

## Terms of Use

Updated: September 17, 2009

### 1. INTRODUCTION

Welcome to DinoSawUs (the "Website"). Our Website is operated and presented to users by Custard Square Limited of Auckland, New Zealand ("Custard Square") Custard Square is referred to in these terms as "we", "us" or "our".

Through the Website, you may register, care for and personalise your Dino and activate Dino-related products whether purchased or supplied free of charge by us. We hope you will enjoy our Website and will visit us often to play with your Dino! So that you may fully enjoy our Website, we would like you to be aware of these terms of use that apply when you use the Website.

If you do not agree to these terms of use, you may not use the Custard Square Website.

If you are a parent or guardian and you provide your consent to your child's registration with the site, you agree to be bound by these terms of use in respect of their use of the Website. Children – you must obtain a parent or guardian's consent to these terms of use.

### 2. USE OF CONTENT

The Website is only for personal use. You may not use the Website for commercial purposes.

All information, materials, functions and other content (including Submissions, as defined in Section 3, ("Content") contained on the Custard Square Website are our property or information. Content may be our copyrighted property or the copyrighted property of our licensors or licensees. All trade marks, trade names, and look and feel are proprietary to us and/or our licensors or licensees. We may change the Website or delete Content or features at any time, in any way, for any reason. You must not do any act or thing which is inconsistent with or which is likely in any way to prejudice our ownership of the trade marks, trade names or look and feel.

Except as we specifically agree in writing, no Content from any Custard Square Website may be used, reproduced, transmitted, distributed or otherwise exploited in any way other than as part of our Website. However where the Website is configured to enable the download of particular Content, you may download one copy of such Content to a single computer for your personal, non-commercial home use only. However you must not make any modifications to the content, nor must you rent, lease, loan, sell, distribute, copy (except to create a single copy for your own back-up purposes), or create any derivative works based on the Website or the Content, in whole or in part.

### 3. SUBMISSIONS

In these terms of use, we use the word "Submissions" to mean text, messages, ideas, concepts, suggestions, stories, screenplays, formats, artwork, photographs,

drawings, videos, audiovisual works, musical compositions (including lyrics), sound recordings, characterizations, your and/or other persons' names, likenesses, voices, performances and/or other biographical information or material, and/or other similar materials that you submit, post, upload, embed, display, communicate or otherwise distribute (collectively, "Distribute") on or through the Website.

"Submissions" means those Submissions that we expressly request or enable you to provide to us by way of a feature or activity on our Website. "Unsolicited Submissions" are any Submissions that do not fall within the previous sentence of this paragraph.

Please do not distribute Unsolicited Submissions on or through the Website. You agree that any Submissions you make is not being made in confidence and that you have no expectation of any review, compensation or consideration of any type.

We, and other authorised users are entitled to use and disclose all Submissions (whether Unsolicited or Solicited). We are not liable to you or to any other person for any use or disclosure of any Submission.

#### 4. LICENSES AND REPRESENTATIONS

You grant us (and authorised users) a non-exclusive, irrevocable, royalty-free and transferable (in whole or part) license to use, reproduce, transmit, distribute, modify, create derivative works based upon and perform, in whole or in part, in all media formats and channels (including on third party Websites) for any and all purposes, all without further notice to you, with or without attribution (the "Submissions License").

By communicating a Submission, you warrant that the Submission and your communication of it to us conform to this agreement and that you own or have the necessary rights, without the need for any permission from or payment to any other person or entity, to use, and to authorise us to use, that Submission in all manners contemplated by these terms of use.

You must only include songs or recordings with any Submissions you distribute on or through Custard Square if you are the sole author of the lyrics and music. You must not include songs nor lyrics that anyone else has written or recorded.

To the extent that we solicit Submissions through features or activities on or through the Website that require the use of our copyrighted works (in whole or in part), we grant you a non-exclusive license to create a derivative work using our copyrighted works (in whole or in part) as required (but only as required, and only for the purpose of creating your Submissions); provided however, that you assign all rights in the work you create to us.

To the extent any "moral rights," ("Moral Rights") in or to the Submissions exist and are not exclusively owned by us and to the extent you are able to do so under applicable law, you agree not to enforce any such rights. To the extent such an agreement is unenforceable, you give us a Moral Rights Consent. To the extent any other person has Moral Rights in or to the Submission, you must obtain a Moral Rights Consent from that person and provide it on request to us. "Moral Rights Consent" means a waiver of moral rights to the maximum extent permitted by applicable law and an unconditional consent to any act or omission in relation to the Submissions by or on behalf of Custard Square.

