

Terms of Service Agreement

1. Introduction

1.1. Nature of this Agreement.

- 1.1.1. This Agreement is an electronic contract.
- 1.1.2. This is an Agreement between you, called “**you**” in this Agreement, and a British Columbia corporation called Caelyx Creative Inc., called “**Caelyx Creative**” in this Agreement. “**We**”, “**us**”, and “**our**” also mean Caelyx Creative. Any time this Agreement says a “**Party**,” or the “**Parties**,” it means it applies to either or both of you and Caelyx Creative.
- 1.1.3. This Agreement affects your legal rights, and you should read it carefully to make sure you know what you are signing.
- 1.1.4. This Agreement also sets out what you have to do as a User, what you can’t do, and what Caelyx Creative has to do or won’t do.
- 1.1.5. This Agreement sets out Caelyx Creative’s relationship with you with respect to the Website and the Services, so you should read it carefully before signing.

1.2. When this Agreement applies.

- 1.2.1. Clicking “I Agree” at the end is the same as signing a paper contract, and you will be bound by the terms of this Agreement.
- 1.2.2. By accessing the Website or using the Services, you agree to be bound by the terms of this Agreement applicable to the Website and the Services that are accessible without logging in.
- 1.2.3. By logging in or otherwise actively indicating your agreement, you agree to be bound by all of the terms of this Agreement without exception.
- 1.2.4. Notwithstanding the foregoing, you are prohibited from any unauthorized or prohibited use of the Website or Services, whether or not you have indicated your agreement to be bound by this Agreement.
- 1.2.5. If you do not agree with or accept any of these terms, you should cease using the Services immediately and leave the Website.

1.3. Subject of this Agreement.

1.3.1. The Gingerotica web site at <http://www.gingerotica.com>, including subdomains and mirrors authorized by Caelyx Creative as part of Gingerotica, is called the “**Website.**”

1.3.2. The services provided by Caelyx Creative, including through the Website, are called the “**Services.**”

1.3.3. “**Content**” means any text, images, video, audio or other multimedia content, software or other information or material submitted to, subsisting on or directly accessible from the Website or via the Services.

1.3.4. Anyone who uses the Services, including you, is a “**User.**”

1.3.5. These terms of use explain how you may use the Website and the Services.

1.4. There are certain policies that are separate documents, like the Privacy Policy and Additional Terms [*insert hyperlink*], which are considered part of this Agreement. Please make sure you read them too, as you are agreeing to be bound by them when you sign this Agreement.

1.5. You must be at least 19 years old and legally capable of entering this Agreement and completing transactions.

1.6. This Site is intended for and directed to residents of Canada over the age of 19 years, or residents of other jurisdictions where the Services are legal and in which you are of legal age in your jurisdiction..

1.7. If you have any questions about this website, please contact Caelyx Creative at info@gingerotica.com.

1.8. Please send any legal notices to Caelyx Creative at:

Caelyx Creative Inc.

Vancouver, British Columbia

V_____ Canada

2. What can you do, what do you have to do, and what are you not allowed to do?

2.1. Permitted Uses (What you can do).

2.1.1. You may use the Services for your personal use only, and not for any other use of yours, and not for any use whatsoever of anyone else's.

2.2. Content.

2.2.1. Where any Content is made available for downloading via the Services, this is our copyrighted work and/or that of our licensors.

2.2.2. All Content that is made available for downloading is only made available for your personal use in a non-commercial manner.

2.2.3. Any reproduction or redistribution of Content not in accordance with this Agreement is hereby prohibited, whether or not such specific prohibition is expressly set out in this Agreement, and may result in severe civil and criminal penalties.

2.2.4. Our Content is warranted only to the extent expressly required by British Columbia law or according to this Agreement, and we hereby disclaim all other warranties, conditions and other terms (whether express or implied) with regard to the Content, to the extent permissible by law. In no event shall our aggregate liability in respect of any Content exceed the limitations of liability in this Agreement.

2.3. Licence and Intellectual Property.

2.3.1. The Website, Services, and all intellectual property rights therein (including without limitation any Content) are owned by us and/or our licensors.

2.3.2. We and our licensors reserve all our intellectual property rights (which include without limitation all copyright, trademarks, domain names, design rights, database rights, patents and all other intellectual property rights of any kind) whether registered or unregistered anywhere in the world.

