

# TERMS OF SERVICE

Thank you for visiting MyVernacular.com (“MyVernacular,” “us” or “we”) and using our services (our “Design Products”), our websites (the “Website” or the “Site”), and our online applications (collectively, the “Apps,” and together with the Site and the Design Products, the “Service”). The following terms of Service (the “Terms of Service” or “Terms”) are a binding contract among you and MyVernacular and govern your use of the Service.

MyVernacular.com is owned and operated by myVernacular lc, a limited liability company duly organized and existing under the laws of the State of Montana.

## USE AND RESTRICTIONS

When you access the Service, you agree to be bound by these Terms and reaffirm such Terms with each additional access and use. Certain portions of the Service (the “Added Service Areas”) may be subject to additional Terms which are also posted on the Service. By using all or any part of Added Service Areas, you expressly affirm that you have read and agree to be bound by the additional Terms applicable to such Added Service Areas. In the event of any conflict among the additional Terms governing Added Service Areas and these Terms, the more stringent terms shall control.

You hereby affirm these Terms are supported by good and valuable consideration, the receipt and sufficiency of which you hereby acknowledge. Such consideration includes, but is not limited to, the ability to access and utilize information on the Service. You hereby represent that you have the capacity to be bound by these Terms, and if you are acting on behalf of another entity, that you have the duly authorized authority to bind such other entity.

Your access and use our Service is strictly limited to lawful purposes pursuant to the terms and conditions of these Terms and the Privacy Policy. If in our sole discretion you take any action that: (i) violates the terms and conditions of these Terms or the Privacy Policy; (ii) restricts, inhibits or prevents any access, use or enjoyment of our Services; or (iii) through the use of our Services, defames, abuses, harasses, offends or threatens we shall have the right to revoke your access and use of our Services.

You hereby further agree that you will not use any automated data gathering or extraction device or method to access, acquire, or monitor all or any portion of our Services without our prior written approval. You shall not: (i) take any action that imposes, or may impose an unreasonable or disproportionately large load on our infrastructure, in our sole discretion; (ii) copy, reproduce, modify, create derivative works from, distribute or publicly display any content (except for your personal information) from our Services without our prior written approval; (iii) interfere or attempt to interfere with the proper working of our Services; or (iv) bypass any measures we may use to prevent or restrict access to our Services. Except as expressly permitted in these Terms, you shall not collect or harvest any personally identifiable information from our Services. You shall not use any communication systems provided on our Services for any commercial or solicitation purposes. You shall not solicit for commercial purposes any users of our Services without our prior written approval.

YOU HEREBY ACKNOWLEDGE AND AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR YOUR DECISIONS MADE ON OR THROUGH THE USE OF THE SERVICE, INCLUDING BUT NOT LIMITED TO, YOUR DECISIONS PERTAINING TO THE DESIGN PRODUCTS.

## ELIGIBILITY

By agreeing to these Terms, you hereby represent and warrant that: (i) you are at least eighteen (18) years of age, (ii) you have not previously been suspended or removed from the Service, and (iii) your use of the Service is in compliance with any and all applicable laws and regulations. You hereby further represent and warrant that if you are and will be strictly responsible for the actions of any minor whom you allow to access the Service.

## INTERRUPTIONS

Your access and use of the Service may be interrupted from time to time for any reason or no reason, including but not limited to actions that we may elect to take in our sole discretion. We reserve the right to suspend or discontinue the all or any portion of our Service at any time and without prior notice.

## USER ACCOUNTS

To access some features of the Service you may be required to register for an account. During such registration, you may be required to provide us with information including confidential or personal identifying information or financial information (“Your Information”). If you provide Your Information to us, you agree to provide true and accurate information that is current and complete. You agree to update Your Information within a reasonable time of a change to Your Information. Our collection, use and disclosure of Your Information is governed by these Terms and our Privacy Policy. You acknowledge and agree that you are solely responsible for all activities occurring on and through your account. Should you have reason to believe your account becomes compromised or is no longer secure, you shall notify us immediately.

