

# *QUICKPOLE.CA*

## **TERMS OF SERVICE**

**Last Modified On: July 12<sup>th</sup>, 2018**

### **1. PRELIMINARY PROVISIONS:**

1.1 Introduction. Welcome to our website's Terms and Conditions ("Agreement"). The provisions of this Agreement will govern your use of our website, and you should therefore take the time to read it carefully. We hope that you thoroughly enjoy our products and services, and anticipate that you will find our site useful and informative. Should you have any questions or comments regarding our website, or its policies, please feel free to contact us by sending an e-mail to [info@sonideft.com](mailto:info@sonideft.com).

1.2. Legal Conditions Apply. Additionally, through the use of these Terms and Conditions, we are placing legal conditions on your use of this website (www.quickpole.ca, hereinafter the "Website").

### 1.3. Party Definitions

1.3.1 *Service Provider Defined*. "We," are the service provider of [www.quickpole.ca](http://www.quickpole.ca). When this Agreement uses first-person pronouns such as "us," "we," "our," "ours," etc., those first-person pronouns are referring to us as the service provider for www.quickpole.ca.

1.3.2 *Web Site User Defined*. "You," the User - As a User of this Website, this Agreement will refer to the User as "You" or through any second-person pronouns, such as "Yours," etc. The User of the Website shall be referred to in applicable second-person pronouns throughout this Agreement.

1.3.3 *Website Defined*. When the term "Website" is used in this Agreement, it means www.quickpole.ca. unless the Agreement specifically says otherwise.

1.4 Acknowledgement that Consideration Is Provided. You agree that consideration for Your acquiescence to all of the provisions in this Agreement has been provided to You in the form of allowing You to use Our Website and the services thereon. You agree that such consideration is adequate, and that it is received when You view or download any portion of Our Website or any files accessible from our Website.

1.5 User Agrees to the Terms of this Agreement. You agree that Your use of the Website constitutes Your acceptance of all of the terms and conditions of this Agreement. If You do not wish to be bound by the terms of this Agreement, You agree to leave the Website immediately.

1.6 Negotiations for Personal Agreement Permitted. You may contact Us to negotiate a separate agreement BEFORE You use the Website. We do not guarantee that such negotiations will be successful. Nevertheless, if you wish to discuss your own personalized Agreement, please contact us or have your legal counsel do so.

1.7 Legal Consultation Mandated. If You have questions about or do not understand all of the terms of this Agreement, You agree to consult a lawyer before using the Website.

1.8. Revisions to this Agreement

1.8.1 *We May Revise this Agreement.* You specifically agree that We have the right to revise the terms of this Agreement at any time. You agree that all modifications or changes to this Agreement are in force immediately upon posting to Our Website.

1.8.2 *Notice of Our Revisions.* If We change anything in this Agreement, We will change the "last modified date" at the top of this Agreement. You agree that it is Your responsibility to remain up to date with the terms and conditions expressed within this Agreement every time You access or use this Website.

1.8.3 *Waiver of Rights in Case of Failure to Remain Updated.* You agree that if You fail to remain up to date with the terms and conditions expressed within this Agreement, You assume all responsibility for such omissions and You agree that such failure amounts to Your affirmative waiver of Your rights that may have arisen under previous versions of this Agreement.

1.9 No Professional Advice on Website. You agree and understand that any information provided upon Our website (<http://www.quickpole.ca>), or through conversations You may have with people associated with Us, does not constitute professional advice. You further agree that it is exclusively Your responsibility to seek and obtain any professional advice you may need in order to fully understand the information on Our website.

## **2. ACCEPTANCE AND AFFIRMATION**

2.1 Use of the Website Constitutes Acceptance of Terms. You agree and affirm that Your access and/or use of the Website constitutes acceptance to all of the terms and conditions expressed within this Agreement.

