

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARL EVANS, DONALD SPENCER,
VALERIE SPENCER, CINDY CARTER,
individuals, on Behalf of themselves and for
the Benefit of all with the Common or
General Interests, Any Persons Injured, and
All Others Similarly Situated,

Plaintiffs,

v.

LINDEN RESEARCH, INC., a corporation,
and PHILIP ROSEDALE, an individual,

Defendants.

Civil Action No.: 10-cv-01679-ER

DECLARATION OF JOHN ROUNTREE

I, John Rountree, declare as follows:

1. I am Director of Customer Relations of defendant Linden Research, Inc. ("Linden Lab"), a Delaware corporation headquartered in San Francisco, California. As part of my responsibilities, I manage the teams that respond to customer inquiries and complaints. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to them.

Use of Second Life Is Subject to the Terms of Service Agreement.

2. Linden Lab created and operates Second Life, a three-dimensional online virtual world that simulates a real world environment. In Second Life, users interact with each other using "avatars," which are their three-dimensional digital personae. Users, who are also called "Residents," create content and experiences in Second Life, including digital representations of

buildings, such as homes and shops, and objects like automobiles, clothing, and jewelry. In Second Life, users explore, socialize, conduct business, and attend meetings and events.

3. To participate in Second Life, a user must register, choose a user name, download the Second Life viewer software, and agree to the Terms of Service set forth on the Second Life website. When the user logs into the three-dimensional online environment for the first time, a dialogue box with the full text of the Terms of Service is presented on the user's computer screen, and the user must affirmatively consent to the terms by clicking a check box next to the words "I Agree." Users who do not click "I Agree" are not allowed to continue in the login process to use Second Life.

4. In accepting the Second Life Terms of Service, users agree:

- To provide true and accurate registration information (TOS § 3.1);
- To abide by the Second Life Community Standards (TOS § 8.1);
- Not to post, display or transmit content that is harmful, threatening, or harassing (TOS § 8.2(iv)), obscene or hateful (TOS § 8.2(v)), or explicitly sexual, intensely violent or otherwise designated as "Adult" under our "Maturity Ratings," except as set forth in those ratings (TOS § 8.2(viii)); and
- Not to engage in malicious or disruptive conduct that impedes or interferes with other users' normal use of the service (TOS § 8.3(iv)).

The Terms of Service also provide:

You agree that this Agreement and the relationship between you and Linden Lab shall be governed by the laws of the State of California Further, you and Linden Lab agree to submit to the exclusive jurisdiction and venue of the courts located in the City and County of San Francisco, California, except as provided in Section 12.1 regarding optional arbitration.

(TOS § 12.2.) The above forum selection provision has been in effect since September 18, 2007.

A true and correct copy of our announcement on the Second Life blog of the inclusion of the forum selection provision in the Terms of Service is attached as Exhibit A. True and correct copies of the Second Life Terms of Service, Community Standards, and Maturity Ratings as they

currently exist are attached as Exhibits B, C, and D respectively.

5. The most recent amendments to the Terms of Service were in September 2007 to update the agreement's dispute resolution provision, in March 2008 to update Linden Lab's policy on use of its trademarks, and in March 2010 to clarify the service and content licenses. True and correct copies of the Terms of Service that existed from September 2007 through March 2008 and then from March 2008 through March 2010 are attached as Exhibits E and F respectively.

6. When Linden Lab updates its Terms of Service from time to time, users must affirmatively agree to the updated terms in order to continue to use the service. The first time that the user logs into Second Life after an update, the user is presented on his or her computer screen with a notice informing the user that the Terms of Service have changed, providing the text of the updated terms, and requiring the user to click on "I Agree" in order to complete the login process.

The Named Plaintiffs Affirmatively Agreed to the Forum Selection Provision.

7. Linden Lab's customer service records show that plaintiff Carl Evans is a current user of Second Life, and that he has agreed to the Second Life Terms of Service presently in effect. He clicked "I Agree" to the existing terms on March 31, 2010.

