

# TERMS OF USE AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SERVICE. BY CLICKING “I ACCEPT” LINK LOCATED AT THE END OF THE LOGIN PAGE, YOU ACKNOWLEDGE THAT YOU HAVE AGREED TO BECOME A PARTY TO, AND TO BE LEGALLY BOUND BY, THE TERMS OF THIS AGREEMENT. IF YOU DO NOT WISH TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN YOU AGREE NOT TO ACCESS OR USE THE SERVICE.

Welcome to the *TSP Advisor*. TSP Advisor, Inc., a Virginia corporation (“TSPA”), agrees to provide the subscriber who has registered to use the Service (“you”) with the Service under the terms and conditions embodied in this Terms of Use Agreement (“Agreement”). This Agreement is effective as of the day of the activation of your account (“Account”) by TSPA.

## 1. Grant of Rights.

**TSPA grants you a personal, non-exclusive, non-transferable, limited right to access, use and display the TSP Internet Site located at <http://www.tspadvisor.com> (collectively, the “Site”) provided by TSPA which may include, without limitation content created by or on behalf of TSPA, and any other products or services that TSPA may offer (collectively, the “Service”) on any machine(s) of which you are the primary user. Your Account may not be transferred to another party without the prior written approval from TSPA, and any such permitted transfer of your Account is subject to any restrictions established by TSPA.**

## 2. Changes to this Agreement.

**TSPA has the right to modify this Agreement and impose new or modified policies or practices at any time in its sole and absolute discretion after providing you with 30 days advance notice (via email or other media). Any modification is effective immediately following this 30 day period. Your continued use of the Service after this 30 day period shall be conclusively deemed an acceptance of all such modification(s). Your exclusive right with respect to any dissatisfaction or disagreement with any modifications made to this Agreement, or any policies or practices of TSPA in providing the Service (including, without limitation, terminating or suspending your access to the Service, any change in the content of the Service, or any change in the amount or type of fees charged for the Service) is to terminate your subscription to the Service by complying with Section 11. Such notice will be effective on receipt by TSPA.**

## 3. Your Account.

This Agreement is personal to you, and you agree not to allow any other persons to use your login name or password to access your Account without the prior written consent of TSPA. Only you may use your Account at any particular time, and you

may not resell or redistribute any portion of the Service or provide access to your Account to any third party.

4. Fees and Payment.

Regardless of whether you actually use the Service, TSPA will charge you a standard monthly, quarterly or annual fee, as the case may be, for your ability to access your Account as long as your Account remains active with TSPA. TSPA reserves the right to change its fees at any time for any reason after providing you with 30 days advance notice (via email or other media). From time to time, TSPA may add or modify certain services relating to the Service, and TSPA reserves the right to charge you additional or different fees in consideration for providing such new or modified services to you. You will also be liable for all attorney and collection fees and costs arising from TSPA's efforts to collect any unpaid balances on your Account.

(a) Communications Charges.

**You are responsible for all charges associated with connecting to the Service, including, without limitation, all telephone access lines, telephone and computer equipment necessary to access the Service.**

(b) Use of the Service.

You are responsible for all activities and charges resulting from use of the Service. You will pay all fees, surcharges, applicable taxes and other charges you incur regarding the Service.

(1) Notification of Security Breaches.

**You agree to notify TSPA immediately of any unauthorized use of your password or account or any other breach of security. In the event of a breach of security, you will remain liable for any unauthorized use of the Account with the Service until you notify TSPA by emailing TSPA Customer Service at support@tspadvisor.com.**

(2) Increase in Fees.

**TSPA reserves the right to increase fees, surcharges, or to institute new fees at any time.**

(c) Late Fees.

**If TSPA does not receive the full amount of your Account balance within thirty (30) days after the invoice date or billing date, the lesser of an additional 5% or the highest percentage allowed by law, of the outstanding balance will be added to your bill as a late charge each month and shall be immediately due and payable.**

## 5. Proprietary Rights.

Material accessible to you through the Service may be the subject of intellectual property rights owned or licensed by third parties, including, without limitation, patents, copyrights, trademarks and trade secrets.

