

FASIG-TIPTON COMPANY, INC.
TERMS AND CONDITIONS OF USE

IMPORTANT: READ CAREFULLY. Please read these Terms and Conditions of Use (these “Terms of Use”) carefully as they contain important information about your legal rights, remedies and obligations. These Terms of Use are a legal contract between you and Fasig-Tipton (as defined herein). By accessing the Service, you agree to be bound by these Terms of Use. If you do not agree to these Terms of Use or any provision of them, please exit the Service and refrain from all further use of it.

Please note: Section 19 of these Terms of Use below contains an arbitration clause and class action waiver that apply to all users. Section 19 affects how disputes with Fasig-Tipton are resolved. By accepting these Terms of Use, you agree to be bound by this arbitration clause and class action waiver. Please read it carefully.

Last Updated: April 1, 2020

1. User's Acknowledgment and Acceptance of Terms

Fasig-Tipton Company, Inc. (“Fasig-Tipton,” “us,” or “we”) provides the www.fasigtipton.com website (the “Website”) and all services offered by us through the Website or otherwise, including without limitation, all mobile, tablet, and other smart devices applications and application program interfaces and associated services (collectively, the “Service”) subject to your compliance with all the terms, conditions, and notices contained or referenced in these Terms and Conditions of Use (these “Terms of Use”), as well as any other written agreement between you and/or your company, as applicable (at times, “you” or “user(s)”) and us. In addition, when using particular services or materials on the Service Website, users shall be subject to any posted guidelines or rules applicable to such services or materials that may contain terms and conditions in addition to those in these Terms of Use. All such guidelines or rules are hereby incorporated by reference into these Terms of Use in their entirety.

BY COMPLETING THE REGISTRATION PROCESS AND/OR USING THE SERVICE, YOU AGREE TO BE BOUND BY THESE TERMS OF USE FOR YOURSELF AND ANY INDIVIDUAL OR ENTITY THAT ACCESSES AND/OR USES THE SERVICE UNDER YOUR ACCOUNT OR USER NAME. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS OF USE, PLEASE EXIT THE SERVICE NOW. YOUR REMEDY FOR DISSATISFACTION WITH THE SERVICE, OR ANY PRODUCTS, SERVICES, CONTENT, OR OTHER INFORMATION AVAILABLE ON OR THROUGH THE SERVICE, IS TO STOP USING THE SERVICE AND/OR THOSE PARTICULAR PRODUCTS OR SERVICES. YOUR AGREEMENT WITH US REGARDING COMPLIANCE WITH THESE TERMS OF USE BECOMES EFFECTIVE IMMEDIATELY UPON COMMENCEMENT OF YOUR USE OF THE SERVICE.

These Terms of Use are effective as of the date set forth above. We reserve the right to change these Terms of Use from time to time without notice to you. You acknowledge and agree that it is your responsibility to review the Service and these Terms of Use periodically and to be aware of any modification(s). Your continued use of the Service after such modification(s) will constitute your acknowledgment of the modified Terms of Use and agreement to abide and be bound by such modified Terms of Use.

As used in these Terms of Use, references to our "Affiliates" include our owners, subsidiaries, affiliated companies, officers, directors, suppliers, partners, sponsors, and advertisers, and includes (without limitation) all individuals and entities involved in creating, producing, and/or delivering the Service and/or its contents.

2. Description of Services

We make various services available on and through the Service including, but not limited to, providing a platform for bidding, purchasing, and selling horses and related services. Fees for the various services are set out in the membership and service fees described elsewhere on and through the Service. You are solely responsible for providing, at your own expense, all equipment necessary to use the services, including: (i) a computer and modem; and (ii) your own Internet access (including payment of telephone or other service fees associated with such access).

We reserve the sole right to modify or discontinue the Service, including any features therein, at any time with or without notice to you. We shall not be liable to you or any third party should we exercise such right. Modifications may include, but are not limited to, changes in the pricing structure, the addition of fee-based services, or changes to limitations on allowable file sizes. Any new features that augment or enhance the then-current services provided on or through the Service also shall be fully subject to these Terms of Use.

You understand and agree that temporary interruptions of the services available on or through the Service may occur from time to time as normal events. You further understand and agree that: (i) we have no control over third party networks that you may access in the course of accessing and using the Service; and (ii) therefore, delays and disruptions of other network transmissions are completely beyond our control.

You understand and agree that the services available on or through the Service are provided “AS IS” and that we assume no responsibility for the timeliness, deletion, mis-delivery, or failure to store any user communications or personalization settings in or through the Service.

