

NIGHTFLY TERMS OF SERVICE

Last Updated: August 2020

By using this mobile application and website, you are accepting all the terms of this application and website including those listed in its Terms of Service, and its Privacy Policy and Disclaimer, both of which are incorporated into the Terms of Service. If you do not agree with anything in the Terms of Service or these additional policies, then you should not use this website or application.

1. Accepting These Terms

1.1. What's What. Nightfly's products, features and offerings are available through mobile applications, webpages, application programming interfaces, and subdomains ("Applications"). These are collectively referred to as "Nightfly Properties" or our "Services." These Terms apply to any Site(s) on which they are posted; where other terms or agreements are instead posted, those terms or agreements apply to the extent they conflict with these Terms. The material, including without limitation information, data, text, editorial content, design elements, look and feel, formatting, graphics, images, photographs, videos, music, sounds and other content contained in or delivered via the Services or otherwise made available by Nightfly in connection with the Services is the "Site Content" (or "Content"). Any material (including the foregoing categories) that you contribute, provide, post, or make available using the Services is "Your Content."

1.2 Who's Who. When this Privacy Policy uses the term "Promoter" we mean event creators using the Services to create events. When this Privacy Policy uses the term "Consumer" we mean people using the Services (a) to consume information about events or attend events, or (b) for any other reason. Promoters, Consumers and third parties using our Services are all referred to in these Terms collectively as "Users," "you," or "your."

When these Terms use the term "Nightfly," "Slyde," "we," "us," or "our," that refers to Slyde Lyfe, LLC and its affiliates, and subsidiaries, and each of its and their respective officers, directors, agents, partners and employees.

1.3 What Else. If you are a Promoter offering events with paid tickets, you are subject to the Merchant Agreement and Refund Policy Requirements of the Third-Party platform you use to sell tickets. If you are a Promoter or Consumer, Nightfly's Community Guidelines are applicable to you. (Some, but not all, of the terms in those agreements are duplicated in these Terms of Service.) Please be on the lookout for additional terms and conditions displayed with certain Services that you may use from time to time as those will also be applicable to you. By agreeing to these Terms of Service, you acknowledge you have read the Privacy Policy and Cookie Statement applicable to all Users.

We may sometimes provide you with services that are not described in these Terms of Service, or customized services. Unless we have entered into a separate, signed agreement that expressly supersedes these Terms of Service, these Terms of Service will apply to those services as well.

1.4 What the "Terms of Service" Means. These Terms of Service and the other documents referenced in them (including the Sections above) comprise Nightfly's "Terms." These Terms are a legally binding agreement between you and Nightfly governing your access to and use of the Services. The Terms set out your rights and responsibilities when you use the Services. By using any of our Services (including browsing a Site), you are agreeing to these Terms. If you do not agree to these Terms, please do not use or access the Services. If you will be using the Services on behalf of an entity (such as on behalf of your employer), you agree to these Terms on behalf of that entity and its affiliates and you represent that you have the authority to do so. In such a case, "you" and "your" will refer to that entity as well as yourself.

2. Nightflyy's Services and Role

2.1 What We Do. Nightflyy's Services provide an easy and efficient way for Promoters to create profiles, promote their events, and engage with Consumers on the Services. We also provide Consumers with a platform that streamlines the process of finding desirable nightlife events, sharing events with others, and communicating with Promoters.

2.2 How We Fit In. Nightflyy is not the creator, promoter or owner of the events listed on the Services. Instead, Nightflyy provides its Services as a platform, which allow Promoters to promote their events. The Promoter is solely responsible for ensuring that any page displaying an event on the Services (and the event itself) meet all applicable local, state, provincial, national and other laws, rules and regulations, and that the goods and services described on the event page are delivered as described and in an accurate, satisfactory manner. The Promoter of a paid event selects the payment processing method for its event. Consumers must use whatever payment processing method the Promoter selects. If the Promoter selects a payment processing method that uses a third party to process the payment, then neither Nightflyy nor any of its payment processing partners processes the transaction. Instead, Nightflyy transmits the Consumer's payment details to the Promoter's designated payment provider. If a Promoter uses Nightflyy Payment Processing (as defined in the Merchant Agreement), Nightflyy also acts as the Promoter's limited agent solely for the purpose of using our third-party payment service providers to collect payments made by Consumers on the Services and passing such payments to the Promoter.

3. Privacy and Consumer Information

3.1 Privacy Policy. We know your personal information is important to you and it is important to Nightflyy, too. Information provided to Nightflyy by Users or collected by Nightflyy through the Nightflyy website or application is governed by our Privacy Policy. Please see the Privacy Policy.