8. Our records show that on at least 28 separate occasions, Mr. Evans agreed to the forum selection provision as it currently exists in section 12.2 of the Terms of Service. In the last 3.5 years, he created at least 101 different Second Life accounts, and in connection with those accounts, he clicked "I Agree" to the Terms of Service then in effect 81 different times. Attached as Exhibit G is a table showing for each of the 101 accounts of Mr. Evans the date the account was created, the last date on which the Terms of Service were presented and

affirmatively accepted by the user's clicking "I Agree," and the last date of login to the account. To protect the account names used by Mr. Evans, the table refers to his accounts as Evans Accounts 1 – 101.

9. Our customer support records also show that plaintiffs Cindy Carter and Valerie Spencer agreed to the forum selection provision as it currently exists in section 12.2 of the Terms of Service. The records also show that the accounts of Valerie Spencer and Donald Spencer are for the same household. Their account information shows the same street address.

Carl Evans Repeatedly Acknowledged and Violated the Terms of Service.

10. Linden Lab has an abuse-reporting process in order to make Second Life an enjoyable experience for our user community. A user who believes that another user's conduct violates the Second Life Terms of Service or Community Standards may report that conduct by submitting an online abuse report to Linden Lab using the Second Life viewer software. Members of Linden Lab's Customer Relations team review and investigate abuse reports and take appropriate responsive action. The actions taken include verbal and written warnings to a user and suspensions of the user's access to Second Life. They depend on the nature and severity of the abuse, the number of prior violations by the abuser, and the number of users affected by the abuse. Attached as Exhibit H is a true and correct copy of the user help information that Linden Lab provides about filing an abuse report.

11. Linden Lab has received over 100 abuse reports about the conduct of Carl Evans in Second Life. The overwhelming majority of the abuse reports were submitted under the "Harassment" category of the abuse-reporting form. They repeatedly identified lewd, profane, violent, and threatening language towards other users. Frequently the language was directed at users who participated in the Second Life Mentor volunteer program and who were present in the

public areas of Second Life that welcomed new users and helped them with answers to questions about Second Life. For example, our records show that an account registered to Carl Evans wrote the following to a participant in the Second Life Mentor program: “you fucking whore your mother and father should burn in hell you rat cunt if I could get near you I wold spit in your skank mouth and shove a bat up your filth ass you little cry baby bith. [sic]”

12. In response to the abuse reports about Carl Evans, Linden Lab took progressively increasing action, starting initially with verbal warnings within Second Life and by telephone from members of Linden Lab’s Customer Relations team. We also sent Mr. Evans written warnings by email about his violations of the Second Life Terms of Service and Community Standards.

13. After these initial warnings, Linden Lab continued to receive abuse reports about Carl Evans using different Second Life accounts to harass others. Our records show abuse reports about more than 20 different accounts of Carl Evans. In response to the repeated reports of his harassment, our Customer Relations team sent him more written warnings and suspended his accounts, starting with one-hour suspensions and increasing the duration to one day, multiple days, multiple weeks, and ultimately closing some of his accounts as the harassment reports continued unabated.

14. Attached as Exhibit I is a sample of the communications from Carl Evans to our Customer Relations team through our online customer support system. Mr. Evans has submitted over 100 such communications and telephoned our Customer Relations team directly dozens of times.

15. In his communications with Linden Lab and other users, Carl Evans has acknowledged his awareness of the Second Life Terms of Service. In customer support requests

that he submitted to us, he complained that a user's conduct "is against your tos" (Exhibit I, Ticket #4051-6515335) and that another user "is just a whiner shoving the tos in every bodys face like hes a cop." (Exhibit I, Ticket #4051-5882522.) In messages that he sent to other users in Second Life, he said:

- "please asking nice here when talking to me do not refer to tos or rules i do[n't] like it and it angers me thank you"
- "fuck you pig fuck the lindens you little crybaby fuck the tos and oh lets not forget fuck the law hahaha"
- "[f]uck the tos i clean dog shit up with it"

16. Mr. Evans has specifically acknowledged his awareness of the forum selection provision as it currently exists in section 12.2 of the Terms of Service. In a written appeal that he submitted under his own name to our Customer Relations team about the closure of one of his accounts, he referenced and linked to Linden Lab's announcement on our Second Life blog of the update to the dispute resolution provision of the Terms of Service. The updated dispute resolution provision included a forum selection provision identical to the one presently in the Terms of Service. In that blog post from Linden Lab, we provided the following "Questions and Answers":

9. Does the TOS allow me to file claims in a court of law?

Yes, Residents may file claims in a court in San Francisco, California.

