

# Northwest Avalanche Center Terms of Use

Last Updated: December 1<sup>st</sup>, 2018

These Terms of Use ("**Terms**") apply to your access to and use of the websites, mobile applications, and other online products and services (collectively, the "**Services**") provided by the Northwest Avalanche Center ("**NWAC**," "**we**," "**us**" or "**our**"). **If you do not agree to these Terms, including the mandatory arbitration provision and class action waiver in Section 13, do not use our Services.**

If you have any questions about these Terms or our Services, please contact us at [info@nwac.us](mailto:info@nwac.us).

## 1 Privacy Policy

For information about how we collect, use, and share information about you, please see our Privacy Policy here: <https://www.nwac.us/privacy-policy/>

## 2 Eligibility

You must be at least 13 years of age to use our Services. If you are under 18 years of age (or the age of legal majority where you live), you may use our Services only under the supervision of a parent or legal guardian who agrees to be bound by these Terms. If you are a parent or legal guardian of a user under the age of 18 (or the age of legal majority), you agree to be fully responsible for the acts or omissions of such user in relation to our Services. If you use our Services on behalf of another person or entity, (a) all references to "you" in these Terms will include that person or entity, (b) you represent that you are authorized to accept these Terms on that person's or entity's behalf, and (c) in the event you or that person or entity violates these Terms, that person or entity agrees to be responsible to us.

## 3 User Content

Our Services may allow you and other users to create, submit, post and share content, including text, photos, videos, and other materials (collectively, "**User Content**"). Except for the license you grant below, you retain all rights in and to your User Content, as between you and NWAC.

You grant NWAC a perpetual, irrevocable, nonexclusive, royalty-free, worldwide, fully-paid, sublicensable license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, publicly perform, and display your User Content and any name, username, or likeness provided in connection with your User Content, in all media formats and channels now known or later developed, without acknowledgment or compensation to you. When you submit, post, or otherwise share User Content on or through our Services, you understand that your User Content and any associated information you provide (such as your name) may be visible to the public.

You may not create, submit, post, or share any User Content that violates these Terms or for which you do not have all of the rights necessary to grant us the license set forth above. You represent and warrant that your User Content, and our use of such content as permitted by these Terms, will not violate any rights of or cause injury to any person or entity. Although we have no obligation to screen, edit, or monitor User Content, we may delete or remove all or portions of your User Content at any time and for any reason, with or without notice.

#### 4 Prohibited Conduct and Content

You will not violate any applicable law, contract, intellectual property, or other third-party right or commit a tort, and you are solely responsible for your conduct while using our Services. You will not:

- Engage in any harassing, threatening, intimidating, predatory, or stalking conduct;
- Impersonate, submit, or post on behalf of any person or entity, or otherwise misrepresent your affiliation with a person or entity;
- Sell, resell, or commercially use our Services;
- Copy, reproduce, distribute, publicly perform, or publicly display all or portions of our Services, except as expressly permitted by us or our licensors;
- Modify our Services, remove any proprietary rights notices or markings, or otherwise make any derivative works based upon our Services;
- Use our Services other than for their intended purpose and in any manner that could interfere with, disrupt, negatively affect, or inhibit other users from fully enjoying our Services or that could damage, disable, overburden, or impair the functioning of our Services in any manner;
- Reverse engineer any aspect of our Services or do anything that might discover source code or that might bypass or circumvent measures employed to prevent or limit access to any part of our Services;
- Attempt to circumvent any content-filtering techniques we employ or attempt to access any feature or area of our Services that you are not authorized to access;
- Use any data mining, robots, or similar data gathering or extraction methods designed to scrape or extract data from our Services;
- Develop or use any applications that interact with our Services without our prior written consent;
- Send, distribute, or post spam, unsolicited or bulk commercial electronic communications, chain letters, or pyramid schemes;
- Bypass or ignore instructions contained in our robots.txt file; or
- Use our Services for any illegal, unintended, or unauthorized purpose, or engage in, encourage, or promote any activity that violates these Terms.

