

## Terms of Use

**Last modified: May 14, 2018**

The website located at <https://www.josephsulkowski.com> (the “**Site**”) is a copyrighted work belonging to Joseph H. Sulkowski d/b/a Apokalupsis, LLC and/or Pinxit, Inc. (collectively, “**Company**”, “**us**”, “**our**”, and “**we**”). Certain features of the Site may be subject to additional guidelines, terms, or rules, which will be posted on the Site in connection with such features. All such additional terms, guidelines, and rules are incorporated by reference into these Terms.

**These Terms of Use (these “Terms”) set forth the legally binding terms and conditions that govern your use of the Site. By accessing or using the Site, you are accepting these Terms (on behalf of yourself or the entity that you represent), and you represent and warrant that you have the right, authority, and capacity to enter into these Terms (on behalf of yourself or the entity that you represent). You may not access or use the Site or accept the Terms if you are not at least 13 years old. If you do not agree with all of the provisions of these Terms, do not access and/or use the Site.**

**These Terms require the use of arbitration (Section 7.2) on an individual basis to resolve disputes, rather than jury trials or class actions, and also limit the remedies available to you in the event of a dispute.**

### **1. Access to the Site**

**1.1 Eligibility.** The Site is not targeted toward or intended for use by anyone under the age of 13. By using the Site, you represent and warrant that you (a) are 13 years of age or older, (b) are a legal resident of the United States, (c) have not been previously suspended or removed from the Site, or engaged in any activity that could result in suspension or removal from the Site, and (d) have full power and authority to enter into these Terms and in so doing will not violate any other agreement to which you are a party.

**1.2 License.** Subject to these Terms, Company grants you a non-transferable, non-exclusive, revocable, limited license to use and access the Site solely for your own personal, non-exclusive, non-transferable use.

**1.3 Certain Restrictions.** The rights granted to you in these Terms are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Site, whether in whole or in part, or any content displayed on the Site; (b) you shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Site, including any content displayed on the Site; (c) you shall not access the Site in order to build a similar or competitive website, product, or service; and (d) except as expressly stated herein, no part of the Site, including any content displayed on the Site, may be copied, reproduced, distributed, republished, downloaded, displayed, posted, or transmitted in any form or by any means. Unless otherwise indicated, any future release, update, or other addition to functionality of the Site shall be subject to these Terms. All copyright and other proprietary notices on the Site (or on any content displayed on the Site) must be retained on all copies thereof.

**1.4 Modification.** Company reserves the right, at any time, to modify, suspend, or discontinue the Site (in whole or in part) with or without notice to you. You agree that Company will not be liable to you or to any third party for any modification, suspension, or discontinuation of the Site or any part thereof.

**1.5 No Support or Maintenance.** You acknowledge and agree that Company will have no obligation to provide you with any support or maintenance in connection with the Site.

**1.6 Ownership.** You acknowledge that all the intellectual property rights, including copyrights, patents, trademarks, and trade secrets, in the Site and its contents, features and functionality are owned by the Company. Neither these Terms (nor your access to the Site) transfers to you or any third party any rights, title or interest in or to such intellectual property rights, except for the limited access rights expressly set forth in Section 1.2. The Company reserves all rights not granted in these Terms. There are no implied licenses granted under these Terms.

**1.7 Privacy.** All information we collect on the Site is subject to our [Privacy Policy](#). By using the Site, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

**1.8 Geographic Restrictions.** The Company is based in the State of Tennessee. We provide the Site for use only by persons located in the United States. We make no claims that the Site or any of its content is accessible or appropriate outside of the United States. Access to the Site may not be legal by certain persons or in certain countries. If you access the Site from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

## **2. Indemnification**

You agree to indemnify and hold Company (and its officers, members, employees, and agents) harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of (a) your use of the Site, (b) your violation of these Terms, or (c) your violation of applicable laws or regulations. Company reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. You agree not to settle any matter without the prior written consent of Company. Company will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it.

## **3. Third-Party Links**

**3.1 Third-Party Links.** The Site may contain links to third-party websites and services (collectively, "**Third-Party Links**"). Such Third-Party Links are not under the control of Company, and Company is not responsible for any Third-Party Links. Company provides access to these Third-Party Links only as a convenience to you, and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Links. You use all Third-Party Links at your own risk, and should apply a suitable level of caution and discretion in doing so. When you click on any of the Third-Party Links, the applicable third party's terms and policies apply, including the third party's privacy and data gathering practices. You should make whatever

investigation you feel necessary or appropriate before proceeding with any transaction in connection with such Third-Party Links.

**3.2 Release.** You hereby release and forever discharge the Company (and our officers, members, employees, agents, successors, and assigns) from, and hereby waive and relinquish, each and every past, present, and future dispute, claim, controversy, demand, right, obligation, liability, action, and cause of action of every kind and nature (including personal injuries, death, and property damage), that has arisen or arises directly or indirectly out of, or that relates directly or indirectly to, the Site (including any interactions with, or act or omission of, any Third-Party Links). IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, 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.”

