

# BUSINESS USER TERMS OF SERVICE

Last Updated: September 3, 2024

SERVICE TERMS APPLICABLE TO BUSINESSES ("BUSINESS USERS"):

## SERVICE TERMS APPLICABLE TO BUSINESSES USERS ("BUSINESS USERS")

These Terms of Service (this "**Agreement**") set forth the terms and conditions that apply to your access and use of the internet website located at [www.sixpac.com](http://www.sixpac.com) and the SIXPAC mobile software application (collectively, the "**Site**"), each owned and operated by Six Pac OTG, LLC and its affiliates (collectively, "**SIXPAC**", "**we**", "**our**" or "**us**"), and the services available thereon, including without limitation the services described in the "Service Description" section below (collectively, the "**Service**").

THIS AGREEMENT CONTAINS SIGNIFICANT LIMITATIONS ON YOUR RIGHTS TO LODGE CLAIMS AGAINST SIXPAC. YOU SHOULD REVIEW THIS ENTIRE AGREEMENT, INCLUDING THE PRIVACY POLICY AND THE LIABILITY LIMITATIONS SET FORTH IN THE "DISCLAIMER OF WARRANTIES" AND "EXCLUSIVE REMEDY AND LIMITATION OF LIABILITY" SECTIONS OF THIS AGREEMENT, BEFORE USING THE SERVICE.

ADDITIONALLY, THIS AGREEMENT LIMITS YOUR RIGHT TO LITIGATE CLAIMS IN A COURT AND INSTEAD REQUIRES YOU TO ARBITRATE DISPUTES ON AN INDIVIDUAL BASIS, AS IS SET FORTH IN THE "DISPUTE RESOLUTION" SECTION OF THIS AGREEMENT.

BY ACCESSING OR USING THE SITE OR SERVICE, OR BY CLICKING ON THE "I ACCEPT" OR SIMILAR BUTTON IN RELATION TO THESE TERMS OF SERVICE, YOU ARE INDICATING YOUR ACCEPTANCE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT ACCEPT THIS AGREEMENT, YOU MUST NOT ACCESS OR USE THE SITE OR THE SERVICE. IF YOU ARE DISSATISFIED WITH THIS AGREEMENT OR ANY RULES, POLICIES, GUIDELINES OR PRACTICES APPLICABLE TO THE SITE OR SERVICE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SITE AND SERVICE.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" WILL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT PLACE ANY ORDER FOR THE SERVICE ON OUR SITE AND YOU MAY NOT USE THE SERVICE.

By accepting this Agreement, you agree to be bound by the terms and conditions of this Agreement, and you agree that you have reviewed and understand SIXPAC's Privacy Policy located at <https://sixpac.com/privacy-policy> (the "**Privacy Policy**"), as it may be amended from time to time in the future.

We may amend any part of this Agreement by adding, deleting, or varying its terms from time-to-time in our discretion. We will provide you with notice of the proposed amendment by posting an amended version of this Agreement with a new "Last Updated" date and alerting you of such amendment by email or through a notification on the Service. We will include a link to the previous version of the terms beneath the new "Last Updated" date.

The amendments will take effect 30 days after the date on which the amended version is posted. Prior to that date, the previous version of this Agreement will continue to apply.

If you disagree with any amendments, you may terminate this Agreement by ceasing to use the Site and Service at any time within the 30-day period before the amendments take effect. If the amendment increases your obligations under this Agreement, or decreases our obligations under this Agreement, then you can also terminate in the 30 days after the amendments take effect. In either case, there is no cost or penalty for terminating. If you do not cease using the Site and Service during that time, then by your continued use, you are considered to have accepted the proposed amendments.

### **Ability to Enter into this Agreement**

In order to enter into this Agreement, you must have reached the legal age of majority in your jurisdiction of residence and be fully able and competent to enter into the terms, conditions, obligations, affirmations, representations and warranties set forth in this Agreement, and to abide by and comply with this Agreement. It is your responsibility to ensure that you are legally eligible to enter into this Agreement under any laws applicable to you. If you accept this Agreement, you represent that you have the capacity to be bound by it.

### **Service Description**

The Service is a platform that facilitates communications, interactions, and transactions between Business Users and End Users for the purpose of enabling Business Users to monitor, coach, train and communicate with End Users, and enabling End Users to access workout and meal plans, track their progress, access their appointments and classes, buy products, and more. SIXPAC does not provide or perform training or coaching. SIXPAC is not responsible for any interactions between Business Users and End Users that are facilitated through or in connection with the Service, nor does SIXPAC have any control over the quality, timing, provision or failure to provide, or any aspect whatsoever relating to the provision of coaching, training, workouts, meal plans, progress tracking, appointments, classes, product purchases and other services provided by Business Users to End Users

## **Your Contractual Relationship with End Users**

This Agreement governs the relationship between SIXPAC and a Business User and, in particular, how a Business User is permitted to make use of the Service in its commercial endeavors. If you elect to interact with End Users in connection with the Service, you should enter into a contract with each such End User and you hereby represent and warrant to us that you have obtained all rights and consents necessary from the End User to use their content submitted through the Service as intended under the Service. SIXPAC is not party to any contract you enter into with an End User and to the extent permitted by law, accepts no liability whatsoever under or in connection with any such contract. You are solely responsible for ensuring that any contract you enter into with an End User complies with all applicable laws.

## **Your Account**

Once you sign up for an Account, you will have the ability to add employees or other personnel (each, an “**Authorized Personnel**”) to your Account through the authentication process provided as part of the Service. As part of the authentication process, End Users that you wish to be associated with your Account will be provided with a unique invitation link that they must use to become Authorized Personnel affiliated with your Account. You are solely responsible for all activities of each Authorized Personnel that occur under or in connection with your Account or the End Users you or your Authorized Personnel train or manage.

Unless otherwise agreed to between the parties in writing, SIXPAC deems the person under whose name appears on the credit or charge card that pays the charges for the Service to be the owner or decision maker of the Business User ID, Profile Information and Account for all purposes under this Agreement. If a corporate or other organization’s name appears on the credit or charge card, that corporation or organization is deemed to be the owner. If any dispute arises as to who owns or controls a Business User ID Profile Information, or Account, the credit or charge card we have on file for the Account will continue to be charged in accordance with this Agreement, and you will be responsible to continue to pay for the Service until SIXPAC receives written confirmation from the Account email address confirming a change in ownership and control of the Account.

## **Fees and Payments**

We reserve the right to modify our billing rates at any time upon 30 days written notice by posting such fee changes to the Site or through email notification to you. You will be liable to pay such modified billing rates.

## **Term and Renewal**

Subject to your payment of applicable fees, we will provide the Service to you for the period of time that you have paid for such Service (the “**Subscription Period**”).

At the end of the Subscription Period, your subscription will automatically renew for an additional Subscription Period until explicitly cancelled by you as described in the “Cancellation and Termination” section below.