Further, you may submit, post, or otherwise share only User Content that is non-confidential and that you have all necessary rights to disclose. You may not create, submit, post, or share any User Content that:

- Is unlawful, libelous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, or fraudulent;



- Would constitute, encourage, or provide instructions for a criminal offense, violate the rights of any party, or otherwise create liability or violate any local, state, national or international law;
- May infringe any patent, trademark, trade secret, copyright, or other intellectual or proprietary right of any person or entity;
- Contains or depicts any statements, remarks, or claims that do not reflect your honest views and experiences;
- Impersonates or misrepresents your affiliation with any person or entity;
- Contains any unsolicited promotions, political campaigning, advertising, or solicitations;
- Contains any private or personal information of a third party without such third party's consent;
- Contains any viruses, corrupted data, or other harmful, disruptive, or destructive files or content;  
or
- Is, in our sole judgment, objectionable or that restricts or inhibits any person or entity from using or enjoying our Services, or that may expose NWAC or others to any harm or liability of any type.

## 5 Ownership; Limited License

The Services, including the text, graphics, images, photos, videos, illustrations, and other content contained therein, are owned by NWAC or our licensors, users, or other third parties and are protected under both United States and foreign laws. Except as explicitly stated in these Terms, all rights in and to the Services are reserved by us or our licensors. Subject to your compliance with these Terms, you are hereby granted a limited, nonexclusive, nontransferable, non-sublicensable, revocable license to access and use our Services for your own personal, non-commercial use. Any use of the Services other than as specifically authorized herein, without our prior written permission, is strictly prohibited, will terminate the license granted to you in this section, and may subject you to additional penalties under applicable law.

## 6 Trademarks

The "Northwest Avalanche Center," "NWAC," and our logos, product and service names, slogans, and the look and feel of our Services are trademarks of NWAC and may not be copied, imitated, or used, in whole or in part, without our prior written permission. All other trademarks, registered trademarks, product and service names, and company names and logos mentioned on the Services are the property of their respective owners. Reference to any products, services, processes, or other information, by trade name, trademark, manufacturer, supplier, or otherwise does not constitute or imply endorsement, sponsorship, or recommendation by NWAC.

## 7 Feedback

Any questions, comments, suggestions, ideas, original or creative materials, or other information about NWAC, our products or services, or the Services that you submit, post, or otherwise communicate to us (collectively, "**Feedback**") is non-confidential and will become the sole property of NWAC. We will own exclusive rights, including all intellectual property rights, in and to Feedback and will be entitled to the



unrestricted use and dissemination of Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

## **8 Third-Party Content**

We may provide information about third-party products, services, activities, or events, or we may allow third parties to make their content and information available on or through the Services (collectively, "**Third-Party Content**"). We provide Third-Party Content as a service to those interested in such content. Your dealings or correspondence with third parties and your use of or interaction with any Third-Party Content are solely between you and the third party. NWAC does not control or endorse, and makes no representations or warranties regarding, any Third-Party Content. Your access to and use of Third-Party Content is at your own risk.

## **9 Indemnification**

To the fullest extent permitted by applicable law, you will indemnify, defend, and hold harmless NWAC and our officers, directors, advisors, agents, partners, and employees (individually and collectively, the "**NWAC Parties**") from and against any loss, liability, claim, demand, damages, expenses, or costs ("**Claims**") arising out of or related to (a) your access to or use of our Services; (b) Feedback you provide; (c) your violation of these Terms; (d) your violation, misappropriation, or infringement of any rights of any person or entity (including intellectual property rights or privacy rights); or (e) your conduct in connection with our Services. You agree to promptly notify the NWAC Parties of any third-party Claims, cooperate with the NWAC Parties in defending such Claims, and pay all fees, costs, and expenses associated with defending such Claims (including reasonable attorneys' fees). You also agree that the NWAC Parties will have control of the defense or settlement, at NWAC's sole option, of any third-party Claims. This indemnity is in addition to, and not in lieu of, any other indemnities set forth in a written agreement between you and NWAC or any other NWAC Parties.

