



## TERMS OF USE

**Introduction.** These are terms and conditions for the operation and use of the PLUME™ mobile application (the "PLUME™ App"). The PLUME™ App is a chat app that enables users, through their iOS mobile devices ("Mobile Devices"), to send and receive texts with flirty and seductive images, from icons (small images) to stickers (larger images) (collectively, "PLUME™ Images"); take, send, and receive photos that are stored in a separate PLUME™ gallery ("PLUME™ Pics") to their contacts who also have installed the PLUME™ App ("PLUME™ Pals"); and invite people from their contact list to download the PLUME™ App and become their PLUME™ Pals.

**Basic Conditions.** These terms of use (these "Terms of Use") contain the complete terms and conditions that apply to your use of the PLUME™ App. They are a legally binding agreement between you and NTWC, LLC, the owner of the PLUME™ App ("NTWC" or "we") and you agree to comply with them. These Terms of Use will remain in full force and effect as long as you use the PLUME™ App.

**Availability.** The PLUME™ App is available to handheld Mobile Devices running iOS 7 or iOS 8. NTWC will use reasonable efforts to make the PLUME™ App available at all times. However, the PLUME™ App is provided over the Internet and mobile networks and so the quality and availability of the PLUME™ App may be affected by factors outside NTWC's reasonable control. NTWC also may restrict, suspend, or block access to the PLUME™ App for maintenance, operational or technical reasons, without prior notice to you.

**Support and Backup.** NTWC does not back up or store your texts, PLUME™ Pics, or any other content that you transmit through the PLUME™ App ("PLUME™ User Content"). The only way to save your PLUME™ User Content is to back it up yourself to your cloud storage in the process of backing up your Mobile Device. You are solely responsible for backing up any Mobile Device on which you use the PLUME™ App. (If you do not wish to back up your PLUME™ User Content when you back up your Mobile Device, you have an option not to back up the PLUME™ App.) The only items of information that we store in your PLUME™ account (your "Account") are (i) your age (encrypted), (ii) the identifiers of your contacts that you have imported (encrypted), and (iii) your Mobile Device identifier.

**Withdrawal of App or Payment Requirement.** The PLUME™ App is currently made available to you free of charge for your personal, non-commercial use. NTWC reserves the right to amend or withdraw the PLUME™ App, or charge for the PLUME™ App or service provided to you in accordance with these Terms of Use, at any time and for any reason.

**Changes to Terms of Use.** We will use our reasonable best efforts to give you sixty (60) days' notice of any changes to these Terms of Use (unless the law requires or permits us to make a more immediate change) through a notification within the PLUME™ App. If we notify you that way of a change to these Terms of Use and you continue to use the PLUME™ App after the date on which the change takes effect, you will be bound by the changed Terms of Use.

**Mobile Provider Charges and Restrictions.** Messages that you send through the PLUME App will be charged under your regular data plan with your communications carrier ("Mobile Provider"). You should check with your Mobile Provider to find out what data plans are available and how much they cost. If you are not the bill payer for the Mobile Device being used to access the PLUME™ App, you will be assumed to have received permission from the bill payer to use the PLUME™ App. Also, your Mobile Provider may prohibit or restrict certain mobile apps and the PLUME™ App may be incompatible with your Mobile Provider or Mobile Device.

**Intellectual Property.** We own all rights in the PLUME™ App, including, without limitation, the copyright in the PLUME™ App software, text, graphics and other content ("the PLUME™ App Content"), and the PLUME™ trademark, which is the subject of a pending application in the U.S. Trademark Office (all together, for purposes of these Terms of Use, the "PLUME™ App Intellectual Property").

**Limited License.** You are granted a limited, non-transferable, non-exclusive, royalty free, revocable license to download, run and use the PLUME™ App on your Mobile Device, including, without limitation, to invite other people to download the PLUME™ App and to send PLUME™ User Content to your PLUME™ Pals, subject to these Terms of Use (the "User License").

**Prohibited Uses.** You may not sell, distribute, or modify the PLUME™ App or use the PLUME™ App in any way that:

- A. Harasses, abuses, stalks, or threatens any third party.
- B. Defames any third party or violates the right of publicity of any third party.
- C. Infringes the trademark, copyright, or other proprietary rights of any third party.
- D. Is unlawful, fraudulent, or deceptive.
- E. Encourages conduct that would constitute a criminal offense or give rise to civil liability.
- F. Results in the display or transmission of any objectionable content.
- G. Seeks to reverse-engineer the PLUME™ App.
- H. Violates these Terms of Use in any manner.

We have the right, but not the obligation, to review all PLUME™ User Content that you transmit through the PLUME™ App and to remove any PLUME™ User Content that violates these Terms of Use.

