

**Last updated: April 15, 2021**

## **Terms of Use for Dimplex Flame Application**

**Glen Dimplex Americas Company , Glen Dimplex Americas Limited** (“**Dimplex**”, “**we**”, “**us**” or “**our**” as applicable) is pleased to offer you (“**you**”, “**user**”, “**your**” as applicable) the use of the Dimplex Flame mobile application (the “**App**”) and all related services provided by us, including any account you may set up, support services, and Materials (as defined below) which you may access (collectively with the App, our “**Services**”). If you use our Services you must abide all the terms and conditions set out below (“**Terms of Use**”) as well as our Privacy Notice [Make hyperlinked] which also applies to you (collectively, these “**Terms**”).

Please read these Terms. They are legally binding and describe

- each party’s obligations
- your options in case there is a dispute (we only resolve disputes using arbitration)
- our disclaimers (you are using our Services “as is”).

Your legal rights may vary depending on the jurisdiction you are in. Certain items (e.g. liability limits, our preference for dispute resolution, disclaimers) contained in these Terms may not apply to the extent stated here, depending on your jurisdiction and its applicable laws.

Your use of an App controlled device (e.g. smart fireplace or other connected devices) (each a “**Device**”) will be governed by Device terms of sale, and the software imbedded in such Device will be governed by an end user license agreement, as applicable.

If you do not wish to abide by these Terms for whatever reason, or if you cannot reasonably meet the obligations and requirements of these Terms, please delete the App, do not register for an account and do not use our Services

### **1. Prerequisites for your use of Services**

- (a) You are 18 years of age or older or have been authorized by someone who has opened an account for the use of Services and has granted you permission to use any of our Services.
- (b) You are capable of entering into a legal agreement.
- (c) If you are entering into these Terms on someone’s behalf, you have obtained their consent or are authorized to do so. The Account holder will be responsible for all actions and any violation of these Terms will be deemed to be Account holder’s violations.
- (d) If you are under 13 years of age, you cannot use this App or any of our Services.
- (e) Full use of our App is dependent upon your use of a Handheld (as defined) with bluetooth access and the purchase a Dimplex Device (as defined).

### **2. Our Services**

- (a) We provide our Services with goals to help improve a user’s enjoyment of a Device subject to our warranty herein.
- (b) We grant users a number of rights under Section 3 of these Terms to allow user to use the App and receive other services, including Materials and support.
- (c) Your use must take into account our disclaimers and your obligations set out in these Terms.
- (d) Our Services may contain links to third party websites, services and/or display advertisements for third parties (together, “**Third Party Links and Ads**”) which shall be subject to our disclaimer.

- (e) We aim to update our Services regularly and may change the content at any time. If the need arises, we may suspend users' access to our Services, in whole or in part, temporarily or permanently, at no cost or liability to you and at your sole discretion.

### 3. **Rights granted under these Terms**

- (a) **We grant you the right to use.** We grant you a non-exclusive, non-transferable, right to access and use (i) the App for controlling and monitoring a Device and accessing other related Services, and (ii) any website ("Site") that you need to access for setting up an account or reviewing support Materials. Since you will need to download the App from a third party website (Google Play or Apple App Store sites) on your Handheld, you will also need to abide by such app stores' terms which apply to the install of an App on your mobile device. To the extent that these app stores' terms and conditions are less restrictive than or otherwise conflict with the terms and conditions of these Terms, these Terms will apply.
- (b) **We grant you license to Materials.** We grant you a non-exclusive, non-transferable, non-sublicensable, revocable license during the Term to our Materials solely for the purpose of your use and enjoyment of our Services. You may print off one copy, and may download extracts, of any page(s) from a Site or App for your personal reference and you may draw the attention of others within your organization to Material posted on our Site. Any paper or digital copies of any Material which you have printed off or downloaded in any way must not be modified, and you must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text.
- (c) **You grant us the right to keep App updated.** Dimplex will generally need to update the App or other Services to fix issues or conform to requirements by app stores or address any issues or changes we feel are important for us ("Updates"). You agree that we do not need to give any notice and can automatically execute Updates. If you do not like any of the Updates we execute, you can choose to uninstall the App and no longer use our Services – that will be your exclusive remedy for any Service related Updates. By continuing to use our Services you accept the Updates
- (d) **You grant us rights to use your feedback.** You may interact with us on the App, any Site or in person as part of our Services - anything you say, write or provide us ("feedback") may be used by us for our benefit to improve Services generally or the App specifically. Except in cases where you are providing us personal information, you agree to NOT (i) provide us feedback that is either confidential in nature, (ii) share feedback that is not owned or is sublicensable by you, and (iii) violate any laws, including copyright law. Dimplex will be free to use, disclose, reproduce, licence or otherwise distribute and exploit any feedback you provide as we sees fit, entirely without obligation or restriction of any kind on account of Intellectual Property Rights or otherwise.
- (e) **You grant us rights to use your data.** You give us a non-exclusive, sublicensable, royalty-free and transferable right to Handle data to (1) provide you our Services, and (2) generate Aggregated Information.
  - (i) You agree that all such data may be, without further required consent by you, Handled by a third-party for either (1) purposes which serve our business purposes, including transaction processing and data monitoring or storage, or (2) for regulatory or other reasons which are imposed on us in Canada or in any other jurisdiction in which may otherwise decide to store or process such data.

