

TERMS OF SERVICE
(Effective March 7, 2014)

Welcome to the Ocho community! If this is your first time here, thanks for joining us. If you've already used Ocho, we're glad you decided to return.

We've got lots of great stuff to share, and we're always imagining new features. Before you can get started, however, we need to set some ground rules.

First of all, if you are under the age of seventeen (17) years, STOP NOW. You are not allowed to use our Services.

Next, please review the following Terms of Service carefully, as they form a legally-binding agreement which governs your access to and use of our Services. By viewing this page, you acknowledge and agree – without condition or exception – to adhere to and be legally bound by the following Terms of Service. If you do not fully agree, you must leave this page immediately; you may not use our Services for any purpose.

1. A Few Definitions

Ocho is a MassLab, Inc. production. “**Ocho**”, “Ocho’s”, “MassLab”, “us”, “we”, and “our” herein refers to **MassLab, Inc**, a Delaware company headquartered in the heart of Brooklyn, NY.

“**You**” means you, the individual, as well as any other individual and/or entity on whose behalf you are acting.

Throughout these Terms of Service, “**Services**” shall embrace Ocho’s mobile video camera application – and any of the features therein listed, including but not limited to those which enable the user to create, save, edit, manipulate, log, and share audio, video, and audiovisual content – as well as any other Ocho website, blog, profile, feature, data, tool (e.g. video tool, audio tool, visualization tool, data organization tool, data manipulation too), feed (e.g. Real Simple Syndication feed, Atom feed), publication, product, offering, software, program, platform, system, and application.

The term “**Affiliates**” shall refer collectively to Ocho’s principals, agents, representatives, employees, contractors, executives, board members, joint ventures, officers, advisors, parents,

successors, and subsidiaries.

“**Content**” means any material, information, and/or data that a user creates, compiles, curates, submits, posts, shares, uploads, transmits, displays, and/or otherwise communicates – in connection with Ocho’s Services – for consumption by oneself and/or others. Content includes but is not limited to audio, video, audiovisual material, photos, images, links, graphics, files, text (e.g. messages, comments, summaries, usernames, profile details), profile information, musical works, works of performance, works of authorship, comments, feedback, ideas, applications, and compilations and manipulations of the aforementioned. Content specifically does not include your user password, personally identifying information, or financially sensitive information (those items are subject to their own rules, as explained in our **Statement on Privacy** (http://on.ocho.co/info/ochovideo_privacy_policy.pdf) unless such information appears (against our recommendation) in your Content, as defined above.

2. Eligibility

We try to be fair about who can and can’t use our Services. At the same time, we need to protect our users and our business. Therefore, any violations of these Terms of Service may result in your suspension or expulsion from the Ocho community. In addition, you are not allowed to use our Services if you are:

- under the age of 17;
- not competent or of sound condition to fully understand and agree to these Terms of Service;
- currently restricted/prohibited from using Services;
- employed by or affiliated with a potential or actual competitor of Ocho;
- closely connected to one or more persons who is employed by or affiliated with a potential or actual competitor of Ocho;
- using our Services on behalf of another individual and/ or entity without said individual’s and/or entity’s permission;
- the owner of more than one Ocho account;
- under a legal obligation that restricts or precludes your use of our Services; and/or
- otherwise unwilling and/or unable to follow these Terms of Service, including but not limited to the user conduct rules set forth in Section 3.

While we make our best efforts to maintain a great community, Ocho cannot and does not promise that ineligible individuals will be kept from using our Services. Furthermore, even if you satisfy these eligibility criteria, Ocho makes no promise or guarantee that you will be permitted and

able to use our Services.

You must immediately close your browser window and cease all further use of Ocho's Services if you are ineligible – or if you become ineligible. If you are required to cease all further use, you agree to notify us at admin@ocho.co, with the subject line “End Use.” In this email, we would appreciate a brief explanation of why you are ending use – your feedback means a lot to us.

Please note: *Ocho reserves the right to refuse access to anyone for any reason without notice at any time.*

3. **Creating an Ocho Account**

If you meet the criteria for eligibility, as explained in the previous section, you may create an Ocho account for legitimate purposes.

By “legitimate purposes” means that you shall not create an account and/or username for any other individual or entity – nor shall you represent yourself and/or your Content as that of any other individual or entity – without said other individual or entity's prior express written consent. Likewise, you shall not use any other user's login information, or our Services, without said user's permission.

