



SCAPENATION.COM  
the adventure begins

## SCAPENATION.COM USER AGREEMENT

UPDATED: FEBRUARY 2, 2009

### 1. INTRODUCTION

This User Agreement applies to the Scapenation.com website ("the Site"), which is operated by Tween Brands, Inc. and/or its affiliated entities (collectively, "Tween Brands"). Tween Brands is referred to herein as "we," "us" or "our." In this User Agreement, "you" or "your" means any person or entity using this Site, provided that if such person is under 18 years of age, it also includes such person's parent or legal guardian.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SITE. This User Agreement constitutes a contract between you and Tween Brands and applies both to your use of information, materials, functions and other content at the Site which do not require registration to access (the "Public Content") and to your use of information, materials, functions and other content that do require registration to access (the "Member Content"). Public Content and Member Content are collectively referred to herein as "Content." By using the Site, by purchasing from the Site, or by registering, you signify your agreement to this User Agreement. If you do not agree to this User Agreement, you may not use the Site.

As explained in more detail below in Section 13, entitled "Amendment," Tween Brands reserves the right to amend, update or modify this User Agreement at any time.

### 2. ACCOUNTS

**CREATION.** When you create an account ("Account") by registering for this Site, you agree to provide and maintain true, accurate, current and complete information about yourself. You shall not impersonate any person or entity or misrepresent your identity or age in completing the registration form or updating your registration data in the future. The contents of an Account cannot be combined with any other Account.

**TERMINATION.** Your Account will remain active until suspended or terminated in accordance with this User Agreement. Your Account may be suspended in part or in full, or terminated, in any of the following circumstances: discontinuance of the Site by Tween Brands, your failure to comply with this User Agreement or any special terms related to a particular service, your infringement of intellectual property rights or violation of other laws with respect to the Site, a period of inactivity with respect to your Account which exceeds 6 months, or as reasonably determined by Tween Brands. **Upon termination of your Account, you shall not be entitled to a refund of any monies spent by you, or others on your behalf, in connection with the Site.**

**SECURITY.** You are solely responsible for maintaining the confidentiality of your Account, including your username and password, and for all activities that occur through the use of your Account. You agree to exit your Account at the end of each session and to notify Tween Brands immediately of any unauthorized use of your Account or breach of security affecting your Account. You may be issued a new password or username or required to change your password or username from time to time.



## SCAPENATION.COM USER AGREEMENT

### 3. LICENSE FOR USE OF CONTENT

This User Agreement grants to you a limited, personal, non-transferrable and non-exclusive license to access and use the Site and the Content, through your Account, for your personal, non-commercial use. Unless specifically provided for herein, you agree that no portion of the Site or the Content may be accessed, used, reproduced, duplicated, copied or otherwise exploited by you for any other purpose. Without limiting the generality of the foregoing, you agree that your license to use the Site and its Contents is conditioned upon your compliance with the following provisions:

- (a) you must not make any derivative work or other modifications to the Content other than as expressly permitted by us;
- (b) you must not use the Content or the Site in a manner that is defamatory, abusive, harassing, threatening, or an invasion of a right of privacy of another person; is bigoted, hateful, or racially or otherwise offensive; is violent, vulgar, obscene, pornographic or otherwise sexually explicit; or otherwise harms or can reasonably be expected to harm any person or entity;
- (c) you must not use the Content or the Site in a manner that is illegal or encourages or advocates illegal activity or the discussion of illegal activities with the intent to commit them, including making any Submission that is, or represents an attempt to engage in, child pornography, stalking, sexual assault, fraud, trafficking in obscene or stolen material, drug dealing and/or drug abuse, harassment, theft, or conspiracy to commit any criminal activity;
- (d) you must not use the Content or the Site in a manner that infringes or violates any right of a third party including:
  - (i) copyright, patent, trademark, trade secret or other proprietary or contractual rights;
  - (ii) right of privacy (specifically, you must not distribute another person's personal information of any kind without their express permission) or publicity; or
  - (iii) any confidentiality obligation;
- (e) you must not use the Content or the Site for the commercial benefit of you or a third party, including without limitation advertising or offering to sell any products, services or otherwise (whether or not for profit), or soliciting others (including solicitations for contributions or donations);
- (f) you must not use bots, hacks, cheat codes or similar mechanisms in conjunction with the Site, or otherwise circumvent the Site's security or use the Site in a fraudulent manner;
- (g) you must not use data mining tools or similar data-gathering or extraction devices in conjunction with the Site;
- (h) you must not use any framing techniques to enclose any trademark, logo, trade name or other content (including images, text, page layout or form) of ours or our licensors;
- (i) you must not use meta tags or any other hidden text utilizing the trademarks, logos, trade names or content of Tween Brands or its licensors; or
- (j) you must not distribute or otherwise exploit the software associated with or downloaded from the Site or decompile, reverse engineer, disassemble or otherwise reduce such software to a human-readable form;
- (k) you must not distribute a virus or other harmful component, or otherwise tamper with, impair or damage the Site or any connected network, or otherwise interfere with any person or entity's use or enjoyment of the Site; and
- (l) you must not violate any specific restrictions applicable to a Public Forum or engage in behavior that is antisocial, disruptive, or destructive, including "flaming," "spamming," "flooding," "trolling," and "griefing" as those terms are commonly understood and used on the Internet.