10. Can I file claims in a court outside of San Francisco, California?

No, if a Resident seeks resolution in a court of law, the claim must be filed in a court in San Francisco, California.

11. What happens if I file a claim in a manner that is not allowed by the TOS?

Linden Lab will notify Residents in writing of claims filed contrary to the TOS. Residents who do not promptly withdraw the claims may be liable for the attorneys' fees and costs, up to \$1,000.00 USD, that Linden Lab incurs as the result of the improper filing.

12. What law applies to a legal dispute that I may have with Linden Lab?

California law governs Residents' relationship with Linden Lab.

13. What if I do not agree to the updated TOS?

Residents who do not agree should decline the updated TOS and are prohibited from using Second Life.

The above-mentioned appeal of Mr. Evans is attached as Exhibit I, Ticket # 4051-4598699. The Second Life blog post referenced in his appeal is attached as Exhibit A.

17. Carl Evans has expressed his intent to evade the Terms of Service by creating new Second Life accounts after Linden Lab suspended or closed his earlier accounts because of his repeatedly abusive behavior. To another user, he wrote:

good morning you rat cunt i started this account just to fucking rip your head off you worthless piece of shit you supposed to mentor not men whore you ratted on my man i wish i could get my hand around your throat [sic]

In correspondence with our Customer Relations team about the closure of one of his accounts, he wrote:

i will admitt [sic] with great ease i can bypass the block and set up a new account but i will wait till 5 pm on fri the 12 of feb 2010 if at this time my account is not released i will be forced to bypass your block to access secondlife and create another account also i plan to take my complaints to the office of the da's in san fran thanks

(Exhibit I, Ticket # 4051-7366155.)

18. In registering his new accounts, Mr. Evans repeatedly provided false identity information, and he admitted to doing so in his communications with our Customer Relations team:

my real name is not james monroe for one and just 2 days ago a friends 19 year old son stole his dads wallet to get his id to open an account i have hellped [sic] 9 people my self bypass this garbage i also play online poker, blackjack and other venues i never use my real name or information

(Exhibit I, Ticket # 4051-6839913.) When asked to confirm the birth date provided for one of his accounts, he responded: "birthdate to be honest i lied have no clue what i used." (Exhibit I, Ticket # 4051-5698727.) When asked for government identification, he provided what appears

to be fake or doctored identification. For example, he provided government identification purporting to be a "Thomas Bing" along with a handwritten letter signed "T. Bing." The handwriting in the "Thomas Bing" letter is identical to the handwriting in a letter that Mr. Evans submitted under his own name. (Exhibit I, Tickets # 4051-4555029 and # 4051-4598699.)

19. Linden Lab has allowed Mr. Evans to continue to use the Second Life service with the written understanding, expressed in an email from our Customer Relations team to him, that he "will comply with Second Life's Terms of Service and Community Standards going forward." (Exhibit I, Ticket # 4051-7399570.)

Key Employees, Records, and Users Are Located in California.

20. Linden Lab is headquartered in San Francisco, California. Almost all of Linden Lab's executive team is located in California. In addition, most of the Customer Relations managers who are responsible for Linden Lab's customer policies and strategies are based in California.

21. The vast majority of Linden Lab's paper records are located at its headquarters in San Francisco, California. Most of Linden Lab's data warehousing team, which is responsible for collecting and organizing the company's electronic records, including our customer records, is in California as well.

22. Linden Lab does not have any offices, employees, or records located in the Eastern District of Pennsylvania.

23. Of the Second Life users located in the United States who pay Linden Lab for paid aspects of the service, more of them are located in California than in any other state.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 7, 2010, at San Francisco, California.

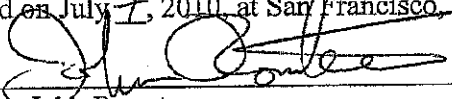

John Rountree

EXHIBIT A



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A Change to the Terms of Service

Posted by Robin Linden on Sep 18, 2007 6:07:09 PM

We wanted to make you aware of a change to our Terms of Service (TOS) regarding the way that disputes are resolved between Linden Lab and Residents. You will be asked to agree to these Terms of Service the next time you log into Second Life.

