

## **TERMS AND CONDITIONS**

THE FOLLOWING TERMS AND CONDITIONS GOVERN YOUR USE OF THIS WEBSITE AND ALL WEBSITES OR MICROSITES OWNED AND OPERATED BY THE KINCADE SOCIETY (“SOCIETY”). PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE ACCESSING THIS WEBSITE. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU ARE NOT GRANTED PERMISSION BY THE SOCIETY TO ACCESS OR OTHERWISE USE THIS WEBSITE. BY PROCEEDING TO ACCESS THIS WEBSITE, YOU ACCEPT AND AGREE TO BE LEGALLY BOUND BY THESE TERMS.

### **1. SOCIETY User Agreement**

Welcome to the SOCIETY website (also referred to as the “Site”). This Agreement contains the terms, covenants, conditions, and provisions (the “Terms and Conditions”) upon which you (the “User,” “You,” or “Your”) may access and use this Site.

Web Site Last Updated: 01/27/2021

### **2. Terms and Conditions**

By accessing, viewing, or using this Site, You indicate that You understand and intend these Terms and Conditions to be the legal equivalent of a signed, written contract and equally binding, and that You accept such Terms and Conditions and agree to be legally bound by them. Please note that the SOCIETY reserves the right to change, at its discretion, the Terms and Conditions under which this Site and its offerings are extended to You. Your continued use of this Site following such modifications will be conclusively deemed acceptance by You of any changes to these Terms and Conditions.

### **3. License Grant**

This Agreement provides You with a personal, revocable, nonexclusive, nontransferable license to use this Site conditioned on Your continued compliance with the Terms and Conditions of this Agreement. You may print and download materials and information on this Site solely for personal and noncommercial use, provided that all hard copies contain all copyright and other applicable notices contained in such materials and information. As a further condition of use of this Site, You warrant to the SOCIETY that You will not use this Site for any purpose that is unlawful or otherwise prohibited by these Terms and Conditions.

### **4. Corrections and Changes**

While the SOCIETY endeavors to keep the materials on the Site up to date, the SOCIETY cannot and does not assume responsibility for any errors or omissions in these materials. The SOCIETY further does not warrant the accuracy or completeness of the information, text, graphics, links, or other items contained within these materials. The SOCIETY may make changes to these materials,

or to the products or services described herein, at any time without notice, and makes no commitment to update the information contained herein.

## **5. Confidentiality of Site**

While the SOCIETY has endeavored to create a secure and reliable Site, please be advised that the confidentiality of any communication or material transmitted to/from this Site over the Internet cannot be guaranteed. Accordingly, the SOCIETY is not responsible for the security of any information transmitted via the Internet. You assume the sole and complete risk for using this Site.

## **6. Intellectual Property Rights**

All material contained on this Site, unless otherwise indicated, is protected by law including, but not limited to, United States copyright and trademark law, as well as other state, national, and international laws and regulations. Except as expressly provided herein, the SOCIETY does not grant any express or implied right to You. The contents of this Site are Copyright © **2020-2021 The Kincade Society. All Rights Reserved.** The SOCIETY, and all other names, logos, and icons identifying the SOCIETY and its products and services are proprietary marks of the SOCIETY. All other product names, company names, and other marks are trademarks of their respective owners. Nothing in these Terms and Conditions grants You any right to use any trademark, service mark, logo, and/or trade name of the SOCIETY, or colorable imitations thereof.

## **7. Disclaimer of Warranty and Limitation of Liability**

Use of this Site is entirely at Your own risk and is subject to all applicable state, national, and international laws and regulations. ALL MATERIALS ON THIS SITE ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. Please note that some jurisdictions may not allow the exclusion of implied warranties, so some of the above exclusions may not apply to You.

THE SOCIETY SHALL NOT BE LIABLE FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES, WHETHER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY, ARISING OUT OF OR IN CONNECTION WITH: (A) YOUR ACCESS TO, OR USE OF, THE SITE; (B) ANY PRODUCTS, SERVICES, INFORMATION, ACTIVITIES, AND/OR MATERIALS AVAILABLE ON OR THROUGH THE SITE; (C) ANY BREACHES OF SECURITY INVOLVING THE SITE OR YOUR ACCOUNT, OR ANY LACK OF AVAILABILITY OR OPERATIONAL PROBLEM OF, THE SITE; OR (D) ANY VIRUSES OR OTHER CODE THAT MAY AFFECT YOUR COMPUTER EQUIPMENT OR OTHER PROPERTY AS A RESULT OF YOUR USE OF THE SITE. Some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages. In such jurisdictions, our liability is limited to the greatest extent permitted by law.

