

ACN Website Terms of Use

These ACN Website Terms of Use (these “**Website Terms of Use**”) are issued by All Communications Network of Canada Co. on behalf of itself and its affiliates (collectively “**ACN**”, “**we**”, or “**us**”). These Website Terms of Use apply to the access to and use of acn.com and all other websites and applications owned or operated by ACN (collectively, the “**Website**”) by any party (“**you**”), and constitute a legally binding agreement between ACN and you.

Please read these Website Terms of Use before using the Website. By using the Website, you acknowledge, accept and agree to all provisions set forth in these Website Terms of Use, regardless of whether you purchase any service or product from ACN, and you also agree to the terms and conditions contained in the ACN [Privacy Policy](#) (the “**Privacy Policy**”), which describes how we collect and process personal and non-personal information when you use the Website.

Without limiting the foregoing, by accessing and using the Website, you specifically acknowledge and agree to the following:

- **YOU AGREE TO RESOLVE ALL DISPUTES BETWEEN YOU AND ACN ARISING FROM OR IN CONNECTION WITH YOUR ACCESS TO OR USE OF THE WEBSITE OR THESE WEBSITE TERMS OF USE PURSUANT TO THE DISPUTE RESOLUTION PROVISIONS SET FORTH IN ARTICLE 8 BELOW (THE “DISPUTE RESOLUTION PROVISIONS”); AND**
- **YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE DISPUTE RESOLUTION PROVISIONS, WHICH PROVISIONS PROVIDE FOR THE RESOLUTION OF MOST DISPUTES THROUGH THE USE OF BINDING ARBITRATION ON AN INDIVIDUAL BASIS, AND ALSO INCLUDE CERTAIN WAIVERS, INCLUDING, BUT NOT LIMITED TO, CLASS ACTION AND CLASS ARBITRATION WAIVERS.**

1. Introduction. These Website Terms of Use apply only to your use of the Website. By accessing and using the Website, you agree to (i) these Website Term of Use, (ii) the terms and conditions contained in the [Privacy Policy](#), all of which should be read together with these Website Terms of Use; and (iii) any documents incorporated herein by reference. If you purchase services from ACN or enroll as an independent business owner (“**IBO**”), additional terms and conditions apply, including the IBO Agreement entered into between ACN and the IBO.

Subject only to Article 7 below, ACN may revise these Website Terms of Use at any time. You should check these Website Terms of Use regularly to review the current version.

2. License and Conditions. ACN grants you a limited, royalty-free, non-exclusive license to access and make use of the Website. As a condition of such license, you acknowledge and agree that:

- all intellectual property appearing on the Website, including without limitation names, logos, trademarks, and copyrighted material (collectively, “**Intellectual Property**”) is owned by ACN, its licensors, or affiliated business partners, and the limited license granted by these Website Terms of Use does not convey any ownership or other rights in the Intellectual Property;
- you will not download (except as required to access and make use of the Website), reproduce, modify, copy, resell, or use for any commercial or non-commercial purpose any (i) Intellectual Property; (ii) service listings, descriptions, or price lists; or (iii) other content appearing on the Website;
- you will not reproduce or store any part of the Website or its content in or on another website;
- if you are an IBO, you will use the Website in compliance with your IBO Agreement; and
- you will not alter the Website or any of its content.

If you provide ACN with any comments, suggestions, recommendations, requests or any other feedback (“**Feedback**”), ACN may use such feedback to improve the Website or for any other purpose. Furthermore, ACN shall own such Feedback and ACN and its affiliates, licensees, clients, partners, third-party providers and other authorized entitled may use, license, distribute, reproduce and commercialize the Feedback, and you hereby assign, irrevocably, exclusively and on a royalty-free basis, all such Feedback to ACN.

Any rights not expressly granted in these Website Terms of Use are expressly reserved to ACN.

