

# **shomi TERMS OF SERVICE**

## **1. INTRODUCTION**

Welcome to **shomi**, a subscription video on demand streaming service (the “**Service**”) provided by or on behalf of Shomi Partnership and its current and future affiliates (collectively, “**us**”, “**we**”, “**our**” or “**shomi**”). The Service offers streaming of digitized versions of movies, television shows, concerts and other video content (the “**Content**”), on a subscription basis, available to you from time to time on <http://www.shomi.com> or any software application that you have downloaded (“**Software**”) to view the Content (each, a “**Site**”). “**You**” and “**your**” means, as applicable, you and every person who uses the Service through your account. Please read these terms of service (“**Terms**”) carefully before you use a Site. By using any Site, you agree to abide by these Terms. If you don’t agree to comply with these Terms, then you may not use any Site. In these Terms, “**residents of Québec**” means residents of Québec to whom the *Consumer Protection Act* (Québec) applies in connection with the use of a Site and the Service.

## **2. AVAILABILITY AND ACCESS**

- (a) **Availability.** The Service is only available to users of a Site while in Canada who have registered for the Service. Even if you have registered for the Service, you will not be able to view Content when you are outside of Canada.
- (b) **Access.** Not all aspects of the Service, including, without limitation, certain Content viewing and access to high-quality video, will be available to you unless the applicable personal computer, digital set top box, gaming device, tablet device, mobile device or other digital device (each a “**Digital Device**”) you use to access the Service and your Internet connection satisfy the Service’s minimum technical requirements available at <http://www.shomi.com/help>. We may change these requirements from time to time at our sole discretion. Unless we specify otherwise, you are solely responsible for updating or maintaining your Digital Device and Internet connection as necessary to meet these requirements. Since the Service is often transmitted over the Internet, you may experience, from time to time, video and/or audio dropouts, rebuffering or loss of connection. You are responsible for any data usage and charges you incur to access the Service through an Internet connection.

## **3. REGISTRATION, ACCOUNT AND PASSWORD**

To obtain access to the Content, you will be required to register. As part of the registration process, you may be asked to provide an email address and select a password, provide your billing information and certain other information. You agree that any information you supply during that registration process will be accurate and complete and that you will not register under the name of, nor attempt to use the Service under the name of, another person. You agree to promptly update any information as necessary to ensure that your account is kept accurate and complete, including, without limitation, any credit card information you designate for payment of your monthly subscription. If you do not update that information when necessary, then you may not be able to access the Service. You will be responsible for preserving the confidentiality of your password and will notify us immediately of any known or suspected unauthorized use of your account and agree to take any reasonable steps necessary to prevent any reoccurrence. If at any time you have forgotten your password and we are otherwise unable to verify your identity, then we may take any action that we deem appropriate, including, without limitation, deleting your account. You may be held liable for any loss or damage incurred by **shomi** or any other user or visitor to a Site due to another party using your account or password.

## **4. MODIFICATIONS**

We may modify the Content made available on a Site at any time at our sole discretion without prior notice to you. We may also modify these Terms or change any aspect of the Service at any time at our sole discretion, upon no less than **30 days’** prior written notice to you. The written notice will be provided to you

by letter or email and will contain the new or amended term or provision, the former version of that term or provision (if applicable), the date that the amendment will come into force and your rights which are described as follows. If you do not accept any modification to these Terms or changes to the Service, then your sole remedy is to terminate these Terms by no longer using any Site and the Service by sending us a notice to that effect no later than **30** days after the modification or change takes effect.

## **5. PRIVACY**

**shomi** respects the privacy of our visitors to and users of a Site. Our collection, use and disclosure of personal information in connection with a Site are governed by our Privacy Policy located at [www.shomi.com/privacy](http://www.shomi.com/privacy). Personal information collected in connection with a Site may be stored and processed in or outside Canada and may be subject to the laws of other jurisdictions. You can unsubscribe from receiving communications from shomi at any time by changing your preferences in your profile at shomi.com or by contacting shomi Partnership at 333 Bloor St. East, Toronto, ON M4W 1G9.