If you purchase any fee-based Service, you agree that we or our Payment Processors are authorized to charge you (i) a fee for any applicable Service for which you have subscribed, billed on a basis of the Subscription Period, (ii) any other fees for Service you may purchase, (iii) any charges for use of the Service in excess of the usage or other limits placed on your use of the Service (and you hereby consent to such charges and agree we are not required to notify you of any such charge in advance), (iv) any applicable taxes in connection with your use of the Service to the credit or charge card you provide and to reimburse us for all collection costs and interest for any overdue amounts, and (v) any and all applicable currency conversion charges. If the credit or charge card you provide expires and you do not provide new credit or charge card information or cancel your account, you authorize us to continue billing you and you agree to remain responsible for any uncollected fees.

## **Trial Program**

From time to time and at our sole discretion, we may offer free or discounted pricing for you to evaluate the use of the current Service that are generally available to customers for a limited period of time (the “**Trial Program**”). If you register for a Trial Program, you may elect to purchase the full Service within the term of the Trial Program specified by us (the “**Trial Period**”) and in this case you will be able to use the Service with more than one End User. Once the Trial Period has expired, you agree that our normal billing rates will apply. You agree to comply with any additional terms, restrictions or limitations (including limitations on the total amount of End Users and usage) we impose in connection with any Trial Program. You may not sign-up for multiple Accounts in order to receive additional benefits under any Trial Programs. We may terminate or suspend any Trial Program at any time without notice or liability and in our sole discretion. We reserve the right to charge or charge more for any Service or product offered through any Trial Program.

## **Taxes**

You take full responsibility for all taxes and fees of any nature associated with the Service, including any sales tax related to any purchase or sale of services or goods under this Agreement. When purchasing or selling services or goods under this Agreement, it is your responsibility to determine whether or not sales taxes apply to a transaction and to collect, report and remit the correct amounts to the appropriate authority. Any tools provided as Materials or in connection with the Service indicating estimated taxes due are for illustration purposes only. You take full responsibility for all taxes and fees of any nature associated with the Service, including any sales tax related to the purchase or sale of services or goods under this Agreement.

## **Calorie Tracker**

Included as part of the Service is a tool that can be used to generate healthy eating recommendations by or on behalf of End Users. If you have elected to utilize the Tracker to provide meal planning, healthy eating recommendations or other nutrition services to

End Users, you acknowledge and agree that:

the Tracker is not a diagnostic tool or medical device; the Tracker should not be used for the diagnosis, prevention, monitoring, treatment, alleviation, cure or mitigation of any disease, health or medical condition, injury, disability or physiological or pathological process or state; any recommendations provided through the Tracker are not intended to be a substitute for professional medical advice, diagnosis or treatment and you should ( i ) review and consider the appropriateness of such recommendations before providing them to or implementing them for any End User; and (ii) encourage End Users to discuss questions about any medical condition or health concern with their physician or other suitable medical professional; if an End User provides any information related to a particular medical condition, you shall have an affirmative obligation to provide a disclaimer clearly stating that ( i ) the Tracker is not for the purpose of managing or treating the End User's disclosed medical condition; (ii) based on your qualifications, training or experience you are not in a position to provide advise addressing any medical condition; and (iii) the End User should consult with a medical professional; before using the Tracker , you should seek legal advice to determine whether you are permitted to utilize and provide such services in the jurisdictions in which you conduct business. SIXPAC is not responsible for, and you are solely responsible and liable for, your compliance with applicable laws, including without limitation those governing the provision of dietitian and nutrition services; in marketing, promoting and providing your products and services and the Tracker , you are not permitted to provide or suggest that SIXPAC provides any representations, warranties or guarantees regarding the Tracker , or otherwise misrepresent the stated purpose for and intended use of the Tracker ; you are solely responsible and liable for any representations, warranties or guaranties you make to any End User, including without limitation those related to your title, qualifications, experience, or any other information which may either be regulated by state or federal law in the applicable jurisdiction, or otherwise harmful to any End User who may have relied on such representations, warranties or guaranties. SIXPAC makes no representations, warranties or guarantees regarding the accuracy of caloric and other food nutritional information provided through the Tracker . All such information is sourced from third party food vendors and restaurants. SIXPAC cannot control the quality, quantity or consistency of foods served and sold by such third parties.

### **Integrated Payments Service**

If you have elected to utilize the Service to process payments related to goods or services offered by you to End Users through the Service (the "**Integrated Payments Service**"), you will receive payment through the Payment Processors for any charges actually paid by an End User related to such goods and services ("**Business User Payments**"), less any commissions, transaction fees or other deductions charged by the Payment Processors and SIXPAC, and you authorize SIXPAC to have its Payment Processors process all such Business User Payments.

If you utilize the Integrated Payments Service, you acknowledge and agree that:

Business User Payments shall not accrue interest and will be net of any amounts that

SIXPAC

or the Payment Processor withhold

s

by

law;

SIXPAC

is not responsible or liable for any failure or error made by any Payment Processor in connection with the Integrated Payments Service, or for any failure by an End User to make payment to you in connection with the Integrated Payments

Service;

you will be responsible for all currency conversion charges and responsible and liable for the collection and remittance to the relevant government and taxing authorities of all sales, service, value-added, use, excise, consumption and any other taxes, duties and charges of any kind, if any, imposed by any federal,

provincial, state or local governmental entity on any Business User Payments, and you will defend, indemnify and hold harmless SIXPAC

and its officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs, debt, and expenses (including but not limited to attorney's fees) arising from any failure by you to collect and remit such charges and amounts;

you may only use the Integrated Payments Service for legitimate transactions with End

Users;

you are solely responsible for your relationship with End Users and the products and services you publicize, offer and sell, including without limitation the nature and quality of such products and services, and delivery, support, refunds, returns and any other ancillary services you provide to End

Users;

when using the Integrated Payments Service you must (1) accurately communicate, and not misrepresent, the nature of your products or services and the amount of the charge or transaction in the appropriate currency, (2) provide End Users a meaningful way to contact you in the event that the product or service is not provided as described, and (3) not use the Service to sell products or services in a manner that is unfair or deceptive, exposes End Users to unreasonable risks or does not disclose material terms of a purchase in advance;

you will maintain a fair return, refund, cancellation, or adjustment policy, and clearly explain the process by which End Users can receive a

refund;

you are solely responsible for determining whether a transaction initiated by an End User is erroneous (such as an End User purchasing one item when they meant to order another) or suspicious (such as unusual or large purchases). If you are unsure if a transaction is erroneous or suspicious, you agree to research the transaction and, if necessary, contact the End User before fulfilling or completing the

transaction;

you are solely responsible for any losses you incur due to erroneous or fraudulent transactions in connection with your use of the Service;

you are solely responsible for providing support to End Users regarding transaction receipts, product or service delivery, support, returns, refunds and any other issues related to your products and services and business activities; and

SIXPAC

is not responsible for or liable to you for authorized and completed transactions or charges that are later the subject of a dispute, refund or reversal, are submitted without authorization or in error or violate any applicable laws.