To access and use certain features of the Website, you will need to create an account. You must safeguard your login information, including username, passwords, digital certifications or other similar security mechanism used by the Website to identify you (“**Login ID**”) that you created to access the Website and the Intellectual Property and you must not disclose this information to anyone. You must immediately notify ACN of any unauthorized use of your Login ID. Your Login ID will be used by ACN solely in accordance with these Website Terms of Use and the Privacy Policy. Failure to comply with this section may result in immediate termination of your account. ACN shall not be responsible or liable, directly or indirectly, in any way for any loss or damage of any kind incurred as a result of, or in connection with, your failure to comply with this section.

3. Visitor Material and Conduct

Other than Personal Information, as defined in the [Privacy Policy](#), any information that you transmit or post to the Website is considered non-confidential. ACN shall have no obligations with respect to such information and is free to use it for any purpose.

You may not post on or transmit to or from the Website any material that:

- is threatening or abusive, defamatory or scandalous, obscene or pornographic, seditious, liable to incite hatred, discriminatory, blasphemous, in breach of confidence or privacy, or otherwise illegal or inappropriate;
- you do not have the legal right to use;
- constitutes or encourages conduct that would constitute a criminal or civil offense or give rise to criminal or civil liability; or
- could harm the Website or ACN’s network or systems (such as computer viruses, logic bombs, Trojan horses, worms, harmful components, corrupted data, or other malicious software or harmful data).

4. Links to and from Other Websites

The Website contains links to websites operated by third parties. These links are provided for convenience only. If you use the links, you will leave the Website. ACN does not review third-party websites and is not responsible for them. Third-party websites are not covered by these Website Terms of Use or the [Privacy Policy](#). If you access such third-party websites, you do so at your own risk. In addition, you may link to websites owned or controlled by specific ACN affiliates, and use of such websites may be subject to separate terms and conditions and a different privacy policy.

You may link to the Website subject to the following conditions:

- you comply with these Website Terms of Use;
- you do not replicate any page of the Website;
- you do not use, alter, copy or remove any Intellectual Property;
- you do not state or imply that ACN endorses any services other than its own;
- you do not present incorrect information about ACN;

- your website does not contain content that is distasteful, offensive, or controversial, infringes the rights of any person, or fails to comply with applicable law or the relevant portions of these Website Terms of Use; and
- if you are IBO, you adhere to the requirements of your IBO Agreement.

5. Breach

ACN may suspend or terminate your access to the Website and take other action against you if you breach these Website Terms of Use. Unless otherwise prohibited by applicable laws, you agree to indemnify ACN for any loss or damage suffered by ACN or its licensors or affiliated business partners as a result of your use of the Website or breach of these Website Terms of Use. ACN cooperates with governmental authorities that direct or request ACN to disclose the identity of anyone who uses the Website in a manner that violates applicable law.

6. Disclaimer of Warranties and Limitation of Liability

ACN seeks to make the Website available 24 hours a day and to ensure that the information on the Website is accurate and updated; however, ACN is not responsible for the availability of the Website and shall not be liable if the Website is unavailable at any time or for any period, or if the information on the Website is incorrect, incomplete, or outdated. Access to the Website may be suspended without notice. ACN may make changes to the content of the Website at any time without notice.

ACN MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE WEBSITE OR THE CONTENT APPEARING THEREON, WHETHER EXPRESS OR IMPLIED. The Website and all content on the Website is provided on an “as is” and “as available” basis. ACN and its officers, directors, employees, shareholders, and agents, exclude all liability for any direct or indirect loss or damage that may result to you or a third party from your use of or inability to use the Website or its content or any websites linked to the Website. IF YOU ARE DISSATISFIED WITH THE WEBSITE OR WITH ANY OF THESE WEBSITE TERMS OF USE, CONDITIONS, GUIDELINES, PRACTICES OR POLICIES OF ACN IN OPERATING THE WEBSITE, YOU AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE TO DISCONTINUE USING THE WEBSITE.