## **6. PAYMENT AND SUBSCRIPTION TERMS**

- (a) **Pricing.** All prices listed on a Site are in Canadian dollars and do not include applicable taxes. Taxes will be applied at time of payment.
- (b) **Agreement to Pay.** If you subscribe to the Service directly through **shomi**, you will be required to provide us with a valid credit card (Visa, MasterCard or American Express). As a new subscriber, you may be entitled to receive the Service for a period of **1** month ("**Trial Period**") before **shomi** charges your credit card the recurring, monthly fee (plus applicable taxes) for use of and access to the Service ("**Subscription Fee**"). At the end of the Trial Period, if any, and provided that you have not opted to cancel your subscription, you authorize us to immediately charge and you agree to pay the Subscription Fee using the credit card provided, and each month thereafter on the anniversary date of your subscription. In the event of a credit card decline or chargeback, you will no longer be able to access the Service until a valid credit card is provided. If you subscribe to the Service through an authorized distributor (such as your local cable or satellite provider) or agent, you will be charged the Subscription Fee directly by that authorized distributor or agent and your purchase may also be governed by the terms of service of that authorized distributor or agent.
- (c) **Additional Terms.** Additional terms and conditions applicable to your subscription ("**Subscription Terms**"), including, without limitation, the length of the subscription period, will be presented to you prior to subscribing. The Subscription Terms will form part of our agreement with you.
- (d) **Subscription Confirmation.** If you have subscribed to the Service directly through **shomi**, you will receive an email confirming your order. Please keep this email as it is your receipt and includes the Subscription Terms.
- (e) **Refunds.** Except as otherwise described in this subsection, all Subscription Fees are non-refundable. We will not issue credits. You may cancel your subscription to the Service in accordance with subsection 14(b). If you subscribe to the Service directly through **shomi**, then you will be refunded a portion of your last paid Subscription Fee (plus applicable taxes) for any days between your cancellation date and the next anniversary date of your subscription. For example, if your subscription anniversary date is the first of each month and you cancel your subscription on September 15<sup>th</sup>, you will receive a refund for the **15** days (being the number of days between September 15<sup>th</sup> and October 1<sup>st</sup>) remaining before your next subscription anniversary date. If you subscribe to the Service through an authorized distributor or agent, then you will need to check with that authorized distributor or agent for any refunds they may provide.

## **7. SOFTWARE**

For Software that you have downloaded from **shomi** related to the use of the Service:

- (a) **Licence.** **shomi** grants to you a limited, non-exclusive, non-transferable, no-fee, revocable licence to install and use one copy of the executable code of the Software on each Digital Device that is connected to the Service. All other rights are reserved to **shomi**, its licensors or suppliers.
- (b) **Restrictions.** You acknowledge and agree that you have been granted a licence and not a transfer of ownership in the Software. You may not:
- i) Rent, lease, sell, sublicense, assign, distribute or otherwise transfer any portion of the Software or use it for any purpose other than in association with the Service;
  - ii) Reverse engineer, decompile or disassemble any portion of the Software, except and only to the extent that this limitation is expressly prohibited by applicable law;
  - iii) Copy, modify, alter or tamper with the Software (including without limitation the removal of any copyright or other proprietary notices from the Software) or create any derivative works of the Software; or
  - iv) Attempt to defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any software protection mechanisms.
- (c) **Data Maintenance, Support, and Software Updates/Changes (if applicable).**
- i) **shomi** may elect to provide you with customer support and/or Software upgrades, enhancements or modifications (collectively, "**Support**"), in its sole discretion, and may terminate this Support at any time without notice to you.
  - ii) **shomi** may, without notice or liability, collect non-personal information regarding your Digital Device(s), hardware and software during the installation and/or use of the Software.
  - iii) **shomi** may change, suspend or discontinue any aspect of the Software at any time, including the availability of any Software feature, database, or content.
  - iv) **shomi** may impose limits on certain features and services or restrict your access to parts or all of the Software or the Service without notice or liability.
  - v) **shomi**, its licensors and other third party suppliers reserve the right to delete data from their servers, or prevent access to their servers or to change data categories for any reason that **shomi** or third parties deem sufficient in their sole discretion at any time, without notice.
  - vi) Nothing in these Terms imposes upon **shomi** or **shomi**'s licensors any obligation to provide you with new, enhanced or additional Support at any time.
  - vii) **shomi** may connect remotely to and run scripts on your Digital Device(s). As part of remote Support, **shomi** and its agents will have full access to your Digital Device(s).
- (d) **Multiple Users.** We allow you to view the Content on up to **2** Digital Devices at the same time. Any attempt to circumvent that limit is a breach of these Terms, resulting in cancellation of the Service in accordance with subsection 14(a). You agree to cause all persons who use the Software through your Digital Device(s) to observe and comply with the Terms respecting that use. You further agree that you are solely responsible and liable for any and all breaches of the Terms, whether that breach is the result of use of the Software by you or by any other user of your Digital Device(s).
- (e) **Termination.** Your right or liability to use Software will terminate automatically if the Service with which the Software is used is terminated or expired