## USER CONTENT

- a. Certain features of the Service may permit you to post and publish content and other works (collectively, "User Content") on the Service. We do not obtain and expressly disclaim proprietary rights to User Content except as set forth herein.
- b. By posting User Content, you grant MyVernacular a worldwide, non-exclusive, royalty-free license, including the right to sublicense, to host, store, transfer, display, reproduce, modify, and distribute your User Content, in whole or in part and in any format, and through any channel and without compensation becoming due and payable to you or anyone else.
- c. By posting and sharing User Content with another user of the Service, you hereby grant that user a non-exclusive royalty-free license to access and use such User Content as permitted by these Terms and the functionality of the Service.
- d. You are solely responsible for your User Content. By posting and publishing User Content, you represent, and warrant that:
  1. You are the creator and owner of, or have all necessary licenses and rights to such User Content for purposes of these Terms;
  2. Your User Content, and the use thereof does not and will not: (i) infringe, violate, or misappropriate any third-party right, including but not limited to any intellectual property rights of any person or entity; or (ii) cause harm to, invade the rights of, or otherwise cause tortious injury to any person or entity.
- e. User Content Disclaimer. We are under no obligation to edit or control and we do not endorse or guarantee any aspect of any User Content. We expressly disclaim any and all liability arising from or in any way relating to User Content. However, MyVernacular may at any time and without prior notice, remove any User Content that in our sole judgment violates these Terms. You hereby do waive any legal or equitable rights or remedies you may have against MyVernacular for any and all User Content. For additional details, terms, and conditions, please review our Privacy Policy. Questions regarding User Content may be directed to [service@myvernacular.com](mailto:service@myvernacular.com).

## REQUESTS FOR INFORMATION

By using our Service, you may be eligible to request information from certain service providers (an "Information Request"). Information Requests are strictly limited to residents of the United States of America, and may not be available in all locations and jurisdictions. If you make an Information Request:

- a. We make no guarantees that you will be matched with a Service Provider.
- b. You hereby acknowledge and agree Your Information may be used and disclosed as set forth in the Privacy Policy. Without limiting anything in the Privacy Policy, you expressly authorize Service Providers, and their affiliates to use Your Information to conduct research to respond to your Information Request.
- c. You hereby authorize us and our Service Providers to contact you by telephone, fax and email at the numbers and addresses provided on your User Account or in your Information Request to respond to your Information Request, even if the your contact information is on a national or state "Do Not Call" list.

## INTELLECTUAL PROPERTY

Our names, service names, graphics, icons, and scripts are our trademarks or trade dress in the United States of America and other countries (collectively, our "Proprietary Marks") and are exclusively our property. You may not use the Proprietary Marks without our prior written approval. We make no claims to any third-party names, trademarks or service marks appearing on our Service. The content viewable on, contained in, or downloadable from our Service (collectively, "Our Content") are copyrighted by or otherwise licensed to us. We also own a copyright of a collective work in the selection, coordination, arrangement, presentation, display and enhancement of Our Content (the "Collective Work"). All software used on or in our Service (the "Software") is our property or the property of our software vendors and is protected by law. Accessing or using Our Content or the Collective Work does not entitle you to any right of ownership in or to Our Content, the Collective Work, or the Software. You are solely responsible for any damages resulting from your infringement of intellectual property rights arising from or related to you use of the Service.

## USE OF CONTENT

We grant to you a limited license to make personal use of the Content and the Collective Work provided, however, that you shall not delete any proprietary notices or materials included in the Content or Collective Work. You shall not modify the Content or the Collective Work or utilize them for any commercial or public display, or disassembly. Nor shall you transfer the Content or the Collective Work to another person or entity. Copying, distribution, redistribution, transmission, publication or use of the Content and the Collective Work other than as permitted by these Terms is strictly prohibited without our prior written approval.

## ELECTRONIC COMMUNICATIONS

You consent to receive communications from us electronically, whether via the Service or via email. We may choose to communicate with you by email or by posting notices on our Service. You hereby agree that in the event we choose to communicate with you electronically, such communication shall satisfy all legal requirements that any such communications be in writing.

## **ELECTRONIC TRANSACTIONS**

YOUR USE OF THE SERVICES INCLUDES THE ABILITY TO ENTER INTO AGREEMENTS AND/OR TO MAKE TRANSACTIONS ELECTRONICALLY. YOU ACKNOWLEDGE THAT YOUR ELECTRONIC SUBMISSIONS CONSTITUTE YOUR AGREEMENT AND INTENT TO BE BOUND BY SUCH AGREEMENTS AND TRANSACTIONS. YOUR AGREEMENT AND INTENT TO BE BOUND BY ELECTRONIC SUBMISSIONS APPLIES TO ALL RECORDS RELATING TO ALL TRANSACTIONS YOU ENTER INTO ON THIS SITE, INCLUDING NOTICES OF CANCELLATION, POLICIES, CONTRACTS, AND APPLICATIONS. IN ORDER TO ACCESS AND RETAIN YOUR ELECTRONIC RECORDS, YOU MAY BE REQUIRED TO HAVE CERTAIN HARDWARE AND SOFTWARE, WHICH ARE SOLELY YOUR RESPONSIBILITY.