**Filtering, Flagging and Reporting of Objectionable Content.** The PLUME™ App chat settings include an option that enables you to send us a report if you receive objectionable content from one of your PLUME™ Pals (a “Report”). If you file a Report about a particular PLUME™ Pal, we will block that PLUME™ Pal from contacting you, so that (i) you will no longer receive messages from that PLUME™ Pal, and (ii) if that PLUME™ Pal tries to contact you through the PLUME™ App, that PLUME™ Pal will see a pop-up that says that you are no longer using the PLUME™ App. We will flag any PLUME™ user against whom a Report has been filed. If three (3) Reports are filed against you, we will terminate your User License and block your Account. If that happens, the next time you try to open PLUME, you will see a pop-up that tells you that your User License has been terminated because you violated these Terms of Use. If you believe that you did not violate these Terms of Use and that your User License should not have been terminated, you can report that to us by clicking on the button in the pop-up you received. That will create an email addressed to [unblock@theplumeapp.com](mailto:unblock@theplumeapp.com), with the subject line “unblock this phone.” When we receive the e-mail, we will determine, in our sole discretion, with or without requesting further information from you, whether to reactivate your User License and reopen your Account.

**Representations and Warranties.** You represent and warrant that:

- A. You are age 17 or older.
- B. You are an authorized user of the Mobile Device(s) through which you are accessing the PLUME™ App and that you are authorized to enter into this Agreement on behalf of the subscriber of the Mobile Provider for the Mobile Device(s).
- C. You own or have the necessary license, right, and/or permission to (i) reproduce, publicly display, publicly perform, distribute copies of, and create derivative works (adaptations) of, or otherwise use any PLUME™ User Content that you transmit through the PLUME™ App in the way that the PLUME™ App contemplates. This means that with respect to any PLUME™ User Content that you send through the PLUME™ App, (i) you created that PLUME™ User Content yourself; (ii) if you did not create that PLUME™ User Content yourself, or if that PLUME™ User Content contains any content created or owned by anyone else, you have permission from that person or company to post, show, play, and distribute copies of that PLUME™ User Content on the PLUME™ App; and (iii) if that PLUME™ User Content includes any name or photo, voice, or footage of any person, you have permission to post, show, play and distribute copies of that name, photo, voice or footage as part of that PLUME™ User Content on the PLUME™ App.

**DISCLAIMER OF WARRANTIES.** THE PLUME™ APP IS PROVIDED "AS IS" AND AT YOUR OWN RISK. THE PLUME™ APP MAY BE UNDER CONTINUOUS DEVELOPMENT, AND IT IS LIKELY THAT BUGS WILL BE PRESENT AT TIMES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE AND OUR DEVELOPERS AND SUPPLIERS DISCLAIM ALL WARRANTIES AND CONDITIONS, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO (A) ANY WARRANTY THAT YOUR USE OF THE PLUME™ APP WILL BE UNINTERRUPTED OR ERROR-FREE; OR (B) ANY WARRANTY THAT THE PLUME™ APP WILL BE FREE FROM LOSS, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION, AND WE DISCLAIM ANY LIABILITY RELATING THERETO. Some jurisdictions do not allow the disclaimer of implied warranties, so some of the foregoing disclaimers may not apply to you insofar as they relate to implied warranties.

### **LIMITATION OF LIABILITY**

A. YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF THE PLUME™ APP. UNDER NO CIRCUMSTANCES WILL NTWC OR ANY OF ITS EMPLOYEES, DIRECTORS, OFFICERS, REPRESENTATIVES, PARTNERS AND AGENTS ("THE NTWC PARTIES") BE LIABLE TO YOU OR RESPONSIBLE IN ANY WAY FOR ANY DIRECT, INDIRECT, ECONOMIC, EXEMPLARY, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER THAT ARISE DIRECTLY OR INDIRECTLY OUT OF YOUR USE OF THE PLUME™ APP, INCLUDING, WITHOUT LIMITATION, LOST REVENUE, LOST DATA, OR ANY DAMAGE TO ANY USER'S MOBILE DEVICE OR OTHER EQUIPMENT OR TECHNOLOGY, WHETHER SUCH DAMAGES ARISE (i) FROM YOUR USE OR MISUSE OF THE PLUME™ APP, (ii) FROM YOUR INABILITY TO USE THE PLUME™ APP, (iii) FROM THE INTERRUPTION, SUSPENSION, MODIFICATION, ALTERATION, OR TERMINATION OF THE PLUME™ APP OR ANY TELECOMMUNICATION FAILURES, (iv) OUT OF ACTIONS TAKEN OR NOT TAKEN, OR STATEMENTS MADE, BY ANYONE WITH WHOM YOU COMMUNICATE THROUGH THE PLUME™ APP, (v) OUT OF THE FILING OF A REPORT AGAINST YOU OR YOUR FILING OF A REPORT AGAINST ANOTHER PLUME™ USER, (vi) OUT OF ANY INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE PLUME™ APP, OR (vii) IN ANY OTHER WAY, AND EVEN IF SUCH DAMAGE WAS FORESEEABLE OR EVEN IF THE NTWC PARTIES HAVE BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, IN ANY ACTION OF ANY KIND. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN NO EVENT WILL THE NTWC PARTIES' TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OR ACTION EXCEED ONE HUNDRED UNITED STATES DOLLARS (\$100.00).