You are allowed to create one and only one Ocho account per individual/entity. Furthermore, Ocho reserves the right to require and cause forfeiture of any username for any reason or notice.

4. **Rules of the Road**

a. When in doubt, follow The Golden Rule. If you use your common sense and act like a reasonable human being, our Standards of User Conduct should be easy to follow. Here are *5 Simple Guidelines* that will help you on your way:

- i. If you can't be polite and respectful to other users, just leave them alone.
- ii. Don't submit User Content that might be improper and/or objectionable.
- iii. Don't act on behalf of other users without their permission.
- iv. Don't try to breach our security, disrupt our technology, or hijack our I.P.
- v. If you're shilling something, shill it somewhere else. Approved ads only.

b. Here's what we mean by “act like reasonable human being.” Unfortunately, The

Golden Rule isn't clear enough for some people. To be certain, you shall not directly or indirectly constitute, involve, attempt, aid, support, incite, encourage, advise, or facilitate any of the following in connection with our Services:

- i. a violation of a law;
- ii. infringement of the personal and/or property rights of Ocho and/or any third party (including but not limited to violations of intellectual property rights, moral rights, privacy rights, rights to publicity, and rights concerning privileged, proprietary, and/or confidential information);
- iii. a breach of an agreement, legal obligation, or responsibility;
- iv. discovery of another user's information beyond that which is legitimately intended to be made publicly available;
- v. an implication or indication of involvement with or endorsement by Ocho when Ocho has not specifically granted permission to make such an implication or indication;
- vi. a violation of a rule, regulation, and/or standard of conduct;
- vii. vandalism and/or destruction of property;
- viii. solicitation of a minor;
- ix. prostitution and/or solicitation of a prostitute.
- x. interference with an existing business relationship and/or contract;
- xi. an unlawful, unfair, deceptive, and/or illegitimate business policy, practice, or scheme;
- xii. support for or advancement of a potential or actual Ocho competitor;
- xiii. a threat, stalking, intimidation, abusive conduct, bullying, and/or other acts of harassment and/or violence;
- xiv. extortion, fraud, and/or identity theft;
- xv. the improper disclosure of privileged, private, confidential, sensitive, and/or proprietary information and/or any other violation of privacy;
- xvi. abuse, neglect, and/or reckless endangerment, of a minor or otherwise;
- xvii. obscenity, vulgarity, nudity (partial or full) and/or pornography;
- xviii. vexatious communications via email, online post, message, or comment/response (e.g. spamming, trolling, phishing)
- xix. unauthorized impersonation, misrepresentation, and/or another reckless or knowing provision of false, incomplete, inaccurate, or outdated information (whether by text, image, photo, audio, video, paper document, or otherwise)
- xx. libel, slander, defamation, or other attack on character or reputation;
- xxi. hate speech, a hate crime, prejudice, or unlawful discrimination; and/or

xxii.any other violation of these Terms of Service.

- c. **Be mindful that your Content is public.** As explained more completely in our Statement on Privacy, all of your Content is subject to being viewed by the public, through Ocho's Services as well as through third-party products and services (including but not limited to applications and websites). Be aware that anything you put out there can and very well may be seen by the public writ large.

- d. **Don't inhibit other users.** We try to make sure that those who are eligible have a fair opportunity to enjoy our Services. You agree that you shall not attempt to or actually interfere with another user's legitimate use of our Services. Among other things, you will refrain from contacting users with whom you do not have a legitimate personal or professional connection.

- e. **Keep your Content ad-free.** Your Content shall not contain any material that constitutes or reflects a solicitation, advertisement, promotion, or other instance of commercial activity. We also ask that you keep your username free of any domain names or web urls.

- f. **Don't advance malicious conduct.** While we have a special place in our hearts for the hackers and explorers of the world, we have no love for annoying spam, dangerous password schemes, or nasty viruses. Accordingly, you shall not use or attempt to engage in spamming, phishing, unauthorized advertising (including but not limited to bulk emailing, pyramid schemes, contests, offers), or the circulation of viruses or other malicious programs and/or code in connection with our Services and/or systems – this includes refraining from attempting to penetrate or actually penetrating our systems with a Trojan horse, spyware, a worm, an Easter egg, a time bomb, and/or any harmful and/or invasive file, program, or code. Likewise, use of a robot, spider, data miner, crawler, scraper and/or similar data gathering and extraction tools is strictly forbidden, except for standard search engine technology and procedures, as expressly allowed by Ocho.