3. Registration Data, Privacy, and Security

To access some of the services on or through the Service, you must be at least eighteen (18) years old and it will require you to obtain a separate account and password that can be obtained by completing our online registration form, which requests certain information and data (collectively, the “Registration Data”), and maintaining and updating your Registration Data as required. By registering, you agree that: (i) you are eighteen (18) years of age or older and have the capacity to enter into an enforceable contract with us; (ii) if you are registering an account for a company or other legal entity, you represent and warrant that you have the authority to legal bind such company or other entity to these Terms of Use in their entirety and specifically to grant us all permissions and license provided for in these Terms of Use; (iii) all information provided in the Registration Data is true and accurate; and (iv) you will maintain and update this information as required to keep it current, complete, and accurate from time to time.

User verification on the Internet is difficult and we do not assume any responsibility for the confirmation of any user’s identity. Notwithstanding the

above, for transparency and fraud prevention purposes and as permitted by applicable laws, we may (but have no obligation to) ask users to provide additional information for identification or verification purposes as we deem appropriate in our sole and absolute discretion.

You also grant us the right to disclose to third party individuals and entities certain Registration Data about you. The information we obtain through your use of the Service, including your Registration Data, is subject to our [Privacy Policy](#), which is specifically hereby incorporated by reference into these Terms of Use in its entirety.

You are responsible for maintaining the confidentiality and security of your account credentials and may not disclose your credentials to any third party. You should immediately notify Fasig-Tipton if you know or have any reason to suspect that your credentials have been lost, stolen, misappropriated, or otherwise compromised or in case of any actual or suspected unauthorized use of your account. You are liable for any and all activities conducted through your account, unless such activities are not authorized by you and you are not otherwise negligent (such as failing to report the unauthorized use or loss of your credentials).

4. Payment of Fees

If you subscribe to a service on the Service that requires payment of a fee, you agree to pay all fees associated with such service. For all charges for services available on or through the Service, we will bill your credit card. Recurring charges are billed in advance, at our sole instance and in our sole discretion. You agree to provide us with accurate and complete billing information (including valid credit card information, your name, address, and telephone number) and to provide us with any changes in such information within fifteen (15) calendar days of any such change.

If for any reason, your credit card company refuses to pay the amount billed for any service, you agree that we may, at our option, to suspend or terminate your subscription to, or retention or use of, any such service and to require you to pay the overdue amount by other means acceptable to us. We may charge a fee for reinstatement of suspended or terminated accounts.

You agree that until your subscription to, or retention or use of, any such service is terminated, you will continue to accrue charges for which you shall remain responsible, even if you do not use such service.

In the event legal action is necessary to collect on any balance(s) due, you agree to reimburse us for all expenses incurred to recover sums due, including attorneys' fees and other legal expenses.

5. Conduct on or through the Service

Your use of the Service is subject to all applicable laws and regulations, including generally accepted and utilized "Netiquette," and you are solely responsible for the contents of your communications on or through the Service. By posting information in or otherwise using any communications service, chat room, message board, newsgroup, software library, or other interactive service that may be available to you on or through the Service, you agree that you will not upload, share, post, or otherwise distribute or facilitate distribution of any content — including in the form of text, communications, software, images, sounds, data, or other information — that:

- is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, contains explicit or graphic descriptions or accounts of sexual acts (including but not limited to sexual language of a violent or threatening nature directed at another individual or group of individuals), or otherwise violates our rules or policies;
- victimizes, harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
- promotes illegal or harmful activities or substances or is violent or threatening or promotes violence or actions that are threatening to any person or animal;
- infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any individual or entity;
- constitutes unauthorized or unsolicited advertising, junk or bulk email (also known as "spamming"), chain letters, any other form of unauthorized solicitation, or any form of lottery or gambling;

- contains software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any individual or entity, including third parties;
- impersonates any person or entity, including any employees or representatives of ours or of any of our Affiliates; or
- violates any Fasig-Tipton (or any Affiliate(s)) policy or standard.

We neither endorse nor assume any liability for the contents of any material uploaded or submitted by users of the Service. We generally do not pre-screen, monitor, or edit the content posted by users of communications services, chat rooms, message boards, newsgroups, software libraries, or other interactive services that may be available on or through the Service. However, we and our agents have the right at our/their sole discretion to remove any content that, in our judgment, does not comply with these Terms of Use and any other rules of user conduct for the Service, or is otherwise harmful, objectionable, or inaccurate. We are not responsible for any failure or delay in removing such content. You hereby consent to such removal and waive any claim against us arising out of such removal of content. See, Section 8 below entitled “User’s Materials” for a description of the procedures to be followed if any individual or entity believes that content posted on or through the Service infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any individual or entity.