2.3.3. Without limiting the generality of the foregoing, all trademarks relating to Gingerotica, Caelyx Creative, or that are otherwise displayed or used in conjunction with the Services are our trademarks or are used by us under

licence and nothing in this Agreement grants you any rights at law or equity with respect to such trademarks.

- 2.3.4. You agree not to adjust to try to circumvent or delete any intellectual property notices contained on the Website and in particular in any digital rights or other security technology embedded or contained within any Content.
- 2.3.5. Caelyx Creative hereby grants to you a personal, non-transferable and non-exclusive license to access, read and download one copy of the Content (or to such portion thereof) to the extent that Caelyx Creative has sufficient right to grant such licence, provided you are and continue to be in compliance with the terms of this Agreement, including any Additional Terms, subject to the following:
 - 2.3.5.1. Some Content is provided free of charge, and may be labelled as a preview, sample, or with some similar label, and your licence to such Content is as set out above and for the period of time such Content is so available; and
 - 2.3.5.2. Some Content is only made available once you have logged in, and may be labelled as member, subscription, or similar Content, and your licence to such Content is as set out above, but only while your subscription dues are fully paid and your membership is current and in good standing.
- 2.3.6. By posting any information or content (called “**Your-Content**”) as part of the Services, you grant to Caelyx Creative an irrevocable, perpetual, non-exclusive, transferable, sub-licensable, worldwide, royalty-free right and license to use, copy, store, display, modify and distribute Your-Content, including preparing derivative works and incorporating Your-Content into other works.
- 2.3.7. You represent and warrant that any posting and use of Your-Content by Caelyx Creative will not infringe or violate the right of any third party.
- 2.4. Your Obligations (What you have to do).
 - 2.4.1. You have to keep your account information accurate and up-to-date. you have to tell Caelyx Creative when your contact information changes. Because Caelyx Creative will send any notices to you by e-mail, it is your

responsibility to make sure that Caelyx Creative has the correct e-mail address.

- 2.4.2. You agree to submit your first and last name as they appear on legal documentation provided by your government, which will be protected by Caelyx Creative in accordance with the Privacy Policy.
 - 2.4.3. You have to comply with the proper security practices described throughout this Agreement, including below under section 5.
 - 2.4.4. You have to complete any payment for the Services that you have agreed to pay.
 - 2.4.5. You agree that anything you post or otherwise communicate through the Services is (i) accurate and not confidential; (ii) not in violation of any laws; (iii) free of viruses, adware, spyware, worms, or other malicious code; and (iv) may be processed by Caelyx Creative in accordance with the Privacy Policy.
- 2.5. Prohibited Uses (What you can't do).
- 2.5.1. You agree and promise that you will not:
 - a) use the Services for any commercial use, which is strictly prohibited;
 - b) interfere with the proper working of Caelyx Creative's computer systems, including but not limited to the Website and any software or hardware related to the Services, (the "**Systems**") or the activities facilitated by the Systems, meaning that, among other things, you won't expose the Systems to or otherwise use, disseminate or propagate malware, automated software, or any other unauthorized software or hardware tools;
 - c) allow someone else to use your account, meaning that, among other things, you won't disclose your login or account information, including but not limited to your password or any other information unique to or identifying a user as you that is required to access the Systems or the Services, and that you won't assign this Agreement or your account to any other person, even temporarily, without the written consent from Caelyx Creative;

- d) disclose confidential information, which is information that is not publicly available and that was made available to you by Caelyx Creative or by other Users, and you will not violate other Users' privacy;
- e) use any information from other Users for purposes of spamming, harassment, invasion of privacy or otherwise objectionable conduct;
- f) bully, defame, slander, libel, or harass any other User;
- g) make, communicate, or publish threatening, harassing, abusive, or otherwise objectionable statements or comments to or about any other User;
- h) defame or disparage anybody or make comments of an obscene, derogatory or offensive manner or otherwise use the Services or the Content in a way that brings us or any third party into disrepute or causes us to be liable to any third party;
- i) misrepresent any material facts or otherwise do anything fraudulent;
- j) infringe Caelyx Creative's or anyone else's intellectual property rights, which includes, among other things, making any copies of, making derivative works from, redistributing or publishing, or reverse engineering the Services or Content;
- k) infringe other Users' intellectual property rights, which includes, among other things, making any copies of, making derivative works from, redistributing or publishing, or reverse engineering anything to which they have intellectual property rights;
- l) expose Caelyx Creative to any kind of harm or claims relating to anyone else's intellectual property rights, which includes, among other things, making any copies of, making derivative works from, redistributing or publishing, or reverse engineering anything to which they have intellectual property rights; or
- m) do anything to bring harm to Caelyx Creative, including but not limited to:
 - i. breaking any law, rule, or regulation;

