

# Motorvate, Inc. Terms of Use

Last updated February 22, 2017

## Introduction

MOTORVATE, Inc. (“**MOTORVATE**”, or “**we**”) is a social discovery automotive mobile platform that personalizes sales, news, alerts, events, mechanics and local shops in your community based on your vehicle. We provide our users the ability to view material created by our community of users and to view automotive and related content, from both social networking services (“**SNSs**”) in particular, and the Internet in general. The services offered by MOTORVATE include our software applications (including any updates, new versions or new releases thereof), including, but not limited to, applications for mobile devices such as Apple’s iPad, iPod, and iPhone (each a “**MOTORVATE Application**”), our website located at [www.MOTORVATE.me](http://www.MOTORVATE.me) (the “**Site**”), and any other services offered by MOTORVATE in connection with our MOTORVATE Application or the Site (any and all of the foregoing are referred to as the “**Services**”). The Services do not include any SNS or other third-party service you interact with via the Services.

Please read the following terms and conditions (“**Terms of Use**”) carefully. These Terms of Use govern your access to and use of the Site, Services and MOTORVATE Content (defined below) and set forth the legally binding terms for your use of the Site, Services and MOTORVATE Content, whether or not you are a MOTORVATE App User (defined below) or a visitor of the Site.

A “**MOTORVATE App User**” is a person who has downloaded and installed a copy of the MOTORVATE Application.

**SPECIAL NOTE TO MOTORVATE APP USERS:** Without limiting any other terms of these Terms of Use, by using an SNS via the Services you understand and agree that MOTORVATE, as an agent on your behalf, will access and store your SNS account information and content so that they are available to you through your use of the MOTORVATE Application and you give MOTORVATE permission to do so. You agree that any content that you submit to an SNS while using the Services may be stored by MOTORVATE at your direction, although MOTORVATE does not undertake any obligations to maintain such submissions.

Certain areas of the Site and Services (and your access to or use of MOTORVATE Content) may have different terms and conditions posted or may require you to agree to and accept additional terms and conditions or to register for certain uses of the Site or Services. If there is a conflict between these Terms of Use and terms and conditions posted for a specific area of the Site, Services or MOTORVATE Content, the latter terms and conditions will take precedence

with respect to your use of or access to that area of the Site, Services or MOTORVATE Content.

**YOU ACKNOWLEDGE AND AGREE THAT BY ACCESSING OR USING THE MOTORVATE APPLICATION, SITE, OR SERVICES, BY DOWNLOADING THE MOTORVATE APPLICATION TO ANY DEVICE OR POSTING OR ACCESSING ANY CONTENT ON THE SITE OR THROUGH THE SERVICES, YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS OF USE. IF YOU DO NOT AGREE TO THESE TERMS OF USE, THEN YOU HAVE NO RIGHT TO ACCESS OR USE THE SITE, SERVICES OR MOTORVATE CONTENT.**

### **Modification**

MOTORVATE reserves the right, in its sole discretion, to modify, discontinue or terminate the Site or Services or to modify these Terms of Use, at any time and without prior notice. If we modify these Terms of Use, we will post the modification on the Site or within the MOTORVATE Application or otherwise provide you with notice of the modification. The date of most recent revision shall be noted at the beginning of these Terms of Use. By continuing to access or use the Site or Services (including any MOTORVATE Application) after we have posted a modification to these Terms of Use or have provided you with notice of a modification, you are indicating that you agree to be bound by the modified Terms of Use. If the modified Terms of Use are not acceptable to you, your only recourse is to cease using the Site and Services. Notwithstanding the preceding sentences of this paragraph, no revisions to these Terms of Use will apply to any dispute between you and MOTORVATE that arose prior to the date of such revision. These Terms of Use may only be modified in writing as set forth in this paragraph, and may not be modified orally.

### **Eligibility and Access**

The Site, Services and MOTORVATE Content are intended solely for persons who are 13 or older. Any access to or use of the Site, Services and MOTORVATE Content by anyone under 13 is expressly prohibited. By accessing or using the Site, Services and MOTORVATE Content you represent and warrant that you are 18 or older or, if younger than 18, are at least 13 or older and have a parent's or guardian's permission to access or use the Site, Services and MOTORVATE Content.