If you utilize the Integrated Payments Service, you represent, warrant and covenant to SIXPAC that: (i) any information you provide us about your business, products or services is accurate and complete; (ii) any Business User Payments represent a transaction for permitted products or services, and any related information accurately describes the transaction; (iii) you will fulfill all of your obligations to End Users and will resolve all disputes with them; (iv) you will comply with all laws applicable to your business and use of the Service; and (v) you will not use the Integrated Payments Service (including any payment processing features thereof), directly or indirectly, for any fraudulent or illegal undertaking, or to interfere in any manner with the normal operation of the Integrated Payments Service.

### **Marketplace**

The SIXPAC marketplace allows sellers to have their inventory added to a single marketplace on the SIXPAC mobile app allowing users to buy from multiple sellers in a single transaction. Marketplace sales are fulfilled by the individual Seller and it's the Seller's responsibility to update the shipping and tracking of their sales to the end user. Refunds, returns, and disputes are the responsibility of the Seller. All sales from the Marketplace are subject to Seller's merchant account fees in addition to a 5% Success Fee that will be debited from the funds deposited to the Seller. For example if you sell a \$100 item, then you would receive \$95 less applicable merchant account fees.

### **Cancellation and Termination**

You may cancel your Account at any time through the interface provided as part of the Service. Cancellation must be issued via the interface. This is the only way to cancel your Account and you will not be provided with a refund, in whole or in part, of any pre-

paid amount. Email requests (from email accounts other than your SIXPAC email account) or phone requests to cancel your Account may not be accepted.

You will remain liable for all charges accrued on your Account up to the time of cancellation, including full fees for the then current Subscription Period in which you cancelled your Account. SIXPAC is under no obligation to store your Content and may delete your Account and your Content immediately upon cancellation.

SIXPAC reserves the right at any time, and without cost, charge or liability, to terminate this Agreement at its sole discretion for any reason, including, but not limited to, a failure to comply with the terms of this Agreement. SIXPAC reserves the right to modify, suspend or discontinue the Site and/or Service, or any portion thereof, at any time and for any reason, with or without notice.

#### **Disclaimer of Warranties**

YOUR USE OF THE SITE OR SERVICE AND ALL CONTENT FORMING PART OF OR RELATED TO THE SITE OR SERVICE, INCLUDING WITHOUT LIMITATION ANY CONTENT YOU UPLOAD OR SUBMIT AND ANY THIRD-PARTY SOFTWARE AND CONTENT, ARE AT YOUR SOLE RESPONSIBILITY AND RISK. THE SITE AND SERVICE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. SIXPAC EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF ANY KIND WITH RESPECT TO THE SITE OR SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, PERFORMANCE, SYSTEM INTEGRATION, QUIET ENJOYMENT, TITLE, AND NON-INFRINGEMENT.

SIXPAC DISCLAIMS ANY WARRANTY THAT THE SITE, THE SERVICE OR ANY CONTENT, INCLUDING WITHOUT LIMITATION ANY THIRD-PARTY SOFTWARE AND CONTENT, WILL MEET YOUR REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE OR THE SERVERS THAT MAKES THE SITE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU AGREE THAT FROM TIME TO TIME SIXPAC MAY REMOVE THE SITE OR CEASE PROVIDING THE SERVICE FOR INDEFINITE PERIODS OF TIME WITHOUT NOTICE TO YOU, AND WITHOUT INCURRING ANY LIABILITY TO YOU OR ANY THIRD PARTY. YOUR ACCESS AND USE OF THE SITE AND THE SERVICE MAY BE INTERRUPTED FROM TIME TO TIME FOR ANY OF SEVERAL REASONS, INCLUDING, WITHOUT LIMITATION, THE MALFUNCTION OF EQUIPMENT, PERIODIC UPDATING, MAINTENANCE OR REPAIR OF THE SITE OR SERVICE OR OTHER ACTIONS THAT SIXPAC, IN ITS SOLE DISCRETION, MAY ELECT TO TAKE. SIXPAC MAKES NO GUARANTEE REGARDING: (A) THE AMOUNT, TIMING AND DELIVERY OF ANY CLICKS OR IMPRESSIONS WITH RESPECT TO ANY CONTENT (INCLUDING THIRD PARTY CONTENT) OR ADVERTISING ON THE SITE OR SERVICE; OR (B) THE COMPATIBILITY OF ANY SOFTWARE, HARDWARE OR CONTENT WITH THE SITE OR SERVICE.

SIXPAC IS NOT RESPONSIBLE FOR THE ACTS OR OMISSIONS OF, OR FOR THE FAILINGS OF, ANY THIRD-PARTY PROVIDER OF ANY CONTENT, SERVICE, NETWORK, SOFTWARE OR HARDWARE, INCLUDING BUT NOT LIMITED TO, INTERNET SERVICE PROVIDERS, HOSTING SERVICES UTILIZED BY SIXPAC, TELECOMMUNICATIONS PROVIDERS, CONTENT PROVIDED BY OTHER USERS, ANY THIRD-PARTY SITES OR SERVICES ACCESSED THROUGH LINKS ON OUR SITE OR SERVICES, OR ANY SOFTWARE OR HARDWARE NOT PROVIDED BY SIXPAC.

YOU ARE SOLELY RESPONSIBLE FOR ENSURING THAT YOUR CONTENT IS COMPATIBLE WITH THE SITE AND SERVICE. SIXPAC DISCLAIMS ANY LIABILITY OR RESPONSIBILITY FOR ANY UNAUTHORIZED USE OF YOUR CONTENT BY THIRD PARTIES OR OTHER USERS OF THE SITE AND SERVICE AND IS NOT RESPONSIBLE FOR PROTECTING YOUR CONTENT.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SITE OR SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM SIXPAC OR THROUGH OR FROM THE SITE OR SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

THE SITE AND SERVICE ARE OFFERED AND CONTROLLED BY SIXPAC FROM ITS FACILITIES IN THE UNITED STATES. SIXPAC MAKES NO REPRESENTATIONS THAT THE SITE OR SERVICE ARE APPROPRIATE OR AVAILABLE FOR USE IN LOCATIONS OTHER THAN THE UNITED STATES. THOSE WHO ACCESS OR USE THE SITE OR SERVICE FROM OTHER JURISDICTIONS DO SO AT THEIR OWN VOLITION AND ARE RESPONSIBLE FOR COMPLIANCE WITH LOCAL LAW.