- (ii) **Aggregated Information.** We will own all Aggregated Information for any purpose we see fit, including but not limited to publication of, and creation of derivative works from the Aggregated Information, provided that such usage shall not reveal to a third party any confidential information or the identity of a user.
- (iii) We may, solely at our discretion or at the request of a governmental authority, monitor, record or otherwise process all user interactions with our Services. Further information is available in our Privacy Notice.
- (f) **You give us permission to contact you.** We use email and other electronic means to stay in touch with users. You agree that when you provide us your email address or personally identifying information (e.g. name, address) during or prior to access or use of our Services, you: (a) consent to receive communications from us, our affiliates, and applicable third party providers in electronic formats, including via the email address you have submitted or other agreed upon contact methods; (b) can opt-out from receiving communication from any such party at any time by completing the formalities on the App or Site, but we do not take on any liability for any communication of another party to you, including any third party providers, particularly if you have provided your contact information to them independently rather than using the communication functions of the App or Site; and (c) agree that these Terms, agreements, notices, disclosures and other communications that we provide you electronically satisfy any legal requirement that such communications would satisfy if they were in writing and physically presented to you.
- (g) **No other IP Rights from us.** Dimplex and its licensors reserve all right, title and interest in and to our Services and all Intellectual Property Rights in such Services.
- (h) **Rights granted to other parties.** We will utilize your information according to our Privacy Notice. You may use, in conjunction with our Services, certain other parties' services or products – if you do so, you may be providing them certain rights according to their product/service terms. Please consult such terms as applicable. If we utilize any party as a subcontractor to provide you our Services, they will follow the terms and conditions set out in these Terms.

#### 4. **Your Obligations**

- (a) **Your Accounts.** Any Account you open with Dimplex for use of Services will require you to provide accurate information, keep your login credentials safe, and use the Account only as allowed under these Terms. If you feel or know that your credentials are compromised, please reset your login. We may disable your Account for any reason, including for security purposes but we do not have any such obligation.
- (b) **Compliance with Laws.** Your use of our Services must comply with the applicable laws in the jurisdiction where you utilize our Services. We do not set out all laws that apply to your use (common sense approach to use of our Services will help) and you will engage in restricted behaviours (see s. 3(c) below).
- (c) **Restricted Behaviours.** You shall:

not licence, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit our Services, whether in whole or in part, or any content displayed on our Services; not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of our Services; not access or view the Service in order to build a similar or competitive website, product, or service to our Services; not provide false data including false names, addresses, contact details and fraudulent credit