In order to use certain current or future portions or functionalities of the Site, Services or MOTORVATE Content, you may be required to register for a username and password (a "**MOTORVATE Account**"). MOTORVATE reserves the right to reject any user name selected by you and/or revoke your right to any previously selected user name and give such user name to any other person or entity in MOTORVATE's sole discretion and without any liability to you. You are responsible for maintaining the confidentiality of your MOTORVATE Account credentials in order to use the Services, and are fully responsible for all activities that occur through the use of your credentials. You should use a robust password to protect your

MOTORVATE Account through a combination of upper and lower case letters, numbers and other characters. You agree to notify MOTORVATE immediately of any unauthorized use of your MOTORVATE Account credentials or any other breach of security with respect to your MOTORVATE Account. MOTORVATE will not be liable for any loss or damage arising from unauthorized use of your MOTORVATE Account credentials prior to you notifying MOTORVATE of such unauthorized use or loss of your credentials.

You agree to provide accurate, current, complete, and non-misleading information to MOTORVATE in connection with your creation of a MOTORVATE Account and during your use of the Site and Services. MOTORVATE reserves the right to suspend or terminate your access to the Site and Services if any information provided to MOTORVATE in connection with your MOTORVATE Account or use of the Site and Services proves to be inaccurate, not current, incomplete or misleading. If messages sent to an email address provided by you and associated to your MOTORVATE Account are returned as undeliverable, MOTORVATE reserves the right to terminate your account immediately with or without notice to you and without any liability to you or any third party. You agree that you will not use the MOTORVATE Application to access or use third party services to which you do not have the right to access. If you are not a MOTORVATE App User, then you may be permitted to browse all areas of the Site or use the parts of the Services that are not limited to MOTORVATE App Users only, except as otherwise limited by the functionalities of the Site or Services (e.g., a MOTORVATE Account may be required for access to certain Services).

### **Third Party Materials and Agreements**

You may be able to access, review, display or use third party services, resources, content or information ("**Third Party Materials**") via the Services. By using the MOTORVATE Application to find material on the Internet, you instruct MOTORVATE to present portions of the data sources that you have selected. You acknowledge sole responsibility for and assume all risk arising from your access to, use of or reliance upon any such Third Party Materials, and MOTORVATE disclaims any liability that you may incur arising from your access to, use of or reliance upon such Third Party Materials or User Content (defined below) via a MOTORVATE Application. You acknowledge and agree that MOTORVATE: (a) is not responsible for the availability or accuracy of such Third Party Materials or the products or services on or available from such Third Party Materials; (b) has no liability to you or any third party for any harm, injuries or losses suffered as a result of your access to or use of such Third Party Materials; and (c) does not make any promises to remove Third Party Materials from being accessed through the Services. Your ability to access or link to Third Party Materials or third party services (including any SNS) does not imply any endorsement by MOTORVATE of Third Party Materials or any such third party services.

These Terms of Use do not authorize you to, and you may not, reproduce, distribute, publicly display, publicly perform, communicate to the public, make available, create derivative works of or otherwise use or exploit any Third Party Materials except as expressly permitted by the

Application as authorized by MOTORVATE, and the owners of such Third Party Materials may have the right to seek damages against you for any unauthorized use of their Third Party Materials.

## **Privacy**

By using the Services you are subject to MOTORVATE's Privacy Policy located at [www.motorvate.me](http://www.motorvate.me), which is hereby incorporated into and made part of these Terms of Use. The Privacy Policy provides information and notices concerning MOTORVATE's collection and use of your personal information. If you have any questions about the MOTORVATE Privacy Policy, then please contact MOTORVATE at [support@MOTORVATE.me](mailto:support@MOTORVATE.me).

Certain types of content are made available through the Site and Services. "**MOTORVATE Content**" means MOTORVATE proprietary content, including but not limited to, MOTORVATE trademarks and logos, made available through the Site and Services, excluding Third Party Materials and User Content. "**User Content**" means the text, data, graphics, images, photos, video or audiovisual content, hypertext links and any other content that a MOTORVATE user provides directly to MOTORVATE via the Site and Services, as applicable.