#### **Exclusive Remedy and Limitation of Liability**

YOU AGREE THAT, UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO NEGLIGENCE, BREACH OF WARRANTY OR CONDITION, BREACH OF CONTRACT OR TORT, WILL SIXPAC OR ITS OWNERS, OFFICERS, DIRECTORS, AFFILIATES, CONTRACTORS, EMPLOYEES OR AGENTS, BE LIABLE TO YOU OR ANY THIRD PARTY ACTING ON YOUR BEHALF FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES OR THE COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICE (EVEN IF SIXPAC HAS BEEN

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM OR RELATING TO THIS AGREEMENT OR YOUR USE OF OR YOUR INABILITY TO USE THE SITE OR SERVICE, OR FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT. SIXPAC'S TOTAL AGGREGATE LIABILITY FROM ANY AND ALL CLAIMS UNDER THIS AGREEMENT IS LIMITED TO THE GREATER OF (A) USD \$100; OR (B) THE TOTAL AMOUNTS YOU PAID TO SIXPAC IN THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE OCCURRENCE OF LOSS OR DAMAGE. TO THE EXTENT ANY PROVINCE, STATE OR JURISDICTION DOES NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SIXPAC'S LIABILITY IN SUCH PROVINCE, STATE OR JURISDICTION WILL BE LIMITED TO THE FURTHEST EXTENT PERMITTED BY LAW. NOTWITHSTANDING THE FOREGOING OR ANYTHING ELSE HEREIN TO THE CONTRARY, SIXPAC WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY ACTING ON YOUR BEHALF IN ANY WAY WITH RESPECT TO A TRIAL PROGRAM OR YOUR PROVISION OF AN INDIVIDUAL'S PERSONAL INFORMATION TO SIXPAC OR THROUGH THE SERVICE. YOU FURTHER AGREE THAT THE FOREGOING LIMITATIONS WILL APPLY WITH RESPECT TO THIRD PARTY LIABILITY OF ANY KIND.

THE FOREGOING LIMITATIONS WILL ALSO APPLY WITH RESPECT TO ANY DAMAGES INCURRED BY REASON OF ANY CONTENT OR SERVICE PROVIDED ON ANY THIRD-PARTY SITES OR OTHERWISE PROVIDED BY ANY THIRD PARTIES OTHER THAN SIXPAC AND RECEIVED BY YOU THROUGH OR ADVERTISED ON THE SITE OR RECEIVED BY YOU ON ANY THIRD PARTY SITES. YOU ALSO AGREE THAT SIXPAC WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS THE RESULT OF ANY INTERACTIONS OR DEALINGS WITH ADVERTISERS OR AS THE RESULT OF THE PRESENCE OF SUCH ADVERTISERS ON THE SITE.

You expressly waive all rights you may have under Section 1542 of the California Civil Code, which states: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

SIXPAC will have no liability whatsoever for any damages, liabilities, losses or any other consequences that you may incur as a result of any modification, suspension or discontinuance of the Site and/or the Service.

#### **Indemnity**

You agree to indemnify, defend, and hold harmless SIXPAC, and its subsidiaries, affiliates, co-branders, all third party advertisers, technology providers, service providers or other partners, and each of their respective officers, directors, agents, shareholders, employees and representatives (together, the "Indemnified Parties"), from and against any third party claim, demand, loss, damage, cost, or liability (including, reasonable attorneys' fees) (collectively and individually, "Claims") incurred by or made against the Indemnified Parties in connection with any Claims arising out of or relating to this Agreement, the Site or the Service, including but without limitation in relation to: (a) your use, non-use or misuse of, or connection to the Site, the Service and any Content, including without limitation your Profile Information, any Content you make available through the Site or Service, and any third party Content forming part of the Site; (b) your violation or alleged violation of this Agreement; and (c) your violation of any rights, including intellectual property rights, of a third party and otherwise as set out herein. SIXPAC reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify SIXPAC and you agree to cooperate with SIXPAC's defense of these Claims. You agree not to settle any matter without the prior written consent of SIXPAC. SIXPAC will use reasonable efforts to notify you of any such Claims upon becoming aware of it.

#### **Dispute Resolution**

BY AGREEING TO THIS AGREEMENT, YOU AGREE THAT YOU ARE REQUIRED TO RESOLVE ANY CLAIM THAT YOU MAY HAVE AGAINST SIXPAC ON AN INDIVIDUAL BASIS IN ARBITRATION AS SET FORTH IN THIS SECTION. THIS WILL PRECLUDE YOU FROM BRINGING ANY CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST SIXPAC, AND ALSO PRECLUDE YOU FROM PARTICIPATING IN OR RECOVERING RELIEF UNDER ANY CURRENT OR FUTURE CLASS, COLLECTIVE, CONSOLIDATED OR REPRESENTATIVE ACTION BROUGHT AGAINST SIXPAC BY SOMEONE ELSE.

YOU ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.

YOU HEREBY EXPRESSLY GIVE UP YOUR RIGHT TO HAVE A TRIAL BY JURY.

YOU HEREBY EXPRESSLY GIVE UP YOUR RIGHT TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS IN ANY LAWSUIT, INCLUDING, BUT NOT LIMITED TO, CLASS ACTION LAWSUITS INVOLVING ANY SUCH DISPUTE.

In the event that you desire to initiate litigation against us for claims arising from or relating this Agreement, you agree that the parties shall first attempt to resolve the dispute in good faith through mediation conducted by a mediator mutually acceptable to the parties. A demand for mediation shall be delivered to SIXPAC's registered agent for service of process in Florida. The mediation shall occur in Vero Beach, Florida. Any statute of limitations period will be tolled for a period starting with the demand for mediation and ending on the date mediation is concluded. At least 5 business days before the scheduled mediation, the parties shall each provide the mediator with a statement of its position and copies of supporting documents, which mediation position may be submitted on a confidential basis at the option of the side making the submission. The cost of the mediator will be paid for by SIXPAC (but all other costs, including legal representation, shall be separately borne by the respective party).

The parties agree that all disputes arising from or relating to your use of the Service that are not resolved in mediation shall be submitted to binding arbitration conducted in accordance with the JAMS Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules, including Rules 16.1 and 16.2 of those Rules (unless another procedure is mutually agreed upon by the parties). The arbitration shall occur in Vero Beach, Florida and shall be before a single arbitrator. Judgment on the resulting award may be entered in any court having jurisdiction. However, this clause shall not preclude parties seeking provisional remedies in aid of arbitration from a court of competent jurisdiction, which shall include but not necessarily be limited to injunctive relief.

Notwithstanding anything to the contrary herein, no action of any form which arises from or relates to this Agreement may be commenced by you more than twelve (12) months after such cause of action accrues.

In the event litigation is commenced in violation of these dispute resolution procedures, the party which improperly commenced litigation shall pay the opposing party's attorney's fees and costs associated with compelling mediation and/or arbitration, as applicable.

### **Miscellaneous**

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

If any portion of this Agreement is deemed unlawful, void, or unenforceable by any arbitrator or court of competent jurisdiction, this Agreement as a whole will not be deemed unlawful, void or unenforceable, but only that portion of this Agreement that is unlawful, void or unenforceable will be stricken from this Agreement.

This Agreement, and any rights and licenses granted hereunder, may not be transferred, assigned, or sold by you, but may be transferred, assigned, and sold by SIXPAC without restriction.

You agree that if SIXPAC does not exercise or enforce any legal right or remedy which is contained in the Agreement (or which SIXPAC has the benefit of under any applicable law), this will not be taken to be a formal waiver of SIXPAC's rights and that those rights or remedies will still be available to SIXPAC.

