IS" BASIS WITHOUT ANY REPRESENTATION, WARRANTIES, OR CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OR CONDITION OF MERCHANTABILITY, MERCHANTABILITY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, TITLE, AND NON-INFRINGEMENT. WE DO NOT GUARANTEE, REPRESENT OR WARRANT THAT YOUR USE OF OUR SERVICES, WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. WE DO NOT WARRANT THAT THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE. YOU AGREE THAT FROM TIME TO TIME WE MAY REMOVE THE SERVICES FOR INDEFINITE PERIODS OF TIME OR CANCEL THEM AT ANY TIME WITHOUT NOTICE TO YOU. TO THE FULLEST EXTENT PERMITTED BY LAW, WE EXCLUDE ALL REPRESENTATIONS AND WARRANTIES RELATING TO OUR SERVICES, OR RELATED CONTENT, FOR WHICH IS OR MAY BE PROVIDED BY ANY AFFILIATES OR ANY OTHER THIRD PARTY, INCLUDING IN RELATION TO ANY INACCURACIES OR OMISSIONS IN OUR SERVICES AND/OR OUR LITERATURE.

IN NO CASE SHALL WE, OUR EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, REPRESENTATIVES, SUPPLIERS, SERVICE PROVIDERS OR LICENSORS BE LIABLE FOR ANY INJURY, LOSS CLAIM, OR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST REVENUE, LOST SAVINGS, LOSS OF DATA, DAMAGE CAUSED TO YOUR COMPUTER, COMPUTER SOFTWARE, SYSTEMS AND PROGRAMS AND THE DATA THEREON, REPLACEMENT COSTS, OR ANY SIMILAR DAMAGES, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE ARISING FROM YOUR USE OF THE SERVICES OR IN ANY WAY RELATED TO THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY ERRORS OR OMISSIONS IN ANY USE OF THE SERVICES OR ANY CONTENT OR PRODUCT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE. IN ANY EVENT, THE AGGREGATE LIABILITY OF US AND OUR AFFILIATES AND OUR SERVICE PROVIDERS UNDER THESE TERMS & CONDITIONS SHALL NOT EXCEED FIVE HUNDRED DOLLARS (\$500.00).

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

IX. GOVERNING LAW

The Terms & Conditions and any separate agreements whereby we provide you the Services shall be governed and construed in accordance with the internal laws of the State of New York without reference to any conflict of law rules.

You agree that you will not use the Services in any country or in any manner prohibited by any applicable laws, restrictions or regulations.

X. ARBITRATION CLAUSE AND CLASS ACTION WAIVER – IMPORTANT – PLEASE REVIEW AS THIS AFFECTS YOUR LEGAL RIGHTS

A. Arbitration Notice:

You and RH agree that if there is any dispute or claim arising from or related to our Services, these Terms & Conditions, and/or the Privacy Policy it will be resolved by confidential binding arbitration in Buffalo, New York, rather than in court, after first giving Notice of the Dispute ("Notice") to the other party and the opportunity to discuss resolution within thirty (30) days of such Notice. The Notice to the

Company should be sent to: RH, One War Memorial Square, Rochester, New York 14614, Attn: Legal Department. This Notice must include a description of the nature and basis of the claims the party is asserting, and the relief sought.

If you and RH are unable to resolve the claims described in the Notice within thirty (30) days after the Notice is sent, you or the Company may initiate arbitration proceedings. **There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages) and must follow the provisions of these Terms & Conditions as a court would. YOU ACKNOWLEDGE THAT YOU ARE VOLUNTARILY AND KNOWINGLY FORFEITING YOUR RIGHT TO A TRIAL BY JURY AND TO OTHERWISE PROCEED IN A LAWSUIT IN STATE OR FEDERAL COURT.**

The Federal Arbitration Act and federal arbitration law apply and the American Arbitration Association (“AAA”) will administer the arbitration under its Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes. Payment of all filing, administration and arbitrator fees will be governed by the AAA’s rules.

