

Website Terms and Conditions

Last updated May, 17, 2022

AGREEMENT TO TERMS

These Terms and Conditions constitute a legally binding agreement made between you, whether personally or on behalf of an entity (“you”) and The Smart Rebel (“we,” “us” or “our”), concerning your access to and use of the www.elainaray.com website as well as any other media form, media channel, mobile website or mobile application related, linked, or otherwise connected thereto (collectively, the “Site”). You agree that by accessing the Site, you have read, understood, and agree to be bound by all of these Terms and Conditions. If you do not agree with all of these Terms and Conditions, then you are expressly prohibited from using the Site and you must discontinue use immediately.

We reserve the right, in our sole discretion, to make changes or modifications to these Terms and Conditions at any time and for any reason. We will alert you about any changes by updating the “Last updated” date of these Terms and Conditions, and you waive any right to receive specific notice of each such change. It is your responsibility to periodically review these Terms and Conditions to stay informed of updates. You will be subject to, and will be deemed to have been made aware of and to have accepted, the changes in any revised Terms and Conditions by your continued use of the Site after the date such revised Terms and Conditions are posted.

USER REPRESENTATIONS

By using the Site, you represent and warrant that:

1. All registration information you submit will be true, accurate, current, and complete;
2. You will maintain the accuracy of such information and promptly update such registration information as necessary;
3. You have the legal capacity and you agree to comply with these Terms and Conditions;
4. You will not access the Site through automated or non-human means, whether through a bot, script, or otherwise;
5. You will not use the Site for any illegal or unauthorized purpose;
6. Your use of the Site will not violate any applicable law or regulation.

PROHIBITED ACTIVITIES

You may not access or use the Site for any purpose other than that for which we make the Site available. The Site may not be used in connection with any commercial endeavors except those that are specifically endorsed or approved by us.

As a user of the Site, you agree not to:

1. Systematically retrieve data or other content from the Site to create or compile, directly or indirectly, a collection, compilation, database, or directory without written permission from us;
2. Make any unauthorized use of the Site, including collecting usernames and/or email addresses of users by electronic or other means for the purpose of sending unsolicited email, or creating user accounts by automated means or under false pretenses;
3. Use the Site to advertise or offer to sell goods and services;
4. Circumvent, disable, or otherwise interfere with security-related features of the Site, including features that prevent or restrict the use or copying of any Content or enforce limitations on the use of the Site and/or the Content contained therein;
5. Engage in unauthorized framing of or linking to the Site;
6. Trick, defraud, or mislead us and other users, especially in any attempt to learn sensitive account information such as user passwords;
7. Make improper use of our support services or submit false reports of abuse or misconduct;

8. Engage in any automated use of the system, such as using scripts to send comments or messages, or using any data mining, robots, or similar data gathering and extraction tools;
9. Interfere with, disrupt, or create an undue burden on the Site or the networks or services connected to the Site;
10. Attempt to impersonate another user or person or use the username of another user;
11. Use any information obtained from the Site in order to harass, abuse, or harm another person;
12. Use the Site as part of any effort to compete with us or otherwise use the Site and/or the Content for any revenue-generating endeavor or commercial enterprise;
13. Decipher, decompile, disassemble, or reverse engineer any of the software comprising or in any way making up a part of the Site;
14. Attempt to bypass any measures of the Site designed to prevent or restrict access to the Site, or any portion of the Site;
15. Harass, annoy, intimidate, or threaten any of our employees or agents engaged in providing any portion of the Site to you;
16. Delete the copyright or other proprietary rights notice from any Content;
17. Copy or adapt the Site's software, including but not limited to Flash, PHP, HTML, JavaScript, or other code;
18. Upload or transmit (or attempt to upload or to transmit) viruses, Trojan horses, or other material, including excessive use of capital letters and spamming (continuous posting of repetitive text), that interferes with any party's uninterrupted use and enjoyment of the Site or modifies, impairs, disrupts, alters, or interferes with the use, features, functions, operation, or maintenance of the Site;
19. Upload or transmit (or attempt to upload or to transmit) any material that acts as a passive or active information collection or transmission mechanism, including without limitation, clear graphics interchange formats ("gifs"), 1x1 pixels, web bugs, cookies, or other similar devices (sometimes referred to as "spyware" or "passive collection mechanisms" or "pcms");
20. Except as may be the result of standard search engine or Internet browser usage, use, launch, develop, or distribute any automated system, including without limitation, any spider, robot, cheat utility, scraper, or offline reader that accesses the Site, or using or launching any unauthorized script or other software;
21. Disparage, tarnish, or otherwise harm, in our opinion, us and/or the Site;
22. Use the Site in a manner inconsistent with any applicable laws or regulations.