You acknowledge and agree that you will not use, copy, adapt, modify, prepare derivative works of, distribute, license, sell, transfer, publicly display, publicly perform, transmit, broadcast, or otherwise exploit the Service. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Fasig-Tipton or its licensors other than for the limited license to: (i) use the Service on your personal device(s); and (ii) access and view any content made available through the Service and accessible to you, solely for your personal and non-commercial use.

You are solely responsible for all user content that you make available on or through the Service. Accordingly, you represent and warrant that: (i) you

either are the sole and exclusive owner of all user content that you make available on or through the Service or you have all rights, licenses, consents, and releases that are necessary to grant to Fasig-Tipton the rights in and to such user content, as contemplated under these Terms of Use; and (ii) neither the user content nor your posting, uploading, publication, submission, or transmittal of the user content or Fasig-Tipton's use of such user content (or any portion thereof) will infringe, misappropriate, or violate any third party individual's or entity's patent, copyright, trademark, trade secret, moral rights, or other proprietary or intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

In addition, you may not use your account to breach security of another account or attempt to gain unauthorized access to another network or server. Not all areas of the Website or Service may be available to you or other authorized users. You shall not interfere with anyone else's use and enjoyment of the Service or other similar services. Users who violate systems or network security may incur criminal and/or civil liability.

You agree that we may at any time, and at our sole instance and in our absolute discretion, terminate your membership without prior notice to you for violating any of the provisions of these Terms of Use and/or of the Fasig-Tipton [Privacy Policy](#). In addition, you acknowledge that we will cooperate fully with investigations of violations of systems or network security at or through other websites or applications, including cooperating with law enforcement authorities in investigating suspected criminal violations.

6. Third Party Websites, Services, Applications, and Information

The Service may link you to other websites on the Internet or otherwise include references to information, documents, software, materials and/or services provided by other individuals or entities. Those external sites may contain information or material that some people may find inappropriate or offensive. Those external sites and individuals and entities are not under our control, and you acknowledge that: (i) we are not responsible for the accuracy, copyright compliance, legality, decency, or any other aspect of the content of such external sites; and (ii) we are not responsible for errors or omissions in any references to other individuals or entities and/or their products and services. The inclusion of such a link or reference is provided

merely as a convenience and does not imply endorsement of, or association with, the Service or any individual or entity by us, or any warranty of any kind, either express or implied.

7. Intellectual Property Information

Our name, logo, and any and all related materials are owned solely by us and we do not consent to their use by any individual or entity, including you, all users, or any others for any purpose without our prior express written consent. All Rights Reserved.

For purposes of these Terms of Use, the term “content” is defined as any information, communications, software, photos, video, graphics, music, sounds, and other material and services that can be viewed by users on or through the Service. This includes, but is in no way limited to, message boards, chat, and other original content.

By accepting these Terms of Use, you acknowledge and agree that all content presented to you on or through the Service is protected by copyrights, trademarks, service marks, patents, or other proprietary rights and laws, and is the sole property of Fasig-Tipton and/or its Affiliates. You are only permitted to use the content as expressly authorized by us or the specific content provider. Except for a single copy made for personal use only, you may not copy, reproduce, modify, republish, upload, post, transmit, or distribute any documents or information from the Service in any form or by any means without prior written permission from us or the specific content provider, and you are solely responsible for obtaining permission before reusing any copyrighted material that is available on or through the Service. Any unauthorized use of the materials appearing on or through the Service may violate copyright, trademark, and other applicable laws and could result in criminal and/or civil penalties.

Neither we nor our Affiliates warrant or represent that your use of materials displayed on, or obtained through, the Service will not infringe the rights of third party individuals or entities. See, Section 8 below entitled “User’s Materials” for a description of the procedures to be followed if any individual or entity believes that content posted on or through the Service infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any individual or entity.

The Service may, in its entirety or in part, be protected by copyright, trademark, and/or other laws of the United States. You acknowledge and agree that the Service, including all associated intellectual property rights, are the exclusive property of Fasig-Tipton and/or its licensors or authorizing third parties. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Service. All trademarks, service marks, logos, trade names, and any other source identifiers of Fasig-Tipton used on or in connection with Service are trademarks or registered trademarks of Fasig-Tipton in the United States. Trademarks, service marks, logos, trade names and any other proprietary designations of third parties used on or in connection with the Service are used for identification purposes only and may be the property of their respective owners.

Certain of the ideas, software, and processes incorporated into the Fasig-Tipton products and services that may be available on or through the Service are protected by patent applications pending in the United States, and we intend to prepare and file additional patent applications in selected foreign jurisdictions as might be appropriate and as we may determine in our sole and absolute discretion.