In the past, we've received some constructive feedback that our process could be improved, and with the aim of reducing the burden on Residents, we've acted on this feedback. We've made some changes that we hope will provide Residents with a cost-effective means of resolving small disputes that they may have with Linden Lab. Of course, we hope that disputes are few and far between, and our aim is and always has been to communicate with Residents to address their concerns as best we can. However, we recognize that disputes occasionally arise, and we'd like to provide Residents with the option of resolving small claims quickly and inexpensively.

Our new updated TOS, which are the terms and conditions on which Linden Lab provides access to the Second Life environment, give Residents the option of resolving claims for amounts less than \$10,000.00 USD through a proceeding conducted by telephone, online, or based on written submissions. With this proceeding—called "binding, non-appearance-based arbitration"—we aim to save Residents both time and money by eliminating the need to appear in person at the arbitration hearing to resolve small claims.

The Q&As after this post go into greater detail about the updated TOS. We hope that this change provides a neutral and cost-effective means of resolving small disputes quickly and effectively, and as always, we welcome feedback.

Questions and Answers

1. Why is Linden Lab doing this?

We know that the amount of money that may be at issue in a Resident dispute with Linden Lab may be small. So we updated the TOS with the goal of allowing Residents to resolve small claims quickly and inexpensively. The updated TOS gives Residents the option of resolving small claims through an arbitration proceeding that doesn't involve a personal appearance by the Resident or Linden Lab.

2. What kinds of disputes does the TOS cover?

The TOS governs disputes between a Resident and Linden Lab. The new dispute resolution procedure does not apply to Resident-to-Resident disputes.

3. What is the arbitration option?

For claims where the total amount of damages sought is less than \$10,000.00 USD, a Resident may choose to resolve the claims through a proceeding called "binding non-appearance-based arbitration."

4. What is "binding non-appearance-based arbitration"?

It is a legally binding procedure administered by a private organization. This means that the arbitrator's opinion on liability and damages may be entered as a final, binding judgment in a court of law. The arbitrator will conduct the arbitration by telephone, online, or based on written submissions, and the Resident and Linden Lab will not make any in-person appearance at the arbitration hearing.

5. How do I elect arbitration?

If a dispute arises with Linden Lab, we strongly encourage Residents to contact us so that we can learn about and try to address their concerns. However, if a Resident seeks to have a dispute resolved in arbitration, the Resident should send Linden Lab a written notice that contains the following:

- (1) A brief statement of the claims alleged and the relief sought;
- (2) Any preference regarding the "established ADR provider" that will conduct the arbitration (for what is an "established ADR provider," see the next question below);
- (3) Any preference regarding whether the arbitration is conducted by telephone, online, or based on written submissions to the arbitrator; and
- (4) Contact information (including mailing address, telephone number, and email address) for the Resident and, if the Resident is represented by counsel, for the Resident's attorney.

Written notices should be sent by mail or fax to:

Linden Lab Legal Department
Attn: Dispute Resolution
945 Battery Street
San Francisco, CA 94111
Fax: 415-243-9045

6. What is an "established ADR provider"?

The Resident and Linden Lab must agree on an established alternative dispute resolution ("ADR") provider to conduct the arbitration. Examples of established ADR providers are the American Arbitration Association (AAA) (<http://www.adr.org/>), Judicial Arbitration and Mediation Services/Endispute (JAMS) (<http://www.jamsadr.com/>), and the National Arbitration Forum (NAF) (<http://www.arb-forum.com/>). Linden Lab will consider reasonable requests to use an established ADR provider. However, please be aware that Linden Lab will not consider any ADR provider that does not have published rules and procedures governing arbitration. Linden Lab also requires that the arbitrator be a retired judge or attorney with legal expertise in the subject matter of the dispute.

