

KIDZAUSTIN.COM'S TERMS OF USE

1. ACCEPTANCE OF TERMS

kidzaustin.com provides a collection of online resources, including listing, links to external Web sites, and online advertising (referred to hereafter as "the Service") subject to the following Terms of Use ("TOU"). By using the Service in any way, you are agreeing to comply with the TOU. In addition, when using particular kidzaustin.com services, you agree to abide by any applicable posted guidelines for all kidzaustin.com services, which may change from time to time. Should you object to any term or condition of the TOU, any guidelines, or any subsequent modifications thereto or become dissatisfied with kidzaustin.com in any way, your only recourse is to immediately discontinue use of kidzaustin.com.

2. MODIFICATIONS TO THIS AGREEMENT

We reserve the right, at our sole discretion, to change, modify or otherwise alter these terms and conditions at any time. Such modifications shall become effective immediately upon the posting thereof. You must review this agreement on a regular basis to keep yourself apprised of any changes. You can find the most recent version of the TOU at:

<http://www.kidzaustin.com/tou.pdf>

3. CONTENT

You understand that all postings, messages, text, files, images, photos, video, sounds, or other materials ("Content") posted on, transmitted through, or linked from the Service, are the sole responsibility of the person from whom such Content originated. More specifically, you are entirely responsible for each individual item ("Item") of Content that you post, email or otherwise make available via the Service. You understand that, while kidzaustin.com strives to provide a kid-friendly online environment, kidzaustin.com does not control, and is not responsible for Content made available through the Service, and that by using the Service, you may be exposed to Content that is offensive, indecent, inaccurate, misleading, or otherwise objectionable. Furthermore, the kidzaustin.com site and Content available through the Service may contain links to other websites, which are completely independent of kidzaustin.com. Kidzaustin.com makes no representation or warranty as to the accuracy, completeness or authenticity of the information contained in any such site. Your linking to any other websites is at your own risk. You agree that you must evaluate, and bear all risks associated with, the use of any Content, that you may not rely on said Content, and that under no circumstances will kidzaustin.com be liable in any way for any Content or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed or otherwise made available via the Service. You acknowledge that kidzaustin.com does pre-screen and/or approve Content, and that kidzaustin.com shall have the right (but not the obligation) in its sole discretion to refuse, delete or move any Content that is available via the Service, for violating the letter or spirit of the TOU or for any other reason.

4. THIRD PARTY CONTENT, SITES, AND SERVICES

The kidzaustin.com site and Content available through the Service may contain features and functionalities that may link you or provide you with access to third-party content which is completely independent of kidzaustin.com, including web sites, directories, servers, networks, systems, information and databases, applications, software, programs, products or services, and the Internet as a whole.

Your interactions with organizations and/or individuals found on or through the Service, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties.

You agree that kidzaustin.com shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings. If there is a dispute between participants on this site, or between users and any third party, you understand and agree that kidzaustin.com is under no obligation to become involved. In the event that you have a dispute with one or more other users, you hereby release kidzaustin.com, its officers, employees, agents and successors in rights from claims, demands and

damages (actual and consequential) of every kind or nature, known or unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to such disputes and / or our service. If you are a California resident, you waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor 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 debtor."

5. NOTIFICATION OF CLAIMS OF INFRINGEMENT

If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please notify kidzaustin.com's agent for notice of claims of copyright or other intellectual property infringement ("Agent"), at

info@kidzaustin.com.

Please provide our Agent with the following Notice:

- a) Identify the material on the kidzaustin.com site that you claim is infringing, with enough detail so that we may locate it on the website;
- b) A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- c) A statement by you declaring under penalty of perjury that (1) the above information in your Notice is accurate, and (2) that you are the owner of the copyright interest involved or that you are authorized to act on behalf of that owner;
- d) Your address, telephone number, and email address; and
- e) Your physical or electronic signature.

Kidzaustin.com will remove the infringing posting(s), subject to the the procedures outlined in the Digital Millenium Copyright Act (DMCA).