## **10 Disclaimers**

**Your use of our Services is at your sole risk. Except as otherwise provided in a writing by NWAC, the Services are provided "as is" and "as available" without warranties of any kind, either express or implied, including implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. In addition, NWAC does not represent or warrant that our Services are accurate, complete, reliable, current, or error-free. While NWAC attempts to make your use of the Services safe, NWAC cannot and does not represent or warrant that the Services or our servers are free of viruses or other harmful components. You assume the entire risk as to the quality and performance of the Services.**

## **11 Limitation of Liability**

**To the fullest extent permitted by applicable law, NWAC and the other NWAC Parties will not be liable to you under any theory of liability—whether based in contract, tort, negligence, strict liability, warranty, or otherwise—for any indirect, consequential, exemplary, incidental, punitive, or special damages or lost profits, even if NWAC or other NWAC Parties have been advised of the possibility of such damages.**



**The total liability of NWAC and the other NWAC Parties, for any claim arising out of or relating to these Terms or our Services, regardless of the form of the action, is limited to the amount you pay to NWAC to use our Services.**

**The limitations set forth in this section will not limit or exclude liability for the gross negligence, fraud or intentional misconduct of NWAC or the other NWAC Parties or for any other matters in which liability cannot be excluded or limited under applicable law. Additionally, some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.**

## **12 Transfer and Processing Data**

By using our Services, you consent to the processing, transfer, and storage of information about you in and to the United States and other countries, where you may not have the same rights and protections as you do under local law.

## **13 Dispute Resolution; Binding Arbitration**

**Please read the following section carefully because it requires you to waive your right to a jury trial and arbitrate certain disputes and claims with NWAC and limits the manner in which you can seek relief from us. No class or representative actions or arbitrations are allowed under these Terms.**

Except for small claims disputes in which you or NWAC seek to bring an individual action in small claims court located in the county of your billing address or disputes in which you or NWAC seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, **you and NWAC waive your rights to a jury trial and to have any dispute arising out of or related to these Terms or our Services resolved in court.** Instead, for any dispute that you have against NWAC, you agree to first contact NWAC and attempt to resolve the claim informally by sending a written notice of your claim ("**Notice**") to NWAC by email at [info@nwac.us](mailto:info@nwac.us) with "Claim Resolution" in the subject line or by certified mail addressed to: Northwest Avalanche Center, 15600 NE 8th Street, Suite B1-711, Bellevue, WA 98008. The Notice must (a) include your name, residence address, email address, and telephone number; (b) describe the nature and basis of the claim; and (c) set forth the specific relief sought. Our notice to you will be similar in form to that described above. If you and NWAC cannot reach an agreement to resolve the claim within thirty (30) days after such Notice is received, then either party may, as appropriate in accordance with this section, submit the dispute to binding arbitration administered by JAMS or, where applicable, in court. All submitted disputes will be resolved through confidential binding arbitration held in King County, Washington or may be conducted telephonically or via video conference for disputes alleging damages less than \$10,000. in accordance with the Streamlined Arbitration Rules and Procedures ("**Rules**") of the Judicial Arbitration and Mediation Services ("**JAMS**"), which are available on the [JAMS website](#) and are hereby incorporated by reference. You either acknowledge and agree that you have read and understand the rules of JAMS or waive your opportunity to read the rules of JAMS and any claim that the rules of JAMS are unfair or should not apply for any reason.

**You and NWAC agree that any dispute arising out of or related to these Terms or our Services is personal to you and NWAC and that any such dispute will be resolved solely through individual arbitration and will not be brought as a class arbitration, class action or any other type of representative proceeding.**



You and NWAC agree that these Terms affect interstate commerce and that the enforceability of this Section 13 will be substantively and procedurally governed by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* (the "FAA"), to the maximum extent permitted by applicable law. As limited by the FAA, these Terms and the JAMS Rules, the arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any dispute and to grant any remedy that would otherwise be available in court, including the power to determine the question of arbitrability; provided, however, that the arbitrator does not have the authority to conduct a class arbitration or a representative action, which is prohibited by these Terms. The arbitrator may only conduct an individual arbitration and may not consolidate more than one individual's claims, preside over any type of class or representative proceeding, or preside over any proceeding involving more than one individual.