7. How much will arbitration cost me?

The exact cost depends on the ADR provider selected. An ADR provider's rules and fee schedule are often available on the provider's website. For example, the National Arbitration Forum's rules currently provide that consumers will pay at most \$185.00 in disputes between consumers and businesses where the total amount of damages sought is less than \$10,000.00 USD. Businesses pay the remainder of the fees charged by the NAF.

8. What kinds of claims are not subject to arbitration under the TOS?

Arbitration is not an option if the total amount of damages sought is \$10,000.00 USD or more, or if injunctive or other equitable relief is sought. Equitable remedies are discretionary and include injunctions, which are court orders that compel or proscribe certain conduct. For information about equitable relief, please see the Wikipedia entry titled "Equitable Remedy" (http://en.wikipedia.org/wiki/Equitable_remedies) and consult a lawyer.

9. Does the TOS allow me to file claims in a court of law?

Yes, Residents may file claims in a court in San Francisco, California.

10. Can I file claims in a court outside of San Francisco, California?

No, if a Resident seeks resolution in a court of law, the claim must be filed in a court in San Francisco, California.

11. What happens if I file a claim in a manner that is not allowed by the TOS?

Linden Lab will notify Residents in writing of claims filed contrary to the TOS. Residents who do not promptly withdraw the claims may be liable for the attorneys' fees and costs, up to \$1,000.00 USD, that Linden Lab incurs as the result of the improper filing.

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California law governs Residents' relationship with Linden Lab.

13. What if I do not agree to the updated TOS?

Residents who do not agree should decline the updated TOS and are prohibited from using Second Life.

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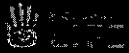
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EXHIBIT B



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Terms of Service

Last updated: March 31, 2010

Effective date: April 30, 2010

Welcome to Second Life! This agreement (this "Agreement" or the "Terms of Service") describes the terms on which Linden Research, Inc. ("Linden Lab") offers you access to Second Life. "Second Life" or the "Service" means the multi-user online service offered by Linden Lab, including its Websites, Servers, Linden Software, Linden In-World Content, and User Content (as those terms are defined in this Agreement). This offer is conditioned on your agreement to all of the terms and conditions contained in the Terms of Service, including the policies and terms linked to or otherwise referenced in this Agreement.

By using Second Life, you agree to and accept these Terms of Service. If you do not so agree, you should decline this Agreement, in which case you are prohibited from accessing or using Second Life.

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This Agreement includes both the terms above and the following 14 sections, which you may jump to directly by selecting the appropriate link below. The headings and subheadings are for your convenience only -- you are responsible for reviewing all sections, defined terms and related links in their entirety to ensure you fully understand this Agreement.

1. **Changes to This Agreement**
2. **Eligibility to Use Second Life**
3. **Account Registration and Billing**
4. **Second Life is a Virtual World Service**
5. **"Linden Dollars" are Virtual Tokens That We License**
6. **"Virtual Land" is In-World Space That We License**
7. **Content Licenses and Intellectual Property Rights**
8. **Conduct by Users of Second Life**
9. **Privacy and Your Personal Information**
10. **Releases, Disclaimers, Liability Limits and Indemnification**
11. **Suspension and Termination of Your Account**
12. **Dispute Resolution and Arbitration**
13. **General Provisions**
14. **Additional Terms and Policies**

1. CHANGES TO THIS AGREEMENT

This Agreement may be changed by Linden Lab effective immediately by notifying you as provided in Section 13.4 below, provided that Material Changes will become effective thirty (30) days after such notification. By continuing to access or use Second Life after the effective date of any such change, you agree to be bound by the modified Terms of Service. A "Material Change" is a change to this Agreement which reduces your contractual rights or increases your responsibilities under this Agreement in a significant manner.

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2. ELIGIBILITY TO USE SECOND LIFE

2.1 Age Requirements for Second Life.

By accepting this Agreement in connection with an Account (other than for Teen Second Life), you represent that you are at least 18 years of age, or the legal age of majority where you reside if that jurisdiction has an older age of majority, and you have the legal authority to enter into this Agreement.

2.2 Age Requirements for Teen Second Life.

By accepting this Agreement in connection with an Account for use in Teen Second Life, you represent that (i) you are at least 13 years of age and less than 18 years of age; (ii) you will not continue to use Teen Second Life after you turn 18; (iii) your parent or legal guardian has consented to your having an Account in Teen Second Life, participating in the Service, and providing your personal information in connection with the Service; and (iv) your parent or legal guardian has read and accepted this Agreement.