### (a) No Reproduction of Others' Proprietary Rights.

Except as expressly permitted by the owner of such proprietary rights, you may not reproduce, redistribute, retransmit, publish or otherwise transfer, or exploit, any such material.

### (b) Ownership of Content on the Site.

TSPA or its suppliers own all rights, title and interest in and to all components of the Service, excluding content owned by third parties that may be accessible through the Service and/or the Internet generally. TSPA's ownership rights in the Service include, but are not limited to, the look and feel of the end-user interfaces associated with the Service, the name of the Service, and the information set forth on the Site. You may not reproduce any content available on the Site without TSPA's prior written consent. In addition, you shall not copy, modify, adapt, reproduce, translate, distribute, reverse engineer, decompile, or disassemble (a) any aspect of the Service that we or our suppliers own, or (b) any service, information or materials supplied by a third party content provider and that you may access through the Service.

## 6. User Information.

### (a) Age.

**You certify to TSPA that you are not a minor, i.e., that you are at least eighteen (18) years of age.**

### (b) Accuracy of Information and Updating Obligation.

**For purposes of identification, billing and marketing, you will provide TSPA with true, accurate, current, complete, and updated information required by the registration to the Service ("Registration Data"), including your legal name, physical address, email address, telephone number(s), and applicable payment method (e.g., credit card number and expiration date). You will notify TSPA within five (5) calendar days of any changes in your Registration Data. Failure to comply with this provision may result in immediate suspension or termination of your right to use the Service.**

### (c) Confidentiality of Passwords.

**You will receive a password and account designation after completing the registration process. You are solely responsible for maintaining the confidentiality of your passwords, and you agree that TSPA will have no obligations with regard thereto.**

7. Privacy and Disclosure.

**Registration Data and certain other information about you is subject to our Privacy Policy. For more information, please see our privacy policy at <http://www.tspadvisor/privacypolicy.html>. TSPA reserves the right to reveal Registration Data or other information in its possession regarding users of the Service in cooperation with a lawful request or an investigation by any government body or governmental agency.**

8. Indemnification.

**Your use of the Service will at all times comply with all applicable laws, rules, and regulations and all rules imposed by TSPA from time to time. You hereby agree to indemnify, defend and hold harmless TSPA and its shareholders, directors, employees, licensors, independent contractors, content or service providers, subsidiaries and affiliates (collectively, the “Affiliates”), from and against any and all claims, proceedings, damages, injuries, liabilities, losses and costs (including, without limitation, attorneys' fees and costs) incurred by the Affiliates in connection with any claim arising out of any breach (whether by action or omission) by you of any of your representations, warranties and covenants contained in this Agreement. You shall cooperate as fully as reasonably required in the defense of any claim. TSPA reserves the right, at its own expense, to assume the exclusive defense and control of any material otherwise subject to indemnification by you, and you shall not in any event settle any matter without the written consent of TSPA.**

9. DISCLAIMERS.

(a) GENERAL.

THE SERVICE (INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS AND INFORMATION ACCESSED BY ANY MEANS THEREOF) IS PROVIDED “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, CONTENT ACCURACY OR THE RESULTS TO BE OBTAINED FROM ITS USE. YOUR USE OF THE SERVICE IS ENTIRELY AT YOUR OWN RISK. IT IS ALSO SOLELY YOUR RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS, USEFULNESS OR VALIDITY OF ALL OPINIONS, ADVICE, SERVICE, PROMOTIONS, ADVERTISEMENTS, AWARDS, PRIZES OR OTHER INFORMATION, AND THE QUALITY AND MERCHANTABILITY OF ALL MERCHANDISE PROVIDED THROUGH THE SERVICE, WHETHER DIRECTLY OR INDIRECTLY, OR ON THE INTERNET GENERALLY. YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SERVICE AND THE INTERNET GENERALLY. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NEITHER TSPA NOR ITS SUPPLIERS MAKE ANY WARRANTIES REGARDING THE SERVICE AND SHALL NOT BE LIABLE FOR THE USE OF THE SERVICE, INCLUDING, WITHOUT LIMITATION, ANY INTERRUPTION OR LACK OF SECURITY OF OR ERROR IN THE SERVICE UNDER ANY CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO TSPA’S NEGLIGENCE. TSPA DOES NOT WARRANT THAT THE OPERATION OF THE SERVICE WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE OR THAT ANY DEFECTS IN THE SERVICE WILL BE CORRECTED IN A TIMELY FASHION.