8. User's Materials

Subject to our [Privacy Policy](#), any communication or material that you transmit to the Service or to us, whether by electronic mail or other means, for any reason, will be treated as nonconfidential and nonproprietary. While you retain all rights in such communications or material, you grant us and our designated licensees a nonexclusive, paid-up, royalty-free, irrevocable, perpetual, and worldwide right to copy, distribute, display, perform, publish, translate, adapt, modify, and otherwise use or exploit such material for any purpose regardless of the form or medium (now known or not currently known) in which it is used, to provide and/or promote the Service or otherwise.

Please do not submit confidential or proprietary information to us unless we have mutually agreed in writing otherwise. We also are unable to accept your unsolicited ideas or proposals, so please do not submit them to us under any circumstance.

We respect the intellectual property of others, and we ask you to do the same. If you or any user of the Service believes its copyright, trademark, or other property rights have been infringed by a posting on or through the Service, you or the user should send notification to our Designated Agent (as defined below) immediately. To be effective, the notification must include:

- a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- identification of the copyrighted work claimed to have been infringed;
- information reasonably sufficient to permit us to contact the complaining individual or entity, such as address, telephone number, and if available, an electronic mail address at which the complaining individual or entity may be contacted;
- identification of the material that is claimed to be infringing or to be subject to infringing activity and that is to be removed and information reasonably sufficient to permit us to locate such materials;
- a statement that the complaining individual or entity has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, agent, or the law; and
- a statement that the information in the notification is accurate and under penalty of perjury, that the complaining individual or entity is authorized to act on behalf of the owner of an exclusive right that is allegedly infringing.

Pursuant to the Digital Millennium Copyright Act, 17 U.S.C.A. Sec. 512(c), our “Designated Agent” for Notice of claims of copyright infringement can be reached as indicated below. Service of repeat infringers of copyright or of users about whom repeat claims of copyright infringement are received will be terminated.

Designated Agent for Claimed Infringement:

Data Protection Officer

Fasig-Tipton Company, Inc.

2400 Newtown Pike

Lexington, KY 40511

Telephone: 859-255-1555

Email: privacy@fasigtipton.com

You acknowledge and agree that upon receipt of a notice of a claim of copyright infringement, we may immediately remove the identified materials from the Service without liability to you or any other individual or entity and that the claims of: (i) the complaining individual or entity; and (ii) the individual or entity that originally posted the materials, will be referred to the United States Copyright Office for adjudication as provided in the Digital Millennium Copyright Act.

9. DISCLAIMER OF WARRANTIES

ALL MATERIALS AND SERVICES AVAILABLE ON OR THROUGH THE SERVICE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THE WARRANTY OF NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY THAT: (A) ANY SERVICES AND MATERIALS WILL MEET YOUR REQUIREMENTS; (B) ANY SERVICES AND MATERIALS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF ANY SERVICES OR MATERIALS WILL BE EFFECTIVE, ACCURATE, OR RELIABLE; OR (D) THE QUALITY OF ANY PRODUCTS, SERVICES, OR INFORMATION PURCHASED OR OBTAINED BY YOU FROM OR THROUGH THE SERVICE FROM US OR OUR AFFILIATES WILL MEET YOUR EXPECTATIONS OR BE FREE FROM MISTAKES, ERRORS, DEFECTS, BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED ON OR THROUGH THE SERVICE BY AND INDIVIDUALS OR ENTITIES, INCLUDING THIRD PARTIES.

THE SERVICE COULD INCLUDE TECHNICAL OR OTHER MISTAKES, INACCURACIES, OR TYPOGRAPHICAL ERRORS. WE MAY MAKE CHANGES TO THE MATERIALS AND SERVICES AT OR ON THE SERVICE, INCLUDING THE PRICES AND DESCRIPTIONS OF ANY PRODUCTS OR SERVICES LISTED THEREIN, AT ANY TIME WITHOUT NOTICE. THE MATERIALS OR SERVICES AT OR ON THE SERVICE MAY BE OUT OF DATE, AND WE MAKE NO COMMITMENT TO UPDATE ANY SUCH MATERIALS OR SERVICES.

THE USE OF THE SERVICES OR THE DOWNLOADING OR OTHER ACQUISITION OF ANY MATERIALS AVAILABLE OR ACCESSED ON OR THROUGH THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND WITH YOUR AGREEMENT THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH ACTIVITIES, IN ADDITION TO ANY OTHER LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE ON OR THROUGH THE SERVICE. YOU UNDERSTAND AND AGREE THAT YOU ACCESS AND USE THE SERVICE AT YOUR OWN RISK.

Through your use of the Service, you may have the opportunities to engage in commercial transactions with other users and vendors. You acknowledge that all transactions relating to any property, merchandise, or services offered by any individual or entity, including but not limited to the purchase terms, payment terms, warranties, guarantees, maintenance, and delivery terms relating to such transactions, are agreed to solely between: (i) the seller or purchaser of such property, merchandise, and services; and (ii) you.