## **8. OWNERSHIP AND COPYRIGHT**

Except for the limited rights explicitly granted to you under these Terms, all right, title, interest and intellectual property rights in and to: (i) the Service and any Site and each component thereof; and (ii) any Content available through the Service and any Site, are the property of their respective owners and are protected by applicable trademark, copyright and/or other intellectual property laws and treaties.

Without limiting the generality of the foregoing, you do not acquire any ownership rights in the Content as a result of accessing it. You agree to abide by all copyright notices, information and restrictions contained in or displayed with the Content. These Terms do not grant you any licence or other rights in connection with any trademarks or logos appearing on any Site. You may not use any trademark or service mark appearing on any Site without the prior written consent of the rightful owner. **shomi** will aggressively enforce our intellectual property rights to the fullest extent permitted by law, and that owners of any other intellectual property rights may also do so against you personally.

Content owners use Microsoft PlayReady™ content access technology to protect their intellectual property, including copyrighted content. The Service uses PlayReady technology to protect certain Content. If the PlayReady technology fails to protect the Content, Content owners may require the Service to restrict or prevent the delivery of protected Content to specified Digital Devices or PC software applications. In certain cases, you may be required to upgrade the PlayReady technology to continue to access the Service's Content. If you decline such an upgrade, you will not be able to access Content that requires the upgrade.

## **9. OTHER CONTENT AND LINKS**

**shomi** is not responsible for, and cannot guarantee the performance of, any products and services provided by any advertisers or others to whose sites we link. Unless otherwise indicated, these sites have been independently developed by third parties. A link to another site is not an endorsement of that site (nor of any product, service or other material offered on that site) by **shomi** or its affiliates, licensors, suppliers, authorized distributors and agents (and each of their respective directors, officers, employees, shareholders and representatives) (collectively, the "**shomi Parties**"). Any dealings you have with advertisers found while using the Service are between you and the advertiser. You acknowledge and agree that the **shomi Parties** are not responsible or liable to you for any content or other materials hosted and served from any website other than a Site.

## **10. CONTENT USAGE RESTRICTIONS**

- (a) **General.** The Service and the Content are for your personal, non-commercial use, entertainment and enjoyment. You may not reproduce, duplicate, copy, download, translate, broadcast, publicly display, sell, transmit, retransmit, license, sub-license, publish or modify any of the Service or the Content without the prior written consent of the owner. Unless otherwise permitted through a Site, you may not distribute copies of Content or materials found on a Site in any form (including by email or other electronic means), without the prior written consent of the owner. Of course, you may encourage others to access the information themselves on a Site and to tell them how to find it.
- (b) **Links.** We welcome links to the homepage of a Site. You may only establish a hypertext link to the homepage of a Site if: (i) the link does not state or imply any affiliation, connection, sponsorship, endorsement, commercial tie-in, or approval of your site by **shomi** or anyone having rights to any Content or create the false appearance that an entity is associated with or sponsored by us and, (ii) the appearance, position and other aspects of the link does not damage or dilute the goodwill associated with us, our trademarks or any other trademarks appearing on a Site. We do not permit framing or inline linking to a Site or any portion of it. Notwithstanding the foregoing, links within any video player, or within the Content itself is strictly prohibited.