## (b) FINANCIAL AND INVESTMENT.

TSPA IS NEITHER A REGISTERED INVESTMENT ADVISOR NOR A REGISTERED BROKER-DEALER. BEFORE MAKING ANY INVESTMENT DECISIONS, YOU SHOULD CONTACT A PROFESSIONAL INVESTMENT ADVISOR, LICENSED BROKER OR OTHER LICENSED FINANCIAL ADVISOR. DIFFERENT TYPES OF INVESTMENTS INVOLVE VARYING DEGREES OF RISK, AND THERE CAN BE NO ASSURANCE THAT ANY SPECIFIC INVESTMENT WILL EITHER BE SUITABLE OR PROFITABLE FOR YOUR INVESTMENT PORTFOLIO. YOU SHOULD NOT ASSUME THAT ANY INFORMATION PRESENTED AND/OR MADE AVAILABLE ON THE SITE SERVES AS THE RECEIPT OF, OR A SUBSTITUTE FOR, PERSONALIZED INDIVIDUAL ADVICE FROM AN INVESTMENT PROFESSIONAL.

THE DATA ACCESSIBLE AT THE SITE IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY, AND IS NOT INTENDED AS INVESTMENT ADVICE. NEITHER TSPA NOR ANY OF ITS DATA OR CONTENT PROVIDERS SHALL BE LIABLE FOR ANY ERRORS OR DELAYS IN THE CONTENT, OR FOR ANY ACTIONS TAKEN IN RELIANCE THEREON. ALL DATA PROVIDED BY TSPA IS BASED SOLELY UPON RESEARCH INFORMATION PROVIDED BY THIRD PARTY ANALYSTS. TSPA SHALL NOT BE LIABLE FOR ANY ACTIONS TAKEN IN RELIANCE THEREON. PAST PERFORMANCE OF THE SECURITIES ANALYZED AT THE SITE MAY NOT BE INDICATIVE OF FUTURE RESULTS. THEREFORE, YOU SHOULD NOT ASSUME THAT THE FUTURE PERFORMANCE OF ANY SPECIFIC INVESTMENT, INVESTMENT STRATEGY WILL BE PROFITABLE OR EQUAL TO CORRESPONDING INDICATED PERFORMANCE LEVELS.

TSPA UTILIZES ALGORITHMS AND OTHER MATHEMATICAL FORMULAS TO GENERATE "INVESTMENT SIGNALS." ONLY "STRONG" INVESTMENT SIGNALS (I.E., SIGNALS THAT INDICATE A HIGH PROBABILITY OF POSITIVE RETURN) ARE IDENTIFIED FOR YOUR INVESTMENT CONSIDERATION EACH MONTH. NOTWITHSTANDING THE USE OF THESE MECHANISMS, THERE ARE RELATIVELY RARE OCCASIONS WHEN (1) A TSP FUND THAT HAD A WEAK OR MIXED INVESTMENT SIGNAL WILL HAVE A POSITIVE RETURN AS OF THE END OF THAT PARTICULAR MONTH (I.E., IN WHICH CASE YOU WILL NOT OBTAIN THE BEST RETURN ON YOUR INVESTMENT) AND/OR (2) A TSP FUND THAT HAD A STRONG INVESTMENT SIGNAL WILL HAVE A NEGATIVE RETURN AS OF THE END OF THAT PARTICULAR MONTH (I.E., IN WHICH CASE YOU WILL LOSE MONEY ON YOUR INVESTMENT). ALTHOUGH TSPA EXPECTS THAT THE NUMBER OF THESE OCCURRENCES WILL BE SMALL, SUCH OCCURRENCES CAN RESULT FROM SUDDEN AND/OR UNPREDICTABLE CHANGES IN MARKET CONDITIONS.