6. PRIVACY AND INFORMATION DISCLOSURE

kidzaustin.com has established a Privacy Policy to explain to users how their information is collected and used, which is located at the following Web address:

<http://www.kidzaustin.com/Privacy/PrivacyPolicy.doc>

Your use of the kidzaustin.com website or the Service signifies acknowledgement of and agreement to our Privacy Policy. You further acknowledge and agree that kidzaustin.com may, in its sole discretion, preserve or disclose your Content, as well as your information, such as email addresses, IP addresses, timestamps, and other user information, if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: comply with legal process; enforce the TOU; respond to claims that any Content violates the rights of third-parties; respond to claims that contact information (e.g. phone number, street address) of a third-party has been posted or transmitted without their consent or as a form of harassment; protect the rights, property, or personal safety of kidzaustin.com, its users or the general public.

7. CONDUCT

You agree not to post, email, or otherwise make available Content:

- a) that is unlawful, harmful, threatening, abusive, harassing, defamatory, libelous, invasive of another's privacy, or is harmful to minors in any way;
- b) that is pornographic or depicts a human being engaged in actual sexual conduct including but not limited to (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between

persons of the same or opposite sex, or (ii) bestiality, or (iii) masturbation, or (iv) sadistic or masochistic abuse, or (v) lascivious exhibition of the genitals or pubic area of any person;

c) that harasses, degrades, intimidates or is hateful toward an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;

d) that violates the Fair Housing Act by stating, in any notice or ad for the sale or rental of any dwelling, a discriminatory preference based on race, color, national origin, religion, sex, familial status or handicap (or violates any state or local law prohibiting discrimination on the basis of these or other characteristics);

e) that violates federal, state, or local equal employment opportunity laws, including but not limited to, stating in any advertisement for employment a preference or requirement based on race, color, religion, sex, national origin, age, or disability.

f) with respect to employers that employ four or more employees, that violates the anti-discrimination provision of the Immigration and Nationality Act, including requiring U.S. citizenship or lawful permanent residency (green card status) as a condition for employment, unless otherwise required in order to comply with law, regulation, executive order, or federal, state, or local government contract.

g) that impersonates any person or entity, including, but not limited to, a kidzaustin.com employee, or falsely states or otherwise misrepresents your affiliation with a person or entity (this provision does not apply to Content that constitutes lawful non-deceptive parody of public figures.);

h) that includes personal or identifying information about another person without that person's explicit consent;

i) that is false, deceptive, misleading, deceitful, misinformative, or constitutes "bait and switch";

j) that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party, or Content that you do not have a right to make available under any law or under contractual or fiduciary relationships;

k) that constitutes or contains "affiliate marketing," "link referral code," "junk mail," "spam," "chain letters," "pyramid schemes," or unsolicited commercial advertisement;

l) that advertises any illegal service or the sale of any items the sale of which is prohibited or restricted by any applicable law, including without limitation items the sale of which is prohibited or regulated by California law.

m) that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

n) that disrupts the normal flow of dialogue with an excessive amount of Content (flooding attack) to the Service, or that otherwise negatively affects other users' ability to use the Service; or

o) that employs misleading email addresses, or forged headers or otherwise manipulated identifiers in order to disguise the origin of Content transmitted through the Service.

Additionally, you agree not to:

p) contact anyone who has asked not to be contacted;

q) "stalk" or otherwise harass anyone;

r) collect personal data about other users for commercial or unlawful purposes;

s) use automated means, including spiders, robots, crawlers, data mining tools, or the like to download data from the Service - unless expressly permitted by kidzaustin.com;

t) post non-local or otherwise irrelevant Content, repeatedly post the same or similar Content or otherwise impose an unreasonable or disproportionately large load on our infrastructure;

w) post the same item or service in more than one classified category or forum, or in more than one metropolitan area;

x) attempt to gain unauthorized access to kidzaustin's computer systems or engage in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of, the Service or the kidzaustin.com website; or

y) use any form of automated device or computer program that enables the submission of postings on kidzaustin.com without each posting being manually entered by the author thereof (an "automated posting device"), including without limitation, the use of any such automated posting device to submit postings in bulk, or for automatic submission of postings at regular intervals.