7. Change in Terms. Subject to applicable law, ACN fully reserves the right to modify, add, eliminate or otherwise change (collectively, “**Change**”) any portion of these Website Terms of Use without direct, individual notice to you. Notwithstanding the foregoing, ACN will endeavor to provide timely notice of any Change on the Website. Any Change may be made effective at ACN’s election upon the implementation date, the date ACN posts notice of the Change on the Website, or prospectively to a date chosen and specified by ACN. Subject to these Website Terms of Use, by continuing to access or use the Website after the effective date of any Change, you acknowledge the Change and agree to be bound and abide by same, and your exclusive remedy in the event you do not agree to any such Change is to discontinue your use of the Website.

8. DISPUTE RESOLUTION BY BINDING ARBITRATION

PLEASE READ THE FOLLOWING DISPUTE RESOLUTION PROVISIONS CAREFULLY, AS THESE PROVISIONS PROVIDE FOR THE RESOLUTION OF MOST DISPUTES THROUGH THE USE OF BINDING ARBITRATION ON AN INDIVIDUAL BASIS, AND ALSO INCLUDE CERTAIN WAIVERS, INCLUDING, BUT NOT LIMITED TO, CLASS ACTION AND CLASS ARBITRATION WAIVERS.

A. Dispute Resolution Generally

To the extent permitted by applicable law, by accessing or using the Website, you agree to be bound by the Dispute Resolution Provisions set forth in Sections 8(B) through 8(H) below. If either (i) ACN or any of its owners, officers, directors, employees, representatives or agents (for purposes of this Article 8, individually or collectively, “ACN”), or (ii) you has any legal claim or dispute against the other, including, but not limited to, those arising from or in connection with, or otherwise relating to, your access to or use of the Website, these

Website Terms of Use, the [Privacy Policy](#), or any action or omission by ACN with respect to the foregoing (each, a “**Dispute**”), then the party initiating the Dispute must first try to contact the other to resolve the Dispute informally in good faith. ACN will attempt to contact you by using any contact information provided by you to us; however, in the event you have not provided any such information, ACN is obligated only to make commercially reasonable efforts to contact you. To contact ACN, you must write to ACN at All Communications Network of Canada Co., Attn: Legal Department, 1000 Progress Place, Concord, NC 28025, or by email at legalnotices@acninc.com, which correspondence must include a physical mailing address for future correspondence with you. Notwithstanding anything to the contrary contained in Sections 8(B) through 8(H) below, you and ACN each acknowledge and agree that in the event the dispute resolution provisions contained in the IBO Agreement (the “**IBO Dispute Provisions**”) are applicable to the relevant Dispute, and there is a conflict between the Dispute Resolution Provisions below and those contained in the IBO Dispute Provisions, then the IBO Dispute Provisions shall govern and control.

B. Arbitration

a. All Disputes (in any case, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal or equitable theory), to the extent not prohibited by applicable law, shall be resolved by final and binding arbitration, pursuant to the Commercial Arbitration Rules (“**AAA Rules**”) of the American Arbitration Association (“**AAA**”) (available at the following address: <https://www.adr.org/sites/default/files/Commercial%20Rules.pdf>) or other applicable AAA rules, as in effect at the time of the arbitration and as modified herein. You may contact the AAA in writing at one of its locations (e.g., SouthPark Towers, 6000 Fairview Rd, Suite 1200, Charlotte, NC 28210). You may also obtain additional information about the AAA and its procedures from the AAA’s website, at www.adr.org. The arbitrator(s), not a court, will determine issues of arbitrability or waiver of arbitrability, and you waive any right to have a court determine issues of arbitrability. Notwithstanding the foregoing in this subsection 8(B)(a), either you or ACN may bring an individual action against the other party in small claims court (or comparable court of competent jurisdiction) so long as the only parties to that action are you and ACN and the total value of the claims made in the action is less than the claim limit applicable in the jurisdiction in which the claim is filed. Following the contact required in Section 8(A) above and prior to commencing an arbitration proceeding with the AAA, a party seeking to arbitrate any Dispute must send to the other party, via certified mail, a written Notice of Dispute (“**Notice**”). The Notice to you must be sent by ACN to the physical address provided in your initial contact pursuant to Section 8(A) above or, if you failed to provide a physical address, then you agree to accept Notice via email. The Notice to ACN must be addressed to All Communications Network of Canada Co., Attn: Legal Department, 1000 Progress Place, Concord, NC 28025. The Notice must (i) describe the nature and basis of the claim or Dispute; and (ii) describe the specific relief sought. You and ACN each expressly agree to attempt to resolve any Dispute by first sending (or making reasonable efforts to send) the Notice to the other party prior to initiating or commencing an arbitration proceeding with the AAA.