WE MAKE NO WARRANTY REGARDING ANY TRANSACTIONS EXECUTED THROUGH, OR IN CONNECTION WITH, THE SERVICE, AND YOU UNDERSTAND AND AGREE THAT SUCH TRANSACTIONS ARE CONDUCTED ENTIRELY AT YOUR OWN RISK. ANY WARRANTY THAT IS PROVIDED IN CONNECTION WITH ANY PRODUCTS, SERVICES, MATERIALS, OR INFORMATION AVAILABLE ON OR THROUGH THE SERVICE FROM A THIRD PARTY INDIVIDUAL OR ENTITY IS PROVIDED SOLELY BY SUCH THIRD PARTY INDIVIDUAL OR ENTITY AND NOT BY US OR ANY OF OUR AFFILIATES.

Before purchasing products and services on or through the Service, review our separate Conditions of Sale, Consignor Agreement, Acknowledgment of Purchase, Credit Application, Authorization of Agent, the Privacy Policy, and all other rules of conduct, disclaimers of warranty, limitations of liability, indemnification, and dispute resolution provisions as to the Service, all of which are incorporated by reference into these Terms of Use in their entirety. If you would like a copy of any such document(s), you may obtain them from the

Service or by requesting a copy of any such document(s) by email to privacy@fasigtipton.com.

Content available on or through the Service often represents the opinions and judgments of an information provider, user, or other individual or entity not connected with Fasig-Tipton. We do not endorse, nor are we responsible for the accuracy or reliability of, any opinion, advice, or statement made by anyone other than an authorized Fasig-Tipton spokesperson speaking in his/her official capacity. Please refer to the specific editorial policies posted on various sections of the Service for further information, which policies are incorporated by reference into these Terms of Use in their entirety as well.

In addition, the materials available on or through the Service may include sample or form agreements, letters, or other documents, including financially or legally significant documents such as contracts and other items (collectively, the "Forms"). The Forms are provided solely as examples of typical documents of their kind, and the delivery and use of Forms does not constitute legal, accounting, or other professional advice. Under no circumstance will Fasig-Tipton or its Affiliates be liable for any loss or damages caused by your reliance on information or advice obtained on or through the Service, including your use of any of the Forms. It is your responsibility to evaluate the accuracy, completeness, or usefulness of any information, opinions, advice, Forms, or other content available on or through the Service. In particular, you are urged to consult an appropriate professional licensed in your jurisdiction before using any Forms or otherwise relying on any legal, accounting, or other professional advice or information obtained on or through the Service.

SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

10. Limitation of Liability

Your exclusive remedy and our entire liability, if any, for any claims arising out of these Terms of Use and your use of the Service shall be limited to the amount you actually paid us and that we actually received for the services or products provided on or through the Service during the six (6) months prior to the act giving rise to such liability.

IN NO EVENT SHALL WE OR OUR AFFILIATES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, THOSE RESULTING FROM LOSS OF USE, DATA, OR PROFITS, NOTWITHSTANDING WHETHER WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND UNDER ANY THEORY OF LIABILITY, ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE SERVICE OR OF ANY WEBSITE OR THIRD PARTY LOCATION, WEBSITE, APPLICATION, PROGRAM, OR MATERIALS REFERENCED, LINKED TO, OR ACCESSED BY OR FROM THE SERVICE.

FURTHER, WE SHALL NOT BE LIABLE IN ANY WAY FOR THIRD PARTY GOODS AND SERVICES OFFERED ON OR THROUGH THE SERVICE OR FOR ASSISTANCE IN CONDUCTING COMMERCIAL TRANSACTIONS ON OR THROUGH THE SERVICE, INCLUDING WITHOUT LIMITATION THE PROCESSING OF ORDERS.

SOME JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

11. Indemnification

Upon a request by us, you agree to defend, indemnify, and hold us and our Affiliates harmless from any and all liabilities, claims, and expenses, including attorney's fees and expenses, that arise from: (i) your use or misuse of the Service; (ii) your breach of these Terms of Use; and (iii) your breach of any applicable laws, regulations, or third party rights. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any and all available defenses.

12. Participation in Promotions

From time to time, the Service may include advertisements offered by third party individuals or entities. You may enter into correspondence with or participate in promotions of the advertisers showing their products on or through the Service. Any such correspondence or promotions, including the delivery of and the payment for goods and services, and any other terms,

conditions, warranties, or representations associated with such correspondence or promotions, are solely between you and the advertiser. We assume no liability, obligation, or responsibility for any part of any such correspondence or promotion.

13. Email Services

We may make email services available to users of the Service, either directly or through a third party provider, in our sole discretion.