The foregoing limited license expires upon the termination of one's visit to the Site, in the case of non-registered users, and in the case of registered users, upon suspension or termination of the user's Account.



## SCAPENATION.COM USER AGREEMENT

### 4. NATURE OF PURCHASES

All purchases of ScapeBucks and other merchandise through the Site are subject to the terms of purchase applicable at the time of purchase. "For our Terms of Purchase, please go to the "Terms of Purchase" Section located at the footer of ScapeNation.com."

ScapeBucks are the fictional currency of ScapeNation, which may also to be earned through engaging in Site activities. The purchase of ScapeBucks does not entitle you access ScapeNation. Membership in ScapeNation, including without limitation your agreement to this User Agreement, is required for you to utilize ScapeBucks.

Member Content includes all virtual items purchased through the Site, whether directly or with ScapeBucks. The purchase of such a virtual item conveys no property rights for the item, but rather is the purchase of a limited, non-exclusive license for you to activate, access, use, view and manipulate the movement of the item for your personal, non-commercial use within the Site.

The limited license purchased with respect to virtual items will expire upon the termination of your Account, and you acknowledge and agree that you shall not be owed any refunds upon the termination of such license.

### 5. SUBMISSIONS

Certain areas of the Site will invite you to make Submissions, which may from time to time include text, messages, ideas, concepts, pitches, suggestions, stories, screenplays, treatments, formats, artwork, photographs, drawings, videos, audiovisual works, musical compositions (including lyrics), sound recordings, characterizations, your and/or other persons' names, likenesses, voices, usernames, profiles, actions, appearances, performances and/or other biographical information or material, and/or other similar materials that you submit, post, upload, embed, display, communicate or otherwise distribute (collectively, "Distribute") on or through the Site.

**DO NOT DISTRIBUTE ANY UNSOLICITED SUBMISSIONS; NO IMPLIED CONTRACT.** Our company policy does not allow us to accept or consider unsolicited submissions so please do not Distribute unsolicited submissions on or through the Site, or otherwise communicate them to Tween Brands. We want to avoid the possibility of future misunderstandings when projects developed by us or under our direction might seem to others to be similar to their own creative work.

**SUBMISSIONS ASSIGNMENT.** To the extent that we solicit Submissions that require the use of our copyrighted works (in whole or in part), we hereby grant you a non-exclusive license to create a derivative work using our copyrighted works (in whole or in part) as required (but only as required, and only for the purpose of creating your Submissions), provided however, that such license shall be conditioned upon your assignment of all rights in the work you create to us. If such rights are not assigned to us, your license to create derivative works using our copyrighted works (in whole or in part) shall be null and void. You agree to the foregoing grant of rights, consents, agreements and assignments whether or not your Submissions are used by us.