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Second Life Terms of Service

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on your behalf. If you are under 13 years of age, then please do not use Teen Second Life. There are lots of other great virtual world services for you. Talk to your parents about which services are appropriate for you.

2.3 Age Verification for Adult Only Second Life.

In order to access Second Life regions or listings designated as "Adult Only" Content (which Content may be explicitly sexual, intensely violent or otherwise designated as Adult under our **Maturity Ratings** ("Adult Only Content")), you affirm that you are at least 13 years of age, or the age of legal majority where you reside if that jurisdiction has an older age of majority. You further agree that as a condition to accessing Adult Only Second Life, you will submit to account verification as required by Linden, and provide only true and accurate identification documentation to Linden or its third party service providers to verify your age. You further acknowledge that you will comply with our **Maturity Ratings**, and conduct any activities we have defined as Adult only within regions designated as Adult.

2.4 Requirements for Corporate Users.

If you are using the Service on behalf of a company, organization or other legal entity (collectively, "User Organization"), you represent and warrant that you are an employee of that User Organization or other person authorized to do so.

2.5 Other Eligibility Requirements for Use of Second Life.

You may not use or register to use Second Life (i) for the duration of your suspension if you have been suspended from the Service by Linden Lab; (ii) at any time if you have been terminated from the Service by Linden Lab; or (iii) at any time if you are a person barred from receiving the Services under applicable law.

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3. ACCOUNT REGISTRATION AND BILLING

3.1 You must establish an account to use Second Life, using true and accurate registration information.

You must establish an Account with Linden Lab to use the Service, except for those portions of the Websites which Linden Lab allows users to access without registration. You may establish one or more additional Accounts, provided that your existing Account is in good standing and you are otherwise in full compliance with this Agreement. You may not transfer or assign your Account and its contractual rights, licenses and obligations, to any third party without the prior written consent of Linden Lab.

You agree to provide accurate, current and complete information about yourself as prompted by the registration form ("Registration Data") and to use the account management tools provided to keep your Registration Data accurate, current and complete.

You may establish an Account with Registration Data provided to Linden Lab by a third party who provides a gateway to our Service through the use of an API, in which case you may have a separate, additional account relationship with such third party. This relationship in no way modifies, lessens or alters your obligations under this Terms of Service. Access to Second Life through third parties may be available or discontinued at the discretion of Linden Lab. You acknowledge that Linden Lab is not liable for the acts or omissions of such third parties, which are not the partner or representative of Linden Lab or endorsed or controlled by Linden Lab.

3.2 You agree to use an Account Name in Second Life that is not misleading, offensive or infringing. You are responsible for activities related to your Account Name, and for keeping your password for this Account secure.

You must choose an account name to identify yourself to Linden Lab staff in connection with your Account (your "Account Name"), which will also serve as the name for your graphical representation within the Service under this Account (your "Avatar"). You may not select as your Account Name any name that Linden Lab determines may cause deception or confusion; may violate any trademark right, copyright, or other proprietary right or mislead other users regarding your identity or affiliation; or any name that Linden Lab determines in its discretion to be vulgar, offensive, or otherwise inappropriate. Linden Lab reserves the right to delete or change any Account Name that violates this paragraph, and will have no liability regarding the use or deletion of any Account Name.

You are responsible for all activities conducted through your Account. In the event that fraud, illegality or other conduct that violates this Agreement is discovered or reported (whether by you or someone else) that is connected with your Account, we may suspend or terminate your Account (or Accounts) as described in Section 11.

At the time your Account is opened, you must select a password. You are responsible for maintaining the confidentiality of your password and are responsible for any harm resulting from your disclosure, or authorization of the disclosure of your password or from any person's use of your password to gain access to your Account or Account Name. At no time should you respond to an online request for a password other than in connection with the log-on process to the Service. Your disclosure of your password to any other person is at your own risk.

3.3 If you choose to use paid aspects of the Service, you agree to the posted pricing and billing policies on the Websites.