card/debit card details; not enter into fraudulent or deceptive interactions or transactions with Dimplex (which shall include entering into interactions or transactions purportedly on behalf of a third party where you have no authority to bind that third party or you are pretending to be a third party); not use our Services in any way that is unlawful, fraudulent or deceptive, or has any unlawful, fraudulent or deceptive purpose or effect; not sell any products or services purchased through Dimplex, without Dimplex's express permission; not intercept or intercept any communications transmitted by way of a telecommunications system and/or information society service; not execute any form of network monitoring which will intercept data not intended for you; not copy, reproduce, distribute, republish, download, display, post or transmit the whole or any part of our Services in any form or by any means, except as otherwise permitted in these Terms; not use our Services other than at all times in compliance with all applicable laws, rules and regulations and strictly in accordance with these Terms; not use our Services to upload, post, share or otherwise make available on our Services any content and/or Materials protected by proprietary rights without the express permission of the owner of such proprietary rights; display and retain all copyright and other proprietary notice on our Services (or on any content displayed on our Services) and such must be retained on all copies thereof; not use our Services to transmit, or procure the sending of, any unsolicited or unauthorised advertising, promotional material, chain letters, mass mailings or any other form of similar solicitation (spam) or of any material that is illegal, offensive, abusive, indecent, defamatory, obscene, menacing or in breach of proprietary rights, confidence, privacy or any other right, or is injurious to third parties; not attempt to gain unauthorised access to our Services, its facilities and/or services or any accounts, databases, computer systems, servers and networks connected to our Services and the server on which the Site is stored; not attack our Services via a denial of service attack; not misuse our Services by knowingly or recklessly introducing viruses, Trojans, worms, logic bombs, harmful data or other materials which is malicious or harmful; not use our Services to harvest or otherwise collect by any means any program material or any information whatsoever (including without limitation email addresses or other personal details of other users); provide Dimplex with accurate and complete information; not access our Services through the use of any mechanism other than through the use of an authorised connection; and use reasonable endeavours to prevent any unauthorised access to, or use of, our Services and, in the event of any such unauthorised access or use, immediately without delay notify Dimplex in writing by email to the relevant email address provided in the "contact us" section below and shall immediately without delay telephone Dimplex to ensure the email communication has been received.

You also agree in respect of Materials to: not modify the paper or digital copies of any Materials you print or download in any way, and you must not use any illustrations, photographs, video or audio sequences, or any graphics separately from any accompanying text; no use Materials on any other website or networked computer environment for any purpose; not use any part of the Materials on our Services for commercial purposes without obtaining permission from our licensors or us.

- (d) By breaching subsection (c), you may commit a criminal offence and Dimplex may report any such breach to the relevant law enforcement authorities and it will co-operate with those authorities. In the event of such a breach, your right to use our Services will cease immediately. Dimplex shall not be liable for any costs, expenses or liabilities resulting from your failure to cooperate or provide information as needed to resolve an issue in relation to your breach of these Terms.

## 5. **Our Obligations**

- (a) We are not obligated to monitor the access or use of our Services, but we reserve the right to do so for our business purposes and to ensure compliance with these Terms. Dimplex may consult with and disclose unlawful conduct to law enforcement authorities and pursuant to valid legal process, including cooperating with law enforcement authorities as part of an investigation and/or to prosecute users who violate the law.

- (b) In addition to any of its other rights or remedies, Dimplex reserves the right to suspend or terminate your access to all or a portion of your Services without any liability if we suspect that your use of our Services is harming or threatening to harm our systems, or in our reasonable opinion you have violated your responsibilities herein.
- (c) We reserves the right to investigate any violation of these terms and any conduct that affects our Services.