## **Ownership**

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## **MOTORVATE Application License**

**License Grant.** Subject to your compliance with the terms and conditions of these Terms of Use, MOTORVATE grants you a limited, non-exclusive, non-transferable license, without the right to sublicense, to download and install a copy of the MOTORVATE Application onto any authorized device you own and control, and run such copy of the MOTORVATE Application solely for your personal, non-commercial use. Furthermore, with respect to any iTunes Store Sourced App (defined below) you will only use the iTunes Store Sourced App as permitted by the "Usage Rules" set forth in the Apple App Store Terms of Service. MOTORVATE reserves all rights in the MOTORVATE Application not expressly granted to you in these Terms of Use.

**Restrictions.** Except as expressly specified in these Terms of Use, you may not (a) copy or modify the MOTORVATE Application, including, but not limited to, adding new features or

otherwise making adaptations that alter the functioning of the MOTORVATE Application; (b) transfer, sell, rent, lease, distribute, sublicense or otherwise assign any rights to, or any portion of, the MOTORVATE Application to any third party; or (c) make the functionality of the MOTORVATE Application available to multiple users through any means, including, but not limited to, distribution of the MOTORVATE Application or by uploading the MOTORVATE Application to a network or file-sharing service or through any hosting, application services provider or any other type of service. The MOTORVATE Application contains trade secrets, and in order to protect those secrets you agree not to disassemble, decompile or reverse engineer the MOTORVATE Application, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition. You will comply with any technical restrictions in the MOTORVATE Application that allow you to use the MOTORVATE Application only in certain ways.

**Updates and Upgrades; No Obligation.** MOTORVATE is not obligated to maintain or support the MOTORVATE Application, to provide all or any specific content through the MOTORVATE Application, or to provide you with updates, upgrades or services related thereto. You acknowledge that MOTORVATE may from time to time in its sole discretion issue updates or upgrades to the MOTORVATE Application, disable access to the MOTORVATE Application for any period of time or permanently, and may automatically update or upgrade the version of the MOTORVATE Application that you are using on your mobile device. You consent to such automatic updating or upgrading on your mobile device, and agree that the terms and conditions of these Terms of Use will apply to all such updates or upgrades. MOTORVATE shall have no liability to you arising out of any unavailability of the MOTORVATE Application.

**Term and Termination.** The license to the MOTORVATE Application granted under these Terms of Use remains in effect for a period of 75 years, unless earlier terminated by you or MOTORVATE in accordance with this provision. You may terminate the license at any time by destroying all copies of the MOTORVATE Application in your possession or control. Without limiting any other terms of these Terms of Use, the license will automatically terminate without notice from MOTORVATE if you breach any terms of these Terms of Use. Upon any termination of these Terms of Use, you must cease all use of the MOTORVATE Application and promptly delete and destroy all copies, full or partial, of the MOTORVATE Application.

**Proprietary Rights.** The copy of the MOTORVATE Application is licensed, not sold, to you. You agree that MOTORVATE and its licensors own all right, title and interest in and to the MOTORVATE Application, including all intellectual property rights therein, and that MOTORVATE retains ownership of all copies of the MOTORVATE Application even after installation on your mobile device.

**Export Control.** You may not use, export, re-export, import, or transfer the MOTORVATE Application except as authorized by United States law, the laws of the jurisdiction in which you obtained the MOTORVATE Application, and any other applicable Laws. In particular, but without

limitation, the MOTORVATE Application may not be exported or re-exported: (a) into any United States embargoed countries; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using the MOTORVATE Application, you represent and warrant that you are not located in any such country or on any such list. You also will not use the MOTORVATE Application for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons.

**iTunes.** You agree to the Apple iTunes Terms of Service if you download a MOTORVATE Application from the iTunes Store.