## **11. SUBMISSIONS AND POSTINGS**

For any content that you upload, post, transmit, distribute or otherwise make available for inclusion on a Site (your "**Contributions**"), you must be, or have first obtained permission from, the rightful owner of

Contributions that you post. You acknowledge and agree that any of your Contributions will be treated as non-confidential and non-proprietary. By submitting your Contributions, you represent and warrant that: (i) you own those Contributions or otherwise have the right to grant, and do grant, to **shomi** the world-wide, royalty-free, non-exclusive, perpetual, irrevocable, fully sub-licensable and transferable licence to use, distribute, reproduce, modify, compress, adapt, publish, translate, communicate, publicly perform and publicly display your Contributions, and to incorporate them into other works in any format or medium now known or later developed; and (ii) you waive all moral rights in those Contributions. We have the right, but not the obligation, to monitor or investigate any of your Contributions posted to a Site. We may also access or preserve your Contributions to comply with legal process in Canada or foreign jurisdictions, operate the Service, ensure compliance with these Terms or any policies, or protect ourselves, our customers or the public. We may, without notice or liability, move, remove, edit, delete or refuse to post any of your Contributions, in whole or in part, that we decide in our sole discretion is unacceptable, undesirable or in violation of any law, these Terms or our Acceptable Use Policy. **shomi** will not be liable to you for our deletion of any of your Contributions.

## **12. PROHIBITED ACTIVITIES**

Your use of a Site, the Service and the Content and any of your Contributions to a Site must comply with these Terms, all applicable laws and our Acceptable Use Policy, which accompanies these Terms and is available at <http://www.shomi.com/termsOfService>.

## **13. RESPONSIBILITY FOR MINORS**

You must be the age of majority in the province in which you reside in order to subscribe to the Service. If you have authorized a minor to use a Site or the Service, then you agree to be fully responsible for: (i) controlling the minor's access to and use of that Site or the Service; and (ii) the consequences of any misuse by the minor. You acknowledge that some of the areas of a Site and some of the Content may include material that is inappropriate for minors.

## **14. SUSPENSION AND CANCELLATION**

- (a) **Without Notice.** **shomi** may at any time, without notice to you, restrict, block, suspend or cancel any or all of your use of a Site (or any portion thereof), the Service or your account if you fail to comply in full with any of these Terms or any other terms, agreements, or policies (including, without limitation, our Acceptable Use Policy) that apply to a Site and the use of it. Any cancellation will not relieve you of any obligation to pay fees accrued prior to cancellation.
- (b) **Subscription.** If you subscribe to the Service directly through **shomi**, then **shomi** may discontinue the Service or your subscription to Content upon no less than **30 days'** (if you are a resident of Québec, **60 days'**) advanced written notice to you. Unless otherwise set out in any applicable Subscription Terms, you may cancel your recurring subscription at any time by sending us a written, dated notice to the email address specified at Section 19 or by cancelling your subscription on-line in your account section of a Site. That cancellation will be effective as of the date you notify us or a future date that you request (if applicable), whichever is later. If you subscribe to the Service through an authorized distributor or agent, then any cancellation of Service described in this subsection will be governed by the terms of service of that authorized distributor or agent.

## **15. INDEMNIFICATION**

**To the maximum extent permitted by applicable law, you will defend, indemnify and hold harmless the shomi Parties from and against all claims, liability, losses, actions, proceedings, suits, damages, settlements, penalties, fines, costs and expenses, including all reasonable legal fees and other litigation expenses, arising out of: (i) your breach of any provision of these Terms or our Acceptable Use Policy; (ii) your use or misuse of a Site or the Content and the placement or transmission of your Contributions on a Site made by you or others using your account; (iii) your use of or inability**

to use any Software; or (iv) any violation, alleged violation or misappropriation of any intellectual property right or non-proprietary right of a third party. shomi may, in its sole discretion and at its own expense, assume the exclusive defence and control of any matter otherwise subject to indemnification by you. You will co-operate as fully as reasonably required in the defence of any claim. Your indemnification shall survive any termination of your right to use a Site and the Service.