## 5. ACCOUNTS

Some services on our Website permit or require you to create an account to participate or to secure additional benefits. You agree to provide and update accurate, current and complete information about yourself as prompted by our registration processes (the "Registration Data"). You must not use anyone else's username, password or other account information, or another person's name, likeness, voice, email address, image or photograph. You must promptly notify us of any unauthorised use of your username, password, other account information, or any other breach of security that you become aware of involving or relating to the Website.

You may choose a free Account or a pre-paid Account. A pre-paid Account on this Website is valid for three (3) months following the date that you register as a member on this Website, unless terminated earlier in accordance with this User Agreement and you may extend or renew this period. A free Account is valid for as long as we choose it to be valid.

User Accounts, usernames and passwords are not transferable and are not redeemable for cash.

Subject to applicable law, we may suspend or terminate your account and your ability to use our Website for failure to comply with these terms of use or any special terms related to a particular service, if we reasonably suspect you are infringing copyright, or for any other reason whatsoever.

## 6. CREDITS

You may purchase credits ("Credits") for your own Account or another person's User Account on this Site. You must be eighteen (18) years or older to purchase Credits.

By purchasing Credits on this Site, you represent that you are eighteen (18) years or older and that you are authorised to use the chosen payment method (including, without limitation, credit cards) for the purposes of purchasing Credits as described herein.

Custard Square may from time to time in its sole discretion distribute Credits at no charge to Users for any reason and change prices for Credits without prior notice. Credits may be used on the Site by Users as a limited license only to access virtual features on the Site or to acquire virtual items for a User's Dino and for any other purpose that Custard Square may determine in its sole discretion.

Dino's and virtual items remain the property of Custard Square. Custard Square has the absolute right to manage, control, regulate or eliminate Credits in general or in specific cases in its sole discretion.

All purchases of Credits are non-refundable. Credits are not transferable or redeemable for any amount of money or monetary value from Custard Square. Purchases made on this Site are processed on servers located in New Zealand. Any purchase of Credits shall be subject to applicable New Zealand laws, regulations and Custard Square policies that may be in effect at the time.

## 7. PUBLIC FORUMS AND COMMUNICATION

"Public Forum" means an area, site or feature offered as part of our Website that offers the opportunity for users to distribute Submissions for viewing by other Website users. This includes chat areas, message and boards.

Public Forums are for public and not private communications, and you have no expectation of privacy with regard to any Submission to a Public Forum. We cannot guarantee the security of any information you disclose through any of these media; you make such disclosures at your own risk.

You are solely responsible for the Submissions you Distribute on or through our Website under your username or otherwise by you in any Public Forum and for the consequences of submitting and posting them. We have no obligation to monitor any Public Forum.

You acknowledge that the use of any Submission posted in any Public Forum is at your own risk. For example, we are not responsible for, and we do not endorse, the opinions, advice or recommendations posted or sent by users in any Public Forum.

We may refuse, to post, deliver, remove, keep, modify or otherwise use or take any action with respect to Submissions you Distribute.

We reserve the right to screen, refuse to post, remove or edit Submissions at any time and for any reason. If we elect to screen Submissions, there may be a delay in its posting in a Public Forum. If we have questions about your Submissions including, without limitation, the copyright, we may contact you for further information.

## 8. RULES OF CONDUCT

The following Rules of Conduct apply to the Website. By using the Website, you agree that you will not Distribute any Submission that:

- (a) is defamatory, abusive, threatening, or an invasion of a right of privacy of another person; (b) is hateful or racially or otherwise offensive; (c) is violent, obscene, pornographic or otherwise sexually explicit; or (d) otherwise harms or can reasonably be expected to harm any person or entity;
- is illegal or encourages or advocates illegal activity;
- infringes or violates any right of a third party including: copyright, patent, trademark, privacy;
- distributes another person's personal information of any kind without their express permission or publicity;
- is commercial, or advertises or offers to sell any products, services or otherwise (whether or not for profit), and including solicitations for contributions or donations;
- contains a virus or other harmful component or otherwise interferes with any person or entity's use or enjoyment of the Website; or
- (a) is not relevant to the designated topic or theme of the Public Forum; (b) is contrary to any specific restrictions applicable to a Public Forum; or (c) is disruptive, including "spamming," or "trolling".

## 9. COOPERATION; REMOVAL OF SUBMISSIONS

To the extent we are able to do so under applicable law, we may identify any user to third parties, and/or disclose to third parties any Submission or personally identifiable information, when we believe in good faith that such identification or disclosure will facilitate compliance with laws, including, for example, compliance with a court order, or help to enforce these terms of use rules, and/or protect the safety or security of any person or property.