3.2 Promoter. If you are a Promoter, you represent, warrant and agree that (a) you will at all times comply with all applicable local, state, provincial, national and other laws, rules and regulations with respect to information you collect from (or receive about) consumers, and (b) you will at all times comply with any applicable policies posted on the Services with respect to information you collect from (or receive about) consumers.

4. Term; Termination

4.1 Generally. These Terms apply to you as soon as you access the Services by any means and continue in effect until they are terminated. There may come a time where either you or Nightflyy decides it's best to part ways as described in Sections 4.2 or 4.3 below. When that happens, these Terms will generally no longer apply. However, as described in Section 4.4, certain provisions will always remain applicable to both you and Nightflyy.

4.2 Nightflyy's Termination of Services. Nightflyy may terminate your right to use the Services at any time (a) if you violate or breach these Terms; (b) if you misuse or abuse the Services, or use the Services in a way not intended or permitted by Nightflyy; or (c) if allowing you to access and use the Services would violate any applicable local, state, provincial, national and other laws, rules and regulations or would expose Nightflyy to legal liability. Nightflyy may choose to stop offering the Services, or any particular portion of the Service, or modify or replace any aspect of the Service, at any time. We will use reasonable efforts to provide you with notice of our termination of your access to the Services, where, in Nightflyy's sole discretion, failure to do so would materially prejudice you. You agree that Nightflyy will not be liable to you or any third-party as a result of its termination of your right to use or otherwise access the Services.

4.3 Your Termination of Services. Except to the extent you have agreed otherwise in a separate written

agreement between you and Nightflyy, you may terminate your access to the Services and the general applicability of Terms by deleting your account. So long as you continue to access the Services, these Terms remain in effect. If there is a separate agreement between you and Nightflyy governing your use of the Services and that agreement terminates or expires, these Terms (as unmodified by such agreement) will govern your use of the Services after such termination or expiration.

4.4 All provisions of these Terms that by their nature should survive termination of these Terms will survive (including, without limitation, all limitations on liability, releases, indemnification obligations, disclaimers of warranties, agreements to arbitrate, choices of law and judicial forum and intellectual property protections and licenses).

5. Export Controls and Restricted Countries

All Users, regardless of your location or the event's location, should familiarize yourself with the restrictions related to export controls and economic sanctions laws. In accepting these Terms you represent and warrant that: (a) you are not located in, and you are not a national or resident of, any country to which the United States, United Kingdom, European Union, Australia or Canada has embargoed goods and/or services of the same type as the Services, including without limitation, Cuba, Iran, North Korea, Syria or the Crimea region of Ukraine; and (b) you are not a person or entity, or owned by, under the control of, or affiliated with, a person or entity (i) that appears on the U.S. Office of Foreign Assets Control's Specially Designated Nationals List, Foreign Sanctions Evaders List or Palestinian Legislative Council List; the U.S. Department of State's Terrorist Exclusion List; the Bureau of Industry and Security's Denied Persons, Entity or Unverified List; the Consolidated List of Targets published by the U.K. HM Treasury; the Consolidated List published by the A.U. Department of Foreign Affairs and Trade; (ii) that is subject to sanctions in any other country; or (iii) that is engaged in the design, development or production of nuclear, biological or chemical weapons, missiles or unmanned aerial vehicles.

6. Release and Indemnification

This is where you agree to cover Nightflyy if you use the Service in a way that causes Nightflyy to be the subject of a legal matter, or to face other claims or expenses, or as otherwise set forth herein, to the extent permitted by applicable laws.

6.1 Release. You hereby agree to release Nightflyy from all damages (whether direct, indirect, incidental, consequential or otherwise), losses, liabilities, costs and expenses of every kind and nature, known and unknown, arising out of a dispute between you and a third party (including other Users) in connection with the Services or any event listed on the Services. In addition, you waive any applicable law or statute, which says, in substance: **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE RELEASED PARTY."**

6.2 Indemnification. You agree to defend, indemnify and hold Nightflyy and each of its and their respective officers, directors, agents, co-branders, licensors, payment processing partners, other partners and employees, harmless from any and all damage (whether direct, indirect, incidental, consequential or otherwise), loss, liability, cost and expense (including, without limitation, reasonable attorneys' and accounting fees) resulting from any claim, demand, suit, proceeding (whether before an arbitrator, court, mediator or otherwise) or investigation made by any third party (each a "Claim") relating to or arising out of: (a) your breach of these Terms (including any terms or agreements or policies incorporated into these Terms); (b) your use of the Services in violation of these Terms or other policies we post or make available; (c) your breach of any applicable local, state, provincial, national or other law, rule or regulation or the rights of any third party; (d) Nightflyy's collection and remission of taxes; and (e) if you are a Promoter, your events (including where Nightflyy has provided Services with respect to those events), provided that in the case of (e) this

indemnification will not apply to the extent that the Claim arises out of Nightflyy's gross negligence or willful misconduct. Nightflyy will provide notice to you of any such Claim, provided that the failure or delay by Nightflyy in providing such notice will not limit your obligations hereunder except to the extent you are materially prejudiced by such failure. Also, in certain circumstances, Nightflyy may choose to handle the Claim ourselves, in which case you agree to cooperate with Nightflyy in any way we request.