b. If a Dispute is not satisfactorily resolved within sixty (60) days after the Notice is sent, either party may then commence an arbitration proceeding with the AAA.

c. If the amount involved in the Dispute is less than \$20,000, the arbitration will be conducted, at your election, (i) in person in the jurisdiction in which your primary residence is located, or (ii) by telephonic hearing. If the amount in Dispute is \$20,000 or more, the arbitration will be conducted in Charlotte, North Carolina. Each of you and ACN has the right to be represented by an attorney in any arbitration.

d. The number of arbitrators shall be mutually agreed upon by the parties; provided, however, that in event the parties cannot agree on the number of arbitrators, the AAA Rules will control. In all cases, the award of the arbitrator(s) shall be accompanied by a reasoned opinion. Punitive or exemplary damages shall be allowed only to the extent the remedy is expressly available under Applicable Law. Discovery shall consist of interrogatories, document requests, and no more than five depositions of seven hours or less each, per side; provided, however, that the arbitrator(s) may award additional discovery upon motion by either party and a showing of need and/or the inability to pursue or defend claims absent additional discovery.

e. The party initiating the arbitration must pay the applicable AAA filing fee when submitting its written request for arbitration to the AAA. Unless otherwise provided for in the AAA Rules, all other administrative fees and expenses of arbitration, including the fees and expenses of the arbitrator, will be divided equally between the parties.

f. Unless applicable substantive law provides otherwise, each party will pay its own expenses to participate in the arbitration, including attorneys' fees and expenses for witnesses, document production, and evidence presentation. The arbitrator(s) shall have the authority to award the same damages and other relief that would have been available to the parties as individual claimants in court.

g. Any award may be confirmed and enforced in any court of competent jurisdiction. The arbitration will be confidential, and neither you nor ACN may disclose the existence, content, or results of the arbitration, except as necessary to conduct the proceedings, to confirm and enforce the award, to its own legal or financial advisors, by agreement, or as may be required by applicable law.

C. CLASS ARBITRATION WAIVER

EACH DISPUTE WILL BE RESOLVED ON AN INDIVIDUAL BASIS. EACH OF YOU AND ACN SPECIFICALLY AGREE THAT YOU MAY BRING CLAIMS AGAINST THE OTHER PARTY ONLY IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A CLAIMANT OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE, REPRESENTATIVE, OR GROUP PROCEEDING. NO CLASS, COLLECTIVE, REPRESENTATIVE, OR GROUP ARBITRATIONS ARE PERMITTED EVEN IF ALLOWED UNDER THE APPLICABLE AAA RULES. EACH PARTY AGREES THAT THE ARBITRATOR MAY NOT CONSOLIDATE PROCEEDINGS OF MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CLASS, COLLECTIVE, REPRESENTATIVE, OR GROUP PROCEEDING ("CLASS ARBITRATION WAIVER"). EACH OF YOU AND ACN ACKNOWLEDGE THAT THE CLASS ARBITRATION WAIVER IS MATERIAL AND ESSENTIAL TO THE RESOLUTION OF ANY DISPUTE. THEREFORE, IF THE CLASS ARBITRATION WAIVER IS LIMITED, VOIDED, OR OTHERWISE FOUND UNENFORCEABLE, SUCH THAT CLASS, COLLECTIVE, REPRESENTATIVE, OR GROUP ARBITRATION IS ALLOWED, THEN THE ENTIRETY OF SECTIONS 8(B) ABOVE AND 8(F) BELOW (BUT ONLY SECTIONS 8(B) ABOVE AND 8(F) BELOW) SHALL BE NULL AND VOID, AND IF A PARTY CHOOSES TO PROCEED WITH ITS CLAIM IT MUST DO SO IN COURT PURSUANT TO SECTIONS 8(D) AND 8(E) AND ARTICLE 9 BELOW. NOTWITHSTANDING ANYTHING ELSE CONTAINED IN THESE DISPUTE RESOLUTION PROVISIONS, THE INTERPRETATION, APPLICABILITY, ENFORCEABILITY, AND VALIDITY OF THE CLASS ARBITRATION WAIVER AND ANY ATTENDANT QUESTION OR DISPUTE REGARDING THE VOIDANCE OF THE ARBITRATION PROVISIONS SET FORTH IN SECTION 8(B) ABOVE, SHALL IN EACH CASE BE DECIDED ONLY BY A COURT AND NOT BY AN ARBITRATOR.