## **16. NO WARRANTIES**

All Sites, the Service and all Content, material, information or postings found on or accessed through a Site, are provided on an "as is" basis. To the maximum extent permitted by applicable law, the shomi Parties expressly disclaim any and all representations, warranties and conditions, express and implied, including, without limitation, any and all representations and warranties of title and non-infringement, and all implied warranties and conditions of merchantable quality, fitness for any particular purpose, suitability for any particular purpose, and any representations, warranties or conditions arising from any course of dealing or usage of trade, for a Site, the Service or the Content contained in or accessed through a Site. To the maximum extent permitted by applicable law, none of the shomi Parties makes any representations or warranties as to the performance, availability, accuracy, timeliness, reliability, secure operation, truthfulness or completeness of a Site, the Service or the Content contained in or accessed through a Site, including, without limitation, the contents, transmission or delivery of any Content, information, material, or posting found on a Site, any services provided through a Site (including the Service), or any links to other sites made available on a Site or the content contained on such site(s), or, for Software, the operation of the Software or any feature of the Software. To the maximum extent permitted by applicable law, none of the shomi Parties makes any representations or warranties that a Site or access to and use of a Site will be continuous, accurate, uninterrupted, error-free, or free from defects, viruses or other harmful codes or components. For Software, to the maximum extent permitted by applicable law, all representations, warranties and conditions of any kind, express or implied, are excluded including any related to completeness of response, results and workmanlike effort for the Software. You expressly agree that use of a Site and the Service are at your sole risk.

Information provided on a Site may contain references or cross-references to products and services offered by authorized distributors or agents that are not available in your local area and shomi makes no representations or warranties as to the availability of such products and services in your local area and such references do not imply that those authorized distributors or agents intend to provide such products or services in your local area. shomi recommends that you consult with an authorized distributor or agent directly for information regarding the products and services that they offer which may be available to you in your local area.

## **17. LIMITATIONS OF LIABILITY**

- (a) **Not applicable to residents of Québec:** To the maximum extent permitted by applicable law, under no circumstances, including without limitation, negligence, gross negligence, negligent misrepresentation and fundamental breach, shall any of the shomi Parties be liable to you or any third party for:
- i) any direct, indirect, incidental, special, consequential, economic or punitive damages (including loss of profit or revenue, financial loss, loss of business opportunities, loss, destruction, interception, misdelivery or alteration of data, files, software or other information, breach of privacy or security, property damage, personal injury, death or any other foreseeable or unforeseeable loss, however caused) or any loss that results from the Support for any Software, the use of, or the inability to use, a Site, the Service or any Content, information, material, or postings on a Site (including, without limitation, your Contributions), directly or indirectly, or the transmission of confidential or sensitive information over the Internet. These limitations apply regardless of whether the party liable or allegedly liable was advised, had other reason to know, or in fact knew of the possibility of damages. You specifically acknowledge and agree that none

of the shomi Parties shall be liable for any defamatory, offensive or illegal conduct of any user, including you; and

- ii) any losses, claims, damages, expenses, liabilities or costs (including, without limitation, reasonable legal fees and other litigation expenses) resulting directly or indirectly out of, or otherwise arising in connection with, any claim that the use or intended use of the Software infringes the copyright, patent, trade-mark, trade secret, confidentiality, privacy, or other industrial or intellectual property rights or contractual rights of any third party. These limits apply to any act or omission of any of the shomi Parties, whether or not the acts or omissions would otherwise give rise to claims or causes of action in contract, tort, pursuant to statute or pursuant to any other doctrine of law.