## 10. DISCLAIMERS

SUBJECT TO APPLICABLE LAW, THE CONTENT ON OR OTHERWISE RELATED IN ANY WAY THE WEBSITE OR ANY THIRD PARTY WEBSITES IS PROVIDED "AS IS" AND WITHOUT CONDITIONS OR WARRANTIES OF ANY KIND. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, WE DISCLAIM ALL CONDITIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, SUBJECT TO APPLICABLE LAW, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, AVAILABILITY, SECURITY, COMPATIBILITY AND NONINFRINGEMENT. WE DO NOT WARRANT THAT ANY CONTENT WILL BE ERROR-FREE, THAT ACCESS OR THAT OUR WEBSITE OR THE SERVERS THAT MAKE SUCH CONTENT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF ANY CONTENT. APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. PLEASE NOTE, HOWEVER, THAT THIS DOES NOT AFFECT YOUR STATUTORY RIGHTS AS A CONSUMER.

Our Website may contain the opinions and views of other users. Given the interactive nature of our Website, we cannot endorse, guarantee, or be responsible for the accuracy, efficacy, or veracity of any content generated by our users.

## 11. GAME PLAY AND LATENCY

To support smooth operation of the Website across wide geographic areas, aspects of certain activities in the Website, such as competing with fellow dinosaurs in stone hedge, may be simulated to avoid delays in game play.

## 12. CONFIDENTIALITY

You are responsible for maintaining the confidentiality of your username(s), password(s), and your account(s), as well as all activities that occur under your account(s).

## 13. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, SHALL CUSTARD SQUARE BE LIABLE FOR ANY LOSS OF USE, LOSS OF DATA, LOSS OF INCOME OR PROFIT, LOSS OF OR DAMAGE TO PROPERTY, OR FOR ANY DAMAGES OF ANY KIND OR CHARACTER (INCLUDING WITHOUT LIMITATION ANY COMPENSATORY, INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE,

OR CONSEQUENTIAL DAMAGES), ARISING OUT OF OR IN CONNECTION WITH THE USE OF, OR THE INABILITY TO USE, THIS WEBSITE, DINOSAWUS ITEMS OR ANY OF THE CUSTARD SQUARE MATERIALS OR CONTENTS WITH WHICH IT IS LINKED.

APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. HOWEVER, IN NO EVENT SHALL THE TOTAL LIABILITY OF CUSTARD SQUARE FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION AND COSTS AND EXPENSES (INCLUDING LEGAL FEES) WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), OR OTHERWISE, RELATED TO YOUR USE OF, OR THE INABILITY TO USE, THIS WEBSITE, DINOSAWUS ITEMS OR ANY OF THE CUSTARD SQUARE MATERIALS OR FUNCTIONS AT THIS WEBSITE, EXCEED THE LESSER OF (I) THE AMOUNT, IF ANY, PAID BY YOU IN CONNECTION WITH YOUR ACCESS, USE AND/OR PURCHASES MADE ON THIS WEBSITE OR (II) NZ\$100.

#### 14. JURISDICTIONAL ISSUES AND DISPUTE RESOLUTION

This User Agreement shall be governed by and construed in accordance with the laws of New Zealand. You must bring any action against us in a court in New Zealand. If you have any questions or concerns relating to this Website, they can be sent to the attention of our Customer Service Representative at this address. You may also contact Custard Square by email at [questions@custardsquare.com](mailto:questions@custardsquare.com).

#### 15. AMENDMENT

We may amend these terms of use at any time (including by modification, deletion and/or addition of any of them). If we make a material amendment to these terms of use, we will notify you of such amendment by posting notice of such amendment on the Website. Any such amendment to these terms of use will be effective ten (10) calendar days following our posting of notice of the changes on the Websites.

#### 16. TERMINATION

These terms of use are effective until terminated by either you or us. You may terminate these terms of use at any time by discontinuing use of the Website and destroying all materials obtained from the Website and all related documentation and all copies of them, whether made under these terms of use or otherwise.

We may immediately terminate these terms of use with respect to you (including your access to the Website), in our absolute discretion including, without limitation, if you breach or fail to comply with any term or provision of these terms of use, if you provide us with incorrect information or if you do not use your user account for a period of time. Upon termination, you must cease use of the Website and destroy all materials obtained from the Website and all copies of those materials, whether made under these terms of use or otherwise.

#### 17. GENERAL PROVISIONS

If any provision of these terms of use shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these terms of use and shall not affect the validity and enforceability of any remaining provisions. No

waiver of any provision of these terms of use by us shall be deemed a further or continuing waiver of such provision or any other provision, and our failure to assert any right or provision under these terms of use shall not constitute a waiver of such right or provision. In these terms of use, the word "including" is used as if followed by the words "but not limited to".