The sections of "Disclaimer of Warranties", "Exclusive Remedy and Limitation of Liability", "Indemnity", "Cancellation and Termination", "Dispute Resolution" and "Miscellaneous" and any other provisions of this Agreement that are intended to survive termination or expiry of this Agreement will survive any actual or purported termination or expiry of this Agreement and continue in full force and effect.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, or US federal law to the extent applicable, without regard to conflict of law provisions. This Agreement is the entire agreement between us related to the subject matter in this Agreement. This Agreement replaces and supersedes any other prior or contemporaneous agreement, representation, or discussion, oral or written, and may not be changed except in writing signed by us, regardless of whether or not the parties act under an unsigned "electronic" agreement or rely on such an unsigned agreement.

## **Privacy Policy**

Last Updated: September 3, 2024

### **THIS PRIVACY POLICY IS APPLICABLE TO ALL USERS**

This Privacy Policy informs Users ("Users" or "You") of the SIXPAC mobile app, desktop app and business toolkit, any other SIXPAC controlled or operated websites or mobile applications ("Websites") about how SIX PAC OTG, LLC, doing business as SIXPAC ("SIXPAC" or "we") gathers and uses (i) personal information submitted to SIXPAC and (ii) aggregated information collected from the Websites, and SIXPAC Services (as defined below). This Privacy Policy applies to the Websites, domains, services, applications, and products ("SIXPAC Services"). This Privacy Policy describes the policies applicable to end users as well as business users, and supplements and is made a part of and integrated into the End User Terms of Service or Business User Terms of Service, as applicable to a particular User.

We may modify or amend this Privacy Policy from time to time. If we make material changes, as determined by us, in the way in which personal information is collected, used, or transferred, we will notify you of these changes by email (if provided) and/or by posting a modified version of this Privacy Policy on our website and by seeking appropriate User consents. Your provision of such consent or, if such consent is not required, your continued use or download of SIXPAC Services for 14 days following any changes means that you accept those changes. Even when we make changes, however, personal information collected by us will be treated in accordance with the version of the Privacy Policy in effect at the time the personal information was collected, unless we obtain your consent otherwise.

We collect various types of information about Users. We collect this data by Users entering their data into our products. This information includes information about User's personal fitness, nutrition, demographics, geographic data, and other personal information as selected by the User.

We use the information we collect to enhance and improve our products and improve User experience internally with the relevant departments within SIXPAC.

We share data that

**does**

personally identify you when you ask us to, including with Business Users with whom you decide to share your fitness and nutrition data. Information sharing of this type is only to Business Users which you ask us to share with.

In addition, we may disclose your data with others in the following ways:

We share data that

**does not**

personally identify you with third parties such as advertisers and business partners. However, geographic data can be shared in the interest of providing a better experience to our Users.

We share data that

**does**

personally identify you with third parties that support our communication with you via email or messages or that provide analytics that permit us to better understand how our products are used.

We also share data that

**does**

personally identify you if we are required by law or if our company is acquired or merges with another company.

We also share data about you with other Users in the context of specific features that are social in nature, additionally, information which you post or disclose in our community forums (e.g. Facebook, other forms of social media, etc.) is public by its nature.

We may share data

in the event that

we are contemplating or actually engaging in a reorganization of our business, or in connection with an actual or contemplated financing, sale, or other transaction involving the disposal of all or a part of our business or assets, including for the purpose of permitting the due diligence required to proceed with such a transaction.

You have choices regarding your personal information and the way that we communicate with you. All Users can change, update, or opt out of sharing information any time.

Users may request copies of personal information, to delete certain information, and to cease processing of personal information that pertains to you.

Our servers are based in the United States, and so data about Users is transferred from around the world to be processed in the United States, where it is subject to local, state, and federal laws of the United States. In addition, you should be aware that the data protection and privacy laws within the United States may offer

a lower

level of protection than in your country/region.

If you have a question about our Privacy Policy, please contact us at

[support@sixpac.com](mailto:support@sixpac.com)

or by mail to SIXPAC, 2205 14<sup>th</sup>

Avenue, Vero Beach, FL 32960.

## **Collection of Personal Information**

SIXPAC collects and uses your personal information to manage and enhance your experience while using the Websites and other SIXPAC Services. We may share information that we collect with third parties consistent with this Privacy Policy, but such information will be aggregated and/or modified such that the third party will not be able to identify the User.

We may also use and allow third parties to track your browsing history profile. Such tracking will allow SIXPAC to offer you specifically tailored services and products with appropriate User consent, where necessary (both of SIXPAC and its third-party partners). No personally identifiable information will be shared with any third party without your consent or acknowledgement.

## **Types of Information Collected**

*User Information.* In addition to the above personal information, we collect standard information about SIXPAC Users such as:

“Personal Fitness and Nutrition Data”, including, birthdate, height, weight, sex, and specific details of your exercise and the foods and drinks that you consume.

Email address and SIXPAC Password.

IP addresses, browser type and your operating system.

Pages visited on the Websites referring and exit pages, and the dates and times of the visits.

Financial information, such as your credit/debit card number or other billing information for purchases and product upgrades.



Any additional information relating to you and your use of the Websites or SIXPAC Services that you provide to use directly through the Websites or SIXPAC Services.

Location data and other information about devices used to access and interact with the Websites.

Information that you make publicly available or publicly post using tools made available on the Websites.

Information you may provide in User-to-User messages.

Information collected from promotions with third party companies.

*Payment Information.* We collect standard payment information when you use the SIXPAC marketplace to purchase goods or services from Business Users or from SIXPAC directly. We share this information with third parties for the purpose of processing those payments, and we store this payment information to make subsequent orders fast and convenient. You may limit the storage of full payment information for future purchases by editing your stored payment settings in your account. However, even if you limit this information storage, certain information (such as order history and basic order identification information) cannot be limited because the information is necessary for us to maintain appropriate and customary business records.

## **Information Shared with Business Users**

We may share information with Business Users as described in this policy. With some exceptions, however, this Privacy Policy and the End User Terms of Service do not describe in detail how any particular Business User may or will use information shared with them (including but not limited to Content created by you and shared with a Business User). End Users should engage directly with the applicable Business User(s) to enter into agreements governing your relationship to one another, including as it relates to your personal information.

## **Communication Preferences**

We may use information you provide to communicate with you, including for marketing or promotional purposes. You can opt out of marketing-style communications or limit the methods by which we communicate with you for marketing or promotional purposes by notifying us of your opt-out request in accordance with this policy. However, even if you opt out, certain communications—such as those used to convey important information about your account, order information, and in response to requests or questions initiated by you—will still occur.

## **Supplemental Information**

Your information may also be supplemented with additional information from other sources, including publicly available sources. If you log into our Site through an account created with a third-party website, that third-party website may send us information about you, depending on the privacy settings that you have in place with that third-party website. Any information collected will be subject to the privacy policies of these third-party websites.

## **Intellectual Property Rights**

All material available on the Site and all material and services provided by or through SIXPAC, its affiliates, subsidiaries, employees, agents, licensors or other commercial partners including, but not limited to, software, all informational text, software documentation, design of and “look and feel”, layout, photographs, graphics, audio, video, messages, interactive and instant messaging, design and functions, files, documents, images, or other materials, whether publicly posted or privately transmitted as well as all derivative works thereof (collectively, the “**Materials**”), are owned by us or our licensors or service providers, and are protected by copyright, trademark, trade secret and other intellectual property laws.