8. POSTING AGENTS

A "Posting Agent" is a third-party agent, service, or intermediary that offers to post Content to the Service on behalf of others. To moderate demands on kidzaustin.com's resources, you may not use a Posting Agent to post Content to the Service without express permission or license from kidzaustin.com. Correspondingly, Posting Agents are not permitted to post Content on behalf of others, to cause Content to be so posted, or otherwise access the Service to facilitate posting Content on behalf of others, except with express permission or license from kidzaustin.com.

9. NO SPAM POLICY

You understand and agree that sending unsolicited email advertisements to kidzaustin.com email addresses or through kidzaustin.com computer systems, which is expressly prohibited by these Terms, will use or cause to be used servers located in California. Any unauthorized use of kidzaustin.com computer systems is a violation of these Terms and certain federal and state laws, including without limitation the Computer Fraud and Abuse Act (18 U.S.C. § 1030 et seq.), Section 502 of the California Penal Code and Section 17538.45 of the California Business and Professions Code. Such violations may subject the sender and his or her agents to civil and criminal penalties.

10. PAID POSTINGS/ADVERTISING

We may charge a fee to post Content/links in some areas of the Service. The fee is an access fee permitting Content/links to be posted in a designated area. Each party posting Content to the Service is responsible for said Content and compliance with the TOU. All fees paid will be non-refundable in the event that Content is removed from the Service for violating the TOU.

11. LIMITATIONS ON SERVICE

You acknowledge that kidzaustin.com may establish limits concerning use of the Service, including the maximum number of days that Content will be retained by the Service, the maximum number and size of postings, email messages, or other Content that may be transmitted or stored by the Service, and the frequency with which you may access the Service. You agree that kidzaustin.com has no responsibility or liability for the deletion or failure to store any Content maintained or transmitted by the Service. You acknowledge that kidzaustin.com reserves the right at any time to modify or discontinue the Service (or any part thereof) with or without notice, and that kidzaustin.com shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

12. ACCESS TO THE SERVICE

Kidzaustin.com grants you a limited, revocable, nonexclusive license to access the Service for your own personal use. This license does not include: (a) access to the Service by Posting Agents; or (b) any collection, aggregation, copying, duplication, display or derivative use of the Service nor any use of data mining, robots, spiders, or similar data gathering and extraction tools for any purpose unless expressly permitted by kidzaustin. A limited exception to (b) is provided to general purpose internet search engines

and non-commercial public archives that use such tools to gather information for the sole purpose of displaying hyperlinks to the Service, provided they each do so from a stable IP address or range of IP addresses using an easily identifiable agent and comply with our robots.txt file. "General purpose internet search engine" does not include a Web site or search engine or other service that specializes in classified listings or in any subset of classified listings such as jobs, housing, for sale, services, or personals, or which is in the business of providing classified ad listing services.

Use of the Service beyond the scope of authorized access granted to you by kidzaustin.com immediately terminates said permission or license. In order to collect, aggregate, copy, duplicate, display or make derivative use of the the Service or any Content made available via the Service for other purposes (including commercial purposes) not stated herein, you must first obtain a license from kidzaustin.com.

13. TERMINATION OF SERVICE

You agree that kidzaustin.com, in its sole discretion, has the right (but not the obligation) to delete or deactivate your account, block your email or IP address, or otherwise terminate your access to or use of the Service (or any part thereof), immediately and without notice, and remove and discard any Content within the Service, for any reason, including, without limitation, if kidzaustin.com believes that you have acted inconsistently with the letter or spirit of the TOU. Further, you agree that kidzaustin.com shall not be liable to you or any third-party for any termination of your access to the Service. Further, you agree not to attempt to use the Service after said termination. Sections 2, 4, 6 and 10-16 shall survive termination of the TOU.