**SUBMISSIONS LICENSE.** With respect to solicited Submissions that do not require the use of our copyrighted works, you hereby grant us and our licensees, distributors, agents, representatives and other authorized users, a perpetual, non-exclusive, irrevocable, fully-paid, royalty-free, sub-licensable and transferable (in whole or part) worldwide license under all copyrights, trademarks, patents, trade secrets, privacy and publicity rights and other intellectual property rights you own or control to use, reproduce, transmit, display, exhibit, distribute, index, comment on, modify (including removing lyrics and music from any Submission or substituting the lyrics and music in any Submission with music and lyrics selected by us), create derivative works based upon, perform and otherwise exploit such Submissions, in whole or in part, in all media formats and channels now known or hereafter devised (including on Tween Brands' various web sites, on third party web sites, on our broadcast and cable networks and stations, on our broadband and wireless platforms,



## SCAPENATION.COM USER AGREEMENT

products and services, on physical media, and in theatrical release) for any and all purposes including entertainment, news, advertising, promotional, marketing, publicity, trade or commercial purposes, all without further notice to you, with or without attribution, and without the requirement of any permission from or payment to you or to any other person or entity (the "Submissions License").

**SUBMISSIONS WARRANTIES.** By Distributing a Submission, you represent and warrant that the Submission and your communication thereof conform to the conditions of your license (see Section 3) and other requirements of this User Agreement, and that you own or have the necessary rights, licenses, consents and permissions, without the need for any permission from or payment to any other person or entity, to exploit, and to authorize us to exploit, such Submission in all manners contemplated by this User Agreement.

You hereby appoint us as your agent with full power to enter into and execute any document and/or do any act we may consider appropriate to confirm the grant of rights, consents, agreements, assignments and waivers set forth in this User Agreement.

To the extent any "moral rights," "ancillary rights," or similar rights in or to the Submissions exist and are not exclusively owned by us, you agree not to enforce any such rights as to us or our licensees, distributors, agents, representatives and other authorized users, and you shall procure the same agreement not to enforce from any others who may possess such rights.

You agree that any Submission you make, including via the private chat feature of the Site, is for public communication rather than private communication and that there is no expectation of privacy therein; that it is not being made in confidence or trust and that no confidential or fiduciary relationship is intended or created between you and us in any way; and that you have no expectation of any review, compensation or consideration of any type.

**NO OBLIGATION.** We, our licensees, distributors, agents, representatives and other authorized users shall be entitled to exploit and disclose all Submissions, and we shall not be liable to you or to any person claiming through you for any exploitation or disclosure of any Submission. At the same time, we owe you no obligation, and therefore reserve the right to (a) remove or refuse to post or communicate any Submission from the Site that violates this User Agreement or for any other reason; (b) modify any Submission you Distribute; and (c) identify any user to third parties, and/or disclose to third parties any Submission or personally identifiable information, when we believe in good faith that such identification or disclosure will either (i) facilitate compliance with laws, including, for example, compliance with a court order or subpoena, or (ii) help to enforce this User Agreement and/or game rules, and/or protect the safety or security of any person or property, including the Site.

### 6. ONLINE SAFETY

You acknowledge that Site features offered, including the private chat feature, are for public, not private, communications, and you have no expectation of privacy with regard to any Submission. We cannot guarantee the security of any information you disclose through any of these media; you make such disclosures at your own risk.

You are and shall remain solely responsible for the Submissions you distribute on or through the Site under your username or otherwise by you and for the consequences of submitting and posting same. We have no duty to monitor any area of the Site.

You should be skeptical about information provided by others, and you acknowledge that the use of any Submission posted at the Site is at your own risk. For example, we are not responsible for, and we do not endorse, the opinions, advice or recommendations posted or sent by users in any area of the Site and we specifically disclaim any and all liability in connection therewith.



## SCAPENATION.COM USER AGREEMENT

### 7. LINKS TO THIRD PARTY SITES

As a convenience to you, the Site may contain links to other websites owned and/or operated by Tween Brands or by unaffiliated third parties. The linked sites are not part of this Site and each has different terms of use and different policies regarding the collection, use and disclosure of your personal information. Please be sure to review the applicable agreements and policies carefully when visiting other web sites which are linked from the Site. Unless otherwise expressly indicated by us, we are not sponsored by or affiliated with the linked web sites and we do not control the information and materials found on or linked to by such other web sites. TWEEN BRANDS ASSUMES NO RESPONSIBILITY FOR ANY MATERIAL ON OTHER WEB SITES WHICH ARE ACCESSED THROUGH LINKS FROM THIS SITE.

### 8. INTELLECTUAL PROPERTY OWNERSHIP

All Content is our copyrighted property or the copyrighted property of our licensors or licensees. All trademarks, service marks, trade names, and trade dress are proprietary to us and/or our licensors. We may change the Site or delete Content or features at any time, in any way, for any or no reason.