Subject to your compliance with all of the terms and conditions of this Agreement, during the term of this Agreement, SIXPAC grants to you a non-transferable, non-sublicensable, non-exclusive, revocable, limited-purpose right to access and use the Materials that we make available to you. You are not permitted to download, copy, or otherwise store any Materials.

If SIXPAC, in its sole discretion and without notice, considers that there is an immediate security or operational risk to the Service or any of its users, data, or Materials, or to your or a third party system, then SIXPAC may immediately suspend access to or use of the Service by you or any or all Business Users or End Users. The suspension of use and access is not a breach of this Agreement. You acknowledge that the preservation of security, confidentiality and data is paramount. SIXPAC has no liability to you for

suspending the Service under this provision or for any other reason, with or without cause.

This section does not apply to Content; however you agree that any ideas, suggestions, concepts, processes or techniques which you provide to SIXPAC related to the Service, the Site or SIXPAC or its business (“**Feedback**”) are and will be SIXPAC’s exclusive property without any compensation or other consideration payable to you by SIXPAC, and you do so of your own free will and volition. SIXPAC may or may not, in its sole discretion, use or incorporate the Feedback in whatever form or derivative SIXPAC may decide into the Site, the Service, its software, documentation, business or other products or services, or any future versions or derivatives of the foregoing. You hereby provide to SIXPAC a perpetual, royalty-free, transferable, worldwide license to use for any reason all rights in any Feedback and, as applicable, procure the waiver of any moral rights and consent to acts which might otherwise infringe your moral rights.

For the purposes of this Agreement and the Privacy Policy, “**personal information**” is any information about or relating to an identified or identifiable individual, as defined in our Privacy Policy.

SIXPAC retains the right to use or share any Aggregated Data generated by anyone using the Site or the Service, including our users, for the purpose of enhancing and providing the Service. “**Aggregated Data**” means data that does not contain personal information, and which has been manipulated or combined to provide generalized, anonymous information. You are still responsible for any and all personal information that is part of any Content.

SIXPAC may from time to time provide certain users with promotional offers and discounts that may result in different amounts charged for the same or similar services or goods obtained through the use of the Service, and you agree that such promotional offers and discounts, unless also made available to you, shall have no bearing on your use of the Service or the Business User Payments applied to you.

### **Submission of Content**

The Site and the Service available thereon enable you to provide or upload content, including but not limited to messages, materials, data, text, music, sound, photos, videos, graphics, applications, code and other information or content (collectively, “**Content**”), to SIXPAC and/or Business Users for the purpose of providing the Service or as otherwise permitted under this Agreement. Content includes materials provided or uploaded by Business Users. You acknowledge and agree that you are solely responsible for all Content you submit, provide or upload and the consequences for submitting, providing, or uploading it.

You agree that by uploading, or otherwise providing any Content on or through the Site and/or the Service, you grant to SIXPAC a perpetual, worldwide, non-exclusive, irrevocable, royalty-free license to use, reproduce, process, display, distribute, perform, modify, adapt, commercialize, create derivative works of, and otherwise make use of all or any portion of such Content, but such license is limited to allowing SIXPAC to operate and allow us to operate the Service for you and other users, to develop new and improved Services, and otherwise in support of the Service. This license includes the right to host, index, cache or otherwise format your Content in order to provide the Service.

You acknowledge and agree that your Content may be disclosed to others in accordance with the selected privacy settings, utilized features and general functionality of the Service, and as such may be accessible to others including without limitation to: (i) your agents; (ii) End Users; (iii) third party service providers and their agents; (iv) any other person to whom any of the foregoing persons have granted access to your Content and (v) our affiliates in accordance with the Privacy Policy. SIXPAC shall take commercially reasonable steps to ensure that Content identified as private within the functionality of the Service is not shared (unless you select otherwise), but you acknowledge and agree that SIXPAC cannot and does not guarantee any confidentiality with respect to your Content whatsoever.

You represent and warrant that you own your Content or have the necessary licenses, rights, consents, and permissions to grant the license set forth herein and that its provision to SIXPAC or SIXPAC’s use thereof will not violate the copyrights, privacy rights, publicity rights, trademark rights, contract rights or any other intellectual property rights or other rights of any person or entity.

You agree that SIXPAC is not responsible for any violations of any third party intellectual property rights, privacy rights, publicity rights, trademark rights, contract rights or any other rights of any person or entity in any Content that you submit to SIXPAC. You agree to pay all royalties, fees and any other monies owing to any person by reason of the Content uploaded, displayed, or otherwise provided by you to the Site.

### **Use of Personal Information**

We will treat the information we collect as confidential. We will not share Personally Identifiable Information about you without your consent. We may share information collected from you that does not identify you or an individual with third parties, including advertisers and potential business partners.

We may also share data that does not identify an individual User.

We may disclose your personal information when we reasonably believe that it is required by law, a duly authorized court order, or legal process and to protect and defend the rights and interests of SIXPAC, its affiliates, suppliers, or Users. If we are required to disclose your information, we will attempt to provide you with advance notice, unless we are prohibited from doing so by law.

In the event SIXPAC goes through a business transition, such as a merger, being acquired by another company, or selling a portion of its assets, Users' personal information and Personal Fitness and Nutrition Data will, in most instances, be part of the assets transferred. We will require as a term of such transition that the entity acquiring Users' personal information and Personal diet data treat such information in accordance with this Privacy Policy. Users' personal information may also be shared prior to the

completion of such a transaction for the purpose of due diligence, similarly, SIXPAC may enter into a financing transaction which may require the disclosure of Users' personal information for the purpose of due diligence, in such case such information sharing would be accompanied by customary confidentiality agreements agreed by the receiving party.

In some circumstances we may use third party contractors to perform these services on our behalf. In such circumstances, we will only provide the contractor with the information needed to perform the services (for example, name and address if a contractor is delivering a product to you), and all contractors will be required to agree to confidentiality obligations with respect to your personal information.

### **Apple HealthKit**

Notwithstanding the foregoing, SIXPAC will not use or disclose to third parties User data gathered from the Apple, Inc. Healthkit framework or Healthkit API for advertising or other use-based data mining purposes other than improving health, or for the purpose of health research. In no event will any information be collected from Healthkit Users for use by third parties in compliance with this section without obtaining User consent.

### **The Genetic Information Nondiscrimination Act of 2008**

The Genetic Information Nondiscrimination Act of 2008 (GINA) provides, as to Users that are residents of the United States, that you do not need to share your genetic Information with your employer or your health insurer. Even so, you may be asked to share your Genetic Information with other insurers. These others could include life, long-term care, and disability insurance firms. You should always take care with whom you choose to share your Genetic Information.

### **Monitoring**

SIXPAC may, but has no obligation to, monitor Content on the Site, or any website created using our Service. You consent to such monitoring. We may disclose any information necessary or appropriate to satisfy our legal obligations, protect SIXPAC or its customers, or operate the Site or Service properly, or improve the Site or Service. SIXPAC, in its sole discretion, may refuse to post, remove, or require you to remove, any Content, in whole or in part, alleged to be unacceptable, undesirable, inappropriate, or in violation of this Agreement, including, but not limited to the Privacy Policy.