6. **Warranty and Disclaimer**

- (a) We do not provide any warranty for our App or any other Service.
- (b) THE SERVICES ARE PROVIDED FOR YOUR CONVENIENCE, "AS IS" AND "AS AVAILABLE", AND DIMPLEX AND ITS AFFILIATES OR LICENSORS AND SUPPLIERS, EXPRESSLY DISCLAIM ANY WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY AND NON-INFRINGEMENT.
- (c) WE DO NOT WARRANT ANY THIRD PARTY, ITS PRODUCTS, OR SERVICES, INCLUDING THIRD PARTY LINKS AND ADS. WE DO NOT VERIFY THE ACCURACY OR RELIABILITY OF ANY INFORMATION ON ANY THIRD PARTY PROPERTY, INCLUDING MATERIALS AND PERSON'S COMMENTS ON ANY SITE, AND DO NOT REVIEW, APPROVE, MONITOR, ENDORSE, WARRANT, OR MAKE ANY REPRESENTATIONS OF ANY KIND IN RESPECT OF SUCH MATERIALS.
- (d) WE DO NOT WARRANT THAT MESSAGE OR INFORMATION YOU SEND ON OUR SITE OR APP WILL BE COMPLETELY PRIVATE OR SECURE, EVEN IF THERE IS A SPECIAL NOTICE THAT A PARTICULAR TRANSMISSION IS ENCRYPTED.
- (e) YOUR ONLY REMEDY WITH RESPECT TO ANY DISSATISFACTION WITH OUR APP, OTHER SERVICES OR ANY MATERIALS, WILL BE TO CANCEL YOUR ACCOUNT AND TO STOP USING OUR SERVICES, INCLUDING OUR APP.
- (f) WE REGRET ANY DOWNTIME, ERRORS, OR OTHER PROBLEMS YOU MAY HAVE WITH OUR SERVICES. THE APP MAY NOT PERFORM AS WE INTEND IT TO FOR MANY REASONS, INCLUDING PERFORMANCE AND CONNECTIVITY ISSUES ON YOUR PERSONAL MOBILE DEVICE OR COMPUTER ("HANDHELD") OR THE LINK BETWEEN YOUR HANDHELD AND A DEVICE – THESE ISSUES ARE DIFFICULT TO PINPOINT BY US AS THEY COULD BE RELATED TO WI-FI, CELL PHONE SERVICE PROVIDER, OR OTHER THIRD PARTY PROVIDERS, OR OTHER DEVICES AND PRODUCTS IN YOUR ENVIRONMENT THAT ARE CAUSING INTERFERENCE WITH THE SIGNALS AND FUNCTIONING OF THE APP OR YOUR HANDHELD. YOU AGREE THAT YOU ARE NOT RELYING ON OUR SERVICES FOR ANY CRITICAL NEED, INCLUDING THE NEEDS AS RELATED TO MANAGING THE DEVICE OR USING A FUNCTION OF THE DEVICE WHICH MAY POSE A SAFETY CONCERN IF THE APP OR YOUR HANDHELD FAILS TO PERFORM PROPERLY.
- (g) WE DO NOT PROMISE THAT OUR SERVICES WILL SATISFY YOU, OR ACTUALLY ACCOMPLISH OUR GOALS. DESPITE OUR GOALS TO PROVIDE YOU A GOOD SERVICE EXPERIENCE, WE DO NOT WARRANT THAT:
- (h) THE SERVICES WILL BE ERROR FREE; HAVE NO DATA LEAKS OR BREACHES; BE FREE OF BUGS OR MALICIOUS CODE; THE APP WILL HAVE NO DOWNTIME; THE APP WILL NOT HAVE ANY NEGATIVE IMPACT ON YOUR HANDHELD; THE APP WILL BE COMPATIBLE WITH A DEVICE; AN UPDATE WILL KEEP THE SAME USER EXPERIENCE YOU ENJOYED BEFORE AN UPDATE OR AN UPDATE WILL

KEEP ALL FEATURES YOU USE; OR THE APP WILL REMAIN FUNCTIONAL AT ALL.

- (i) IF THERE ARE ANY SUGGESTIONS ON HOW TO USE THE APP, THE CONNECTED DEVICE OR HOW OTHERS USE SUCH ITEMS, THEY ARE SUGGESTIONS ONLY. PLEASE PRACTICE SAFETY AROUND A DEVICE AND ENSURE THAT YOUR USE OF THE APP DOES NOT SURPRISE OR HURT OTHERS IN ANY WAY. IF YOU CANNOT SEE A DEVICE THAT IS CONTROLLED WITH AN APP, DO NOT TURN ON THE DEVICE AS SOMEONE/SOMETHING MAY BE CLOSE AND BE SERIOUSLY HURT, INCLUDING AT RISK OF DEATH.
- (j) IF YOU WISH TO PROTECT YOURSELF AGAINST ANY RISK OF USING OUR APP OR ANY OTHER SERVICE, OR A DEVICE IN RELATION TO OUR APP, PLEASE CONSIDER GETTING APPROPRIATE INSURANCE COVERAGE AS YOU SEE FIT. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND THE APPLICABLE POLICY OR POLICIES OF INSURANCE YOU OBTAIN AND MAINTAIN, YOU RELEASE DIMPLEX, ITS AFFILIATES AND THEIR LICENSORS AND SUPPLIERS FROM ALL LIABILITY FOR ANY LOSS, OCCURRENCE, EVENT OR CONDITION COVERED BY YOUR INSURANCE.