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THESE DISPUTE RESOLUTION PROVISIONS TO THE CONTRARY, THE ARBITRATOR MAY AWARD MONEY OR INJUNCTIVE RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT PARTY'S INDIVIDUAL CLAIM. NO CLASS, COLLECTIVE, REPRESENTATIVE, GROUP, OR APPLICABLE PRIVATE ATTORNEY GENERAL THEORIES OF LIABILITY, OR PRAYERS FOR RELIEF, MAY BE MAINTAINED IN ANY ARBITRATION HELD PURSUANT TO THESE DISPUTE RESOLUTION PROVISIONS.

D. CLASS ACTION WAIVER

IN THE EVENT ANY DISPUTE PROCEEDS IN COURT RATHER THAN THROUGH ARBITRATION, FOR ANY REASON, EACH OF YOU AND ACN AGREE THAT SUCH DISPUTE WILL ONLY BE RESOLVED ON AN INDIVIDUAL BASIS. EACH OF YOU AND ACN SPECIFICALLY AGREE THAT YOU MAY BRING CLAIMS AGAINST THE OTHER PARTY ONLY IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE, REPRESENTATIVE, OR GROUP PROCEEDING.

E. JURY TRIAL WAIVER

TO THE EXTENT ANY DISPUTE PROCEEDS IN COURT RATHER THAN THROUGH ARBITRATION, FOR ANY REASON, IF NOT PROHIBITED BY APPLICABLE LAW, EACH OF YOU AND ACN HEREBY WAIVE ANY RIGHT TO A JURY TRIAL TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

F. Delegation to Arbitrator

Except as provided in Section 8(C) above, you and ACN acknowledge and agree that the arbitrator(s), and not any federal, provincial, state, or local court, shall have exclusive authority to resolve any Dispute relating to the interpretation, applicability, enforceability, or validity of these Dispute Resolution Provisions, including without limitation any claim that these Dispute Resolution Provisions are void or voidable.

G. Severability

If any provision contained in these Dispute Resolution Provisions is deemed invalid or unenforceable, such provision shall be modified automatically to the minimum extent necessary to render the parties' agreement to arbitrate valid and enforceable. If a provision conflicts with a mandatory provision of applicable law, the conflicting provision shall be severed automatically and the remainder construed to incorporate the mandatory provision. In the event of such severance or modification, the remainder shall not be affected.

H. Termination and Survival

These Dispute Resolution Provisions shall remain in effect even after the expiration or termination of your use of the Website.

Notwithstanding anything to the contrary in the rest of these Website Terms of Use, the following takes precedence with respect to users in Canada: Disputes shall be referred to and finally resolved by arbitration at ADR Chambers under the ADR Chambers Arbitration Rules. The place of the arbitration shall be Toronto, Ontario. The language of arbitration shall be English. The arbitrator(s), not a court, will determine issues of arbitrability or waiver of arbitrability, and you waive any right to have a court determine issues of arbitrability.