14. PROPRIETARY RIGHTS

The Service is protected to the maximum extent permitted by copyright laws and international treaties. Content displayed on or through the Service is protected by copyright as a collective work and/or compilation, pursuant to copyrights laws, and international conventions. Any reproduction, modification, creation of derivative works from or redistribution of the site or the collective work, and/or copying or reproducing the sites or any portion thereof to any other server or location for further reproduction or redistribution is prohibited without the express written consent of kidzaustin. You further agree not to reproduce, duplicate or copy Content from the Service without the express written consent of kidzaustin, and agree to abide by any and all copyright notices displayed on the Service. You may not decompile or disassemble, reverse engineer or otherwise attempt to discover any source code contained in the Service. Without limiting the foregoing, you agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any aspect of the Service.

Although kidzaustin.com does not claim ownership of content that its users post, by posting Content to any public area of the Service, you automatically grant, and you represent and warrant that you have the right to grant, to kidzaustin.com an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, and distribute said Content and to prepare derivative works of, or incorporate into other works, said Content, and to grant and authorize sublicenses (through multiple tiers) of the foregoing. Furthermore, by posting Content to any public area of the Service, you automatically grant kidzaustin.com all rights necessary to prohibit any subsequent aggregation, display, copying, duplication, reproduction, or exploitation of the Content on the Service by any party for any purpose.

15. DISCLAIMER OF WARRANTIES

YOU AGREE THAT USE OF THE KIDZAUSTIN.COM SITE AND SERVICE IS ENTIRELY AT YOUR OWN RISK. THE KIDZAUSTIN.COM SITE AND THE SERVICE ARE PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND. ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. TO THE FULLEST EXTENT PERMITTED BY LAW, KIDZAUSTIN.COM DISCLAIMS ANY WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, ACCURACY, AND PERFORMANCE OF THE KIDZAUSTIN SITE AND THE SERVICE. TO THE FULLEST EXTENT PERMITTED BY LAW, KIDZAUSTIN.COM DISCLAIMS ANY WARRANTIES FOR OTHER SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE KIDZAUSTIN.COM SITE OR THE SITES OR SERVICE, OR ACCESSED THROUGH ANY LINKS ON THE KIDZAUSTIN.COM SITE. TO THE FULLEST EXTENT PERMITTED BY LAW, KIDZAUSTIN.COM DISCLAIMS ANY WARRANTIES FOR VIRUSES OR OTHER HARMFUL

COMPONENTS IN CONNECTION WITH THE KIDZAUSTIN.COM SITE OR THE SERVICE. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES. IN SUCH JURISDICTIONS, SOME OF THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU INsofar AS THEY RELATE TO IMPLIED WARRANTIES.

16. LIMITATIONS OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL KIDZAUSTIN.COM BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (EVEN IF KIDZAUSTIN.COM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM ANY ASPECT OF YOUR USE OF THE KIDZAUSTIN.COM SITE OR THE SERVICE, WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF THE KIDZAUSTIN.COM SITE OR THE SERVICE, FROM INABILITY TO USE THE KIDZAUSTIN.COM SITE OR SERVICE, OR THE INTERRUPTION, SUSPENSION, MODIFICATION, ALTERATION, OR TERMINATION OF THE KIDZAUSTIN.COM SITE OR SERVICE. SUCH LIMITATION SHALL ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY REASON OF OTHER SERVICES OR PRODUCTS RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE KIDZAUSTIN.COM'S SITE OR THE SERVICE OR ANY LINKS ON THE KIDZAUSTIN.COM SITE, AS WELL AS BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE KIDZAUSTIN.COM'S SITE OR THE SERVICE OR ANY LINKS ON THE KIDZAUSTIN.COM SITE. THESE LIMITATIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. IN SOME JURISDICTIONS, LIMITATIONS OF LIABILITY ARE NOT PERMITTED. IN SUCH JURISDICTIONS, SOME OF THE FOREGOING LIMITATION MAY NOT APPLY TO YOU.