## 7. **Indemnification and Limitation of Liability**

- (a) You agree to indemnify, defend, and hold harmless Dimplex, its subsidiaries and affiliates, and each of their officers, directors, employees, agents, successors, permitted assigns (collectively the “**Dimplex Indemnitees**”) from and against any and all claims and expenses, including legal or other professional fees and disbursements, arising out of: (a) your violation of any of the provisions in these Terms; (b) any allegation of facts that, if true, would constitute your breach of any of your representations, warranties or obligations under these Terms; (c) negligence or wilful misconduct by you or any third party on your behalf in connection with our Services; and (d) your infringement or violation of any Intellectual Property Rights or other rights of any person or entity.
- (b) We may, at our sole discretion and expense, choose to assume the exclusive defense and control of any matter otherwise subject to indemnification by you and you shall not in any event settle any matter without our written consent.
- (c) We will be liable to you for anything that cannot be limited under law, including our breach of your data privacy rights, our gross negligence and wilful misconduct, but we will not be held liability by you, and you agree that you will not receive any compensation whatsoever or seek any penalties or other remuneration, for the failure of the App and any non-performance of a Service.
- (d) You agree to hereby discharge, waive and release Dimplex Indemnitees and from any past, present and future claims, liabilities and damages, known or unknown, arising out of or relating to your interactions with any third parties and their services or products in respect of which you may be utilizing our App.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, WHICH STATES: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOUR 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.” YOU HEREBY WAIVE ANY SIMILAR PROVISION IN ANY OTHER JURISDICTION.

- (e) IN NO EVENT WILL DIMPLEX INDEMNITEES or their LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, DAMAGES FOR LOSS OF USE, DATA,

INFORMATION, OR REVENUE, PROFITS OR BUSINESS INTERRUPTION, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGES OR ANY OTHER DAMAGES WHATSOEVER IN RELATION TO OR ARISING UNDER THIS AGREEMENT, WHETHER SUCH DAMAGES ARE BASED IN TORT, CONTRACT, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE, EVEN IF A DIMPLEX INDEMNITEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- (f) Without limiting the foregoing, if a Dimplex Indemnitee should be found liable to you for any loss or damage that arises out of or is in any connected with your Services or Materials, our cumulative liability will in no event exceed CAD \$1.00.
- (g) Should a jurisdiction that does not allow the exclusion of indirect, punitive, incidental, special or consequential damages apply to these Terms, the total liability to you or any person in connection with any indirect, punitive, incidental, special or consequential damages shall be limited to amounts under subsection (f).
- (h) If you use our Services for commercial, business or resale purpose, we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

## 8. **Term and Termination**

- (a) Subject to the "Surviving Provisions" section below, these Terms shall terminate upon your cancellation or deactivation of your Account through the means provided through our Services. However, these Terms shall continue to apply to your use and access to our Services and Materials available to you or any functions, services or features we offer, prior to or after termination of these Terms.
- (b) We may terminate your access to all or any part of our Services at any time, with or without cause and with or without notice, effective immediately and for any reason deemed appropriate in our sole discretion. We may close your Account and delete any data and information associated with the Account.
- (c) You may cancel your Account at any time. Upon cancellation, termination or deactivation of your Account, (i) all rights, licenses, consents and authorizations granted pursuant to these Terms shall immediately terminate, and (ii) we may disable all users' access to our Services except as set out in these Terms.
- (d) Notwithstanding anything to the contrary in these Terms, with respect to information and materials in our possession or control at the time of cancellation, termination or deactivation of your Account: (i) we may retain any of your data in our backups, archives and disaster recovery systems until such data is deleted in the ordinary course; and (ii) all information and materials described in the foregoing clause (a) shall remain subject to all confidentiality, security and other applicable requirements of these Terms.