The arbitration shall be held in Buffalo, New York or at another mutually agreed location. If the value of the relief sought is \$10,000 or less, you or us may elect to have the arbitration conducted by telephone or based solely on written submissions, which election shall be binding on you and us subject to the arbitrator’s discretion to require an in-person hearing, if the circumstances warrant. Attendance at an in-person hearing may be made by telephone by you and us, unless the arbitrator requires otherwise.

The arbitrator will decide the substance of all claims in accordance with the laws of the State of New York, including recognized principles of equity, and will honor all claims of privilege recognized by applicable law. The arbitrator’s award shall be confidential, final and binding, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Notwithstanding any provision in these Terms & Conditions to the contrary, you and us agree that if we make any change to this Section (other than a change to any notice address or website link provided herein) in the future, that change shall not apply to any claim that was filed in a proceeding against us prior to the effective date of the change. Moreover, if we seek to terminate this Section, any such termination shall not be effective until thirty (30) days after the version of the Terms & Conditions containing this Section is posted to the websites, and shall not be effective as to any claim that was filed in a proceeding against us prior to the effective date of termination.

CLASS ACTION WAIVER: YOU AND THE COMPANY AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION. If for any reason a claim proceeds in court rather than in arbitration, **we each waive any right to a jury trial.** We also both agree that you or the Company may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

B. Claims and Disputes Must be Filed Within One Year

To the extent permitted by law, and without limiting the effect of any disclaimer contained herein, any cause of action or claim you may have with respect to your use of the Services, including, without limitation, any website or mobile application or other Services-related product, services, or other

content must be commenced within one (1) year after the claim or cause of action arises. This section applies to you and your heirs, successors and assigns.

XI. SEVERABILITY

To the extent that any provision of these Terms & Conditions is deemed to be unlawful, void, or unenforceable, including the binding arbitration clause and class action waiver, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms & Conditions. Such determination shall not affect the validity and enforceability of any other remaining provisions.

XII. TERMINATION

These Terms & Conditions are effective until terminated. We may terminate this agreement at any time without notice to you and may deny you access to our Services.

XIII. INDEMNIFICATION

To the fullest extent permitted by law, and except to the extent arising from our gross negligence or intentional misconduct, you agree to indemnify, defend, and hold harmless us, and our employees, contractors, licensors, service providers, affiliates, subcontractors, suppliers, and representatives, from any claim or demand, including reasonable attorneys' fees made by any third party due to or arising out of your breach of these Terms & Conditions or the documents they incorporate by reference, or your violation of any law or rights of a third party. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you shall cooperate with us in asserting any available defenses. You shall not settle any actions or claims on our behalf without our prior written consent.

If you are a California resident or resident of a state with a similar applicable law, you hereby expressly waive California Civil Code section 1542 in connection with the foregoing (or such other similar applicable law in your state), which states: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

XIV. NO THIRD PARTY BENEFICIARIES

There are no third party beneficiaries to the Terms & Conditions. We shall have the right to assign our rights or delegate any of its responsibilities under these Terms & Conditions to an affiliate or in connection with a merger, consolidation, or reorganization for the sale of substantially all of our assets.

XV. CHANGES TO THESE TERMS & CONDITIONS

We reserve the right to change, modify, or amend these Terms & Conditions at any time to reflect changes in our practices and service offerings. If we modify our Terms & Conditions, such changes will be effective upon posting. It is your obligation to check our current Terms & Conditions for any changes. These Terms & Conditions may only be modified in writing. Any ambiguities in the interpretation will not be construed against the drafter.

XVI. HOW TO CONTACT US

If you have any questions about these Terms & Conditions, please send us an email at PRIVACY@AMERKS.COM, call us toll-free at: [\(866\) 918-0235](tel:8669180235), or write us at One War Memorial Square, Rochester, New York 14614, Attn: Privacy Officer.

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