## **User Content**

By making available any User Content through the Site and Services, you hereby grant to MOTORVATE a worldwide, non-exclusive, transferable, assignable, royalty-free license, with the right to sublicense, to use, copy, adapt, modify, distribute, publicly display, publicly perform, transmit, stream, broadcast, make available, communicate to the public, and otherwise use and exploit (collectively, "**Use**") such User Content only on, through or by means of the Site and the Services. MOTORVATE does not claim any ownership rights in any such User Content and nothing in these Terms of Use will be deemed to restrict any rights that you may have to Use any such User Content. Licenses granted with respect to any photographs, artwork or images uploaded by you will terminate within 90 days following your deletion of such User Content from the Services or the termination of your MOTORVATE Account, but the license granted by you with respect to any other User Content, including, but not limited to, any comments regarding any aspect of the Services or communications with another user of the Services, will be perpetual and irrevocable. Notwithstanding the preceding sentence, you hereby acknowledge and agree that MOTORVATE shall not be liable for any Uses of your User Content by any third party that had access to your User Content during the period in which your User Content was available on or through the Services.

You acknowledge and agree that you are solely responsible for all User Content that you make available through the Site or Services. Accordingly, you represent and warrant that: (a) you either are the sole and exclusive owner of all User Content that you make available through the Site or Services or you have all rights, licenses, consents, and releases that are necessary to grant to MOTORVATE the rights in such User Content, as contemplated under these Terms of Use; (b) neither the User Content nor your accessing, posting, submission or transmittal of the User Content or MOTORVATE's Use of the User Content (or any portion thereof) on, through or by means of the Site and the Services will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation; and (c) no payments of any kind shall be due to any third party, whether a copyright owner or an agent thereof, for any Use made of the User Content (or any portion thereof) on, through or by means of the Site and the Services.

## **Copyrighted Materials: No Infringing Use**

You will not use the Site or Services to offer, display, distribute, transmit, route, provide connections to or store any material that infringes copyrighted works or otherwise violates or promotes the violation of the intellectual property rights of any third party.

## **Feedback**

We welcome and encourage you to provide feedback, comments and suggestions for improvements to the Site and Services ("**Feedback**"). You may submit Feedback by emailing us at support@MOTORVATE.me. You acknowledge and agree that all Feedback will be the sole and exclusive property of MOTORVATE and you hereby irrevocably assign to MOTORVATE and agree to irrevocably assign to MOTORVATE all of your right, title, and interest in and to all Feedback, including without limitation, all worldwide patent rights, copyright rights, trade secret rights, and other proprietary or intellectual property rights therein. At MOTORVATE's request and expense, you will execute documents and take such further acts as MOTORVATE may reasonably request to assist MOTORVATE to acquire, perfect, and maintain its intellectual property rights and other legal protections for the Feedback.

## **Interactions between Users**

You are solely responsible for your interactions (including any disputes) with other users. You understand that MOTORVATE does not in any way screen MOTORVATE users. You are solely responsible for, and will exercise caution, discretion, common sense and judgment in, using the Site and Services and disclosing personal information to other MOTORVATE users. You agree to take reasonable precautions in all interactions with other MOTORVATE users, particularly if you decide to communicate with MOTORVATE user offline or meet them in person. Your use of the Site, Services, MOTORVATE Content, and any other content made available through the Site or Services is at your sole risk and discretion, and MOTORVATE hereby disclaims any and all liability to you or any third party relating thereto. MOTORVATE reserves the right to contact MOTORVATE users, in compliance with applicable law, in order to evaluate compliance with the rules and policies in these Terms of Use. You will cooperate fully with MOTORVATE to investigate any suspected unlawful, fraudulent or improper activity via the Services.

## **Mapping Services**

Your use of any mapping services that are part of or integrated into the Services through Third Parties such as Apple Maps are at your sole risk and that such mapping services are provided "as is" and "as available." In Particular, we do not represent or warrant to you that:

- (a) your use of mapping services will meet your requirements;
- (b) your use of mapping services will be uninterrupted, timely, secure, or free from error:

(c) the information obtained by you as a result of the use of the service will be accurate or reliable, and

(d) that defects in the operation or functionality of any software provided to you as part of the service will be corrected.

### **Shops Feature**

By using the shops feature you agree to the following provisions:

(a) Motorvate is not responsible for the information accuracy or the quality/quantity of products/services offered by a shop.