IMPLEMENTING INVESTMENT CONSIDERATIONS IDENTIFIED BY TSPA CAN RESULT IN FINANCIAL GAIN OR LOSS. YOU AGREE TO TAKE SOLE RESPONSIBILITY FOR ANY INVESTMENT LOSS RESULTING FROM YOUR IMPLEMENTATION OF THE INVESTMENT CONSIDERATIONS IDENTIFIED ON THE SITE AND WILL HOLD TSPA AND ITS OWNERS, EMPLOYEES, AGENTS AND AFFILIATES HARMLESS FROM ANY AND ALL LIABILITY FOR ANY LOSSES, FINANCIAL OR OTHERWISE, THAT YOU MAY SUFFER AS A RESULT OF YOUR IMPLEMENTATION OF ANY INVESTMENT CONSIDERATIONS IDENTIFIED ON THE SITE.

### 10. LIMITATION OF LIABILITY.

**UNDER NO CIRCUMSTANCES SHALL TSPA OR ITS SUPPLIERS BE LIABLE TO YOU OR ANY THIRD PARTIES FOR ANY SPECIAL, INCIDENTAL PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSSES THAT ARE DIRECTLY OR INDIRECTLY RELATED TO THE USE OF, OR THE INABILITY TO USE, THE SERVICE, ANY OF THE**

**DATA OR OTHER MATERIALS TRANSMITTED THROUGH OR RESIDING ON THE TSPA SITE OR THE INTERNET GENERALLY, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, EVEN IF TSPA OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. IN NO EVENT SHALL TSPA'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, OR CAUSE OF ACTION EXCEED THE AMOUNT RECEIVED BY TSPA DURING THE ONE (1) MONTH IMMEDIATELY PRECEDING THE ACCRUAL OF SUCH CLAIM. YOU UNDERSTAND THAT IF YOU BECOME DISSATISFIED WITH THE SERVICE, YOUR SOLE AND EXCLUSIVE REMEDY WILL BE TO DISCONTINUE THE SERVICE IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.**

11. Termination of Service.

You may terminate your Account by emailing TSPA at support@tspadvisor.com, but you will remain liable for all charges accrued or paid by you up to that time, including the full monthly charges for the month, the full quarterly charges for the quarter or the full annual charges for the year, as the case may be, during which you terminated your Account. In other words, all fees that you pay to TSPA are **NONREFUNDABLE**. TSPA may modify, suspend or terminate your Account immediately for any breach of this Agreement. On termination of this Agreement, TSPA reserves the right to terminate your login name and password and to delete any or all program or data files associated with the Account.

12. Service Rules.

You shall not use the Service in a manner that is prohibited by any law or regulation, or that would facilitate the violation of any law or regulation.

(a) Termination for Failure to Follow Service Rules.

You will abide by the following rules and any other rules established from time to time by TSPA:

(1) Password Confidentiality.

you will not tell others your password or let your Account be used by anyone except yourself or members of your immediate family;

(2) Multiple User Login.

You will not attempt to, or cause others to attempt to, log in more than once at the same time on your Account without prior written permission from TSPA;

(3) Criminal Activity.