We will not inspect or disclose the contents of private email messages except with the consent of the sender or the recipient, or in the narrowly-defined situations provided under the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510, *et seq.*, or as otherwise required by law or by court or governmental order. Further related information is available in our [Privacy Policy](#).

We may employ automated monitoring devices or techniques to protect our users from mass unsolicited mailings (also known as “spam”) and/or other types of electronic communications that we deem inconsistent with our business purposes. However, such devices or techniques are not perfect, and we will not be responsible for any legitimate communication that is blocked or for any unsolicited communication that is not blocked.

Mailboxes may have a limited storage capacity. If you exceed the maximum permitted storage space in any such mailbox, we may employ automated devices that delete or block email messages that exceed the limit. We will not be responsible for such deleted or blocked messages.

14. Use of the Service and Storage of Material

You acknowledge that we may establish general practices and limits concerning use of the services available on or through the Service, including without limitation the maximum number of days that uploaded content will be retained on or through the Service, the maximum disk space that will be allotted on our servers on your behalf, and the maximum number of times (and the maximum duration for which) you may access the Service (or utilize the products and services offered on or through the Service) in a given period of time. You agree that we have no responsibility or liability for the deletion or failure to store any content maintained or transmitted on or through the Service. You acknowledge that we reserve the right to log off accounts for

which any applicable fees have not paid and/or that are inactive for an extended period of time. You further acknowledge that we reserve the right to change these general practices and limits at any time, in our sole discretion, with or without notice.

We provide storage space and access for material on or through the Service. For purposes of these Terms of Use, the term “material” refers to all forms of communication that we may allow, including narrative descriptions, graphics (including photographs, illustrations, images, drawings, and logos), executable programs, video recordings, and audio recordings. You may not use the Service to publish material that we determine, at our sole discretion, to be unlawful, indecent, or objectionable, or that violates the restrictions described in Section 5 above entitled “Conduct on or through the Service”. We will not routinely monitor the contents of your account or of information or materials you may post on or through the Service (your “Portfolio”). You are solely responsible for any information contained in your Portfolio and account. However if complaints are received regarding language, content, or graphics contained in your Portfolio or through your account, we may, at our sole discretion, remove the images and related information and material hosted on our servers and terminate your access to and use of the Service. We also may suspend your Portfolio or account, restrict access to them, or remove content from them if necessary or appropriate, again at our sole instance and in our sole discretion.

Additionally without our express prior written consent, you may not use the Service, your Portfolio, or your account for any commercial purposes, including the promotion or advertisement of any goods, services, or opportunities, or to solicit other visitors or users to visit or become members of, subscribe to, or register with, any commercial online service or other organization that you might control or otherwise.

You acknowledge and agree that to the fullest extent permitted by applicable law, we have no control over, and shall have no liability for any damages resulting from, the use (including without limitation re-publication) or misuse by any third party individual or entity of information voluntarily made public on or through the Service, your Portfolio, or your account. IF YOU CHOOSE TO MAKE ANY OF YOUR PERSONALLY IDENTIFIABLE OR OTHER INFORMATION PUBLICLY AVAILABLE ON OR THROUGH THE SERVICE,

YOUR PORTFOLIO, YOUR ACCOUNT, OR OTHERWISE ON THE SERVICE OR OTHER SOCIAL MEDIA, YOU HEREBY ACKNOWLEDGE AND AGREE THAT YOU DO SO AT YOUR OWN RISK.

The accounts of our users operate on shared resources. Excessive use or abuse of these shared network resources by one user may have a negative impact on all other users. Misuse of network resources in a manner that impairs network performance, including excessive consumption of CPU time, memory, disk space, and session time, is prohibited and may result in termination of your Portfolio or your account or limitation of your activities.

The Service is not designed or intended to be used as a disaster recovery facility or as an emergency data storage facility. Although we take reasonable precautions to preserve and protect the material you upload to the Service, you should not rely on the Service as your only storage facility. You should preserve backup copies of any digital data, information, or other materials that you have uploaded or otherwise submitted or transmitted to or through the Service. You agree not to hold us for any damage to, any deletion of or any failure to store your files, data or Registration Data.

15. Security and Password

You are solely responsible for maintaining the confidentiality of your password and account and for any and all statements made and acts or omissions that occur through the use of your password and account, including any mail or messages sent and any charges incurred. Therefore, you must take steps to ensure that other individuals or entities do not gain access to your password and account. Our personnel will never ask you for your password. You may not transfer or share your account with anyone, and we reserve the right to immediately terminate your account in the event of any unauthorized transfer or sharing thereof.