(b) If you create a shop listing, you are the owner of the shop or an official representative of the shop.

(c) Motorvate can delete, modify, and assign to another user a shop listing at any time without notice to you.

(d) When leaving a shop review, you will be honest and truthful in your experience with the shop.

(e) Motorvate can delete a shop review at any time without notice to the shop owner or user who left the review.

### **Market Feature**

By using the market feature you agree to the following provisions:

(a) Motorvate is not responsible for the information accuracy or the quality/quantity of products/services offered in market listing.

(b) Motorvate can delete, modify, and assign to another user a market listing at any time without notice to you.

(c) You create or engage in market listing transactions outside of the Motorvate application at your own risk.

### **Events Feature**

By using the events feature you agree to the following provisions:

(a) Motorvate is not responsible for the information accuracy offered in a event listing.

(b) If you create a event listing, you are the owner of the event or an official representative of the event.

(c) Motorvate can delete, modify, and assign to another user a event listing at any time without notice to you.

(d) You engage or participate in events outside of the Motorvate application at your own risk.

## **General Prohibitions**

**You agree not to do any of the following while using the Site, Services or MOTORVATE Content:**

- **Access, post, submit or transmit any text, graphics, images, software, music, audio, video, information or other material that: (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy, including, but not limited to, in any Third Party Materials; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, vulgar, offensive, shocking or objectionable; (v) constitutes child pornography or child erotica; (vi) promotes pornography, discrimination, bigotry, racism, hatred, harassment or harm against any individual, group, class of people or characteristics of any person; (vii) is violent or threatening or promotes violence or actions that are threatening to any other person; or (viii) promotes illegal or harmful activities or substances (including, but not limited to activities that promote or provide instructional information regarding the manufacture or purchase of illegal weapons or illegal substances).**
- **Use, display, mirror, frame or utilize framing techniques to enclose the Site or Services, or any individual element or materials within the Site or Services, MOTORVATE's name, any MOTORVATE trademark, logo or other proprietary information, the content of any text or the layout and design of any page or form contained on a page, without MOTORVATE's express written consent;**
- **Access, tamper with, or use nonpublic areas of the Site or Services, MOTORVATE's computer systems, or the technical delivery systems of MOTORVATE's providers;**
- **Attempt to probe, scan, or test the vulnerability of any MOTORVATE system or network or breach any security or authentication measures;**
- **Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by MOTORVATE or any of MOTORVATE's providers or any other third party (including another user) to**

protect the Site, Services or MOTORVATE Content;

- Attempt to access or search the Site, Services or MOTORVATE Content or download MOTORVATE Content from the Site or Services through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by MOTORVATE or other generally available third party web browsers (such as Microsoft Internet Explorer, Mozilla Firefox, Chrome, Safari or Opera);
- Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;
- Use any meta tags or other hidden text or metadata utilizing a MOTORVATE trademark, logo URL or product name without MOTORVATE's express written consent;
- Use the Site, Services or MOTORVATE Content for any commercial purpose or the benefit of any third party or in any manner not permitted by these Terms of Use;
- Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Site, Services or MOTORVATE Content to send altered, deceptive or false source-identifying information;
- Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Site, Services or MOTORVATE Content;
- Interfere with, or attempt to interfere with, the access of any user, host or network connected to the Site or Services, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Site;
- Collect or store any personally identifiable information from the Site or Services from other users of the Site or Services without their express permission;
- Impersonate or misrepresent your affiliation with any person or entity;
- Violate any applicable law or regulation; or
- Encourage or enable any other individual to do any of the foregoing.

Users will have the ability to report a post and report a user for MOTORVATE to investigate within the service. Within two business days of a user reporting a post or another user for violating our terms, MOTORVATE will have the option to remove content and terminate the violating user account. MOTORVATE will have the right to investigate and prosecute any reported violations of any of the above, including intellectual property rights infringement and Site and Services security issues, to the fullest extent of its service and of the law. MOTORVATE has the right to terminate any user account without discretion for inappropriate posts or inappropriate accounts. MOTORVATE may involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms of Use or the rights of any third party.