7. Disclaimer of Warranties and Assumption of Risks by You

We strive to provide Services in the way you need them, but there are some things that are important for you to understand that we cannot promise.

To the extent permitted by applicable laws, the Services are provided on an "as is" and "as available" basis. **Nightflyy expressly disclaims all warranties of any kind, express or implied, including, but not limited to, implied warranties of merchantability, title, non-infringement and fitness for a particular purpose.** For example, Nightflyy makes no warranty that (a) the Services (or any portion of the Services) will meet your requirements or expectations; (b) the Services will be uninterrupted, timely, secure, or error-free; or (c) the results that may be obtained from the use of the Services will be accurate or reliable.

You acknowledge that Nightflyy has no control over and does not guarantee the quality, safety, accuracy or legality of any event or Content associated with an event, the truth or accuracy of any information provided by Users (including the Consumer's personal information shared with Promoters in connection with events) or the ability of any User to perform or actually complete a transaction. Nightflyy has no responsibility to you for, and hereby disclaims all liability arising from, the acts or omissions of any third parties that Nightflyy requires to provide the Services, that a Promoter chooses to assist with an event, or that you choose to contract with when using the Services.

You understand and agree that some events may carry inherent risk, and by participating in those events, you choose to assume those risks voluntarily. For example, some events may carry risk of illness, bodily injury, disability, or death, and you freely and willfully assume those risks by choosing to participate in those events.

The foregoing disclaimers apply to the maximum extent permitted by law. You may have other statutory rights. However, the duration of statutorily required warranties, if any, will be limited to the maximum extent permitted by law.

8. Limitation of Liability

8.1 To the extent permitted by applicable laws, or as otherwise set forth herein, Nightflyy and any person or entity associated with Nightflyy's provision of the Services (e.g., an affiliate, vendor, strategic partner or employee) ("Associated Parties"), will not be liable to you or any third party for: (a) any indirect, incidental, special, consequential, punitive or exemplary damages, including, but not limited to, damages for loss of profits, goodwill, use, data, opportunity costs, intangible losses, or the cost of substitute services (even if Nightflyy has been advised of the possibility of such damages); or (b) Your Content. Nightflyy is also not liable for third parties or Promoters. In addition, other than the obligation of Nightflyy to pay out Event Registration Fees in certain circumstances to certain Promoters under the Merchant Agreement, and only in accordance with the terms therein, the maximum aggregate liability of Nightflyy or Associated Parties is limited to the following:

a. For Promoters of events with paid tickets, and subject to the terms of the Merchant Agreement, the fees (net of Nightflyy Payment Processing Fees) that you paid us in the three (3) month period immediately preceding the circumstances giving rise to your claim; and

b. For Promoters of events with free tickets only, Consumers or other Users, (1) the total amount of all tickets or registrations that you purchased or made through the Services in the three (3) month period immediately

preceding the circumstances giving rise to your claim; or (2) if you made no such purchases, one hundred U.S. dollars (US \$100).

8.2 Nothing in these Terms is intended to exclude or limit any condition, warranty, right or liability which may not be lawfully excluded or limited. Some jurisdictions do not allow the exclusion of certain warranties or conditions or the limitation or exclusion of liability for loss or damage caused by willful acts, negligence, breach of contract or breach of implied terms, or incidental or consequential damages. Accordingly, only those liability and other limitations which are lawful in your jurisdiction (if any) will apply to you and our liability is limited to the maximum extent permitted by law.

9. IMPORTANT: BINDING ARBITRATION AND CLASS ACTION WAIVER PROVISIONS.

PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS YOUR RIGHTS. ANY DISPUTE OR CLAIM UNDER THESE TERMS OR WITH RESPECT TO THE SERVICES WILL BE SETTLED BY BINDING ARBITRATION OR IN SMALL CLAIMS COURT (TO THE EXTENT THE CLAIM QUALIFIES) AND WILL TAKE PLACE ON AN INDIVIDUAL BASIS ONLY; YOU AGREE THAT CLASS, CONSOLIDATED OR REPRESENTATIVE ARBITRATIONS AND CIVIL ACTIONS ARE NOT PERMITTED AND ANY RIGHTS TO BRING SUCH ACTIONS ARE WAIVED BY EACH PARTY.