16. Export Controls

Software available on or through the Service is subject to United States Export Controls. No software from the Service may be downloaded or exported: (a) into (or to a resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria, or any other country concerning which the United States has embargoed goods; or (b) anyone on the United States Treasury Department's list of "Specially Designated Nationals" or the United States

Commerce Department's "Table of Deny Orders." By downloading or using the software available on or through the Service, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such prohibited list.

17. International Use

Although the Service may be accessible worldwide, we make no representation that materials available on or through the Service are appropriate or available for use in locations outside the United States, and accessing them from territories where their contents are illegal is prohibited. Those who choose to access the Service from other locations do so on their own initiative and are responsible for compliance with all applicable laws. Any offer for any product, service, and/or information made in connection with or through the Service is void where prohibited.

18. Termination of Use

You agree that we may, in our sole discretion, terminate or suspend your access to all or part of the Service with or without notice and for any reason, including, without limitation, breach of these Terms of Use. Any suspected fraudulent, abusive, or illegal activity may be grounds for terminating your relationship and may be referred to appropriate law enforcement authorities.

Upon termination or suspension, regardless of the reasons therefore, your right to use the services or purchase any products available on or through the Service will cease immediately, and you acknowledge and agree that we may immediately deactivate or delete your Portfolio, your account, and all related information and files in your account and/or bar any further access to such files or the Service. We shall not be liable to you or any third party individual or entity for any claims or damages arising out of any termination or suspension or any other actions taken by us in connection therewith. Sections 1, 3, 5-11, 14, 18-20, and 22 of these Terms of Use, as well as your liability for any unpaid fees, shall survive any termination done consistent with the above or otherwise.

19. Governing Law/Dispute Resolution

19.1 Governing Law. The Service (excluding any linked sites) is controlled by us from our offices within the Commonwealth of Kentucky, United States of America. It can be accessed from all 50 states, as well as from other

countries around the world. As each of these places has laws that may differ from those of the Commonwealth of Kentucky, by accessing the Service both of us agree that the statutes and laws of the Commonwealth of Kentucky, without regard to the conflict of laws principles thereof and the United Nations Convention on the International Sales of Goods, will apply to all matters relating to the use of the Service and the purchase of products and services available on or through the Service.

19.2 Dispute Resolution Agreement. You and Fasig-Tipton agree to resolve any dispute or question arising as to the interpretation of any clause of, or the rights and liabilities of you or us under, or in any manner relating to these Terms of Use and connected in any manner with use of the Service (each, a "Claim") in accordance with one of the subsections below or as Fasig-Tipton and you otherwise agree in writing.

19.3 Jurisdiction; Venue. Except as otherwise provided under this Section 19, you and Fasig-Tipton agree to submit to the personal and exclusive jurisdiction and proper venue of the Fayette Circuit Court and/or the U.S. District Court for the Eastern District of Kentucky, in each case located in Lexington, Fayette County, Kentucky, and knowingly, intelligently, and voluntarily waive any right to trial by jury.

19.4 Arbitration. Any Claim shall be referred to final and binding arbitration before a single arbitrator in Lexington, Kentucky, under the rules and procedures of the American Arbitration Association relating to the selection of arbitrators for the determination of issues. The arbitration shall be governed by the United States Federal Arbitration Act, 9 U.S.C. §§ 1-16. This agreement to arbitrate is supported by adequate consideration, receipt of which is acknowledged. The decision of the arbitrator will be binding, final, and conclusive on you and us, and judgment on the arbitrator's decision may be entered in any court having jurisdiction thereof. This agreement to arbitrate is binding upon any permitted successors, heirs, legal representatives, assigns, and transferees of you and us. The arbitrator may, at his or her own instance or upon the written request of you or us, issue written directions as to the scope and timetable for discovery. If the arbitrator should determine that the matter(s) in dispute may be resolved by a review of a written record and that a hearing is not necessary, you and we agree to effectively waive our rights to a hearing. The arbitrator shall be charged to

draft and issue a written opinion reciting the facts as determined and the applicable law as applied. The arbitrator may award injunctive and other equitable relief, as well as an award of monetary damages. No claim of fraud, duress, or other basis for revocation of contract made with respect to these agreed Terms of Use shall limit or preclude the enforcement of this agreement to arbitrate except as such fraud, duress, or other basis for revocation shall arise with particularity to this agreement to arbitrate, and each party conclusively agrees that this provision shall be interpreted in a manner consistent with the separability doctrine of *Prima Paint Corp. v. Flood and Conklin Mfg. Co.*, 388 U.S. 395 (1967), meaning that any claim of unenforceability of these Terms of Use must first be heard by an arbitrator consistent with this Section 19 rather than by any court.

19.5 Waiver. Neither you nor Fasig-Tipton will participate in a class action or class-wide arbitration for any Claims covered by this agreement to arbitrate. YOU ARE GIVING UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.