You acknowledge that MOTORVATE has no obligation to monitor your access to or use of the Site, Services or MOTORVATE Content or to review or edit any User Content or Third Party Materials, but has the right to do so for the purpose of operating the Site and Services, to

ensure your compliance with these Terms of Use, or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body. MOTORVATE reserves the right, at any time and without prior notice, to remove or disable access to any MOTORVATE Content, Third Party Materials, and any User Content, that MOTORVATE, in its sole discretion, considers to be in violation of these Terms of Use or otherwise harmful to the Site or Services.

### **Sweepstakes and Contests**

MOTORVATE may operate sweepstakes, contests and similar promotions (collectively, “**Promotions**”) through the Site and Services. You should carefully review the rules (e.g., the “**Official Rules**”) of each Promotion in which you participate through the Site and Service, as they may contain additional important information about MOTORVATE rights to and ownership of the submissions you make as part of the Promotions and as a result of your participation in such Promotion. To the extent that the terms and conditions of such Official Rules conflict with these Terms of Use, the terms and conditions of such Official Rules will control.

### **Termination**

Without limiting other remedies, MOTORVATE may at any time suspend, terminate, or refuse to provide you with access to the Site or Services. In addition, MOTORVATE may notify authorities or take any actions it deems appropriate, without notice to you, if MOTORVATE suspects or determines, in its own discretion, that you may have or there is a significant risk that you have (a) failed to comply with any provision of these Terms of Use or any policies or rules established by MOTORVATE; or (b) engaged in actions relating to or in the course of using the Site or Services that may be illegal or cause liability, harm, embarrassment, harassment, abuse or disruption for you, MOTORVATE users, MOTORVATE or any other third parties or the Site or Services. Without limiting any other terms of these Terms of Use, you may stop using the Site and Services at any time.

After any termination, you understand and acknowledge that we will have no further obligation to provide the Site or Services and all licenses and other rights granted to you by these Terms of Use will immediately cease. MOTORVATE will not be liable to you or any third party for termination of the Site or Services or termination of your use of either. UPON ANY TERMINATION OR SUSPENSION, ANY CONTENT, MATERIALS OR INFORMATION (INCLUDING USER CONTENT) THAT YOU HAVE SUBMITTED ON THE SITE OR VIA THE SERVICES WILL NO LONGER BE ACCESSIBLE BY YOU VIA THE SERVICES.

Any suspension, termination or cancellation will not affect your obligations to MOTORVATE under these Terms of Use (including, without limitation, proprietary rights and ownership, indemnification, and limitation of liability), which by their sense and context are intended to survive and do survive such suspension, termination or cancellation.

## **Disclaimers**

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NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM MOTORVATE OR THROUGH THE SITE, SERVICES, MOTORVATE CONTENT OR USER CONTENT, WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

## **Indemnity**

You agree to defend, indemnify, and hold MOTORVATE, its officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal and accounting fees, arising out of or in any way connected with User Content, your access to or use of the Site, Services or MOTORVATE Content, or your violation of these Terms of Use.

## **Limitation of Liability**

**YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ENTIRE RISK ARISING OUT OF YOUR ACCESS TO AND USE OF THE SITE, SERVICES, INCLUDING THE MOTORVATE APPLICATION, AND CONTENT THEREIN REMAINS WITH YOU. NEITHER MOTORVATE NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SITE, SERVICES OR MOTORVATE CONTENT WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF LIFE, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OF USE OR FROM THE USE OF OR INABILITY TO USE THE SITE, SERVICES OR CONTENT THEREIN, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT MOTORVATE HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. YOU SPECIFICALLY ACKNOWLEDGE THAT MOTORVATE IS NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS, THIRD PARTIES OR THIRD PARTY MATERIALS, AND THAT THE RISK OF INJURY FROM THE**

**FOREGOING RESTS ENTIRELY WITH YOU.**

**IN NO EVENT WILL MOTORVATE'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SITE, SERVICES OR CONTENT THEREIN EXCEED ONE HUNDRED U.S. DOLLARS (\$100). THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN MOTORVATE AND YOU. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.**

### **Proprietary Rights Notices**

All trademarks, service marks, logos, trade names, and any other proprietary designations of MOTORVATE used herein are trademarks or registered trademarks of MOTORVATE. Any other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks or registered trademarks of their respective parties.