#### **4. Disclaimers**

THE SITE IS PROVIDED ON AN “AS-IS” AND “AS AVAILABLE” BASIS, AND COMPANY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. WE MAKE NO WARRANTY THAT THE SITE WILL MEET YOUR REQUIREMENTS, WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS, OR WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SITE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF FIRST USE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

#### **5. Limitation on Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL COMPANY BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THESE TERMS OR YOUR USE OF, OR INABILITY TO USE, THE SITE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF, THE SITE IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR COMPUTER SYSTEM, OR LOSS OF DATA RESULTING THEREFROM.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT (FOR ANY CAUSE

WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO A MAXIMUM OF FIFTY US DOLLARS (U.S. \$50). THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

## **6. Term and Termination**

Subject to this Section, these Terms will remain in full force and effect while you use the Site. We may suspend or terminate your rights to use the Site at any time for any reason at our sole discretion, including for any use of the Site in violation of these Terms. Upon termination of your rights under these Terms, your right to access and use the Site will terminate immediately. Company will not have any liability whatsoever to you for any termination of your rights under these Terms. Even after your rights under these Terms are terminated, the following provisions of these Terms will remain in effect: Sections 1.3 through 1.8, and Sections 2 through 7.

## **7. General**

**7.1 Changes.** These Terms are subject to occasional revision, and if we make any substantial changes, we may notify you by prominently posting notice of the changes on our Site. All changes are effective immediately when we post them, and apply to all access to and use of the Website thereafter. However, any changes to the dispute resolution provisions set forth in Section 7.2 will not apply to any disputes for which the parties have actual notice on or prior to the date the change is posted on the Site. Continued use of our Site following notice of such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes. You are expected to check this page from time to time so you are aware of any changes, as they are binding on you.

### **7.2 Dispute Resolution.**

(a) *Arbitration.* All claims and disputes in connection with the Terms or the use of any product or service provided by the Company that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Section.

(b) *Notice Requirement and Informal Dispute Resolution.* Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute (“**Notice**”) describing the nature and basis of the claim or dispute, and the requested relief. A Notice to the Company should be sent to: 1000 Sundown Circle, Franklin, TN 37069. After the Notice is received, you and the Company may attempt to resolve the claim or dispute informally. If you and the Company do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

(c) *Arbitration Rules.* Arbitration shall be initiated through the American Arbitration Association (“**AAA**”). The AAA Consumer Arbitration Rules (“**Arbitration Rules**”)

shall govern the arbitration. The arbitration shall be conducted by a single, neutral arbitrator. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party shall bear its own costs (including attorney's fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the arbitrator. The arbitrator shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the AAA Rules, and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The award of the arbitrator is final and binding upon you and the Company.

**(d) Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration hereunder this Arbitration Agreement.

**(e) Confidentiality.** All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent a party from submitting to a court of law any information necessary to enforce an arbitration award or to seek injunctive or equitable relief.

**(f) Courts.** In any circumstances where the foregoing permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within Davidson County, Tennessee, for such purpose

**7.3 Governing Law.** All matters relating to the Site and these Terms and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule. Notwithstanding the foregoing, the enforceability and interpretation of Section 7.2 shall be both substantively and procedurally governed by and construed and enforced in accordance with the Federal Arbitration Act, 9 U.S.C. § 1 et seq., to the maximum extent permitted by applicable law.

**7.4 Export.** The Site may be subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Company, or any products utilizing such data, in violation of the United States export laws or regulations.

**7.5 Disclosures.** Company is located at the address in Section 7.9. If you are a California resident, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Product of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

**7.6 Electronic Communications.** The communications between you and Company use electronic means, whether you use the Site or send us emails, or whether Company posts notices on the Site or communicates with you via email. For contractual purposes, you (a) consent to receive communications from Company in an electronic form and (b) agree that all terms and

conditions, agreements, notices, disclosures, and other communications that Company provides to you electronically satisfy any legal requirement that such communications would satisfy if it were be in a hardcopy writing. The foregoing does not affect your non-waivable rights.

**7.7 Entire Terms.** These Terms constitute the entire agreement between you and us regarding the use of the Site. Our failure to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. The word “including” means “including without limitation”. If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. These Terms, and your rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by you without Company’s prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. Company may freely assign these Terms. The terms and conditions set forth in these Terms shall be binding upon assignees.

**7.8 Copyright/Trademark Information.** Copyright © 2018 Joseph H. Sulkowski. All rights reserved. All trademarks, logos, and service marks (“**Marks**”) displayed on the Site are our property. You are not permitted to use these Marks without our prior written consent.

**7.9 Contact Information:**

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