## **8. Third Party Web Sites**

The SOCIETY may provide links, in its sole discretion, to other sites on the World Wide Web for Your convenience in locating related information and services. These sites have not necessarily been reviewed by the SOCIETY and are maintained by third parties over which the SOCIETY exercises no control.

THE SOCIETY MAKES NO WARRANTY OF ANY KIND IN CONNECTION WITH ANY THIRD-PARTY SITE OR ANY INFORMATION, PRODUCTS, SERVICES, OR MATERIALS AVAILABLE ON OR THROUGH ANY THIRD-PARTY SITE.

The SOCIETY does not endorse, and shall not be liable in connection with, the content, the accuracy of the information, and/or quality of products or services provided by or advertised on these third-party web sites. Use of third-party sites is at Your own risk.

## **9. Code of Conduct**

You agree not to do the following:

(a) Restrict or inhibit any other User from using and enjoying the Site. This includes, without limitation: (1) using, or attempting to use, any account without the owner's permission, (2) obtaining or soliciting another person's password or other personal information under false pretenses, or (3) impersonating another User or otherwise misrepresenting Yourself to the SOCIETY, the Site's systems, or other entities.

(b) Interfere (or attempt to interfere) with the operation of the Site. This includes, without limitation: (1) interfering with, defeating, or circumventing any security function of the Site, or attempting to do so, or (2) accessing, or attempting to access, any portion of the Site that You are not authorized to access. Unauthorized access (or attempts) may subject You to civil and/or criminal penalties.

(c) Post, store, or transmit any unlawful, threatening, defamatory, obscene, inflammatory, pornographic, profane, or otherwise objectionable (as determined by the SOCIETY in its sole discretion) information or material.

(d) Post, store, or transmit any information or material that could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability, or otherwise violate any law.

(e) Post, store, or transmit any advertising, promotion, or solicitation of goods or services for commercial purposes.

(f) Use the Site to post, store, or transmit any information or software that contains a virus, worm, Trojan horse, or other harmful or disruptive component.

(g) Use the Site to post, store, or transmit materials in violation of another party's copyright or other intellectual property rights. You are solely responsible for determining whether any material You post, store, or transmit is subject to a third party's rights.

(h) Use the Site for any unlawful purposes.

(i) Modify, adapt, sublicense, translate, resell, retransmit, reverse engineer, decompile, or disassemble any portion of the Site.

## **10. Law Enforcement**

Actual or attempted unauthorized or unlawful use of the Site may result in criminal and/or civil prosecution. For Your protection, the SOCIETY reserves the right to view, monitor, and record activity on the Site without notice or permission from You. Any information obtained by monitoring, reviewing, or recording is subject to review by law enforcement organizations in connection with the investigation or prosecution of possible criminal activity on the Site. The SOCIETY will also comply with all court orders involving requests for such information.

## **11. Term and Termination**

This Agreement will take effect at the time You begin using this Site (thereby indicating acceptance of these Terms and Conditions). The SOCIETY reserves the right at any time and for any reason to deny You access to the Site or any portion thereof, and to terminate this Agreement. Termination will be effective without notice.

## **12. Privacy Policy**

Please see the SOCIETY's Privacy Policy for a summary of the SOCIETY's practices regarding collection and use of non-public personal information. By using this Site, You consent to the SOCIETY's collection and use of personal data as outlined therein.

## **13. Submissions**

Any ideas, suggestions, information, know-how, material, or other content (collectively, "content") submitted to and received through this Site will be deemed to include a royalty-free, perpetual, irrevocable, transferable, worldwide, nonexclusive right and license for the SOCIETY to adopt, publish, reproduce, disseminate, transmit, distribute, copy, use, create derivative works, display (in whole or part), or act on such content without additional approval or consideration, in any form, media, or technology now known or later developed for the full term of any rights that may exist in such content. The SOCIETY may refuse to post, or may remove at any time, any content submitted to and received through this Site for any reason.

## **14. Digital Millennium Copyright Act**

The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under United States copyright law. The SOCIETY reserves the right to remove any material on the Site which allegedly infringes another person's copyright. Notices to the SOCIETY regarding any alleged copyright infringement on the Site should be directed to: THE KINCADE SOCIETY ATTN: Administrative Department; at: [thekincadesociety@protonmail.com](mailto:thekincadesociety@protonmail.com).