- g. **Respect our technology and use only public interfaces.** The Ocho community is counting on us to operate our Services smoothly, without meddling or interference.

You shall not interfere or attempt to interfere with the security, functions, technology, data, Content and/or the proper workings of Ocho and/or our Services; nor shall you use or attempt to use our Services to interfere with the security, functions, technology, and/or proper workings of any third party and/or third party products and/or services. You shall only attempt to access and/or access those offerings which Ocho deliberately makes publicly available, within the parameters of our intended public use of those offerings. Accessing or attempting to access any other areas relating to Ocho, our Affiliates, and/or our third parties' services, systems, sites, data, code, programs, templates, graphics, images, servers, data, user information, and/or other private information is strictly prohibited; this includes but is not limited to hacking, password mining, identity theft, and other breaches of authentication and/or security. You shall only use those interfaces provided by Ocho when accessing and/or attempting to access our Services. You are not allowed to test or probe the security/vulnerability of our Services, networks, servers, and other technologies.

- h. **Don't generate or impose an excessive load.** Your use of our Services shall not impose any excessive load or unreasonable demand – as per our sole determination – on our infrastructure, systems, servers, or other technology and operations.
- i. **Don't reverse engineer our Services.** You know you're not supposed to copy our work – you learned that in the first grade. You shall not attempt to or actually reverse-engineer any Ocho Services – including without limitation any aspect, feature, function, or detail of our Services.
- j. **No Deceptive Source Info.** You will not in any fashion use our Services to send false or deceptive source-identifying information, including without limitation forgery of a TCP/IP packet header or header to an email or post.
- k. **Refrain from framing techniques and hidden text.** You may not utilize framing techniques to enclose any Ocho trademark, logo, image, text, layout, format, or other proprietary information or intellectual property without Ocho's prior express written consent. You may not utilize any "hidden text" (e.g. meta tags) that references Ocho's proprietary information or intellectual property without our prior express written consent. You are strictly forbidden from removing or concealing any indicator of

proprietary rights, including without limitation an indication of copyright, trademark rights, or service mark.

- l. **Be fair when linking.** Don't abuse hyperlinks, please. You may not link to any of our web pages in an effort to disrupt, obstruct, harass, defame, unfairly profit from, or otherwise harm Ocho, its Services, its Affiliates, its third parties, and/or its clients. Furthermore, upon Ocho's request, you shall immediately and without dispute remove any link connecting to one or more of our Services.

m. Make sure you don't misappropriate our Intellectual Property. Our I.P. forms the foundation of our business. You agree that you shall not misappropriate or misuse it. In particular, you are strictly forbidden from the following with respect to our data, information, materials, code, and content:

- i. displaying, publishing, transmitting, licensing, sublicensing, distributing, exhibiting, and/or making commercial use of these items beyond our prior express written consent;
- ii. downloading, extraction, copying, indexing, and/or collection of these items (including, without limitation, use of a robot, spider, data miner, crawler, scraper or similar tool);
- iii. duplication, rebranding, and/or derivative usage of these items;
- iv. deleting or modifying the substance and/or appearance of these items;
- v. displaying these items out of context, obscuring them, including them alongside objectionable content, or otherwise failing to present them as fully intended; and
- vi. other manual and/or automated means of improper access or retrieval of these items.

- n. **Take responsibility for your own account & Content, like every other user.** Our users typically set-up an account so that they can create and share awesome videos and interact with the Ocho community. If you plan to create an account – or if you already have one – please pay close attention to the following:

- i. ***You and you alone are responsible*** for all actions and omissions arising out of and/or relating to your account, Content, and/or other use of our Services. Any Content or other information provided to us from your account is at your own risk of liabilities, harms, losses, damages, settlement amount, expenses, fees, costs, and/or penalties.
- ii. You agree that any Content or other information you furnish in connection with Ocho is 100% able to be disclosed without breaching any contract provisions or violating any third party rights (e.g. privacy, confidentiality, copyright, trademark, patent, trade secret, proprietary). You agree that your user profile and all other information you submit to Ocho will remain truthful, accurate, current and up-to-date at all times.
- iii. You are ***solely responsible*** for the confidentiality and security of your account and password and any related information, including but not limited to your Content. You agree that you shall not disclose your password to anyone else or permit anyone else to use your account, except as to employees, members, or contractors who create/operate this account on your behalf with your full authorization.
- iv. You assume full responsibility for all data and usage charges you may incur as a result of using our Services.
- v. You agree not to sell, license, assign, or transfer your account, user name, account rights, or Followers.
- vi. You agree that you shall not use any other user's account, discover any other user's private account information, or purchase, acquire, or otherwise receive access or rights to any other user's account – except to the extent you are a person or business who has been authorized to create and/or manage an account on behalf of a client, employer, or organization with which you are affiliated.
- vii. ***Ocho and its Affiliates shall not be responsible for*** any claims, obligations, third party royalties, liabilities, costs, debt, expenses, losses, damages, charges, fees, or fines, including legal fees, accounting fees, business interruption damages, lost profits, and punitive, incidental, special, or consequential damages arising out of or relating to ***your account*** or its authorized or unauthorized use (including without limitation issues relating to your Content and/or personal information).
- viii. ***Ocho and its Affiliates shall not be responsible for*** any claims, obligations, third party royalties, liabilities, costs, debt, expenses, losses, damages, charges,

fees, or fines, including legal fees, accounting fees, business interruption damages, lost profits, and punitive, incidental, special, or consequential damages arising out of or relating to ***any other user's account*** or its authorized or unauthorized use (including without limitation issues relating to your Content and/or personal information).

ix. During the course of using our Services, you may encounter content, information, data, and/or material that you consider inaccurate, objectionable, inappropriate, hostile, indecent, and/or worse. Therefore, you acknowledge and agree that ***you use our Services at your own risk of encountering hostile, offensive, indecent, or otherwise inappropriate Content or material.*** You accordingly ***shall not under any circumstances hold Ocho or its Affiliates responsible or liable*** for the creation, existence, or continuation of such content, information, data, or material, or the effects of such content, information, data, or material on you or any other third party. You are hereby notified, pursuant to 47 U.S.C. Section 230(d), that parental control protections are commercially available that may assist you in limiting access to material that is harmful to minors; information identifying current providers of such protections is available at: <http://kids.getnetwise.org> and <http://onguardonline.gov>.

o. **You acknowledge and agree that we don't pre-screen our Content.** Ocho does not audit, analyze, or review user Content or third party content before it goes live. ***We are not in any way responsible for what is published in connection with our Services, and we are under no obligation to edit or control user Content or third party content.*** While we make an effort to help our users, we make no warranties or representations regarding responding to user Content issues or other issues arising out of or relating to our Services; it is possible that your issue may go unaddressed. That said, we reserve the right to delete any user Content or any other content at any time for any reason without notice or consent.

p. **Report suspicious or improper conduct.** We ask our community members to keep an eye open for suspicious or improper conduct. You agree to immediately notify Ocho of any unauthorized use of your account, any breach of security, or any other suspicious or improper usage of our Services (including but not limited to reporting inappropriate conduct). Likewise, you agree to immediately notify Ocho with a

detailed explanation if you believe you or any other user has committed or will commit a breach of this Agreement.

5. **Statement on Privacy**

Ocho values your privacy rights, and we are dedicated to being open and fair with our privacy policy. *We strongly recommend that you carefully review our **Statement on Privacy*** (http://on.ocho.co/info/ochovideo_privacy_policy.pdf) This Statement on Privacy governs how we collect and use your personal information.

Our Statement on Privacy is incorporated by reference into these Terms of Service; by agreeing to our Terms of Service, you acknowledge and fully agree to be bound by our privacy policy.

6. **Your Rights under this Agreement**

- a. We grant you a license to Use Services.** Provided that you fully agree to these Terms of Service – and are capable of conducting yourself in accordance with them – you will be granted a limited, non-exclusive, non-sublicensable, non-transferable, non-delegable, non-assignable, fully revocable license to access and make personal, non-commercial use of our Services strictly as intended, in accordance with our terms and conditions (e.g. these Terms of Service). Ocho reserves the right to suspend or revoke this license at any time, for any reason, without notification or warning.

- b. To an extent, you may edit and delete your Content.** At any time, you will be able to revise or delete the information in your user profile. However, your profile information may have already been seen or captured by a third party (e.g. cached for future searches). With respect to any other Content you create, distribute, or otherwise submit or disseminate in connection with our Services – such as messages, comments, and posts – you cannot revise or delete that which has been submitted.