## 9. **Amendment of these Terms**

- (a) To the extent permitted by applicable law, Dimplex reserves the right, at our sole discretion, to amend these Terms at any time. You may not amend or modify these Terms.
- (b) We shall post the amended Terms on the App and/or Site. Although we shall take reasonable steps to notify you of amendments, you are expected to check the App and/or Website periodically for any amendments to these Terms. Your continued access and use of our Services following such amendments shall constitute your affirmative acknowledgement of these Terms and agreement to be bound by these Terms, as amended. If at any time you choose not to accept our amended Terms, including following receipt of notification of any amendments made hereto, then you

are not permitted to access or use our Services and you must terminate and deactivate your Account.

#### 10. **Governing Law**

These Terms and any access to or use of our Services shall be governed by, and construed in accordance with the internal laws of the Province of Ontario and the federal laws of Canada therein, without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Province of Ontario.

#### 11. **Dispute Resolution through Arbitration**

- (a) Any controversy, dispute, disagreement or claim arising out of, relating to or in connection with our Services, these Terms or any breach hereof, including any question regarding its existence, validity or termination, shall be finally and conclusively resolved by arbitration under Arbitration Act, 1991, S.O. 1991, c. 17 (the "Act"). There shall be one (1) arbitrator selected in accordance with the Act. The parties to the arbitration shall equally share the fees of the arbitrator and the facility fees and the parties shall each bear their own legal costs and expenses of the arbitration; provided, that the arbitrator shall have the authority to award such fees, costs and expenses in the decision of the arbitrator. The arbitration shall be conducted in English. Any decision of the arbitrator shall be final and binding on the parties and their respective successors and assigns and there shall be no right to appeal such decision, whether on a question of law, a question of fact, or a mixed question of fact and law. Notwithstanding the foregoing, Dimplex shall have the right to seek injunctive or other equitable relief, including in relation to the breach of confidentiality obligations or violation of the Intellectual Property Rights set forth in these Terms.
  
- (b) The arbitrator may award declaratory or injunctive relief only in favour of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AND DIMPLEX AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED GROUP LITIGATION OR PRIVATE ATTORNEY GENERAL PROCEEDING. Further, unless all affected parties agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or group proceeding. If a court decides that applicable law precludes enforcement of any of this subsection's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.

#### 12. **30-Day Opt-Out Period**

If you do not wish to be bound by the arbitration and class-action waiver provisions in these Terms, you must notify us in writing within 30 days of the date that you first accept these Terms (unless a longer period is required by applicable law). Your written notification must be mailed in accordance with the notification requirements herein. If you do not notify Dimplex in accordance with this Section, you agree to be bound by the arbitration and group litigation waiver provisions of these Terms, including such provisions in any Terms revised after the date of your first acceptance.

#### 13. **Waiver of Class Proceedings**

You hereby waive any right you may have to commence or participate in any class action lawsuit against Dimplex, its affiliates, their respective officers, directors and shareholders, and licensors or suppliers, related to any claim, dispute or controversy and, where applicable, users hereby agree to opt out of any class proceeding against Dimplex otherwise commenced.

#### 14. **Severability**



If any portion or provision of these Terms shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of these Terms, or the application of such portion of provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of these Terms shall be valid and enforceable to the fullest extent permitted by law.

#### 15. **Assignment**

You may not assign, in whole or in part, any of your rights or obligations under these Terms. Dimplex may, without prior notice or consent, assign these Terms or any of its rights or obligations hereunder. You give your approval to Dimplex for it to assign these Terms, in whole or in part, and upon such assignment the assignee shall assume all the rights and obligations of Dimplex and Dimplex shall be released. The Terms will inure to the benefit of Dimplex' successors and assigns.

#### 16. **Further Assurances**

You agree to execute and deliver all such further documents and instruments and do all acts and things as Dimplex may reasonably require to carry out the full intent and meaning of these Terms.

#### 17. **Relationship between the Parties**

There is no joint venture, partnership, employment or agency relationship created between you and Dimplex as a result of these Terms or access or use of our Services or the Dimplex Content.

#### 18. **Headings and Summaries**

The headings, captions and summaries in these Terms are for convenience only and in no way define or describe the scope or content of any provision of these Terms.