B. YOU RELEASE THE NTWC PARTIES FROM ANY CLAIMS AND DAMAGES, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY CLAIM YOU HAVE AGAINST ANY THIRD PARTY, ANY CLAIM THAT A THIRD PARTY HAS AGAINST YOU, OR ANY DISPUTE THAT MAY ARISE BETWEEN YOU AND ANY THIRD PARTY, INCLUDING, WITHOUT

LIMITATION, ANY CLAIM THAT ARISES OUT OF OR RELATES TO THE FILING OF A REPORT OR REPORTS AGAINST YOU AND THE TERMINATION OF YOUR USER LICENSE.

C. YOU UNDERSTAND THAT BY USING THE PLUME™ APP, YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, IF YOU ARE A CALIFORNIA RESIDENT, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." IF YOU ARE A RESIDENT OF ANOTHER STATE OR TERRITORY WITH A SIMILAR LAW, YOU EXPRESSLY WAIVE THE BENEFITS OF SUCH LAW.

D. YOU ARE SOLELY RESPONSIBLE FOR ANY AND ALL TRANSMISSIONS OF CONTENT THAT ORIGINATE FROM YOUR MOBILE DEVICE WHILE THE PLUME™ APP IS INSTALLED ON YOUR MOBILE DEVICE.

**Indemnity.** You will indemnify and hold harmless the NTWC Parties from any loss, liability, claim, demand, fees, and expenses, including reasonable attorney's fees, made, brought or asserted by any third party (which means anyone other than you or us) due to or arising out of your use of the PLUME™ App, including, without limitation, any claim arising from your breach of these Terms of Use, your breach of your representations and warranties stated above, your inviting a third party to share the PLUME™ App, sharing of any personal information from the PLUME™ App with any third party, and your posting of PLUME™ User Content that you do not have the right to post. This obligation will survive termination of this Agreement, which means that even after you stop using the PLUME™ App, you will still be bound.

**Compliance with Software Export Laws.** You represent and warrant that (i) you are not located in, and will not transfer the PLUME™ App, to a national of, a country that is subject to a United States or Canadian Government embargo, or that has been designated by the U.S. or Canadian Government as a "terrorist supporting" country; and (ii) you are not listed on any government "watch list" of prohibited or restricted parties, including the Specially Designated Nationals list published by the Office of Foreign Assets Control of the U.S. Treasury or the Denied Persons List published by the U.S. Department of Commerce.

**Governing Law, Jurisdiction, and Time Limit on Claims.** Your use of or access of the PLUME™ App should not be construed as NTWC's or any other NTWC Party's purposefully availing itself of the benefits or privilege of doing business in any province or jurisdiction other than the State of California. If you have any dispute with us or any other NTWC Party, that dispute will be governed by the laws of the State of California without regard to its conflict of law provisions, and you hereby submit to personal jurisdiction by and venue in the state and federal courts of Los Angeles, California. Regardless of any statute or law to the contrary, any

claim or cause of action arising out of or related to use of the PLUME™ App or these Terms of Use must be filed within one (1) year after such claim or cause of action arose, or it will be forever barred.

**Consent to Collection and Use of Data.** Our privacy policy, which you can read here <http://theplumeapp.com/privacy-policy> explains what personally identifying information is collected through the PLUME™ App, how it is used, and who has access to it. In addition, we may collect and use technical data and related information, including but not limited to technical information about your Mobile Device and system that is gathered to facilitate the provision of updates to the PLUME™ App, technical support for the PLUME™ App, push notifications, and other services (if any).

**Termination.** We reserve the right, in our sole discretion, to terminate any User License, remove PLUME™ User Content, assist law enforcement in the prosecution of criminal liability, demand that you remove the PLUME™ App from your Mobile Device, and/or assert a civil or criminal legal action on account of PLUME™ User Content or use of the PLUME™ App, that we reasonably believe is or might be in violation of these Terms of Use, including but not limited to, a complaint made to us that you have violated a third party's intellectual property rights.

**Additional Terms.** Our failure to exercise or enforce any right or provision of the Terms of Use shall not constitute a waiver of such right or provision. If a court of competent jurisdiction holds any provision of the Terms of Use invalid, the court should try to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms of Use will remain in full force and effect.

These Terms of Use were last updated on December 16, 2014.