### 9. DISCLAIMERS

**THE CONTENT ON OR OTHERWISE RELATED IN ANY WAY TO THE SITE OR ANY THIRD PARTY SITES OR SERVICES LINKED TO OR FROM THE SITE IS PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, AVAILABILITY, SECURITY, COMPATIBILITY AND NON-INFRINGEMENT. WE DO NOT WARRANT THAT ANY CONTENT WILL BE ERROR-FREE, THAT ACCESS THERETO WILL BE UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE OR THE SERVERS THAT MAKE SUCH CONTENT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF ANY CONTENT. YOU HEREBY IRREVOCABLY WAIVE ANY CLAIM AGAINST US WITH RESPECT TO CONTENT AND ANY CONTENT YOU PROVIDE TO THIRD PARTY SITES (INCLUDING CREDIT CARD AND OTHER PERSONAL INFORMATION).**

The Site may contain the opinions and views of other users. Given the interactive nature of the Site, we cannot endorse, guarantee, or be responsible for the accuracy, efficacy, or veracity of any content generated by our users.

From time to time there may be information on the Site that contains typographical errors, inaccuracies, or omissions that may relate to product descriptions, pricing, availability or other issues. Tween Brands reserves the right to correct any errors, inaccuracies or omissions and to change or update information at any time without prior notice (including after you have submitted an order).



## SCAPENATION.COM USER AGREEMENT

### 10. INDEMNIFICATION

You are responsible for maintaining the confidentiality of your username(s), password(s), and your Account(s), as well as all activities that occur under your Account(s). You hereby agree to indemnify, defend, and hold us, our licensors, licensees, distributors, agents, representatives and other authorized users, and each of the foregoing entities' respective resellers, distributors, service providers and suppliers, and all of the foregoing entities' respective officers, directors, owners, employees, agents, representatives and assigns (collectively, the "Indemnified Parties") harmless from and against any and all losses, damages, liabilities and costs (including settlement costs and any legal or other fees and expenses for investigating or defending any actions or threatened actions) incurred by the Indemnified Parties in connection with any claim arising out of any breach by you of this User Agreement or claims arising from your use of the Site and/or your Account(s). You shall use your best efforts to cooperate with us in the defense of any claim. We reserve the right, at our own expense, to employ separate counsel and assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

### 11. LIMITATION OF LIABILITY

**UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL WE, OUR LICENSORS OR LICENSEES, OR ANY OF THE FOREGOING ENTITIES' RESPECTIVE RESELLERS, DISTRIBUTORS, SERVICE PROVIDERS OR SUPPLIERS, BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING LOST PROFITS, PERSONAL INJURY (INCLUDING DEATH) AND PROPERTY DAMAGE OF ANY NATURE WHATSOEVER, THAT RESULT FROM (A) THE USE OF, OR THE INABILITY TO USE, ANY TWEEN BRANDS SITE OR CONTENT, OR (B) THE CONDUCT OR ACTIONS, WHETHER ONLINE OR OFFLINE, OF ANY USER OF THE SITE OR ANY OTHER PERSON OR ENTITY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL OUR TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EXCEED THE AMOUNT PAID BY YOU, IF ANY, OR \$100 (WHICHEVER IS LESS) FOR ACCESSING OR PARTICIPATING IN ANY ACTIVITY RELATED TO THE SITE. MOREOVER, UNDER NO CIRCUMSTANCES SHALL WE, OUR LICENSORS OR LICENSEES, OR ANY OF THE FOREGOING ENTITIES' RESPECTIVE RESELLERS, DISTRIBUTORS, SERVICE PROVIDERS OR SUPPLIERS, BE HELD LIABLE FOR ANY DELAY OR FAILURE IN PERFORMANCE RESULTING DIRECTLY OR INDIRECTLY FROM AN ACT OF FORCE MAJEURE OR CAUSES BEYOND OUR OR THEIR REASONABLE CONTROL.**

**WE MAY TERMINATE YOUR FURTHER ACCESS TO THE SITE OR CHANGE THE SITE OR DELETE CONTENT OR FEATURES IN ANY WAY, AT ANY TIME AND FOR ANY REASON OR NO REASON.**

**THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION AND ELSEWHERE IN THIS USER AGREEMENT APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.**

### 12. JURISDICTIONAL AND VENUE ISSUES

You agree that any action at law or in equity arising out of or relating to this User Agreement or the Site shall be filed, and that venue properly lies, only in state or federal courts located in Franklin County, Ohio, and you hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action. We make no representation that Content on the Site is appropriate or available for use in any particular location. Those who choose to access the Site do so on their own initiative and are responsible for compliance with all applicable laws including any applicable local laws.