The parties understand that, absent this mandatory provision, they would have the right to sue in court and have a jury trial. They further understand that, in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court.

9.1 Contact Us First. If you have a question or concern about the Services, please contact us first. Our customer support team will try to answer your question or resolve your concern.

9.2 Agreement to Arbitrate. In the unlikely event that our customer support team is unable to resolve your concerns, the parties (you and us) each hereby agree to resolve any and all disputes or claims under these Terms, with respect to the Services, or related to our relationship through binding arbitration or in small claims court (to the extent the claim qualifies) instead of in courts of general jurisdiction, and only on an individual basis. In no event may either we or you seek to resolve a dispute with the other as part of any purported class, consolidated or representative proceeding. Binding arbitration is subject to very limited review. Only the arbitrator appointed pursuant to this Section, and not any federal, state or local court will have the authority to resolve any dispute or claim relating to this Section including, without limitation, regarding the scope, enforceability and arbitrability of these Terms. This arbitration provision will survive termination of these Terms. These Terms evidence a transaction in interstate commerce and the interpretation and enforcement of this Section 9 is governed by the Federal Arbitration Act, notwithstanding the choice of law set forth in Section 9(h) below.

9.3 Scope of Agreement. This agreement to arbitrate is intended to be broadly interpreted as to legal disputes between you and us. It includes, but is not limited to: (i) all claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; (ii) all claims that arose before this or any prior agreement (including, but not limited to, claims relating to advertising); and (iii) all claims that may arise after termination of these Terms and/or your use of the Services.

9.4 Exceptions. Notwithstanding this Agreement to arbitrate, either party may (i) bring an action on an individual basis in small claims court (to the extent the applicable claim qualifies); or (ii) bring enforcement actions, validity determinations or claims arising from or relating to theft, piracy or unauthorized use of intellectual property in state or federal court in the U.S. Patent or Trademark Office to protect its Intellectual Property Rights ("Intellectual Property Rights" means patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights). In addition, the portion of any dispute or complaint relating to our

participation in the US-EU or US-Swiss Privacy Shield Frameworks is subject to the Dispute Resolution section of our Privacy Policy before being subject to this Section.

9.5 No Class Actions. YOU AND NIGHTFLY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, CONSOLIDATED OR REPRESENTATIVE PROCEEDING. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, MAY NOT PRESIDE OVER ANY FORM OF CLASS, CONSOLIDATED OR REPRESENTATIVE PROCEEDING AND MAY ONLY PROVIDE RELIEF IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT PARTY'S INDIVIDUAL CLAIM.

9.6 Notice of Dispute. A party who intends to seek arbitration must first email to the other a written Notice of Dispute ("Notice"). The Notice to Nightfly must be sent via email to legal@nightfly.com. Notice to you will be delivered to the email address that is on record with Nightfly. The Notice must (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought. If Nightfly and you do not reach an agreement to resolve the claim within sixty (60) calendar days after the Notice is received, you or Nightfly may commence an arbitration proceeding.

9.7 Arbitration Proceedings. The arbitration will be governed by the Commercial Arbitration Rules, or, if the actions giving rise to the dispute or claim relate to your personal or household use of the Services (rather than business use), the Consumer Arbitration Rules (in each case, the "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Section 9, and will be administered by the AAA and settled by a single arbitrator. (The AAA Rules are also available by calling the AAA at 1-800-778-7879.) All issues in dispute between the parties are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability of this Section 9.

9.8 Location of Arbitration Proceedings. If you are a Consumer, any arbitration hearings will take place (at your option) either in the county of your residence or by phone, except if you are a Consumer whose residence is outside of the United States. In that instance, the hearing will take place either in Rochester, NY or by phone or videoconference, at your option and as permitted by the AAA Rules. If you are a business (i.e., your use of the Services were for commercial use), then unless Nightfly and you agree otherwise, any arbitration hearings will take place in a reasonably convenient location in the United States for both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, AAA will determine the location. If your claim is for ten thousand dollars (\$10,000) or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds ten thousand dollars (\$10,000), the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator will issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. All decisions by the arbitrator will be final and binding and judgment on the award rendered may be entered in any court having jurisdiction.