(b) **Applicable only to residents of Québec:** Except for damages resulting from a shomi Party's own act, the shomi Parties will not be liable to you or any third party for:

- i) any damages (including loss of profit or revenue, financial loss, loss of business opportunities, loss, destruction, interception, misdelivery or alteration of data, files, software or other information, breach of privacy or security or property damage) or any loss that results from the Support for any Software, the use of, or the inability to use, a Site, the Service or any Content, information, material, or postings on a Site (including, without limitation, your Contributions), directly or indirectly, or the transmission of confidential or sensitive information over the Internet. You specifically acknowledge and agree that none of the shomi Parties shall be liable for any defamatory, offensive or illegal conduct of any user, including you; and
- ii) any losses, claims, damages, expenses, liabilities or costs (including, without limitation, reasonable legal fees and other litigation expenses) resulting directly or indirectly out of, or otherwise arising in connection with, any claim that the use or intended use of the Software infringes the copyright, patent, trade-mark, trade secret, confidentiality, privacy, or other industrial or intellectual property rights or contractual rights of any third party.

## **18. ARBITRATION**

**Not applicable to residents of Québec:** To the extent permitted by applicable law, unless we agree otherwise, any claim, dispute or controversy, whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether pre-existing, present or future, arising out of or relating to the following items will be determined by final and binding arbitration to the exclusion of the courts:

- these Terms, including without limitation any licence granted under these Terms;
- the Service or a Site;
- oral or written statements, advertisements or promotions relating to these Terms, the Service or a Site; or
- the relationships that result from these Terms.

**Not applicable to residents of Québec: Where applicable,** arbitration will be conducted in the province in which you reside, on a simplified and expedited basis by one arbitrator pursuant to the current laws and rules relating to commercial arbitration in the province or jurisdiction in which you reside on the date of the notice. **shomi** will pay all reasonable costs associated with that arbitration. Any arbitration will be conducted in accordance with our Arbitration Protocol, which is available at <http://www.shomi.com/termsOfService>.

## **19. FEEDBACK**

To contact **shomi** in connection with a Site, send an email to [support@shomi.com](mailto:support@shomi.com).

## **20. OTHER IMPORTANT TERMS**

These Terms are governed exclusively by the laws of the province in which you reside, but if you reside outside of Canada, then these Terms are governed exclusively by the laws of the province of Ontario and the laws of Canada applicable therein, without giving effect to their conflict of laws principles, and you submit to the jurisdiction of the courts of Ontario. **Please note that your rights and remedies may vary by province.** These Terms, as amended from time to time, any applicable Subscription Terms, any other documents referenced herein and any rules, policies, guidelines or other agreements posted on a Site by **shomi** constitute the entire agreement between **shomi** and you for your use of a Site and the Service. Either party's failure to insist upon or enforce strict performance of any provision of these Terms does not mean that party has waived any provision or right in these Terms. No waiver by either **shomi** or you of any breach or default under these Terms shall be deemed to be a waiver of any preceding or subsequent breach or default. If any provisions contained in these Terms are determined to be void, invalid, or otherwise unenforceable by a court of competent jurisdiction, that determination will not affect the remaining provisions. If any portion of these Terms is unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect **shomi's** original intentions and the remainder of the provisions shall remain in full force and effect. Neither the course of conduct between you and **shomi** nor trade practice shall act to modify any provision of these Terms. These Terms enure to the benefit of and are binding on you, your heirs and your legal personal representatives and on your and **shomi's** respective successors and assigns. You may not assign or transfer these Terms without our prior consent. We may assign or transfer these Terms or any of our rights or obligations under these Terms without your consent. The provisions of Sections 14-18 and 20 survive cancellation of the Service. If you are dissatisfied with a Site or with these Terms, then your sole remedy is to stop using all Sites.

These Terms have been drawn up in the English language at the express request of the parties. Les présentes modalités ont été rédigées en anglais à la demande expresse des parties.

## **21. NOTICES**

Any notice of a claim must be given to the **shomi** Legal Department at 333 Bloor Street East, Toronto, Ontario M4W 1G9. Any notice will be deemed to have been given on the date on which it was sent by the party giving the notice.