## SCAPENATION.COM USER AGREEMENT

### 13. AMENDMENT

At any time, we may amend or modify this User Agreement (including by modification, deletion and/or addition of any portion thereof) by posting the new User Agreement on the Site. If we make a material amendment to this User Agreement, we will notify Account holders at their next login and ask for agreement to it at that time. If you do not agree to the modified User Agreement, you may not continue to access or use this Site.

### 14. GENERAL PROVISIONS

This User Agreement shall be governed by and construed in accordance with the laws of the State of Ohio and the laws of the United States, without giving effect to any principles of conflicts of law. If any provision of this User Agreement shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this User Agreement and shall not affect the validity and enforceability of any remaining provisions. No waiver of any provision of this User Agreement by us shall be deemed a further or continuing waiver of such provision or any other provision, and our failure to assert any right or provision under this User Agreement shall not constitute a waiver of such right or provision. In this User Agreement, the word "including" is used illustratively, as if followed by the words "but not limited to." **YOU AGREE THAT ANY CAUSE OF ACTION YOU MAY HAVE ARISING OUT OF OR RELATED TO THIS USER AGREEMENT OR THE SITE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION SHALL BE PERMANENTLY BARRED.**

Supply of goods, services and software through the Site is subject to United States export control and economic sanctions requirements. By acquiring any such items through the Site, you represent and warrant that your acquisition comports with and your use of the item will comport with those requirements. Without limiting the foregoing, you may not acquire goods, services or software through the Site if: 1) you are in, under the control of, or a national or resident of Cuba, Iran, North Korea, Sudan or Syria or if you are on the U.S. Treasury Department's Specially Designated Nationals List or the U.S. Commerce Department's Denied Persons List, Unverified List or Entity List or 2) you intend to supply the acquired goods, services or software to Cuba, Iran, North Korea, Sudan or Syria (or a national or resident of one of these countries) or to a person on the Specially Designated Nationals List, Denied Persons List, Unverified List or Entity List.

### 15. CLAIMS OF COPYRIGHT INFRINGEMENT

We have adopted and implemented a policy that provides for the termination, in appropriate circumstances as determined by us in our sole discretion, of users who are infringers of copyright. Pursuant to Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright infringement must be sent to Service Provider's Designated Agent. Notification must be submitted to the following Designated Agent:

Service Provider: ScapeNation

Name of Agent Designated to Receive Notification of Claimed Infringement: Rosanne T. Yang

Full Address of Designated Agent to Which Notification Should be Sent:

8323 Walton Parkway,  
New Albany, Ohio 43054

Telephone Number of Designated Agent: 614-775-3500

Facsimile Number of Designated Agent: 614-775-3932

E-Mail Address of Designated Agent: ip@tweenbrands.com



## SCAPENATION.COM USER AGREEMENT

To be effective, the notification must be a written communication that includes the following:

1. A physical or electronic signature of person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
2. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
4. Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;
5. A statement that the complaining party has a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
6. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

We may give you notice that we have removed or disabled access to certain material by means of a general notice on the Site, electronic mail to a user's email address in our records, or by written communication sent by first-class mail to your physical address in our records. If you receive such a notice, you may provide counter-notification in writing to the designated agent that includes the information below. To be effective, the counter-notification must be a written communication that includes the following:

1. Your physical or electronic signature;
2. Identification of the material that has been removed or to which access has been disabled, and the location at which the material appeared before it was removed or access to it was disabled;
3. A statement from you under the penalty of perjury, that you have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled; and
4. Your name, physical address and telephone number, and a statement that you consent to the jurisdiction of a Federal District Court for the judicial district in which your physical address is located, or if your physical address is outside of the United States, for any judicial district in which Tween Brands may be found, and that you will accept service of process from the person who provided notification of allegedly infringing material or an agent of such person.