You will not use the Service to commit a crime, or to plan, encourage or help others to commit a crime;

(4) Commercial Use.

you will not use any portion of the Service for any commercial activity, whether or not for-profit, but only for your personal, nonpecuniary purposes;

(5) Compliance with Other Laws.

you will not violate any applicable local, state, national or foreign law, including, without limitation, regulations promulgated by any local, state or foreign agency;

(6) Personal Data.

you will not use the Service collect, store or distribute personal data about other users;

(7) Compliance with Rules of Other Interactive Services.

you will not violate the terms and conditions and operating rules of any other interactive service, including, without limitation, other newsgroups and mailing lists or other similar groups or lists and World Wide Web sites;

(8) Disruption of the Service.

you will not interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies, or regulations of networks connected to the Service;

(9) Impersonation.

you will not impersonate a TSPA official, forum leader, guide or host or another user or otherwise falsify any person's name in an email or other communication;; and

(10) Disguising Origin.

you will not forge headers or otherwise manipulate identifiers to disguise the origin of any content transmitted through the Service.

(b) Termination for Violation of Service Rules.

You are bound by the rules that TSPA imposes for proper use of the Service. Your failure to follow these rules, whether set out in this Agreement, or in bulletins posted at various points by TSPA at the Site, all of which are incorporated by this reference, will give TSPA the right to terminate immediately this Agreement and your Account.

(c) Payment for Violation of Service Rules.

**For each violation by you of any of these rules, you will pay TSPA damages to compensate for the lost goodwill such a violation causes, but, where warranted, such as in the case of accidental transmission, TSPA may waive all or part of any applicable charge. Payment by you under this provision shall not prevent TSPA from seeking to obtain other legal remedies against you, including other damages or an injunction.**

### 13. Dispute Resolution.

If there is any dispute, disagreement, claim or other controversy (“Dispute”) that arises out of the use of the Service or the performance, interpretation or application of this Agreement, then the Dispute shall be resolved by an independent arbitrator affiliated with the American Arbitration Association and designated by TSPA (“Arbitrator”). The arbitration of the Dispute shall be conducted in accordance with the then-current arbitration rules of the American Arbitration Association. The decision and award of the Arbitrator shall be final and binding on the parties; provided, however, that the Arbitrator shall have no authority to award punitive damages or any other damages not measured by the prevailing party's actual damages, and shall not make any ruling, finding or award that does not conform to the terms of this Agreement. The arbitration shall be held in Virginia Beach, Virginia. The cost of any arbitration shall be shared equally by the parties, but the Arbitrator shall be authorized to enter, as part of the award to any party, an amount equal to such party's attorneys' fees and other costs related to the arbitration. The provisions of this Section shall not affect any party's right to terminate this Agreement in accordance with its terms. The decision of the Arbitrator may be enforced by the prevailing party, but only in the state or federal courts set forth in Section 14(c), and you and TSPA submit to the jurisdiction of such courts.

### 14. Miscellaneous.

#### (a) Entire Agreement.

This Agreement constitutes the entire agreement between TSPA and you with respect to the Service.

#### (b) GOVERNING LAW.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA, WITHOUT REGARD TO CONFLICTS OF LAWS PROVISIONS.

#### (c) JURISDICTION.

SUBJECT TO THE ARBITRATION REQUIREMENT SET FORTH IN SECTION 13 OF THIS AGREEMENT, THE SOLE AND EXCLUSIVE JURISDICTIONS FOR ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE AN APPROPRIATE STATE COURT LOCATED IN VIRGINIA BEACH, VIRGINIA OR FEDERAL COURT LOCATED IN NORFOLK, VIRGINIA.

#### (d) LIMITATIONS PERIOD.

ANY CAUSE OF ACTION YOU MAY HAVE WITH RESPECT TO THE SERVICE OR THIS AGREEMENT MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CLAIM OR CAUSE OF ACTION ARISES.

#### (e) Severability.

If for any reason a court of competent jurisdiction finds any provision of the Agreement, or portion thereof, to be unenforceable, that provision shall



be enforced to the maximum extent permissible so as to effect the intent of the Agreement, and the remainder of this Agreement shall continue in full force and effect.

(f) Assignment.

You may not assign this Agreement or your rights or obligations hereunder without the prior written consent of TSPA. TSPA may assign this Agreement and its rights and obligations hereunder in its sole discretion and without your consent.

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