### **Dispute Resolution**

Mandatory Arbitration. Please read this carefully. It affects your rights. YOU AND MOTORVATE AND EACH OF OUR RESPECTIVE SUBSIDIARIES, AFFILIATES, PREDECESSORS IN INTEREST, SUCCESSORS, AND PERMITTED ASSIGNS AGREE TO ARBITRATION (EXCEPT FOR MATTERS THAT MAY BE TAKEN TO SMALL CLAIMS COURT), AS THE EXCLUSIVE FORM OF DISPUTE RESOLUTION EXCEPT AS PROVIDED FOR BELOW, FOR ALL DISPUTES AND CLAIMS ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR USE OF THE SERVICES. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Please visit [www.adr.org](http://www.adr.org) for more information about arbitration. Commencing Arbitration. A party who intends to seek arbitration must first send to the other, by certified mail, a written notice of intent to arbitrate (a "**Notice**"), or, in the absence of a mailing address provided by you to MOTORVATE, to you via any other method available to MOTORVATE, including via e-mail. The Notice to MOTORVATE should be addressed to: MOTORVATE, Inc., 28 W. 39th St. Suite 401 - #124, New York, NY 10018 United States, Attn: President (the "**Arbitration Notice Address**"). The Notice must (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought (the "**Demand**"). If you and MOTORVATE do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or MOTORVATE may commence an arbitration proceeding as set forth below or file a claim in small claims court. THE ARBITRATION SHALL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("**AAA**") IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES AND THE SUPPLEMENTARY PROCEDURES FOR CONSUMER RELATED DISPUTES (the "**Rules**"), AS MODIFIED BY THIS AGREEMENT. The Rules and AAA forms are available online at [www.adr.org](http://www.adr.org) or by calling the AAA at

1-800-778-7879, or by writing to the Notice Address. If you are required to pay a filing fee to commence an arbitration against MOTORVATE, then you are responsible for all costs. Arbitration Proceeding. The arbitration shall be conducted in the English language. A single independent and impartial arbitrator shall be appointed pursuant to the Rules, as modified herein. You and MOTORVATE agree to comply with the following rules, which are intended to streamline the dispute resolution process and reduce the costs and burdens on the parties: (i) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner to be chosen by the party initiating the arbitration; (ii) the arbitration shall not require any personal appearance by the parties or witnesses unless otherwise mutually agreed in writing by the parties; and (iii) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

No Class Actions. YOU AND MOTORVATE AGREE THAT YOU AND MOTORVATE 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 OR REPRESENTATIVE PROCEEDING. FURTHER, YOU AGREE THAT THE ARBITRATOR MAY NOT CONSOLIDATE PROCEEDINGS OF MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING, AND THAT IF THIS SPECIFIC PROVISIO IS FOUND TO BE UNENFORCEABLE, THEN THE ENTIRETY OF THIS MANDATORY ARBITRATION SECTION SHALL BE NULL AND VOID.

Decision of the Arbitrator. Barring extraordinary circumstances, the arbitrator shall issue his or her decision within 120 days from the date the arbitrator is appointed. The arbitrator may extend this time limit for an additional 30 days in the interests of justice. All arbitration proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed, except as necessary to obtain court confirmation of the arbitration award. The award of the arbitrator shall be in writing and shall include a statement setting forth the reasons for the disposition of any claim. The arbitrator shall apply the laws of the State of New York in conducting the arbitration. You acknowledge that these terms and your use of the Service evidences a transaction involving interstate commerce. The United States Federal Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the Mandatory Arbitration clause in these Terms of Use.

These Terms of Use and your use of the Service shall be governed by the substantive laws of the State of New York without reference to its choice or conflicts of law principles. Only if the Mandatory Arbitration clause is deemed to be null and void, then all disputes arising between you and MOTORVATE under these Terms of Use shall be subject to the exclusive jurisdiction of the state and federal courts located in New York, NY, and you and MOTORVATE hereby submit to the personal jurisdiction and venue of these courts.