### **Trademarks and Rights of Publicity**

SIXPAC responds to complaints that Content infringes trademarks or celebrity material. Trademarks include logos, brand names, and trade dress, which is the distinctive visual appearance of a product or its packaging. Please be aware that celebrities, and others, may have a "right of publicity," which means that they may have a right to control commercial uses of their name, image, likeness, and other aspects of their identity. If you use a celebrity name or likeness on the Service and you do not have the celebrity's permission, you risk infringing the celebrity's rights, and depending on the circumstances, this may be true for non-celebrities as well.

If you believe your rights have been infringed on the Service, please submit a notification of infringement to our agent listed in the Section entitled "Copyright and Trademark Compliance and Complaints" below. To submit a notification, you must be the trademark owner or the individual featured in a manner violating your rights of publicity, or an authorized agent of the trademark owner or featured individual.

When submitting a notification of trademark or trade dress infringement, provide a copy of the relevant trademark or trade dress registration(s) from the U.S. Patent and Trademark Office or other national trademark office. Please also provide the location on the Service where you believe the infringement is occurring.

### **Control of Personal information and Opt-Out Options**

SIXPAC values the accuracy of the information you provide. If you want to opt-out of communications from SIXPAC, you can do so at any time. If you change your mind, you can opt-in again here. When you opt-out of promotional communications from us, you may still receive service messages (such as an order confirmation) and legally mandated notices. Users that are residents of the European Union have additional rights with respect to personal information, as explained below. Access to personally identifiable information that is collected from our websites and that we maintain may be available to you. For example, if you created a password-protected account within our Site, you can access that account to review the information you provided.

You may also send an e-mail or letter requesting access to or correction of your personally identifiable information. For verification purposes please include your first name, last name, e-mail address you use for such service. You may be asked to provide information in addition to your contact information if we require it to verify you.

### **Security of the Information We Collect**

We take commercially reasonable precautions in an effort to protect your information against security breaches. However, this is not a guarantee that your information may not be accessed, disclosed, altered, or destroyed. By using the Websites and SIXPAC

Services, you acknowledge that you understand and agree to assume these risks.

### **Protection of Children's Privacy**

SIXPAC.com is a general interest website, and we do not knowingly collect any personal information from children. If you are under 18, you are not permitted to use the Websites. Consistent with the Children's Online Privacy Protection Act ("COPPA") and the General Data Protection Regulation, the Websites are not intended for use by anyone under the age of 18 (COPPA's minimum protections are for minors 13 years of age or under). SIXPAC does not knowingly collect personal information from children through this Website.

If you are a parent with concerns about children's privacy issues in conjunction with the use of this Website, please contact us. SIXPAC encourages parents to discuss this Privacy Policy and the dangers of providing Personal Information on-line.

### **Use of Cookies and Tracking Technology**

*Cookies.* When you visit the Websites, a cookie may be saved on your computer (if your computer accepts cookies), and if you return to the Websites the cookie may be read. A "cookie," is a small text file placed on the User's hard drive to track usage of the Websites and collect basic information, which may include certain of your preferences.

We use cookies to gain knowledge of Internet usage, improve content and advertisements, collect the site visitation data described above and, in some cases, to deliver specialized content. Cookies also help to prevent you from having to register or re-enter your information every time you visit the Website in a streamlined fashion. Some of our advertisers and partners occasionally use cookies as well. SIXPAC does not have any control over the cookies used by advertisers and partners.

If you would like to avoid cookies, your web browser may have an option that enables you to disable or not accept cookies. It should be noted, however, that should you disable or not accept cookies, portions of the Website may not properly function.

*Web Beacons.* We may also use web beacons, clear gif technology, or action tags as mechanisms to collect aggregate site visitation data by tracking how Users navigate to and through our Websites. We may also use this technology to track the delivery of HTML email messages. Data collected through this mechanism is not linked to personal information. A web beacon is an electronic image and string of code that is imbedded in a web page or email which allows us to track web page views/hits or the opening of an email containing a beacon. We may use web beacon in conjunction with cookies to track Website activity on www.sixpac.com. Web beacon tracking by SIXPAC does not identify the name or email address of the web User or mail recipient.

*Local Beacons & Geo Fencing.* We may offer advertisers a local beacon or geo fencing to better interact with Users in their local geographic area.

### **Your Rights Regarding Your Personal Data**

If you are a resident of the European Union or the State of California, you have the following rights:

You have the right to request an accounting of all Personal Information that we have that pertains to you, and to have copies of such information delivered to you in electronic format (e.g., electronic copies of information attached to an email). We reserve the right to transmit information to you in a manner that complies with all applicable laws.

You have the right to request that we change any Personal Information that pertains to you that is inaccurate.

You have the right to request that we delete some or all Personal Information that pertains to you. We reserve the right to carry out such a request in a manner that complies with all applicable laws, such as laws concerning record retention. Note that fulfilling this request requires us to delete Personal Information in our possession, but that this right does not extend to Personal Information that has already been lawfully shared in accordance with this Policy.

You have the right to request that we cease processing any Personal Information that pertains to you. Note that fulfilling this request requires us to cease processing Personal Information that pertains to you in the future but does not apply to lawful processing that has already occurred in accordance with this Policy.

You have the right to exercise all the rights afforded by this Policy without fear of retaliation or discrimination. This means that we treat Users who exercise any of the rights under this Policy the same as Users who do not.

To exercise any of the rights explained above, please contact us. Once we have received notification that you withdraw your consent, we will no longer process your information for the purpose(s) to which you originally consented unless there are compelling legitimate grounds for further processing which override your interests, rights, and freedoms or for the establishment, exercise, or defense of legal claims.

If you believe that we have misused your personal data, you also have a right to lodge a complaint with a national Data Protection Authority. Each European Union member nation has established its own Data Protection Authority; you can find out about the Data Protection Authority in your country here: [http://ec.europa.eu/justice/article-29/structure/data-protection-authorities/index\\_en.htm](http://ec.europa.eu/justice/article-29/structure/data-protection-authorities/index_en.htm).

### **Mobile Analytics**

In addition, SIXPAC or our partners may use analytics technology to track anonymous traffic data about use of the Websites. As noted above, we share non-identifying event level data with our analytics partners Amplitude and Singular – as well as both non-identifying event level data and email addresses with our analytics partners – to help us learn about and improve use of the Website and apps. Such partners have the right to retain and use the anonymous traffic data collected through the analytics service from Users of the Websites or the apps. We work to ensure these third parties provide privacy protections equal to those required under this Privacy Policy and Apple’s Developer Guidelines.

### **Interest-Based Advertising**

When you use our websites, third parties may collect data about your mobile device in order to serve ads on other apps or websites that are tailored to your interest. This practice is known as 'interest-based advertising.' Examples of data that may be collected includes: IP addresses, identifiers associated with your mobile device (also called 'Advertising Identifiers'), or any ads that you click while using our Websites. If you wish to opt out, please contact us.