SITE MANAGEMENT

We reserve the right, but not the obligation, to:

1. Monitor the Site for violations of these Terms and Conditions;
1. Take appropriate legal action against anyone who, in our sole discretion, violates the law or these Terms and Conditions, including without limitation, reporting such user to law enforcement authorities;
1. In our sole discretion and without limitation, refuse, restrict access to, limit the availability of, or disable (to the extent technologically feasible) any of your Contributions or any portion thereof;
1. In our sole discretion and without limitation, notice, or liability, to remove from the Site or otherwise disable all files and content that are excessive in size or are in any way burdensome to our systems; or
1. Otherwise manage the Site in a manner designed to protect our rights and property and to facilitate the proper functioning of the Site.

PRIVACY POLICY

We care about data privacy and security. Please review our Privacy Policy [[CLICK HERE](#)]/posted on the Site]. The Privacy Policy makes certain disclosures required by laws that may apply to you, it is not a contract. By using the Site, you consent to the practices described in our Privacy Policy.

If you access the Site from a region of the world with laws or other requirements governing personal data collection, use, or disclosure that differ from applicable laws in the Netherlands, then through your continued use of the Site, and you expressly consent to have your data transferred to and processed in the Netherlands. Please review our Privacy Policy for further information as to your rights and our obligations.

TERM AND TERMINATION

These Terms and Conditions shall remain in full force and effect while you use the Site.

WITHOUT LIMITING ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS, WE RESERVE THE RIGHT TO, IN OUR SOLE DISCRETION AND WITHOUT NOTICE OR LIABILITY, DENY ACCESS TO AND USE OF THE SITE (INCLUDING BLOCKING CERTAIN IP ADDRESSES), TO ANY PERSON FOR ANY REASON OR FOR NO REASON, INCLUDING WITHOUT LIMITATION FOR BREACH OF ANY REPRESENTATION, WARRANTY, OR COVENANT CONTAINED IN THESE TERMS AND CONDITIONS OR OF ANY APPLICABLE LAW OR REGULATION. WE MAY TERMINATE YOUR USE OR PARTICIPATION IN THE SITE OR DELETE YOUR ACCOUNT AT ANY TIME, WITHOUT WARNING, IN OUR SOLE DISCRETION.

If we terminate or suspend your account for any reason, you are prohibited from registering and creating a new account under your name, a fake or borrowed name, or the name of any third party, even if you may be acting on behalf of the third party.

In addition to terminating or suspending your account, we reserve the right to take appropriate legal action, including without limitation pursuing civil, criminal, and injunctive redress.

MODIFICATIONS AND INTERRUPTIONS

We reserve the right to change, modify, or remove the contents of the Site at any time or for any reason at our sole discretion without notice. However, we have no obligation to update any information on our Site except as may be required by applicable law. We also reserve the right to modify or discontinue all or part of the Site without notice at any time.

We will not be liable to you or any third party for any modification, price change, suspension, or discontinuance of the Site.

We cannot guarantee the Site will be available at all times. We may experience hardware, software, or other problems or need to perform maintenance related to the Site, resulting in interruptions, delays, or errors.

We reserve the right to change, revise, update, suspend, discontinue, or otherwise modify the Site at any time or for any reason without notice to you. You agree that we have no liability whatsoever for any loss, damage, or inconvenience caused by your inability to access or use the Site during any downtime or discontinuance of the Site.

Nothing in these Terms and Conditions will be construed to obligate us to maintain and support the Site or to supply any corrections, updates, or releases in connection therewith.