Equitable Relief. The foregoing provisions of this Dispute Resolution section do not apply to any claim in which MOTORVATE seeks equitable relief of any kind. You acknowledge that, in the event of a breach of these Terms of Use by MOTORVATE or any third party, the damage or

harm, if any, caused to you will not entitle you to seek injunctive or other equitable relief against MOTORVATE, including with respect to any User Content, and your only remedy shall be for monetary damages, subject to the limitations of liability set forth in these Terms of Use.

**Claims.** You and MOTORVATE agree that, notwithstanding any other rights the party may have under law or equity, any cause of action arising out of or related to these Terms of Use or the Site or the Services, excluding a claim for indemnification, must commence within one year after the cause of action accrues. Otherwise, such cause of action is permanently barred.

**Improperly Filed Claims.** All claims you bring against MOTORVATE must be resolved in accordance with this Dispute Resolution section. All claims filed or brought contrary to this Dispute Resolution section shall be considered improperly filed. Should you file a claim contrary to this Dispute Resolution section, MOTORVATE may recover attorneys' fees and costs up to \$5,000, provided that MOTORVATE has notified you in writing of the improperly filed claim, and you have failed to promptly withdraw the claim.

## **Entire Agreement**

These Terms of Use constitute the entire and exclusive understanding and agreement between MOTORVATE and you regarding the Site, Services and MOTORVATE Content, and these Terms of Use supersede and replace any and all prior oral or written understandings or agreements between MOTORVATE and you regarding the Site, Services, and MOTORVATE Content.

## **Assignment**

You may not assign or transfer these Terms of Use, by operation of law or otherwise, without MOTORVATE's prior written consent. Any attempt by you to assign or transfer these Terms of Use, without such consent, will be null and of no effect. MOTORVATE may freely assign these Terms of Use. Subject to the foregoing, these Terms of Use will bind and inure to the benefit of the parties, their successors, and permitted assigns.

## **Notices**

You consent to the use of: (a) electronic means to complete these Terms of Use and to deliver any notices or other communications permitted or required hereunder; and (b) electronic records to store information related to these Terms of Use or your use of the Site or Services. Any notices or other communications permitted or required hereunder, including those regarding modifications to these Terms of Use, will be in writing and given by MOTORVATE (x) via email if applicable (in each case to the address that you provide); or (y) by posting to the Site or Services. For notices made by e-mail, the date of transmission will be deemed the date on which such notice is transmitted.

## **General**

These Terms of Use represent the entire agreement between you and MOTORVATE relating to the subject matter herein and supersede all previous communications, representations, understandings, and agreements, either oral or written, between you and MOTORVATE with respect to the subject matter hereof. These Terms of Use shall not be modified except in a writing, signed by both parties, or by a change to these Terms of Use made by MOTORVATE as authorized in these Terms of Use. The heading references used in these Terms of Use are for convenience purposes only, do not constitute a part of these Terms of Use, and shall not be deemed to limit or affect any of the provisions hereof. The failure of MOTORVATE to enforce any right or provision of these Terms of Use will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of MOTORVATE. Except as expressly set forth in these Terms of Use, the exercise by either party of any of its remedies under these Terms of Use will be without prejudice to its other remedies under these Terms of Use or otherwise. If for any reason a court of competent jurisdiction finds any provision of these Terms of Use invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms of Use will remain in full force and effect. There are no third-party beneficiaries of these Terms of Use unless provided expressly by this agreement. You agree that no joint venture, partnership, employment, or agency relationship exists between you and MOTORVATE as a result of these Terms of Use or your use of the Site or the Services. You further acknowledge that by submitting User Content, no confidential, fiduciary, contractually implied or other relationship is created between you and MOTORVATE other than pursuant to these Terms of Use.

## **Disclosure**

The services hereunder are offered by MOTORVATE, Inc., located at 28 W. 39th St. Suite 401 - #124, New York, NY 10018 United States. You may contact us by sending correspondence to the foregoing address or by emailing us at [support@MOTORVATE.me](mailto:support@MOTORVATE.me).

MOTORVATE and the MOTORVATE Logo are trademarks of MOTORVATE, Inc.