## **3. SERVICES PROVIDED AND NOT PROVIDED**

3.1 Services Provided. You agree and acknowledge that the Website provides data and makes available information related to the products and software that We sell. The Website contains images and content, including but not limited to text, images, messages, and other information. You agree and acknowledge that all materials displayed on the Website are protected by applicable patent and trademark law. You agree that We are not responsible for the content of communications, statements, opinions, posting or other information placed on the Website by third parties, via any discussion board, forum, or public area of the Website.

3.2 User Releases Website from Liability. You hereby discharge, acquit, and otherwise release the Website, its parent corporation, its agents, employees, officers, directors, shareholders, lawyers, and affiliates, from any and all allegations, counts, charges, debts, causes of action, and claims relating in any way to the use of, or activities relating to Your use of, the Website including, but not limited to claims relating to the following:

3.2.1 *Specific Damages Waived by the User.* You hereby discharge, acquit, and otherwise release the Website, Sonideft Inc., their agents, employees, officers, directors, shareholders, lawyers, and affiliates, from liability for damages from any instances of Copyright Infringement, Negligence, Gross Negligence, Reckless Conduct, , Intentional Infliction of Emotional Distress, Intentional Interference with Contract or Advantageous Business Relationship, Defamation, Invasion of Privacy, and Misrepresentation or any claim based on Vicarious Liability for Torts committed through or on the Website.

3.2.2 *List of Waived Damages Not Exhaustive.* The above list is provided for purposes of example only, and not exhaustive of the types or categories of claims released by You. This release is intended by the parties to be interpreted broadly in favor of the Website, and thus any ambiguity shall be interpreted in a manner providing release of the broadest claims. This release is intended to be a full release of claims, and the parties acknowledge the legally binding nature of this provision, and the nature of the rights given up in connection therewith.

#### **4. USER TERMS, LIMITATIONS & CONDITIONS:**

4.1 Knowledge and Experience Needed to Consent. You represent and warrant that You have the appropriate legal capacity to enter into this Agreement. You further represent and warrant that you have the appropriate knowledge, skills, and training to fully understand the information presented upon the Website. You further agree and warrant not to bypass any security and/or access features on the Website.

4.2 No Illegal Conduct Allowed. You will not use the Website in any manner inconsistent with any applicable laws or regulations. You may not use the Website to advertise products or services, nor may You use the Website in order to solicit products or services from third parties to this Agreement, unless otherwise permitted by Us through explicit, written permission.

#### **5. SPECIAL CONSIDERATIONS REGARDING LAW ENFORCEMENT**

**User Agrees to Website's Cooperation With Law Enforcement. We willfully cooperate with any law-enforcement agency. You agree that We may cooperate in any form with a request for information from any law enforcement authority, and explicitly waive any privacy protections or concerns relating to Our transmittal of Your information, including sensitive personal information where applicable, to law enforcement authorities.**

#### **6. IMAGES AND CONTENT**

6.1. Website to Contain Images. Our Website contains images and content, including but not limited to text, software, images, graphics, data, messages, and other information (collectively, "Materials").

6.2. User Acknowledges Website Materials Are Protected By Law. You acknowledge and stipulate that all of the Materials are expressive content that is fully protected by applicable patent and trademark law.

6.3. User Agrees Not to Access the Website If It Would Be Unlawful. You agree not to use or access the Website if doing so would violate the laws of Your state, province, or country. You further agree that it is Your responsibility to become aware of any applicable laws in your jurisdiction that may affect Your right to view the Website.

## **7. RESTRICTIONS ON USE OF WEBSITE**

7.1. User Agrees to Not Use Website for Purposes Outside the Scope of This Agreement. You agree that You will only use the Website for purposes expressly permitted and contemplated by this Agreement. You may not use the Website for any other purposes without Our express prior written consent.