9.9 Costs of Arbitration; Legal Fees.

a. Payment of Costs and Expenses. Payment of all filing, administration, and arbitrator costs and expenses imposed by AAA will be governed by the AAA rules, provided that if you are initiating an arbitration against Nightfly and the value of the relief sought is ten thousand dollars (\$10,000) or less, then Nightfly will advance all filing, administrative and arbitration costs and expenses imposed by AAA (subject to reimbursement as set forth below). Further, if the circumstances in the preceding sentence apply and your claim arises from your use of the Services as a Consumer, but the value of relief sought is more than ten thousand

dollars (\$10,000) and you demonstrate to the arbitrator that such costs and expenses would be more expensive than a court proceeding, then Nightflyy will pay the amount of any such costs and expenses. In the event that the arbitrator determines that all of the claims you assert in arbitration are frivolous according to Federal Rule of Civil Procedure 11, you agree to reimburse Nightflyy for all such cost and expenses that Nightflyy paid and that you would have been obligated to pay under the AAA rules.

b. Payment of Legal Fees. Just as in any court proceeding, each party will initially bear its own attorneys' fees and expenses in connection with any arbitration. Should either party be determined to have substantially prevailed in the arbitration, then upon such party's request, the arbitrator will award such prevailing party the reasonable attorneys' fees and expenses that it incurred in connection with the arbitration, provided that to the extent that the dispute or claim relate to your personal or household use of the Services (rather than business use) Nightflyy will not seek to recover its attorneys' fees and expenses in an arbitration initiated by you. The arbitrator may make rulings and resolve disputes as to the reimbursement of attorneys' fees and expenses upon request from either party made within fourteen (14) days of the arbitrator's ruling on the merits.

c. Future Changes. Notwithstanding any provision in these Terms to the contrary, you and Nightflyy agree that if Nightflyy makes any future change to this arbitration provision (other than a change to the Notice Address) Nightflyy will provide you with notice of such change and you may reject any such change by sending us written notice within thirty (30) calendar days of the change to the Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision as unmodified by such rejected change.

9.10 Special Severability. In the event that any provisions of this Section 9 are found to be invalid or unenforceable for any dispute or claim, then, the entirety of this Section 9 will be null and void with respect to such dispute or claim and Section 23 will apply in lieu of this Section 9.

9.11 Opt Out. You have the right to opt out and not be bound by the arbitration or class action waiver provisions set forth above by sending (from the email address we associate with you as a User) written notice of your decision to opt-out to legal@nightflyy.com with the subject line, "ARBITRATION AND CLASS ACTION WAIVER OPT-OUT." The notice must be sent within thirty (30) days of your first use of the Services or your agreement to these Terms (whichever is later); otherwise, you will be bound to arbitrate disputes in accordance with the terms of those paragraphs. Note that if you opt out of these arbitration provisions, Nightflyy also will not be bound by them.

10. License to the Nightflyy Services

10.1 License to Services. We grant you a limited, non-exclusive, non-transferable, non-sublicensable (except to sub-Users registered via the Services), revocable right to use our Services solely to (a) browse the Services and search for, view, register for or purchase tickets or registrations to an event listed on the Services; and/or (b) create event registration, Promoter profile and other webpages to promote, market, manage, track, and collect sales proceeds for an event. Your use of the Services must be in compliance with these Terms and in compliance with all applicable local, state, provincial, national and other laws, rules and regulations. In addition, by using any search functionality or address auto-population tools, you are bound by the [Google Maps/Google Earth Additional Terms of Service](#) (including the [Google Privacy Policy](#)).

10.2 Restrictions on Your License. Without limitations on other restrictions, limitations and prohibitions that we impose (in these Terms or elsewhere), you agree you will not directly or indirectly (a) copy, modify, reproduce, translate, localize, port or otherwise create derivatives of any part of the Services; (b) reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or structure, sequence and organization of all or any part of the Services; (c) rent, lease, resell, distribute, use the Services for other commercial purposes not contemplated or otherwise exploit the Services in any unauthorized manner; (d)

remove or alter any proprietary notices on the Services; or (e) engage in any activity that interferes with or disrupts the Services.

10.3 Our Intellectual Property and Copyrights. You agree that all Site Content may be protected by copyrights, trademarks, service marks, trade secrets or other intellectual property and other proprietary rights and laws. Nightfly may own the Site Content or portions of the Site Content may be made available to Nightfly through arrangements with third parties. Site Content included in or made available through the Services is the exclusive property of Nightfly and is protected by copyright laws. You agree to use the Site Content only for purposes that are permitted by these Terms and any applicable local, state, provincial, national or other law, rule or regulation. Any rights not expressly granted herein are reserved.