17. INDEMNITY

You agree to indemnify and hold kidzaustin.com, its officers, subsidiaries, affiliates, successors, assigns, directors, officers, agents, service providers, suppliers and employees, harmless from any claim or demand, including reasonable attorney fees and court costs, made by any third party due to or arising out of Content you submit, post or make available through the Service, your use of the Service, your violation of the TOU, your breach of any of the representations and warranties herein, or your violation of any rights of another.

18. GENERAL INFORMATION

The TOU constitute the entire agreement between you and kidzaustin.com and govern your use of the Service, superceding any prior agreements between you and kidzaustin.com. The TOU and the relationship between you and kidzaustin.com shall be governed by the laws of the State of California without regard to its conflict of law provisions. You and kidzaustin.com agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Williamson, Texas. The failure of kidzaustin.com to exercise or enforce any right or provision of the TOU shall not constitute a waiver of such right or provision. If any provision of the TOU is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the TOU remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the TOU must be filed within one (1) year after such claim or cause of action arose or be forever barred.

19. VIOLATION OF TERMS AND LIQUIDATED DAMAGES

Please report any violations of the TOU, by emailing to:

info@kidzaustin.com

Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches.

You understand and agree that, because damages are often difficult to quantify, if it becomes necessary for kidzaustin.com to pursue legal action to enforce these Terms, you will be liable to pay Kidzaustin.com the following amounts as liquidated damages, which you accept as reasonable estimates of kidzaustin.com's damages for the specified breaches of these Terms:

a. If you post a message that (1) impersonates any person or entity; (2) falsely states or otherwise misrepresents your affiliation with a person or entity; or (3) that includes personal or identifying information about another person without that person's explicit consent, you agree to pay kidzaustin.com's five hundred dollars (\$500) for each such message. This provision does not apply to Content that constitutes lawful non-deceptive parody of public figures.

b. If kidzaustin.com establishes limits on the frequency with which you may access the Service, or terminates your access to or use of the Service, you agree to pay kidzaustin.com one hundred dollars (\$100) for each message posted in excess of such limits or for each day on which you access kidzaustin.com in excess of such limits, whichever is higher.

c. If you send unsolicited email advertisements to kidzaustin.com's e-mail addresses or through kidzaustin.com's computer systems, you agree to pay kidzaustin.com twenty dollars (\$20) for each such email.

d. If you post Content in violation of the TOU, other than as described above, you agree to pay kidzaustin.com one hundred dollars (\$100) for each Item of Content posted. In its sole discretion, kidzaustin.com may elect to issue a warning before assessing damages.

e. If you are a Posting Agent that uses the Service in violation of the TOU, in addition to any liquidated damages under clause (d), you agree to pay kidzaustin.com one hundred dollars (\$100) for each and every Item you post in violation of the TOU. A Posting Agent will also be deemed an agent of the party engaging the Posting Agent to access the Service (the "Principal"), and the Principal (by engaging the Posting Agent in violation of the TOU) agrees to pay kidzaustin.com an additional one hundred dollars (\$100) for each Item posted by the Posting Agent on behalf of the Principal in violation of the TOU.

f. If you aggregate, display, copy, duplicate, reproduce, or otherwise exploit for any purpose any Content (except for your own Content) in violation of these Terms without kidzaustin.com's express written permission, you agree to pay kidzaustin.com one thousand dollars (\$1,000) for each day on which you engage in such conduct.

Otherwise, you agree to pay kidzaustin.com's actual damages, to the extent such actual damages can be reasonably calculated. Notwithstanding any other provision of these Terms, kidzaustin.com retains the right to seek the remedy of specific performance of any term contained in these Terms, or a preliminary or permanent injunction against the breach of any such term or in aid of the exercise of any power granted in these Terms, or any combination thereof.

20. FEEDBACK

We welcome your questions and comments on this document via email to: info@kidzaustin.com