- c. You can make a single, non-commercial copy of our Content.** You are allowed to make a single copy of our content for use in learning about, evaluating, and/or utilizing Ocho’s Services, provided you agree that any such copy will be

accompanied by a clear, complete, unmodified, and unobscured copy of these Terms of Service – and that these Terms of Service shall control use of said copy.

7. Our Rights under this Agreement

a. We reserve the right to freely modify and amend. In order to make Ocho the best platform it can be, we need the ability to change things as needed, on the fly.

i. We therefore reserve the right to do any and all of the following at any time, effective immediately, without liability, cause, notice, or preservation obligation:

- 1.** add to, remove, or modify any and/or all of our terms and conditions (including but not limited to these Terms of Service and our Statement on Privacy) – in which case your subsequent access and/or use of our Services constitutes acceptance of the amended term(s);
- 2.** suspend, discontinue, remove, interrupt, restrict, update, improve, or otherwise modify (a) our Services, (b) features, functions, details, and/or portions of our Services, and (c) material, data, information, code, and/or content arising out of or relating to our Services; and
- 3.** suspend, terminate, ban, restrict, or otherwise modify your – or any other user’s – access to and/or ability to use: (a) our Services, (b) features, functions, details, or portions of our Services, and/or (c) material, data, code, information, and/or content arising out of or relating to our Services.

ii. If you do not wish to be bound by modifications relating to our terms, Services, or access rights, you must stop using our Services immediately and cease from all further use; you further agree to email optout@ocho.co with the subject “End Use” and details about your reason for ceasing all further use.

iii. *Ocho is under no obligation – and shall face no penalty, liability, damage, claim, suit, or loss* – to take action or refrain from taking action with respect to maintaining, updating, modifying, improving, and/or providing: (a) our Services; (b) features, functions, details, or portions of our Services; (c) terms

and /or conditions relating to our Services; and/or (d) material, data, information, and/or content arising out of or relating to our Services.

- b. You grant Ocho a license to use your Content.** In order to maximize the scope of our product and brand, we need to be able to use your Content freely. We do not claim to own the Content you generate in connection with our Services, provided said Content does not in some manner infringe our own intellectual property. Therefore, you grant Ocho a perpetual, irrevocable, non-exclusive, royalty-free, fully sublicensable, worldwide license to exercise any and all rights you may have in your Content and other information arising out of and/or relating to your use of our Services (e.g. data regarding your Web history and use of our Services). You agree that Ocho may, at our sole discretion: copy, reproduce, adapt, translate, sell, distribute, syndicate, publish, transfer, communicate, modify, exhibit, advertise, market, create derivative works from, display, make commercial use of (including currently known and future, currently unknown commercial uses), and/or otherwise use your User Content and other information arising out of and/or relating to your use of our Services throughout the world in any media in any manner, fashion and/or context we wish. You further agree that you waive any moral rights – including but not limited to the rights of attribution – in connection with any Content and any other information arising out of and/or relating to your use of our Services. Furthermore, you represent that you have full authority and right to grant licenses and waive rights pursuant to these Terms of Service.
- c. We get to decide how we handle your information and Content.** It's up to us to decide if and how we handle your information and Content. You agree that Ocho may, at its sole discretion: store, save, retain, screen, filter, flag, edit, remove, censor, delete, filter, edit, or destroy your User Content as it deems fit, with or without notice or cause, effective immediately. Furthermore, you agree that Ocho may store, save, retain, delete, or destroy any data it collects, including but not limited data concerning your personally identifying and financially sensitive information. Specific details about how we use your information – including your personally identifying and financially sensitive information – can be found in our Statement on Privacy (http://on.ocho.co/info/ochovideo_privacy_policy.pdf) We encourage you to review this Statement carefully.