The arbitrators, NWAC, and you will maintain the confidentiality of any proceedings, including any and all information gathered, prepared, and presented for purposes of the arbitration or related to the dispute(s) therein. The arbitrators will have the authority to make appropriate rulings to safeguard that confidentiality, unless applicable law provides to the contrary.

You and NWAC agree that for any arbitration you initiate, you will pay the filing fee and NWAC will pay the remaining JAMS fees and costs. For any arbitration initiated by NWAC, NWAC will pay all JAMS fees and costs. You and NWAC agree that the state or federal courts of the State of Washington and the United States sitting in King County, Washington have exclusive jurisdiction over any appeals and the enforcement of an arbitration award.

**Any claim arising out of or related to these Terms or our Services must be filed within one (1) year after such claim arose; otherwise, such claim is permanently barred, which means that you and NWAC will not have the right to assert the claim.**

You have the right to opt out of binding arbitration within thirty (30) days of the date you first accepted the terms of this Section 13 by sending a written opt-out notice to NWAC by email at [info@nwac.us](mailto:info@nwac.us) with "Arbitration Opt-out" in the subject line. In order to be effective, the opt-out notice must include your full name and address and must clearly indicate your intent to opt out of binding arbitration. By opting out of binding arbitration, you are agreeing to resolve disputes in accordance with Section 14.

If any portion of this arbitration section is found to be unenforceable or unlawful for any reason, (i) the unenforceable or unlawful provision will be severed from these Terms; (ii) severance of the unenforceable or unlawful provision will have no impact whatsoever on the remainder of this arbitration section or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to this arbitration section; and (iii) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims will be stayed pending the outcome of any individual claims in arbitration. Further, if any part of this arbitration section is found to prohibit an individual claim seeking public injunctive relief, that provision will have no effect to the extent such relief is allowed to be sought out of arbitration, and the remainder of this section will be enforceable.

## **14 Governing Law and Venue**

Any dispute arising out of or related to these Terms and your use of our Services will be governed by and construed and enforced in accordance with the laws of Washington, without regard to conflict of law rules



or principles (whether of Washington or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. Any dispute between the parties that is not subject to arbitration as set forth in these Terms or cannot be heard in small claims court will be resolved in the state or federal courts of Washington and the United States, respectively, sitting in King County, Washington.

## **15 Modifying and Terminating our Services**

We reserve the right to modify the Services or to suspend or stop providing all or portions of the Services at any time. You also have the right to stop using the Services at any time. We are not responsible for any loss or harm related to your inability to access or use the Services.

## **16 Changes to these Terms**

We may make changes to these Terms from time to time. If we make any changes, we will provide you with notice of such changes, such as by sending an email notification, providing notice through the Services, or updating the “Last Updated” date above. Unless we say otherwise in our notice, the amended Terms will be effective immediately and your continued access to and use of our Services after we provide notice will confirm your acceptance of the changes. If you do not agree to any of the amended terms and conditions set forth in the amended Terms, you must stop using our Services.

## **17 Interpretation**

In these terms, the terms “including” and “include” will mean “including but not limited to” and references to a “Section” will mean a section of these Terms, unless otherwise expressly stated. All section titles in these Terms are for convenience only and have no legal or contractual effect.

## **18 Severability**

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

## **19 Miscellaneous**

The failure of NWAC to exercise or enforce any right or provision of these Terms will not operate as a waiver of such right or provision. Except as otherwise provided in these Terms, these Terms are intended solely for the benefit of the parties and are not intended to confer third-party beneficiary rights upon any other person or entity. You agree that communications and transactions between us may be conducted electronically.