## **15. Limitation of Service**

The SOCIETY reserves the right to limit, in its sole discretion, the availability of the Site and/or the provision and quantity of any product, service, and/or information to any person, geographic area, or jurisdiction it so desires.

## **16. Indemnification**

You agree to defend, indemnify, and hold harmless the SOCIETY and its affiliates, Members, members of the Governing Body, officers, employees, volunteers, agents, predecessors, successors, and assigns, from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs, and expenses (including reasonable attorneys' fees and litigation expenses) relating to or arising from Your use of the Site, any breach by You of this Agreement, or any other matter for which You are responsible hereunder or under law.

## **17. Waiver**

Failure to insist on strict performance of any of the Terms and Conditions of this Agreement will not operate as a waiver of any subsequent default or failure of performance. No waiver by the SOCIETY of any right under these Terms and Conditions will be deemed to be either a waiver of any other right or provision or a waiver of that same right or provision at any other time.

## **18. Governing Law & Arbitration Agreement**

(a) These Terms and Conditions shall be construed and governed by the internal laws of the state of Connecticut (irrespective of its choice of law principles), and any controversy, conflict, dispute, or claim under statutory or common law arising out of or relating to these Terms and Conditions, or the breach thereof, or access or use of this Site shall also be construed and governed thereby.

(b) Any controversy, conflict, dispute, or claim under statutory or common law arising out of, relating to, or in connection with these Terms and Conditions or access or use of this Site shall be settled by binding arbitration and this agreement to arbitrate shall be valid, irrevocable, and enforceable, except when there exists sufficient cause at law or in equity for the avoidance of written contracts generally, and shall survive expiration, termination, or rescission of this Agreement, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(c) Any and all arbitration shall be individualized rather than class or collective action, and any controversy, conflict, dispute, or claim under statutory or common law arising out of, relating to, or in connection with these Terms and Conditions, or the breach thereof, or access or use of this Site shall be heard in separate proceedings.

(d) The SOCIETY shall be responsible for choosing a single arbitrator; arbitration shall be conducted in the state of jurisdiction wherein the SOCIETY's principal place of business is located; the parties shall bear their own individual expenses for arbitration; and, sending a notice to the other party constitutes initiating arbitration. Furthermore, the arbitrator shall not have any authority to change any term(s), provision(s), condition(s), or obligation(s) of this Agreement by

additions, subtractions, or alterations of the Agreement's term(s), provision(s), condition(s), or obligation(s). Finally, the decision of the arbitrator will be binding and is the exclusive remedy, and the prevailing party in any arbitration concerning these Terms and Conditions or access or use of this Site shall be entitled to reasonable attorneys' fees.

(e) If the aforementioned agreement to arbitrate or its application is invalid or unenforceable, any legal proceeding with respect to any dispute concerning these Terms and Conditions or access or use of this Site will be tried in a court of competent jurisdiction by a judge without a jury in the state wherein the SOCIETY's principal place of business is located. Any and all parties involved in such dispute agree to waive any right to a jury trial in any such proceeding.

(f) This Site is controlled and operated by the SOCIETY from its offices within the United States. The SOCIETY makes no representation that materials on the Site are appropriate or available for use in other locations, and access to them from territories where any of the contents of this Site are illegal is prohibited. If You choose to access this Site from other locations, You do so on Your own volition and are responsible for compliance with any applicable local laws.

## **19. Costs & Attorneys' Fees**

In any action to enforce this Agreement, the prevailing party will be entitled to reasonable costs and attorneys' fees.

## **20. Severability**

If any part of these Terms and Conditions is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and the liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most clearly matches the intent of the original provision and the remainder of these Terms and Conditions shall continue in effect.

## **21. No Agency**

No joint venture, partnership, employment, or agency relationship exists between You and the SOCIETY as a result of this Agreement or Your utilization of this Site.

## **22. No Rights or Benefits**

This Agreement is not intended to, and does not, create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or in equity by any party against the SOCIETY, its parent, subsidiaries, and affiliates, or its respective agents, members, associates, officers, directors, employees, volunteers, representatives, or any other person.

## **23. Entire Agreement/Reservation of Rights**

These Terms and Conditions and the SOCIETY's Privacy Policy, which are hereby incorporated as if set forth fully in these Terms and Conditions, represent the entire agreement between You

and the SOCIETY with respect to Your use of the material available on or through this Site, and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between You and the SOCIETY with respect to this Site. Any rights not expressly granted herein are reserved.