19.6 Improperly Filed Claims. All Claims brought under this Section 19 must be resolved in accordance with this Section 19, and you and we both conclusively agree to that. All Claims filed or brought contrary to this Section 19 shall be considered improperly filed. Should you file a Claim contrary to the procedures set forth in this Section 19, Fasig-Tipton shall be entitled to recover its reasonable attorneys' fees and costs actually incurred in disputing and defending it, provided that Fasig-Tipton has notified you in writing of the improperly filed Claim and that you have failed to promptly withdraw the Claim.

20. Notices

All notices to any individual or entity shall be in writing and shall be made via email, conventional mail, or both. Notices to us must be sent to the attention of Customer Service at privacy@fasigtipton.com, if by email, or at Fasig-Tipton Company, Inc., 2400 Newtown Pike, Lexington, KY 40511, if by conventional mail. Notices to you may be sent either to the email address supplied for your account or to the mailing address supplied by you as part

of your Registration Data. In addition, we may broadcast notices or messages on or good through the Service to inform you of changes to the Service or other matters of importance, and such broadcasts shall constitute good, sufficient, and completed notice to you.

Any notices or communication under these Terms of Use will be deemed delivered to the individual or entity receiving such communication: (1) on the delivery date if delivered personally to the individual or entity; (2) two (2) business days after deposit with a commercial overnight carrier, with written verification of receipt; (3) five (5) business days after the mailing date, if sent by US mail, return receipt requested; (4) on the delivery date if transmitted by confirmed facsimile; or (5) on the delivery date if transmitted by confirmed email.

21. Entire Agreement

The terms and conditions set forth in these Terms of Use constitute the entire agreement and understanding between you and us concerning the subject matter hereof and supersede all prior agreements and understandings between you and us with respect to such subject matter. These Terms of Use may NOT be altered, supplemented, or amended by the use of any other document(s), except as otherwise expressly provided for in these Terms of Use. Any attempt to alter, supplement, or amend this document or to enter an order for products or services that are subject to additional or altered terms and conditions shall be null and void, unless otherwise agreed to in a written agreement signed by you and us. To the extent that anything in or associated with the Service is in conflict or inconsistent with these Terms of Use, these Terms of Use shall take precedence.

22. Miscellaneous

In any action to enforce these Terms of Use, the prevailing party will be entitled to reimbursement for costs and attorneys' fees incurred. Any cause of action brought by you against us or our Affiliates must be instituted within one (1) year after the cause of action arises or be deemed forever waived and barred. For clarity, such limitation will not apply to any cause of action by us against you, as all such causes of action will be limited only by applicable law.

Notwithstanding anything in these Terms of Use to the contrary, and to avoid any doubt, you retain all applicable personal information and other rights as set forth in our [Privacy Policy](#), including without limitation, your rights to have your personal information erased and your rights to close your account.

You may not assign your rights and obligations under these Terms of Use to any individual or entity, and any purported attempt to do so shall be null and void. We may freely assign our rights and obligations under these Terms of Use without your consent.

You agree not to sell, resell, reproduce, duplicate, copy, or use for any commercial purposes any portion of the Service, use of the Service, or access to the Service.

In addition to any excuse provided by applicable law, we shall be excused from liability for non-delivery or delay in delivery of products and services available on or through the Service arising from any event beyond our reasonable control, notwithstanding whether foreseeable by you or us, including but not limited to, labor disturbance, war, fire, accident, adverse weather, inability to secure transportation, governmental act or regulation, epidemic, pandemic, or other illness affecting the United States and/or other countries, and other causes or events beyond our reasonable control, notwithstanding whether similar to those that are enumerated above.

If any part of these Terms of Use is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of you and us, and the remaining portions shall remain in full force and effect.

Any failure by us to enforce or exercise any provision(s) of these Terms of Use or related rights shall not constitute a waiver of that provision or right or of any other or additional rights.

The section titles in these Terms of Use are for convenience of reference only and have no legal or contractual effect.

23. Contact Information

Except as explicitly noted on the Website and otherwise, the products and services available on or through the Service are offered by Fasig-Tipton Company, Inc., a Delaware corporation, located at 2400 Newtown Pike,

Lexington, KY 40511. Our telephone number is 859-255-1555. You may have information contained in these Terms of Use emailed to you by sending a letter to the foregoing address with your email address and a request for this information. Please also be aware that you have the right to contact your local, state, or federal consumer protection and/or business oversight agency or organization(s) with any concerns as to your data, privacy, security, and rights as an individual consumer, as applicable, at any time. If you notice that any user is violating these Terms of Use, please contact us at privacy@fasigtipton.com.