## **THIRD PARTY PROVIDERS**

The Service may provide or third parties may provide access or direction to other websites or resources. You hereby acknowledge and agree that we are not responsible for such other websites and resources, and we neither endorse nor are responsible for any content on or related to such other websites or resources. You hereby agree and do release us from any liability associated therewith.

## **DESIGN PRODUCTS**

Users of the Service may receive designs or recommendations based on each such user's questionnaire, pictures, or other material submitted to us. However, design is inherently subjective and you agree that MyVernacular cannot and does not warrant or guarantee your satisfaction with our services, the Design Products, or any other ideas you access or otherwise receive on the Service or through correspondence with us. MyVernacular will take reasonable steps, in MyVernacular's sole discretion and opinion, including but not limited to those measures set forth in our Refund Policy (set forth below) to attempt to meet your satisfaction. This offer is valid for six (6) weeks from the date of initial purchase.

While MyVernacular has made reasonable efforts to portray colors and materials in an accurate way on the Service, displayed colors cannot be guaranteed as accurate. We also make reasonable efforts to estimate scale of your space, but you are required to accurately measure your space and you are solely responsible for all such measurements and all consequences arising as a result of any and all faulty measurements.

MYVERNACULAR DOES NOT GUARANTEE, OR WARRANT ANY OF THE PRODUCTS PURCHASED BY YOU THROUGH THE USE OF OUR SERVICE OR THOSE SERVICES OF A SERVICE PROVIDER.

## **REFUND POLICY ON PAID SERVICES**

If you are not satisfied with your Design Product or any of our other services, you may make requests for reasonable changes by emailing [service@myvernacular.com](mailto:service@myvernacular.com). At MyVernacular's sole discretion, we may offer a refund in those situations where another remedy, such as redesign to your purchased product, is not possible or in our sole opinion would not correct the issue. All refunds are limited to the amount paid for the services you received from us. Notwithstanding anything to the contrary contained in these Terms, it shall be myVernacular's sole option whether and when to offer a design remedy or refund of fees in the event you are not satisfied with services we have provided and for which you have paid.

## **COPYRIGHT**

Please notify us by e-mail at [service@myvernacular.com](mailto:service@myvernacular.com) if you believe that a user of the Service has infringed your intellectual property rights. We include this policy pursuant to Section 512 of the Copyright Revision Act, as enacted through the Digital Millennium Copyright Act ("DMCA").

## **DISCLAIMERS; NO WARRANTIES**

ALL CONTENT, SERVICES, AND PRODUCTS ASSOCIATED WITH OUR SERVICE ARE PROVIDED TO YOU ON AN "AS-IS" AND "AS AVAILABLE" BASIS. WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF OR CONTENT ON OF THE SERVICE OR ANYTHING ASSOCIATED THEREWITH. YOUR USE OF OUR SERVICE AND ANYTHING ASSOCIATED THEREWITH IS AT YOUR SOLE RISK.

WE DO NOT MAKE AND EXPRESSLY DISCLAIM ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY OR COMPLETENESS OF THE SERVICE AND ANYTHING ASSOCIATED THEREWITH, OR THE SAFETY, RELIABILITY, TITLE, TIMELINESS, COMPLETENESS, MERCHANTABILITY, CONFORMITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE SERVICE AND ANYTHING ASSOCIATED THEREWITH. IT IS SOLELY YOUR RESPONSIBILITY TO INDEPENDENTLY EVALUATE THE ACCURACY, CORRECTNESS AND COMPLETENESS OF THE SERVICE AND ANYTHING ASSOCIATED THEREWITH.

WE MAKE NO REPRESENTATION, WARRANTY OR GUARANTEE THAT THE SERVICE AND ANYTHING ASSOCIATED THEREWITH IS FREE OF INFECTION FROM ANY VIRUSES, MALICIOUS SOFTWARE OR OTHER DETRIMENTAL OR DAMAGING CODE OR COMPUTER PROGRAMMING ROUTINES. YOU DOWNLOAD OR OTHERWISE OBTAIN MATERIAL OR DATA THROUGH THE USE OF THE SERVICE AT YOUR OWN DISCRETION AND RISK.

WE DO NOT MAKE AND EXPRESSLY DISCLAIM ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, REGARDING ANY INFORMATION OR OFFERS PROVIDED ON OR THROUGH THE SERVICE. WE DISCLAIM, ANY WARRANTIES FOR ANY INFORMATION OR ADVICE OBTAINED THROUGH AND IN ANY WAY ASSOCIATED WITH THE SERVICE.