## **SHOMI ACCEPTABLE USE POLICY**

Please direct any questions or comments regarding this Acceptable Use Policy (“AUP”) and complaints of violations of this AUP by subscribers to [abuse@shomi.com](mailto:abuse@shomi.com). Except where otherwise indicated, “you” and “your” means you and every person who uses the Service through your account.

### **INTRODUCTION**

When using the Service and any products, content, applications or services in conjunction with the Service, you must comply with all applicable laws, and our policies, rules and limits including this AUP. This AUP supplements and is incorporated into the **shomi** Terms of Service (the “Terms”), which is available at [www.shomi.com/termsOfService](http://www.shomi.com/termsOfService). Unless otherwise defined in this AUP, defined terms have the meanings given to them in the Terms.

**IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND THIS AUP, AS AMENDED FROM TIME TO TIME, YOU SHOULD IMMEDIATELY STOP USING THE SERVICE AND NOTIFY SHOMI THAT YOU ARE TERMINATING THE SERVICE.**

### **PROHIBITED ACTIVITIES**

Without limitation, you may not use (or allow anyone else to use) our Service to:

- i. use, possess, post, upload, transmit, disseminate or otherwise make available content that is unlawful or violates the copyright or other intellectual property rights of others (as described in more detail below);
- ii. participate in any illegal soliciting or gaming schemes;
- iii. attempt to use the Service in such a manner so as to avoid incurring charges for usage;
- iv. participate in any fraudulent activities, including impersonating any person or entity or forging anyone else's digital or manual signature. You assume all risks regarding the determination of whether material is in the public domain;
- v. invade another person's privacy or collect or store personal data about other users; stalk or harass another person or entity;
- vi. access any computer, software, data or any confidential, copyright-protected or patent-protected material of any other person, without the knowledge and consent of that person, or use any tools designed to facilitate access, such as "**packet sniffers**";
- vii. upload, post, publish, deface, modify, transmit, reproduce, distribute in any way or otherwise make available information, software, content (including the Content), or other material protected by copyright or other proprietary or contractual right (such as a non-disclosure agreement) or related derivative works, without obtaining permission of the copyright owner or rightholder;
- viii. use, reproduce, sell, resell or otherwise exploit the Service for any commercial purposes;
- ix. copy, distribute, sub-license or otherwise make available any Software or Content, except as authorized by us;
- x. restrict, inhibit or interfere with the ability of any person to access, use or enjoy the Internet, the Service or any equipment used to connect to the Service;
- xi. disrupt any backbone network nodes or network service, or otherwise restrict, inhibit, disrupt or impede our ability to monitor or deliver the Service, our transmissions or data;
- xii. interfere with computer networking or telecommunications service to or from any Internet user, host, provider or network, including but not limited to denying service attacks, overloading a service, improperly seizing or abusing operator privileges ("**hacking**"), or attempting to "crash" a host;

- xiii. use the Service for anything other than your own personal purposes (such as reselling the Service, or any other feature of the Service to any third party) or share or transfer your Service without our express consent;
- xiv. operate a server in connection with the Service, including, but not limited to, mail, news, file, gopher, telnet, chat, Web, or host configuration servers, multimedia streamers or multi-user interactive forums;
- xv. impersonate any person or entity, including, but not limited to, a **shomi** official, forum leader, guide or host, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- xvi. forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Service; or
- xvii. port scan a person's computer without that person's consent, or use any tools designed to facilitate these scans.

## **UNLAWFUL OR INAPPROPRIATE CONTENT**

Any **shomi** Party reserves the right to move, remove or refuse to post any content, in whole or in part, that it, in its sole discretion, decide are unacceptable, undesirable or in violation of the Terms or this AUP. This includes, without limitation:

- i. obscene, profane, pornographic content;
- ii. defamatory, fraudulent or deceptive statements;
- iii. threatening, intimidating, abusive or harassing statements;
- iv. content that violates the privacy rights or intellectual property rights of others;
- v. content that unlawfully promotes or incites hatred;
- vi. content that is otherwise offensive or objectionable; or
- vii. any transmissions constituting or encouraging conduct that would constitute a criminal offence, give rise to civil liability or otherwise violate any municipal, provincial, federal or international law, order or regulation.