- ii. doing or facilitating anything obscene or illegal, including providing access to anything obscene or illegal;
- iii. creating liability or business difficulty for Caelyx Creative; or
- iv. linking to anything to which you don't have a right to link.

3. What happens if you do something prohibited?

- 3.1. If you do something prohibited by law or in breach of this Agreement, Caelyx Creative may immediately, and without notice or compensation, terminate, suspend, or impose conditions on your account in Caelyx Creative sole, absolute, and uncontrolled discretion.
- 3.2. **Indemnity. In the event you expose Caelyx Creative to a claim or suit from another User, from any third party, or from a government or regulatory body, for any act or failure to act on your part, whether or not negligent or wilful, you agree to indemnify Caelyx Creative, its directors, officers, employees, and assigns from such claims, and any related damages, costs (including legal costs and expenses on a solicitor and own client basis), expenses, penalties, and settlements.**
 - 3.2.1. **This means that you won't get Caelyx Creative in trouble, either on purpose or by accident, and if you do, you'll pay any penalties, settlements or damages found, and you'll also pay for Caelyx Creative's lawyers. Caelyx Creative is telling you right here that this is a complex legal clause with important effects on your rights and obligations, and that you should get a lawyer to review it with you.**

4. What if something goes wrong? Whose fault is it?

- 4.1. **The products offered and sold via the Services are provided "as is". Except to the limit of warranties expressly stated as applicable and to the extent expressly stated, Caelyx Creative makes no warranties, including without limitation, implied warranties or conditions of merchantability, fitness for a particular purpose, or non-infringement of intellectual property or other violation of rights.**
- 4.2. **In no event shall Caelyx Creative or its suppliers be liable for any damages arising out of the use or inability to use any products available through the Services, to the extent permissible by law.**

- 4.3. **Caelyx Creative assumes no responsibility for the conduct of any User communicating through the Services in any manner, and assumes no responsibility for monitoring the Services for inappropriate content or conduct.**
- 4.4. **Users are responsible and liable for the consequences of their own communications about, with, and between them and other Users and, therefore you and the other Users are responsible for your own actions, whether or not mediated or facilitated by Caelyx Creative.**
- 4.5. Reporting. Users may report a problem with another User's communications including posted content, subject to and in accordance with the following:
- 4.5.1. Report any suspicious or inappropriate communications to Caelyx Creative by e-mailing support@gingerotica.com.
- 4.5.2. Caelyx Creative has no obligation to modify or remove inappropriate communication or content.
- 4.5.3. Caelyx Creative may, but need not, edit, refuse to post, or remove anything posted by any User at any time, and Caelyx Creative is under no obligation to give reasons for such action.
- 4.5.4. You will fully cooperate with Caelyx Creative to investigate any suspected unlawful, fraudulent or improper activity, including, without limitation, granting Caelyx Creative access to any password-protected portion of your account.

5. What about Privacy and Security?

- 5.1. Privacy.
- 5.1.1. Caelyx Creative is committed to protecting your privacy, as set out in the Privacy Policy [[insert hyperlink here](#)], and in accordance with the *Personal Information Protection Act (British Columbia)*.
- 5.1.2. You hereby provide irrevocable consent to Caelyx Creative monitoring and recording your communications through the Services for internal purposes, including security purposes and business purposes, subject to the Privacy Policy.

- 5.1.3. Caelyx Creative will never sell your information, or use or disclose it for any purpose other than the purpose for which it was collected, unless compelled by law, or required in order to protect its rights under law and so permitted.
- 5.1.4. Caelyx Creative may use your information for its own marketing purposes, but will not sell or disclose it to any third party except as necessary in a confidential manner to provide the Services, such as to process transactions.
- 5.1.5. Caelyx Creative declares to you that some of the servers for the Services may be located in the United States of America or elsewhere, and disclosure of information stored on or transmitted through those servers could be compelled under the *USA PATRIOT Act*; although it is highly unlikely for something like that to happen, it's important for you to know.