7.2. User Needs Explicit Written Permission from the Website Owners to Perform Specific Acts. You agree that, without Our express prior written authorization, You may not:

7.2.1. Duplicate any part of the Website or the materials contained therein (except as expressly provided elsewhere in this Agreement);

7.2.2. Redistribute or create any derivative works based on the Website or any of the materials contained therein. You agree that any such use is NOT "fair use;"

7.2.3. Use the Website or any of the materials contained therein for any public display, public performance, sale or rental, and You hereby agree and stipulate that any and all such uses are NOT "fair use;"

7.2.4. Remove any copyright or other proprietary notices from the Website or any of the Materials contained therein;

7.2.5. Circumvent any encryption or other security tools used anywhere on the Website.

7.3. Acceptable Use Policy. You agree that We are entitled to investigate and terminate Your access to the Website if We believe, in Our sole discretion, that You have misused the Website, or behaved in a way which could be regarded as inappropriate, unlawful, or illegal.

7.4. User Agrees to Not Use the Website to Send SPAM Or Other Commercial Messages. You agree not to use any facilities or capabilities of the Website to solicit the performance of any activity that is prohibited by applicable laws dealing with illegal distribution of unsolicited commercial bulk e-mail ("UCBE"), commonly known as "SPAM," nor shall Users forge or use without authorization any mail header information from any source. Any breach of this provision will result in immediate termination of Your access to the Website, and the immediate provision of Your identity and contact information to applicable law enforcement agencies.

## **8. DISCLAIMER AND INDEMNIFICATION**

8.1. User Agrees to Termination of Access to the Website in Case of Violation of Laws. You agree that, if We determine that You or any User has used Our services in violation of any law, Your ability to use the Website may be terminated immediately and We have every right to voluntarily cooperate with law enforcement or private aggrieved parties that We may be legally compelled to do so. We hereby disclaim any liability for damages that may arise from any User providing any services for any purpose that violates any law. You do hereby agree to defend, indemnify and hold Us harmless from any liability that may arise for Us should You violate any law.

8.2. User Agrees to Indemnify Website from Third-Party Lawsuits Arising from That User's Bad Acts. You also agree to defend and indemnify Us should any third party be harmed by Your actions, and/or if We should be obligated to defend any claims including, without limitation, any criminal or civil action brought by any party against Us as a result of Your use of the Website.

8.3. User Agrees to Indemnify and Hold Harmless the Website from Claims Arising from the User's Access or Use of the Website. You agree to defend, indemnify, and hold harmless our company, its officers, directors, shareholders, employees, independent contractors, telecommunication providers, and agents, from and against any and all claims, actions, loss, liabilities, expenses, costs, or demands, including without limitation legal and accounting fees, for all damages directly, indirectly, and/or consequentially resulting or allegedly resulting from Your (or You under another person's authority - including without limitation to governmental agencies) use, misuse, or inability to use the Website or any of the Materials contained therein, or Your breach of any part of this Agreement. We shall promptly notify You by electronic mail of any such claim or suit, and cooperate fully (at Your expense) in the defense of such claim or suit. We reserve the right to participate in the defense of such claim or defense at Our own expense, and choose Our own legal counsel; however, You agree that We are not obligated to do so.

## **9. INTELLECTUAL PROPERTY INFORMATION**

9.1. User Agrees that The Website and Its Name Are Service Marks and/or Trademarks. You agree that quickpole.ca and the aforementioned name of the Website are Our service mark(s) and/or trademark(s).

9.2. User Agrees that Products and Services Advertised on the Website May Be Trademarked By Third Parties. Other companies' product and service names referenced herein may be trademarks and service marks of their respective companies and are the exclusive property of such respective owners, and may not be used publicly without the express written consent of the owners and/or holders of such trademarks and service marks.

9.3. User Acknowledges that the Website is a Copyrighted Product. You agree that this Website belongs to Us, and we either own or have rights to display all of the materials thereupon. You may not use any of Our materials without Our express written consent.