9. Governing Law and Jurisdiction. These Website Terms of Use, including their formation, construction, interpretation, and enforceability, are governed by and shall be construed in accordance with the law of the State of North Carolina, without regard to its choice of law rules. Notwithstanding the foregoing, each of you and ACN acknowledge and agree that the relationship between you is an interstate commerce transaction and, accordingly, the Dispute Resolution Provisions set forth in Article 8 above, and the interpretation and the enforceability of the Dispute Resolution Provisions, are and shall be governed by the Federal Arbitration Act, notwithstanding any other law to the contrary, and no state law shall apply if, and to the extent such state law is preempted, by the Federal Arbitration Act. Subject to the foregoing, the substantive law of the State of North Carolina shall govern the substance of any Dispute arbitrated under the Dispute Resolution Provisions. Further, any court proceedings between you and ACN shall be governed by the laws of the State of North Carolina, without regard to its choice of law rules, and such proceedings shall take place in North Carolina; provided, however, that if you bring a small claims action as permitted in subsection 8(B)(b) above, you may do so in the jurisdiction of your primary residence. Subject to the arbitration requirements contained in Section 8(B) above, for any court action brought in a jurisdiction consistent with the foregoing sentence, each of you and ACN agree to submit to the personal and exclusive jurisdiction of such court and waive any objection as to venue or inconvenient forum.

Notwithstanding anything to the contrary in the rest of these Website Terms of Use, the following takes precedence with respect to users in Canada: These Website Terms of Use shall be governed by the laws of the Province of Ontario without regard to its conflict of law provisions, and, subject to the arbitration requirements contained herein, you agree that any court proceedings between you and ACN shall be brought and you submit yourself to the personal and exclusive jurisdiction of and venue in the provincial courts in Toronto, Ontario, and you waive any objection to such jurisdiction or venue. The arbitrator(s), not a court, will determine issues of arbitrability or waiver of arbitrability, and you waive any right to have a court determine issues of arbitrability and nothing contained herein shall be read or understood to contradict this intention.

10. Waiver and Severability. No waiver by us of any term or condition set out in these Website Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or

condition, and any failure by us to assert a right or provision under these Website Terms of Use shall not constitute a waiver of such right or provision. Except as provided in Section 8(G) above, which shall control for purposes of Section 8, if any provision of these Website Terms of Use is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms of Use will continue in full force and effect.

11. Statement on Accessibility. ACN is committed to making its website usable by all people, including those with disabilities by meeting or exceeding the requirements of the Web Content Accessibility Guidelines 2.0 Level A/AA (WCAG 2.0 A/AA). We regularly monitor our Website in an effort to make our content accessible to all visitors. Monitoring the accessibility of our Website is an ongoing process as we continually make improvements and enhancements to the Website. While you are visiting our Sites, you will notice that we offer links to third-party sites and ACN does not control or remedy the way content is portrayed on those third-party sites.

12. Miscellaneous. This electronic document, and all other electronic documents referred to or incorporated herein, will be: (a) deemed for all purposes to be a “writing” or “in writing”, and to comply with all statutory, contractual, and other legal requirements for a writing; and (b) legally enforceable as a signed agreement. You will not assign these Website Terms of Use or assign any rights or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of ACN, which consent may be withheld in ACN’s sole discretion. Any purported assignment or delegation by you without the appropriate prior written consent of ACN will be null and void. ACN may assign these Website Terms of Use or any rights hereunder without your consent. Neither the course of conduct between the parties nor trade practice will act to modify these Website Terms of Use. Except for the indemnification provisions set forth above, these Website Terms of Use do not confer any third-party beneficiary rights. You and ACN agree that these Website Terms of Use and all documents relating thereto be drawn-up in English. *Nous avons demandé que cette convention ainsi que tous les documents qui s’y rattachent soient rédigés en anglais.* While a French translation of these Terms may be provided for convenience, in the event of a dispute as to the terms of these Website Terms of Use, the English version shall prevail.

In case of any questions, please contact us by emailing at legalnotices@acninc.com or writing to us at **1000 Progress Place, Concord, NC 28025; Attention: Legal Department.**

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