INTELLECTUAL PROPERTY RIGHTS

Unless otherwise indicated, the Site is our proprietary property and all source code, databases, functionality, software, website designs, audio, video, text, photographs, and graphics on the Site (collectively, the "Content") and the trademarks, service marks, and logos contained therein (the "Marks") are owned or controlled by us or licensed to us, and are protected by copyright and trademark laws and various other intellectual property rights and unfair competition laws of the Netherlands, foreign jurisdictions, and international conventions. We may also ask you for your testimonial and record a video

outlining the same. You agree that if you provide us with permission to record or post your testimonial, that testimonial will be considered Content as defined above, subject to the protections outlined in this section.

The Content and the Marks are provided on the Site "AS IS" for your information and personal use only. Except as expressly provided in these Terms and Conditions, no part of the Site and no Content or Marks may be copied, reproduced, aggregated, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted, distributed, sold, licensed, or otherwise exploited for any commercial purpose whatsoever, without our express prior written permission.

Provided that you are eligible to use the Site, you are granted a limited license to access and use the Site and to download or print a copy of any portion of the Content to which you have properly gained access solely for your personal, non-commercial use. We reserve all rights not expressly granted to you in and to the Site, the Content and the Marks.

GOVERNING LAW

These Terms and Conditions and your use of the Site are governed by and construed in accordance with the laws of the Netherlands, without regard to its conflict of law principles.

DISPUTE RESOLUTION

PLEASE READ THIS SECTION CAREFULLY. IF YOU DO NOT REJECT IT, THIS SECTION WILL APPLY, AND MOST DISPUTES BETWEEN YOU AND US WILL BE SUBJECT TO INDIVIDUAL ARBITRATION. THIS MEANS THAT: (1) NEITHER A COURT NOR A JURY WILL RESOLVE ANY SUCH DISPUTE; (2) YOU WILL NOT BE ABLE TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING; (3) LESS INFORMATION WILL BE AVAILABLE IN DISCOVERY; AND (4) APPEAL RIGHTS WILL BE LIMITED.

If a dispute arises between you and us, our goal is to provide you with a neutral and cost effective means of resolving the dispute quickly. Accordingly, you and the Company agree that you and we will resolve any claim or controversy at law or equity that arises out of these Terms, the Website, or our products or services (a "Claim") in accordance with one of the subsections below:

- (i) If either you or we make a demand for arbitration, you and we must arbitrate any dispute or claim between you or any person who uses your Account, and us, our affiliates, and/or agents, if it relates to your Account, your use of the Website, or to these Terms, except as noted hereafter.
- (ii) Either party may assert an individual case in small claims court or your state's equivalent court. Any disputes relating to the enforcement, protection, or validity of the intellectual property rights of either party shall not be subject to arbitration. Nothing in this Section shall limit either party from seeking injunctive or other exigent relief from a court of law.

Notwithstanding any other language in this Section, only a court, not an arbitrator, will decide disputes about the validity, enforceability, coverage or scope of this Section of these Terms. However, any dispute or argument that concerns the validity or enforceability of these Terms as a whole is for the arbitrator, not a court, to decide. Further, you and we may litigate in court to compel arbitration, stay proceedings pending arbitration, or confirm, modify, vacate or enter judgment on the award entered by the arbitrator.

YOU AGREE NOT TO PARTICIPATE IN A CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL ACTION AGAINST US IN COURT OR ARBITRATION. ALSO, YOU MAY NOT BRING CLAIMS AGAINST US ON BEHALF OF ANY OTHER USER OR PERSON NOT ON YOUR ACCOUNT.

The party who wants to arbitrate must notify the other party in writing. This notice can be given after the beginning of a lawsuit or in papers filed in the lawsuit. Otherwise, your notice must be mailed to [physical address].

If for any reason, a Dispute proceeds in court rather than arbitration, the Dispute shall be commenced or prosecuted exclusively in the Netherlands, and the Parties hereby consent to, and waive all defenses of lack of personal jurisdiction, and inconvenient forum with respect to venue and jurisdiction in such state and federal courts.