10.4 Trademarks. The trademarks, service marks and logos of Nightfly (the "Nightfly Trademarks") used and displayed in connection with the Services are registered and unregistered trademarks or service marks of Nightfly. Other company, product and service names used in connection with the Services may be trademarks or service marks owned by third parties (the "Third Party Trademarks," and, collectively with Nightfly Trademarks, the "Trademarks"). The offering of the Services will not be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Trademark displayed in connection with the Services without the prior written consent of Nightfly specific for each such use. The Trademarks may not be used to disparage Nightfly, any third party or Nightfly's or such third party's products or services, or in any manner that may damage any goodwill in the Trademarks. Use of any Trademarks as part of a link to or from any site is prohibited unless Nightfly approves the establishment of such a link by prior written consent specific for each such link. All goodwill generated from the use of any Nightfly Trademark will inure to Nightfly's benefit. A number of patents pending apply to the Services. Site Content may also be protected by copyrights owned by Nightfly and/or third parties. Please note that if you copy portions of the Services you are violating these patent rights and copyrights.

11. Licenses and Permits Promoters Must Obtain

If you are an Promoter, without limiting the generality of any representations or warranties provided elsewhere in these Terms of Service, you represent and warrant to us that:

- (a) You and your affiliates will obtain, prior to the start of ticket sales, all applicable licenses, permits, and authorizations (individually and collectively, "Licensure") with respect to events hosted by you or your affiliates on the Services. Licensure includes but is not limited to property operation permits and fire marshal permits;
- (b) You and your affiliates will comply, and will ensure that the venues for each event hosted by you or your affiliates on the Services will comply, with all applicable laws, regulations, rules and ordinances;
- (c) You will only request that Nightfly offer tickets to an event after you have obtained any specific Licensures for such event, including, but not limited to, any state, county, municipal or other local authority's authorization of the event, traffic engineering authorizations, fire department inspection reports, authorization to receive minors (if applicable), sanitary authorization (if applicable), and any other potential applicable authorization; and you and your affiliates will maintain in force throughout the term of access to the Service the applicable Licensure for Promoter to promote, produce, sponsor, host and sell tickets for all events hosted by you or your affiliates on the Services;
- (d) Without limiting the generality of any release provided under these Terms of Service, as a material inducement to Nightfly permitting you to access and use the Services, you hereby agree to release Nightfly, and its affiliates and subsidiaries, and each of its and their respective parent companies, subsidiaries, officers, affiliates, representatives, shareholders, contractors, directors, agents, partners and employees from all damages (whether direct, indirect, incidental, consequential or otherwise), losses, liabilities, costs and expenses of every kind and nature, including, without limitation, attorneys' fees, known and unknown, arising out of or in any way

connected with your or your affiliates' Licensure, any failure to obtain or maintain any Licensure, or any error in obtaining or maintaining any Licensure; and

(e) Without limiting your indemnification obligations elsewhere under these Terms of Service, you agree to defend, indemnify and hold Nightflyy, and its affiliates and subsidiaries, and each of its and their respective officers, directors, agents, co-branders, licensors, payment processing partners, other partners and employees, harmless from any and all damage (whether direct, indirect, incidental, consequential or otherwise), loss, liability, cost and expense (including, without limitation, reasonable attorneys' and accounting fees) resulting from any Claim due to or arising out of your or your affiliates' Licensure, any failure to obtain or maintain any Licensure, or any error in obtaining or maintaining any Licensure. You agree to provide evidence of Licensure and related information prior to offering tickets or registrations for events on the Site and promptly upon the reasonable request of Nightflyy from time to time.

12. Your Rights to Submit a Copyright Takedown Notice

If you are a copyright owner or an agent of a copyright owner and you believe that any content on the Sites infringes your copyrights, you may submit a notice pursuant to the Digital Millennium Copyright Act ("DMCA") by following the directions we provided in Nightflyy's Trademark and Copyright Policy.

13. Scraping or Commercial Use of Site Content is Prohibited

The Site Content is not intended for your commercial use. You have no right to use, and agree not to use, any Site Content for your own commercial purposes. You have no right to, and agree not to scrape, crawl, or employ any automated means to extract data from the Site(s).

14. Fees and Refunds

14.1 Fees That We Charge. Creating an account, listing an event and accessing the Services are free.

14.2 Ticket Transfers. If you wish to transfer tickets to an event you have purchased on Nightflyy, please contact the Promoter of the event to arrange for ticket transfer.