WE DISCLAIM ANY RESPONSIBILITY FOR THE DELETION, FAILURE TO STORE, MISS DELIVERY, OR UNTIMELY DELIVERY OF ANY INFORMATION OR MATERIAL ON OR ASSOCIATED WITH THE SERVICE. WE DISCLAIM ANY WARRANTIES REGARDING THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SERVICE.

OUR SERVICE IS CONTROLLED AND OFFERED BY US FROM OUR FACILITIES IN THE UNITED STATES OF AMERICA. WE MAKE NO REPRESENTATIONS AND EXPRESSLY DISCLAIM THAT OUR SERVICE IS APPROPRIATE OR AVAILABLE FOR USE IN OTHER JURISDICTIONS. IF YOU ACCESS OR USE OUR SERVICE FROM OTHER JURISDICTIONS, THEN YOU DO SO BY YOUR OWN VOLITION AND ARE SOLELY RESPONSIBLE FOR COMPLIANCE WITH LOCAL LAW.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, WE DO NOT MAKE AND EXPRESSLY DISCLAIM ANY REPRESENTATIONS, WARRANTIES, AND GUARANTEES THAT OUR DESIGN PRODUCTS ARE SUITABLE FOR A PARTICULAR USE, EASILY OR ECONOMICALLY CONSTRUCTIBLE, CONFORM TO ANY ZONING, LAND USE, BUILDING CODE, DEED OR COMMUNITY COVENANTS OR RESTRICTIONS, AND ANY OTHER RULES OR REGULATIONS GOVERNING THE LOCALITY OF YOUR PROJECT SITE. YOU ARE SOLELY RESPONSIBLE FOR CONFIRMING OUR DESIGN PRODUCTS CAN BE CONSTRUCTED AND INSTALLED FOR YOUR PURPOSES AND ARE SOLELY RESPONSIBLE FOR THE ACCURACY OF ALL INFORMATION YOU OR YOUR AGENTS SHARE WITH US.

## **LIMITATIONS OF LIABILITY**

WE DO NOT HAVE AND SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY TO YOU OR ANY OTHER, WHETHER AT LAW OR IN EQUITY, FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES, DIRECTLY OR INDIRECTLY ARISING FROM: (I) YOUR BREACH OR VIOLATION OF THESE TERMS; (II) YOUR ACCESS TO AND USE OF OUR SERVICE OR INABILITY TO ACCESS OR USE OUR SERVICE; (IV) YOUR DOWNLOADING OF ANY CONTENT, COLLECTIVE WORK, OR OTHER MATERIAL FROM THE SERVICE OR THROUGH OR CORRESPONDENCE; (V) YOUR RELIANCE UPON OR USE OF THE SERVICE, OR (VI) ANYTHING YOU OR ANYONE ELSE OBTAIN THROUGH OUR SERVICE OR OTHERWISE ARISING OUT OF THE USE OF OUR SERVICE OR DESIGN PRODUCTS, EVEN IF WE OR OUR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

THIS LIMITATION ALSO APPLIES TO DAMAGES ARISING FROM OR RELATED TO SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE SERVICE OR RECEIVED THROUGH ANY LINKS PROVIDED ON THE SERVICE. THIS LIMITATION SHALL ALSO APPLY, WITHOUT LIMITATION, TO THE COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, OR LOST DATA.

WITHOUT LIMITING THE FOREGOING, WE SHALL NOT BE HELD LIABLE FOR ANY DELAY OR FAILURE IN PERFORMANCE RESULTING DIRECTLY OR INDIRECTLY FROM ACTS OF NATURE, FORCES, OR CAUSES BEYOND OUR REASONABLE CONTROL. YOU ACKNOWLEDGE AND AGREE THAT WE ARE NOT AND SHALL NOT BE LIABLE FOR USER GENERATED CONTENT OR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY THIRD PARTY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY AND THE LIABILITY OF OUR AFFILIATES, DIRECTORS, OFFICERS, OWNERS, EMPLOYEES, INDEPENDENT CONTRACTORS, SHAREHOLDERS, REPRESENTATIVES, AND AGENTS DIRECTLY OR INDIRECTLY ARISING OUT OF THESE TERMS OR YOUR USE OF OUR SERVICE OR OUR COMMUNICATIONS OR COMMERCIAL RELATIONSHIP SHALL NOT EXCEED THE LESSER OF OUR FEE CHARGED FOR SERVICES GIVING RISE TO OUR PURPORTED LIABILITY OR PROCEEDS OF AVAILABLE INSURANCE.

ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO OUR SERVICE OR COMMERCIAL RELATIONSHIP MUST COMMENCE WITHIN ONE (1) YEAR OF THE CAUSE OF ACTION ACCRUING OR BE PERMANENTLY BARRED.