- d. **We reserve all intellectual property rights in connection with our Services.** Our Services contain computer code, content, materials and information – in various formats, including, but not limited to, images, illustrations, photographs, graphs, messages, video material, audio material audiovisual material software, data, text, graphics, visual interfaces, logos, slogans, headers, buttons, icons, layout formats, scripts, feeds, manipulations, and compilations – that are the sole property of Ocho.
- i. The copyright, trademark rights, patent rights, trade dress rights, common law rights, and other proprietary rights and interests in all of this inform computer code, content, materials and information are owned by us, or someone who has granted us a license to use the property (including without limitation your granting of a license to Ocho to use your Content, as set forth in Section 7b, *supra*). Except as to your own rightful proprietary material, you are not granted a license or right to use any such intellectual property unless you obtain the prior written authorization to use such mark from us or such other third party holder of the mark.
 - ii. Except as expressly authorized in these terms and conditions, ***you may not*** sell, use, license, download, upload, transmit, copy, print, distribute, exhibit, broadcast, display, perform, reproduce, republish, post, modify, create derivative works from, adapt, transmit, or otherwise exploit any content, materials, data, code, or other information from our Services in whole or in part without our prior express written consent.
 - iii. Our Services – and the code, content, materials, and information therein (as set forth at the outset of this clause)- are protected by the laws of the United States and all foreign countries with respect to trademarks, service marks, copyright, trade dress, patent rights, and all other
 - iv. If you have a specific question related to the intellectual property in connection with our Services – or a request for the use of such marks – please direct your inquires to us via e-mail legal@ocho.co.
- e. **We reserve the right to monitor and investigate.** We need to be able to keep an eye on creeps, jerks, and criminals. You acknowledge and agree that Ocho may, in its sole discretion, monitor or review any Content, user interaction, and/or any other attempted or actual usage of our Services – including any data, analysis or other derivative information –at any time for any reason without liability or the need for further notification or consent. This includes without limitation inspection of your

usage with respect to: the content of messages and your receipt/sending of messages; the creation, sharing, and viewing of User Content; and other interactions in connection with our Services. For more information, please review our Statement on Privacy. <[hyperlink](#)>

f. **We can contact you through any means we choose.** For the purpose of service messages and notices, we reserve the right to contact you through any means we choose, including by mail, telephone, email, social media, website banner, notice appear in connection with our Service, or otherwise. You agree that any means of contact we choose will suffice for the purpose of providing adequate, timely legal notice.

g. **You acknowledge and agree to the following catch-All.** Ocho reserves any and all rights and interests relating to our Company, its property, its Affiliates, and its Affiliates' property which were not expressly enumerated in these Terms of Service, including but not limited to rights relating to ownership, title, copyright, patent, proprietary rights, and trademark.

8. One or both of Parties may choose to terminate this Agreement at any time.

a. **Termination by Ocho.** Use of our Services is a privilege, and we may revoke that privilege at any time. Ocho reserves the right to – whenever we choose, effective immediately, without liability, cause, notice, or warning – suspend, terminate, ban, interrupt, restrict, or otherwise modify your (or any other user's) access to and/or use our Services, or any, functions, details, features or portions of our Services. This includes but is not limited to deleting your Content, restricting the scope of your access, and/or outright banning you for an indefinite period of time. You acknowledge and agree that termination has no impact on our ability to maintain and use the information and content you communicated to Ocho – at our sole discretion – and that it may take several weeks or longer to deactivate your account.

b. **Termination by You.** If you wish to terminate this Agreement and no longer access or utilize our Services, you may do so at any time; simply send an email to optout@ocho.co from the account you use in connection with Ocho and include the subject line “End Use.” You acknowledge and agree that termination has no impact

on our ability to maintain and use the information and content you communicated to Ocho – at our sole discretion – and that it may take several weeks or longer to deactivate your account.

- c. **Clauses Surviving Termination.** The following sections – and all terms and conditions therein – survive termination of this Agreement indefinitely, regardless of which party terminates the Agreement: 1 (Definitions), 4 (User Guidelines), 5 (Privacy Policy), 7 (Our Rights), 8 (Termination), 9 (Disclaimers & Limitations), and 10 (Miscellaneous).