5.2. Security.

- 5.2.1. While nothing is 100% secure, Caelyx Creative takes steps to keep information as secure as reasonably possible.
- 5.2.2. Caelyx Creative contracts the development and maintenance of the website and data processing to security service providers that use current, industry-standard security protocols to protect your information.
- 5.2.3. Because there is no perfect computer security system, you have certain obligations:
 - 5.2.3.1. You have to use a unique password that you don't use for other websites or computer systems.
 - 5.2.3.2. You have to protect your login information, which is the password itself, and the combination of your password and username.
 - 5.2.3.3. You are not allowed to share your password with or disclose it to any other person.
 - 5.2.3.4. You agree to notify Caelyx Creative at support@gingerotica.com promptly in the event of any known or suspected loss, theft, or unauthorized disclosure of your account information, including but not limited to your password, personal information, or credit card or other payment information.

6. Can this Agreement be changed?

- 6.1. Caelyx Creative may update this Agreement or any policies or documents incorporated into it by reference, such updates to agreement or policies amending this Agreement or the policies effective on the 15th calendar day after being posted and a notice being sent to you by email to the email address in your profile.
- 6.2. If you don't keep your email address up to date, you may not receive the notice and the amendments will be effective anyway, so keep your email address updated.

7. How does this Agreement end?

7.1. Either party may terminate.

7.1.1. You may terminate your account at any time for any reason.

7.1.2. Caelyx Creative reserves the right to stop offering or supporting the Services or a particular product or part of the Services at any time, at which point your licence to the Content or the applicable part thereof will automatically be terminated.

7.1.2.1. In such event, Caelyx Creative shall not be required to provide refunds, benefits or other compensation to you in connection with such discontinued Services.

7.1.3. Caelyx Creative reserves the rights to terminate your account without notice or compensation if it has been inactive for 90 consecutive days. **[Note: Levi to consider this.]**

7.2. Upon termination of your account for any reason, any licence you have been granted to the Content terminates.

8. The following are some basic but necessary legal statements about this Agreement. Please read them.

8.1. Jurisdiction.

8.1.1. You and Caelyx Creative agree that this Agreement is governed by and interpreted according to the laws of the Province of British Columbia, Canada.

8.1.2. You and Caelyx Creative agree to deal with any disputes or hear any legal matters in the courts of the Province of British Columbia, Canada.

- 8.2. Severability. Should any provision of this Agreement be found to be invalid or unenforceable by the Court, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and such invalid provision shall be deemed severed and the remainder of this Agreement shall remain in full force and effect.
- 8.3. Survival. Sections 2.4.3 (your promise to adhere to proper security practices), 2.4.4 (your promise to complete transactions), 2.5 (Prohibited Uses), 3.2 (Indemnity), 4 (Limited Liability), and 5.2.3.4 (your promise to notify Caelyx Creative if your account or password becomes compromised) shall survive the termination or expiry of this Agreement.
- 8.4. Assignment. Caelyx Creative may assign this Agreement on reasonable notice to you, which notice will be provided by email to the email address in your profile. you may not assign this Agreement.
- 8.5. Enurement. This Agreement shall enure to the benefit of and be binding upon each of Caelyx Creative and you and Caelyx Creative's and your respective successors and permitted assigns.
- 8.6. Waiver.
- 8.6.1. Any waiver of, breach, non-compliance, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given.
- 8.6.2. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right.
- 8.6.3. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.
- 8.7. Force Majeure.
- 8.7.1. In the event that the performance of the terms of this Agreement by a Party is delayed, hindered or prevented by a Force Majeure, the Party may at its option suspend this Agreement, in whole or in part, without liability or account thereof.
- 8.7.2. For the purposes of this Agreement, "**Force Majeure**" means any cause beyond the reasonable control of the Party seeking to take advantage of such

Force Majeure, including, without limitation, any act of nature, acts of any government authority, war, fire, unanticipated loads or transactions in Caelyx Creative' web site or systems, breaches of security, malware, faults in third-party software or equipment, or degradation or failure of telecommunications services.

- 8.8. Independent Contractors. You and Caelyx Creative agree that the Parties are independent contractors and that there is no joint venture, employment, partnership, or agency relationship.