For purposes of this AUP, "**content**" refers to all forms of communications including, without limitation, text, graphics (including photographs, illustrations, images, drawings, logos), executable programs, video recordings, and audio recordings.

## **SECURITY**

As set out above, you are responsible for any misuse of the Service, by yourself or by any other person with access to the Service through your Digital Devices or your account. Therefore, you must take steps to ensure that others do not gain unauthorized access to the Service through any means, including without limitation, wireless networking and wired networking. The Service may not be used to breach the security of another user or to attempt to gain access to any other person's equipment, software or data, without the knowledge and consent of that person. Additionally, the Service may not be used in any attempt to circumvent the user authentication or security of any host, network, or account, including without limitation, accessing data not intended for you, logging into or making use of a server or account you are not expressly authorized to access, or probing the security of other networks. Use or distribution of tools designed for compromising security, such as password guessing programs, cracking tools, packet sniffers or network probing tools, is prohibited. You may not disrupt the Service. The Service also may not be used to interfere with computer networking or telecommunications services to any user, host or network, including without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abuse of operator privileges and attempts to "crash" a host. The transmission or dissemination of any information or software that contains a virus or other harmful feature is also prohibited. You are solely responsible for the security of any Digital Device you choose to connect to the Service, including any data stored on that

device. You may not access the Service using a “rooted” or “jailbroken” device. In particular, **shomi** recommends against enabling file or printer sharing of any sort. **shomi** recommends that any files or services you do choose to make available for remote access be protected with a strong password or as otherwise appropriate.

## **UNSOLICITED MESSAGES**

As set out above, the Service may not be used to send unsolicited, bulk or commercial messages. This includes, but is not limited to, bulk mailing of commercial advertising, informational announcements, charity requests, petitions for signatures and political or religious messages. Such messages may only be sent to those who have explicitly requested it. The Service may not be used to send messages to any individual who has indicated that he/she does not wish to receive messages from you. The Service may not be used to collect responses from unsolicited email messages sent from accounts on other Internet hosts or email services that violate this AUP or the acceptable use policy of any other Internet service provider. Moreover, unsolicited email messages may not direct the recipient to any web site or other resource that uses the Service. Forging, altering or removing email headers is prohibited. You may not reference the **shomi** network (for example, by including “Organization: **shomi**” in the header or by listing an IP address that belongs to **shomi**) in any unsolicited email even if that email is not sent through the **shomi** network. “**Mail bombing**” is prohibited. That is, you may not send numerous copies of the same or substantially similar messages, nor may you send very large messages or files to a recipient with the intent to disrupt a server or account. The propagation of chain letters is similarly prohibited, whether or not the recipient wishes to receive such mailings. **shomi** is not responsible for the forwarding of email sent to any account that has been suspended or terminated. Such email will be returned to sender, ignored, deleted, or stored temporarily, at **shomi**’s sole discretion.

## **VIOLATION OF THIS ACCEPTABLE USE POLICY**

As set out in the Terms, we have the right, but not the obligation, to monitor or investigate any content that is transmitted using the Service and to access or preserve content or information in accordance with the Terms. We prefer to advise subscribers of inappropriate behavior and any necessary corrective action. However, if the Service is used in a way that we, in our sole discretion, believe violates this AUP, any of the **shomi** Parties may take any responsive actions they deem appropriate. Actions may include, without limitation, suspension or cancellation of the Service or your account. The **shomi** Parties will have no liability for any responsive actions. These actions are not exclusive remedies and the **shomi** Parties may take any other legal or technical action deemed appropriate. The failure to enforce this AUP, for whatever reason, shall not be construed as a waiver of any right to do so at any time. If any portion of this AUP is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect. This AUP shall be exclusively governed by, and construed in accordance with the governing law provision set out in the Terms.

## **COMPLAINTS**

Please direct any complaints of violations of this AUP to [abuse@shomi.com](mailto:abuse@shomi.com) or contact us at 1-855-417-4664. Questions or complaints concerning third party content should be addressed to the applicable content provider.

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