9. Legal Disclaimers & Limitations

- a. **DISCLAIMERS.** We need to make sure that we don't lose the farm if something goes go wrong. Accordingly, you acknowledge and fully agree to the following disclaimers:

- i. OCHO AND ITS AFFILIATES PROVIDE ALL SERVICES – AND ALL INFORMATION, MATERIALS, DATA AND CONTENT THERETHROUGH AVAILABLE – ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED.
- ii. OCHO AND ITS AFFILIATES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND ANY OTHER IMPLIED WARRANTY THAT MAY ARISE FROM THE COURSE OF DEALING, USAGE, PERFORMANCE OR TRADE.
- iii. OCHO AND ITS AFFILIATES DISCLAIM ANY DUTIES, RESPONSIBILITIES, LIABILITIES, AND OBLIGATIONS IN CONNECTION WITH ANY “FORWARD-LOOKING STATEMENT” WE MAKE, JUST AS WE DISCLAIM ANY DUTIES, RESPONSIBILITIES, LIABILITIES, AND OBLIGATIONS IN CONNECTION WITH ANY AND ALL OF THE STATEMENTS WE MAKE.
- iv. NEITHER OCHO NOR ITS AFFILIATES MAKES ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THIRD-

PARTY INTELLECTUAL PROPERTY AND/OR RELATED RIGHTS AS THEY ARISE IN CONNECTION WITH OUR SERVICES.

- v. NEITHER OCHO NOR ITS AFFILIATES IN ANY MANNER WARRANTS THAT: OCHO PRODUCTS AND/OR SERVICES FUNCTION OR WILL FUNCTION IN AN UNINTERRUPTED OR ERROR-FREE MANNER; INFORMATION, MATERIALS, DATA, CONTENT, OR DATA WILL BE AVAILABLE AND/OR PRESERVED; MALFUNCTIONS OR DEFECTS HAVE BEEN OR WILL BE CORRECTED; OUR SERVICES ARE AND WILL REMAIN SECURE; OR OUR SERVICES OR THE SERVERS THAT MAKE THEM AVAILABLE ARE AND WILL CONTINUE TO BE FREE OF VIRUSES OR OTHER HARMFUL AND/OR DESTRUCTIVE COMPONENTS. NEITHER OCHO NOR ITS AFFILIATES WARRANTS THAT ANY VIDEOS, MESSAGES, EMAIL, OR ATTACHMENTS WE SEND – OR ANYTHING ELSE WE MAKE AVAILABLE FOR DOWNLOAD OR ACCESS – ARE FREE OF VIRUSES OR OTHER HARMFUL OR DESTRUCTIVE COMPONENTS.
- vi. NEITHER OCHO NOR ITS AFFILIATES MAKES ANY PROMISES OR WARRANTIES REGARDING THE ACTS AND/OR OMISSIONS OF ANY THIRD PARTY.
- vii. NEITHER OCHO NOR ITS AFFILIATES WARRANTS OR MAKES ANY REPRESENTATIONS REGARDING THE QUALITY, USE, EFFICACY, OR THE RESULTS OF THE USE OF OUR SERVICES – OR ANY INFORMATION, MATERIALS, DATA, AND CONTENT THERE THROUGH AVAILABLE. NEITHER OCHO NOR ITS AFFILIATES MAKE ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE INFORMATION, DATA, MATERIALS, AND CONTENT AVAILABLE THROUGH OUR SERVICES WILL BE ACCURATE, PRECISE, COMPLETE, RELIABLE, UP-TO-DATE, ERROR-FREE, AND/OR FREE OF INAPPROPRIATE CONTENT.
- viii. OCHO AND ITS AFFILIATES HANDLE PRIVATE, FINANCIAL, AND OTHERWISE SENSITIVE INFORMATION WITH REASONABLE SECURITY AND CARE; HOWEVER, WE CANNOT AND DO NOT GUARANTEE THAT ANY TRANSACTION OR TRANSFER OR STORAGE OF INFORMATION IS 100% SECURE. OCHO THEREFORE DISCLAIMS ALL LIABILITY IN CONNECTION WITH ANY UNDESIRE AND/OR HARMFUL DISCLOSURE AND/OR USAGE OF

YOUR INFORMATION – PERSONALLY IDENTIFYING INFORMATION, FINANCIALLY-SENSITIVE INFORMATION, OR OTHERWISE.

ix. OUR SERVICES MAY RUN ADVERTISEMENTS, FEEDS, OR CONTENT OR OTHERWISE BE LINKED TO OTHER SITES WHICH ARE NOT MAINTAINED BY OCHO; NEITHER OCHO NOR ITS AFFILIATES CONTROLS, ENDORSES, OR IS RESPONSIBLE FOR ANY ISSUES ARISING OUT OF OR RELATING TO THE INFORMATION, CONTENT, DATA, MATERIALS, PRODUCTS, OR SERVICES AVAILABLE ON OR THROUGH THESE ADVERTISEMENTS, SITES, AND THIRD PARTY FEEDS/LINKS. OCHO AND ITS AFFILIATES DISCLAIM ANY ENDORSEMENT RELATING TO OR LIABILITY FOR (A) LINKS OR FEEDS TO OUR SERVICES FROM ANOTHER SITE; AND (B) LINKS OR FEEDS FROM OUR SERVICES TO ANOTHER SITE.