We are providing you with this information and ability to control these settings in accordance with our commitment to the Digital Advertising Alliance's Self Regulatory Principles.

### **Links to Other Websites**

Our websites may contain links to other websites. Please be aware that we are not responsible for the privacy practices of these other sites, and we encourage you to review the policies of each site you use. We cannot control the actions of such third parties or be held responsible for their use of any information that you provide directly to them.

### **Legal Bases for Processing Your Information**

We rely on the following legal grounds to process your personal information:

Performance of a contract – If you choose to make a purchase through the Websites, we need to collect and use your personal information to perform our agreement with you.

Consent – We may use or disclose some of your personal information as described in this Privacy Policy subject to your consent.

Legitimate interests – We may use your personal information for our legitimate interests to improve our products and services.

Consistent with our legitimate interests and any choices that we offer or consents that may be required under applicable laws, we may use technical information as described in this Privacy Policy and use personal information for our marketing purposes.

### **Transfer and Processing of Data**

For Users within the United States, we process data in data centers located in the United States. We have adopted reasonable physical, technical, and organizational safeguards against accidental, unauthorized, or unlawful destruction, loss, alteration, disclosure, access, use, or processing of User data in our possession. We comply with state and federal laws governing the protection of personal information.

For Users within the European Union, we transfer data from the European Union to data centers located in the United States for processing. The European Commission has determined that the law of the United States does not provide a level of protection adequate to satisfy the requirements of Regulation 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and free movement of such data, known as the General Data Protection Regulation (“GDPR”). As to Users residing in the EU, however, we extend the rights provided for by the GDPR – as detailed below – including the imposition of required safeguards with respect to accidental, unauthorized, or unlawful destruction, loss, alteration, disclosure, access, use or processing of data. Transfers of EU resident data from the EU to the United States from third parties (such as third-party payment processors) are conducted in accordance with appropriate transfer mechanisms under the GDPR, principally contractual clauses approved by the European Commission.

### **Data Retention and Deletion**

We will only retain your personal information for as long as necessary to fulfill the purposes for which it was collected and processed, including for the purposes of satisfying any legal, regulatory, accounting or reporting requirements. In some circumstances, we may anonymize your personal information so that it can no longer be associated with you, in which case it is no longer personal information.

Except where longer storage requirements are imposed by applicable legal, regulatory, accounting, or reporting obligations, it is our policy to retain personal information for 6 months after such personal information is no longer necessary. Once that 6 months has passed, we will delete such personal information. This means that, if you close your account with us, we will delete personal information associated with your account after 6 months.

### **Acceptable Use and Conduct**

You agree that you will not publish or make available any Content that, or use the Site or Service in a manner that:

infringes, violates or misappropriates any third party’s intellectual property or proprietary rights;

contains software viruses, Trojan horses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications

equipment;

is misleading, deceptive or fraudulent or otherwise illegal or promotes illegal activities, including engaging in phishing or otherwise obtaining financial or other personal information in a misleading manner or for fraudulent or misleading purposes;

is libelous or defamatory, or that is otherwise threatening, abusive, violent, harassing, malicious or harmful to any person or entity, or is invasive of another's

privacy;

is harmful to minors in any

way;

is hateful or discriminatory based on race, color, sex, religion, nationality, ethnic or national origin, marital status, disability, sexual orientation or age or is otherwise objectionable, as reasonably determined by

SIXPAC;

impersonates a SIXPAC employee, or any other person, or falsely states or otherwise misrepresents your affiliation with any person or entity, or to obtain access to the Site or Service or a portion thereof without proper authorization;

interferes or attempts to interfere with the proper working of the Site or Service or prevents others from using the Site or Service, or in a manner that disrupts the normal flow of dialogue with an excessive number of messages (flooding attack) to the Site, or that otherwise negatively affects other persons' ability to use the Site or

Service;

uses any manual or automated means, including agents, robots, scripts, or spiders, to monitor or copy the Site or Service or the content contained

therein;

facilitates the unlawful distribution of copyrighted

Content;

except as expressly permitted by SIXPAC, licenses, sublicenses, rents or leases the Service to third parties, or uses the Service for third party training, commercial time-sharing or service bureau

use;

includes personal or identifying information about another person in a manner that employs misleading email or IP addresses, or forged headers or otherwise manipulated identifiers in order to disguise the origin of Content transmitted through the Site or Service to

users;

constitutes or contains any form of advertising or solicitation to users who have requested not to be contacted about other services, products or commercial

interests;

stalks or otherwise harasses anyone on the Site or using the Service or with information obtained from the Site or Service;

collects, uses or discloses data, including personal information, about users without their informed consent or for unlawful purposes or in violation of applicable law or

regulations;

requests, solicits or otherwise obtains access to usernames, passwords or other authentication credentials from any user of the Site or Service for the purposes of automating logins to the

Site;

attempts to gain unauthorized access to the computer systems of SIXPAC or engage in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of the Site or

Service;

posts adult or pornographic

Content;

decompiles or reverse engineers or attempts to access the source code of the software underlying the Site, the Service or any other SIXPAC

technology;

copies, archives, stores, reproduces, rearranges, modifies, downloads, uploads, creates derivative works from, displays, performs, publishes, distributes, redistributes or disseminates all or any part of the Site or

Service;

accesses the Site or Service for the purposes of building a product using similar ideas, features, functions, interface or graphics as those found in the Site or

Service;

accesses the Site or Service for the purposes of monitoring its availability, performance, or functionality, or for any other benchmarking or competitive purposes; or

accesses the Site to upload any Content or computer code for the purposes of: (

) causing a breach or override of security to the Site or Service; (ii) interfering with the proper working, functionality or performance of the Site or Service; or (iii) preventing others from accessing or using the Site or Service.

### **Third Party Sites and Content**

The Site may permit you to link to other websites or resources on the Internet, and other websites or resources may contain links to the Site. These other websites are not under SIXPAC's control, and you acknowledge that SIXPAC is not responsible or liable for any third-party content, including but not limited to the accuracy, integrity, quality, usefulness, legality, appropriateness, safety, or intellectual property rights of or relating to such third-party content or any other aspect of such websites or resources. The inclusion of any such link does not imply endorsement by SIXPAC or any association with its operators. You further acknowledge and agree that SIXPAC will not be responsible or liable, directly, or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such third-party content, goods, or services available on or through any such website or resource. Access and use of third-party sites, including the information, material, products, and services on third party sites or available through third party sites is solely at your own risk.

### **Data Usage and Charges**

The Service may use information and data transmission networks operated by third parties to send data, information and Content from a computer or device to SIXPAC's servers, and to serve data, information, and Content back to such computer or device.

Depending on your wired or wireless data or similar plan with such third-party operators, you may incur charges from such third-party operators for use of its information and data transmission networks. You are solely responsible for any and all costs, including without limitation wireless and cellular data costs, you may incur as a result of the usage of the Service and/or as a result of data, information and Content submitted or received by your computer or device through the Service.

### **Contacting SIXPAC**

You may contact SIXPAC:

by email at

support@sixpac.com;

by telephone at 1-801-323-3000.