14.3 Refunds. Because all transactions are between a Promoter and its respective attendees, Nightflyy asks that all Consumers contact the applicable Promoter of their event with any refund requests.

a. Consumers. If you are a Consumer, you acknowledge that should you receive a refund for your ticket, you will discard any ticket that we or any Promoter has delivered, and will not use it (or any copy of it) to attend the event. Violation of the foregoing constitutes fraud. You acknowledge that the applicable procedure to check the validity of the ticket must always be followed. Nightflyy will not be held liable under any circumstances for any costs arising from non-compliance by Promoters with applicable procedures that must be implemented by Promoters to check validity of tickets. Nightflyy will not be held liable under any circumstances for costs and/or damage associated with tickets arising from situations with fraud and/or for damage associated with the purchase of the ticket through non-official means, such as third parties.

b. Promoters. If you are a Promoter, you acknowledge that the applicable procedure to check the validity of the ticket must always be followed. Nightflyy will not be held liable under any circumstances for any costs arising from non-compliance by Promoters with applicable procedures that must be implemented by Promoters to check validity of tickets. Nightflyy will not be held liable under any circumstances for costs and/or damage associated with tickets arising from situations with fraud and/or for damage associated with the purchase of the ticket through non-official means, such as third parties.

15. Your Account with Nightflyy

We require you to create an account to access features and/or functions of the Services. You agree to follow certain rules when you create an account with Nightflyy and use the Services, including the following:

- (a) You must be at least 18 years of age, or the legal age of majority where you reside, to use the Services. If you are 13 or older, you may only use the Services under the supervisions of a parent or legal guardian who manages your use and/or account. However, if you are under 13, please do not provide us with any information about yourself.
- (b) You agree to provide true, accurate, current and complete information about yourself, or if you are using the Services on behalf of an entity, the entity (the "Registration Data"). You also agree to update this Registration Data if it changes.
- (c) If there is a dispute between two or more persons or entities as to account ownership, Nightflyy will be the sole arbiter of that dispute and Nightflyy's decision (which may include termination or suspension of the account) will be final and binding on those parties.
- (d) If you are using the Services on behalf of a company or other entity, you represent and warrant that you have the authority to legally bind that entity and grant Nightflyy all permissions and licenses provided in these Terms.
- (e) We may provide you the ability to implement certain permission within your account to third parties including, "sub-users," "sub-accounts," or other credentialed account users. If we do so, you agree that you are solely responsible for all activity that occurs under your account (including actions by sub-users), so you must maintain the confidentiality of your password and account details. You likewise agree that all rules applicable to your account will apply to all third parties to whom you grant access to your account.
- (f) You agree to immediately notify Nightflyy of any unauthorized use of your password or account or any other breach of security. You are responsible for (and we will hold you responsible for) any activities that occur under your account.

16. Our Community Guidelines

You agree to abide by the Nightflyy Community Guidelines whenever you use or access our Services. Please read these carefully, as they affect what types of content and conduct are permitted on and through the Nightflyy Services.

17. Your Content

17.1 License. Nightflyy does not make any claim to Your Content. However, you are solely responsible for Your Content. You hereby grant Nightflyy a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, transferable, sublicensable right and license to access, use, reproduce, transmit, adapt, modify, perform, display, distribute, translate, publish and create derivative works based on Your Content, in whole or in part, in any media, for the purpose of operating the Services (including Nightflyy's promotional and marketing services, which may include without limitation, promotion of your event on a third party website), and you hereby waive any and all moral right to use the name you submit with Your Content. Notwithstanding the foregoing, Nightflyy does not claim, and you do not transfer, any ownership rights in any of Your Content and nothing in these Terms of Service will restrict any rights that you may have to use and exploit Your Content outside of the Services.

17.2 Your Representations About Your Content. You represent and warrant that you have all the rights, power and authority necessary to grant the foregoing license, and that all Your Content (a) does not infringe, violate,

misappropriate or otherwise conflict with the rights of any third party; (b) complies with all applicable local, state, provincial, national and other laws, rules and regulations; and (c) does not violate these Terms.

17.3 Additional Rules About Your Content. Your Content must be accurate and truthful. Nightflyy reserves the right to remove Your Content from the Services if Nightflyy believes in its sole discretion that it violates these Terms, our Community Guidelines, or for any other reason. Nightflyy may use your name and logo (whether or not you have made it available through the Services) for the purpose of identifying you as an existing or past customer of Nightflyy both on the Services and in marketing, advertising and promotional materials. We likewise may preserve Your Content and account information and may also disclose Your Content and account information if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to (a) comply with legal process; (b) respond to claims that any of Your Content violates the rights of third parties; (c) enforce or administer the Terms of Service, including without limitation, these Terms of Service; and/or (d) protect the rights, property and/or personal safety of Nightflyy, its users and/or the public, including fraud prevention. You understand that the technical processing and transmission of the Services, including Your Content, may involve transmissions over various networks and/or changes to conform and adapt to technical requirements of connecting networks or devices.

18. Email and Direct Message Features

Nightflyy may make available to you features and tools that allow you to contact Venues via email (the "Email Feature"), and Promoters and other Consumers via an in-app Direct Message ("DM Feature") feature.