## **INDEMNITY**

You hereby agree to defend, indemnify and hold harmless MyVernacular and its owners, officers, directors, employees, consultants, contractors, affiliates, subsidiaries and agents from and against any and all claims, liabilities, damages, losses and expenses, including reasonable attorneys' and accounting fees and costs, arising from or in any way pertaining to (i) your access to, use of, or alleged use of the Service; (ii) your violation of the Terms or any representation, warranty, or agreements referenced herein, or any applicable law or regulation; (iii) your violation of any third party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right; and (iv) any disputes or issues between you and any third party.

## **AMENDMENTS TO THESE TERMS**

We reserve the right to amend or change these Terms and the Privacy Policy at any time in our sole discretion and without notice. Amendments will take effect immediately upon posting to the Service. Your continued access and use of the Service following the posting of any such changes shall be deemed your acceptance of the Terms and of the Privacy Policy as amended or changed.

## **DISPUTE RESOLUTION**

For any dispute you have with MyVernacular, you shall first contact us at [service@myvernacular.com](mailto:service@myvernacular.com) and you and we agree to attempt to resolve such dispute informally and as a condition precedent to any formal proceeding. If you and we cannot resolve such dispute informally, the following dispute resolution procedure shall control (THIS SECTION AFFECTS YOUR LEGAL RIGHTS AND SUBSTANTIALLY IMPACTS ANY CLAIMS YOU MAY HAVE AGAINST MYVERNACULAR):

### **a. Applicable Law**

The laws of the State of Montana without regard to the principles of conflicts of law, shall govern all such disputes and these Terms except as otherwise stated in these Terms.

b. Prohibition of Class and Representative Actions and Non-Individualized Relief

CLASS ACTION LAWSUITS, CLASS-WIDE ARBITRATION, PRIVATE ATTORNEY-GENERAL ACTIONS, AND ANY OTHER PROCEEDINGS IN WHICH AN INDIVIDUAL ACTS IN A REPRESENTATIVE CAPACITY ARE STRICTLY PROHIBITED. COMBINING INDIVIDUAL PROCEEDINGS WITHOUT THE CONSENT OF ALL PARTIES TO EACH SUCH PROCEEDING IS STRICTLY PROHIBITED. YOU AND WE AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. ANY RELIEF AWARDED CANNOT AFFECT OUR OTHER USERS.

c. Forum for All Disputes

Any claim or dispute that has arisen or may arise between you and us must be resolved exclusively by proceedings before a state or federal court located in the State of Montana. You and we agree to submit to the personal jurisdiction of the courts located within Montana for any and all claims or disputes. You also agree that: (i) our Service and the commercial relationship between you and us shall be deemed to be based in the State of Montana; and (ii) our services shall be deemed passive in nature and not giving rise to personal jurisdiction over us and our assigns, either specific or general, in jurisdictions other than the State of Montana.

## MISCELLANEOUS

### Independent Contractors

You are hereby noticed that the Design Professional or Professionals with whom you may work while accessing our services, including but not limited to the Design Products, by or through the Service may be independent contractors and not employees of MyVernacular.

### Scope of Services, Professional Liability

You hereby acknowledge and agree that our services, whether Design Products, or otherwise, do not constitute the practice of architecture or the practice of interior design for purposes of professional licensing requirements in any jurisdiction in which we offer and provide services through our Service. While our owners, affiliates, officers, directors, contractors, employees and consultants may in fact be professionally licensed in certain jurisdictions, the scope of services offered through our Service and our commercial interactions or relationship does not rise to the level of professional practice as that term of art may be interpreted by state law or regulation or rules by any professional licensing board or other authority having jurisdiction. You further agree and understand that we do not hold ourselves out as being licensed professionals in every U.S. jurisdiction.

### Service Area

The Service is not available in the following jurisdictions: District of Columbia, Nevada, New Jersey, and New York (collectively, the "Restricted Jurisdictions"). myVernacular does not advertise and does not offer any design services that may constitute the practice of architecture in the Restricted Jurisdiction.

### Severability

If any portion of these Terms is deemed unlawful, void or unenforceable by any court or authority of competent jurisdiction, these Terms as a whole shall not be deemed unlawful, void or unenforceable, and only that portion deemed unlawful, void or unenforceable shall be stricken herefrom.

### No Waiver

Our failure to enforce any right or provision of these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by us in writing.

### Survival

All covenants, representations, and warranties made in these Terms, as may be amended by us from time to time, shall survive acceptance and termination of our commercial relationship with you.