#### 19. **Notices**

Except as otherwise stated in these Terms or as expressly required by law, any notice to us, including for purposes of termination, shall be given in writing by certified postal mail to:

**Sherief Mohamed**

Glen Dimplex Americas

1367 Industrial Rd

Cambridge, ON

N3H 4W3

or by email to:

[Sherief.Mohamed@GlenDimplexamericas.com](mailto:Sherief.Mohamed@GlenDimplexamericas.com)

Any notice to you shall be given to the most current email address in your Account.

#### 20. **Other Rules of Interpretation**

Any reference to gender includes all genders; words importing the singular number only shall include the plural and vice versa; the word "or" "is not exclusive; the words "including", "includes" and "include" mean "including without limitation"; and "shall" means "will" and "must", all three of which can be changed interchangeably and shall not mean "may".

#### 21. **No Waiver of Covenants**

Failure by any party to insist upon the strict performance of any of the covenants, agreements, terms, provisions or conditions contained in these Terms or to exercise any election shall not be construed as

a waiver or relinquishment of such covenant, agreement, term, provision or condition but the same shall continue and remain in full force. No waiver shall be deemed to have been made unless expressed in writing.

## 22. **Surviving Provisions**

Notwithstanding the expiration or termination of these Terms, those rights and obligations that are stated to or which by their nature are intended to survive such expiration or termination shall survive, including, but not limited to the sections in respect of indemnification and liability, governing law, dispute resolution

## 23. **Force Majeure**

Without limiting anything else in these Terms, if a default or delay by Dimplex under these Terms is caused by, or if Dimplex is unable to make our Services and/or the Dimplex Content available for, any reason or circumstances beyond the reasonable control of Dimplex, including, but not limited to fire, flood, earthquake, elements of nature, acts of God, epidemic (whether or not declared), pandemic (whether or not declared), explosion, power failure, third party caused damage to network infrastructure, war, terrorism, cyber terrorism/warfare, revolution, civil commotion, cyber terrorism/warfare, acts of public enemies, law, order, regulation, ordinance or requirement of any government or legal body having jurisdiction, or labour unrest such as strikes, slowdowns, picketing or boycotts, Dimplex shall not be liable for that default or delay, or inability to make our Services and/or the Dimplex Content available, and shall be excused from further performance of its affected obligations.

## 24. **Entire Agreement**

The Terms and anything else incorporated or referred to herein constitute the entire agreement between you and Dimplex and supersede all prior communications, agreements and understandings, written or oral, with respect to the subject matter of these Terms.

## 25. **Language**

You and we have requested that these Terms and all correspondence and all documentation relating to these Terms be written in the English language. Les parties aux présentes ont exigé que la présente entente, de même que toute la correspondance et la documentation relative à cette entente, soient rédigées en langue anglaise.

## 26. **Definitions.** In these Terms of Use, the following expressions shall have the following meanings:

**“Handle”** means to process, record, transfer, access, receive, use, disclose, retain, dispose of, destroy, manage, collect, store, or otherwise handle and any variation of “Handle” and “Handling” has the same meaning depending on the context.

**“Intellectual Property Rights”** means all rights in inventions, discoveries, or improvements (whether patented or able to be patented and whether or not reduced to practice), including patents, patent applications, certificates of invention, utility models, continuations, continuations-in-part, provisionals, divisions, reissues, renewals, re-examinations and extensions thereof; trade secrets, know-how, designs, methodologies, processes, rights in data, and similar rights; semiconductor chip protection and mask work right; the protection of works of authorship or expression and copyright (whether or not registered); trademark, trade names, service marks, logos, domain names and trade dress; and similar rights under any laws or international conventions throughout the world, whether now existing or hereafter arising or developed, including the right to apply for registrations, certificates, or renewals with respect thereto, the rights to prosecute, enforce, and obtain damages.

**“laws”** means any statute, ordinance, regulation, rule, code, constitution, treaty, common law, governmental order or other requirement or rule of law of any governmental authority.

**“Materials”** means any information, text, document, articles, blogs, links, reports, data, databases, tools, e-mail, code, photographs, pictures, audio, video, postings, graphics (including illustrations and animations), comments, interfaces, webpages, files, software, product names, Dimplex names, trademarks, logos, trade names, or other materials.