Using the Email Feature will take you to a third-party site. Nightflyy is not responsible for the third party's website(s) or resources. Furthermore, Nightflyy does not endorse and is not responsible or liable for any Content, advertising, offers, products, services or other materials on or available from such websites or resources, or any damages or losses related thereto, even if such websites or resources are connected with Nightflyy partners or third party service providers.

Additionally, Nightflyy is not responsible or liable for any Promoter's and/or Consumer's use of the DM Feature.

19. Notices

Notices to you may be sent via email to the email address in Nightflyy's records. The Services may also provide notices of changes to these Terms or other matters by displaying notices or links to notices to you generally on the Services. If you wish to contact Nightflyy or deliver any notice, you can do so at Slyde Lyfe, LLC, via email to support@nightflyy.com.

20. Modifications to the Terms or Services

Nightflyy reserves the right to modify these Terms from time to time (collectively, "Modifications").

If we believe the Modifications are material, we will inform you about them by doing one (or more) of the following: (a) posting the changes through the Services; (b) updating the "Updated" date at the top of this page; or (c) sending you an email or message about the Modifications. Modifications that are material will be effective thirty (30) days following the "Updated" date or such other date as communicated in any other notice to you.

Modifications that are simply addressing new functions we add to the Services or which do not impose any additional burdens or obligations on you will be effective immediately. You are responsible for reviewing and becoming familiar with any Modifications. Your continued use of the Services following Modifications constitutes your acceptance of those Modifications and the updated Terms. In certain circumstances, Nightflyy may seek a Modification to these Terms that will only apply to you. This type of Modification must be accomplished by way of a written or electronic document signed by you and an authorized officer of Nightflyy.

Nightflyy is constantly evolving our products and services to better meet the needs of our Users. Because of this, we cannot guarantee the availability of certain product features or functionality. Nightflyy reserves the right to modify, replace or discontinue any part of the Services or the entire Service.

21. Assignment

We may, without your consent or approval, freely assign these Terms and our rights and obligations under these Terms whether to an affiliate or to another entity in connection with a corporate transaction or otherwise.

22. Entire Agreement

Except as otherwise set forth herein, these Terms constitute the entire agreement between you and Nightflyy and govern your use of the Services, superseding any prior or contemporaneous agreements, proposals, discussions or communications between you and Nightflyy on the subject matter hereof, other than any written agreement for Services between you and an authorized officer of Nightflyy relating to a specified event or events.

23. Applicable Law and Jurisdiction

These Terms are governed by the laws of the State of New York, without regard to its conflict of laws rules. These laws will apply no matter where in the world you live. But if you live outside of the United States, you may be entitled to the protection of the mandatory consumer protection provisions of your local consumer protection law. Nightflyy is based in Rochester, New York, and any legal action against Nightflyy related to our Services and that is not precluded by the arbitration provisions in these Terms must be filed and take place in Rochester. Thus, for any actions not subject to arbitration, you and Nightflyy agree to submit to the personal jurisdiction of the federal or state courts (as applicable) located in Monroe County, New York.

24. Feedback

We welcome and encourage you to provide feedback, comments and suggestions for improvements to the Services ("Feedback"). Any Feedback you submit to us will be considered non-confidential and non-proprietary to you. By submitting Feedback to us, you grant us a non-exclusive, worldwide, royalty-free, irrevocable, sub-licensable, perpetual license to use and publish those ideas and materials for any purpose, without compensation to you.

25. Third Party Websites; Linked Accounts; Third Party Offers

The Services may provide, or Users may provide, links to other Internet websites or resources. Because Nightflyy has no control over such websites and resources, you acknowledge and agree that Nightflyy is not responsible for the availability of such websites or resources, and does not endorse and is not responsible or liable for any Content, advertising, offers, products, services or other materials on or available from such websites or resources, or any damages or losses related thereto, even if such websites or resources are connected with Nightflyy partners or third party service providers.

26. Additional Miscellaneous Provisions

Our failure to enforce any part of these Terms will not constitute a waiver of our right to later enforce that or any other part of these Terms. No oral waiver, amendment or modification of these Terms will be effective.

If any provision of these Terms is found to be unenforceable, that part will be limited to the minimum extent necessary; the other provisions of these Terms remain in full force and effect.

Section titles in these Terms are for convenience and have no legal or contractual effect.

No independent contractor, agency, partnership, joint venture or other such relationship is created by these Terms.

We may freely assign any of our rights and obligations under these Terms.

We may translate these Terms into other languages for your convenience. If there is a conflict between the English version and a translated version, the English version will control.