## **10. LIMITATION OF LIABILITY**

10.1. User Agrees to Waive Special Damages. You agree that in no event shall We (or Our licensors, agents, suppliers, resellers, service providers, or any other subscribers or suppliers) be liable to You, or any other third party for any direct, special, indirect, incidental, consequential, exemplary, or punitive damages, including without limitation, damages for loss of profits, loss of information, business interruption, revenue, or goodwill, which may arise from any person's use, misuse, or inability to use the Website or any of the Materials contained therein, even if We have been advised of the probability of such damages. This applies to any matter arising out of or relating to this Agreement, whether such liability is asserted on the basis of contract, tort or otherwise, even if We have been advised of the possibility of such damages.

10.2. User Agrees to Limit General Damages. In no event shall Our maximum total aggregate liability hereunder for direct damages exceed the total fees actually paid by You for use of the Website for a period of no more than one (1) month from the accrual of the applicable cause or causes of action.

## **11. GENERAL PROVISIONS**

11.1. Governing Law. You agree that this Agreement and all matters arising out of, or otherwise relating to, this Agreement and/or Your use of the Website shall be governed by the laws of the Province of Nova Scotia, excluding its conflict of law provisions. The sum of this paragraph is that any and all disputes must be, without exception, brought to court and litigated in Halifax, Nova Scotia.

11.1.1. All parties to this Agreement agree that all actions or proceedings arising in connection with this Agreement or any services or business interactions between the parties that may be subject to this Agreement shall be tried and/or litigated exclusively in the provincial and federal courts located in Halifax, Nova Scotia.

11.1.2. The parties agree to exclusive jurisdiction in, and only in, Halifax, Nova Scotia.

11.1.3. The parties agree to exclusive venue in, and only in, Halifax, Nova Scotia.

11.1.4. The parties additionally agree that this choice of venue and forum is mandatory and not permissive in nature, thereby precluding any possibility of litigation between the

parties with respect to, or arising out of, this Agreement in a jurisdiction other than that specified in this paragraph.

11.1.5. All parties hereby waive any right to assert the doctrine of *forum non-conveniens* or similar doctrines, or to object to venue with respect to any proceeding brought in accordance with this paragraph or with respect to any dispute under this Agreement whatsoever.

11.1.6. All parties stipulate that the provincial and federal courts located in the Province of Nova Scotia, shall have personal jurisdiction over them for the purpose of litigating any dispute, controversy, or proceeding arising out of (or related to) this Agreement and/or the relationship between the parties contemplated thereby.

11.1.7. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it, as contemplated by this paragraph by registered or certified mail, Federal Express, proof of delivery or return receipt requested, to the parties' address for the giving of notices as set forth in this Agreement.

11.1.8. Any final judgment rendered against a party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law if such enforcement becomes necessary.

11.2. Mandatory Arbitration. If there is a dispute between the parties arising out of or otherwise relating to this Agreement, the parties shall meet and negotiate in good faith to attempt to resolve the dispute. If the parties are unable to resolve the dispute through direct negotiations, then, except as otherwise provided herein, either party may submit the issue to binding arbitration in accordance with the then-existing Commercial Arbitration Rules of the Canadian Arbitration Association. Arbitral Claims shall include, but are not limited to, contract and tort claims of all kinds, and all claims based on any federal, provincial or local law, statute, or regulation, excepting only claims under applicable worker's compensation law, unemployment insurance claims, actions for injunctions, attachment, garnishment, and other equitable relief. The arbitration shall be conducted in Halifax, Nova Scotia, and conducted by a single arbitrator, knowledgeable in Internet and e-Commerce disputes. The arbitrator shall have no authority to award any punitive or exemplary damages; certify a class action; add any parties; vary or ignore the provisions of this Agreement; and shall be bound by governing and applicable law. The arbitrator shall render a written opinion setting forth all material facts and the basis of his or her decision within thirty (30) days of the conclusion of the arbitration proceeding. **THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRAL CLAIMS.**



11.3. Powers of the Arbitrator. You agree that the Arbitrator shall have no authority to award any punitive or exemplary damages; certify a class action; add any parties; vary or ignore the provisions of this Agreement; and shall be bound by governing and applicable law. The arbitrator shall render a written opinion setting forth all material facts and the basis of his or her decision within thirty (30) days of the conclusion of the arbitration proceeding. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRAL CLAIMS.