DISCLAIMER

EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THESE TERMS, OUR PRODUCTS AND SERVICES, INCLUDING ALL MATERIALS INCORPORATED THEREIN, ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, WE AND OUR DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, REPRESENTATIVES AND AFFILIATES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, ACCURACY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NOTE: CERTAIN APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. NO STATEMENT OF OURS OR ANY OF OUR DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, REPRESENTATIVES AND AFFILIATES SHALL CREATE ANY WARRANTY OTHER THAN THOSE EXPRESSLY CONTAINED IN THESE TERMS. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

LIMITATION OF LIABILITY

EXCEPT WHERE PROHIBITED BY LAW, IN NO EVENT WILL WE OR OUR DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT, LOST REVENUE, LOSS OF DATA, OR OTHER DAMAGES ARISING FROM YOUR USE OF THE SITE, EVEN IF SUCH LOSSES WERE FORESEEABLE AND REGARDLESS OF WHETHER WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

If, notwithstanding the other provisions of these Terms of Use, we are found to be liable to you for any damage or loss which arises out of or is in any way connected with your use of the Site, our liability shall in no event exceed the greater of (1) the total of any subscription or similar fees, if any, with respect to any service or feature of or on the Site paid in the six months prior to the date of the initial claim made against us, or (2) US \$100.00.

Some jurisdictions do not allow limitations of liability, so some or all of the foregoing limitations may not apply to you.

INDEMNIFICATION

You agree to defend, indemnify, and hold us harmless, including our subsidiaries, affiliates, and all of our respective officers, agents, partners, and employees, from and against any loss, damage, liability, claim, or demand, including reasonable attorneys' fees and expenses, made by any third party due to or arising out of: (1) use of the Site; (3) breach of these Terms and Conditions; (4) any breach of your representations and warranties set forth in these Terms and Conditions; (5) your violation of the rights of a third party, including but not limited to intellectual property rights; or (6) any overt harmful act toward any other user of the Site with whom you connected via the Site.

Notwithstanding the foregoing, we reserve 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, at your

expense, with our defense of such claims. We will use reasonable efforts to notify you of any such claim, action, or proceeding which is subject to this indemnification upon becoming aware of it.

ELECTRONIC COMMUNICATIONS, TRANSACTIONS, AND SIGNATURES

Visiting the Site, sending us emails, and completing online forms constitute electronic communications. You consent to receive electronic communications, and you agree that all agreements, notices, disclosures, and other communications we provide to you electronically, via email and on the Site, satisfy any legal requirement that such communication be in writing.

YOU HEREBY AGREE TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS, AND OTHER RECORDS, AND TO ELECTRONIC DELIVERY OF NOTICES, POLICIES, AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED BY US OR VIA THE SITE.

You hereby waive any rights or requirements under any statutes, regulations, rules, ordinances, or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by any means other than electronic means.

MISCELLANEOUS

These Terms and Conditions and any policies or operating rules posted by us on the Site constitute the entire agreement and understanding between you and us. Our failure to exercise or enforce any right or provision of these Terms and Conditions shall not operate as a waiver of such right or provision.

These Terms and Conditions operate to the fullest extent permissible by law. We may assign any or all of our rights and obligations to others at any time. We shall not be responsible or liable for any loss, damage, delay, or failure to act caused by any cause beyond our reasonable control.

If any provision or part of a provision of these Terms and Conditions is determined to be unlawful, void, or unenforceable, that provision or part of the provision is deemed severable from these Terms and Conditions and does not affect the validity and enforceability of any remaining provisions.

There is no joint venture, partnership, employment or agency relationship, or fiduciary relationship created between you and us as a result of these Terms and Conditions or use of the Site. You agree that these Terms and Conditions will not be construed against us by virtue of having drafted them.

You hereby waive any and all defenses you may have based on the electronic form of these Terms and Conditions and the lack of signing by the parties hereto to execute these Terms and Conditions.

CONTACT US

In order to resolve a complaint regarding the Site or to receive further information regarding use of the Site, please contact us at:

The Smart Rebel
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