11.4. No Waiver of Right to Arbitration. You agree that there shall be no waiver of the right to arbitration unless such waiver is provided affirmatively and in writing by the waiving party to the other party. You agree that there shall be no implied waiver of this right to arbitration. No acts, including the filing of litigation, shall be construed as a waiver or a repudiation of the right to arbitrate.

11.5. Severability. If for any reason a court of competent jurisdiction or a qualified arbitrator under Section 11.2 of this Agreement finds any provision of this Agreement, or any portion thereof, to be unenforceable, the parties agree that that provision will be enforced to the maximum extent permissible and the remainder of this Agreement will continue in full force and effect.

11.6. Solicitors' Fees. In the event any Party shall commence any claims, actions, formal legal action, or arbitration to interpret and/or enforce any of the terms and conditions of this Agreement, or relating in any way to this Agreement, including without limitation asserted breaches of representations and warranties, the prevailing party in any such action or proceeding shall be entitled to recover, in addition to all other available relief, its reasonable solicitors' fees and costs incurred in connection therewith, including solicitors' fees incurred on appeal.

11.7. No Continuing Waiver. No waiver or action made by Us shall be deemed a waiver of any subsequent default of the same provision of this Agreement. If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from this Agreement.

11.8. Headings. You agree that all headings and sub-headings in this Agreement are provided solely for the convenience of reference and shall not affect the meaning, construction or effect of this Agreement.

11.9. Complete Agreement. This Agreement constitutes the entire Agreement between the parties with respect to Your access and use of the Website and the Materials contained therein, and supersedes and replaces all prior understandings or agreements, written or oral, regarding such subject matter.

## 12. STIPULATED LIQUIDATED DAMAGES

12.1. Liquidated Damages Agreed To. In various provisions in this Agreement, We have outlined liquidated damages amounts to be applied as penalties against You if You violate these specific provisions. You specifically agree to pay these amounts. In agreeing to pay liquidated damages, You acknowledge that this amount is not a penalty, that the actual damages are uncertain and difficult to ascertain, but that this amount represents the parties' good faith attempt to calculate an appropriate compensation based on anticipated actual damages.

12.2. General Liquid Damages Amount. For any breach of a portion of this Agreement that does not specifically state a liquidated damages amount, You hereby agree that any breach of this Agreement shall result in liquidated damages of CA\$7,500.00 per occurrence. You specifically agree to pay this CA\$7,500.00 in liquidated damages.

12.3. Rights to Liquid Damages Can Be Assigned. For any breach of this Agreement resulting in liquidated damages owed by You, You specifically agree that We can, and We expressly reserve the right to, assign Our rights to these liquidated damages to a third party.

12.4. Reimbursement of Fees Expressly Permitted. If We are required to enlist the assistance of legal counsel or other person to collect any liquidated damages or any other amount of money from You, or if We are required to seek the assistance of a Lawyer to pursue injunctive relief against You, then You additionally agree that You will reimburse Us for all fees incurred in order to collect these liquidated damages or in order to seek injunctive relief from You. You understand that even a nominal amount of damages may require the expenditure of extensive legal fees, travel expenses, costs, and other amounts that may dwarf the liquidated damages themselves. You agree that You will pay all of these fees and costs.

This document was prepared for Sonideft Inc. by Derek B. Brett, Esquire, Burnside Law Group, Dartmouth, Nova Scotia, Canada.

*Nothing more follows.*