x. IT IS ENTIRELY YOUR RESPONSIBILITY TO ASSESS THE ACCURACY, RELIABILITY, UP-TO-DATENESS, VIABILITY AND APPROPRIATENESS OF OUR SERVICES – AND ANY DATA, INFORMATION, MATERIALS, AND CONTENT THERE THROUGH AVAILABLE – ESPECIALLY AS THEY RELATE TO YOUR SPECIFIC NEEDS. YOU ASSUME THE ENTIRE COST OF ALL SERVICES, REPAIRS, CORRECTIONS, DEBTS, LIABILITIES OR OTHERWISE THAT MAY ARISE FROM AN ATTEMPT TO USE OR THE USE OF OUR SERVICES OR ANY INFORMATION, DATA, MATERIALS, AND CONTENT THERE THROUGH AVAILABLE.

xi. YOUR JURISDICTION MAY NOT ALLOW THE DISCLAIMER OF CERTAIN WARRANTIES OR THE LIMITATION OF CERTAIN TYPES OF DAMAGES. THUS, IT IS POSSIBLE THAT PORTIONS OF THE AFOREMENTIONED OR SUBSEQUENT DISCLAIMERS MAY NOT APPLY TO YOU; HOWEVER, THE LIMITATION OR EXCLUSION OF A PARTICULAR DISCLAIMER OR LIABILITY LIMITATION SHALL IN NO MANNER IMPACT ANY OTHER PROVISION HEREIN, NOR SHALL IT AFFECT THE VALIDITY OR FORCE OF THAT LIABILITY LIMITATION OR DISCLAIMER IN OTHER JURISDICTIONS.

b. Sole Responsibility. *You agree that you hold sole responsibility* for any and all risks, harms, liabilities, responsibilities, damages, settlements, awards, disputes, controversies, claims, losses, fees, and/or penalties that arise from and/or relate to

your account, your use of our Services, acts and omissions in connection with our Services and/or a breach of these Terms of Service.

- c. LIMITATION OF LIABILITY.** To the fullest extent possible, you hereby agree to fully and unconditionally release Ocho and its Affiliates from any and all risks, harms, liabilities, responsibilities, damages, settlements, awards, disputes, controversies, claims, losses, fees, and/or penalties – regardless of how they occur or their legal implications – arising out of or relating to (a) our Company, (b) our Affiliates (c) our Services, including without limitation our, materials, information, data, code, terms, user Content, and/or other content relating to our Services; (d) the actions of third parties arising out of or relating to our Services; (e) the availability, performance, and/or functionality of our Services, including without limitation matters concerning your ability to access your Content and/or our Services; (e) the collection, storage, transfer, and/or usage of your Content, data, and other information (including without limitation your financially-sensitive and personally-identifying information), whether authorized or not
- i.** This clause embraces, but is not limited to, a full and unconditional release from: indirect damages; statutory damages; incidental damages; reliance damages; consequential damages; exemplary damages; special damages; punitive damages; attorney fees; litigation costs; the cost of substitute services; any additional penalties (including without limitation administrative and/or civil penalties); and insofar as they are not captured by the previous releases, lost profits, lost revenue, loss of opportunity, harm to reputation, loss of use of Services or any associated products or services, interruption of business, cost of capital, facilities, services, labor, and/or salaries, downtime costs, shutdown and/or slowdown costs, spoilage of materials, inaccuracy of data and/or information, destruction and/or loss of any data, and any damages multiplier, including but not limited to any provision at law for double or treble damages. This clause applies regardless of whether if Ocho and/or its Affiliates were advised as to the possibility of such liabilities, damages, penalties, costs, expenses, and/or awards.
 - ii.** This clause applies regardless of whether the matter implicates negligence, intentional conduct, or otherwise. This clause applies regardless of whether the matter involves a statutory, tort, contractual and/or other dispute.

iii. As you are not paying to use our Services, your sole remedy is terminate this Agreement, close your browser, and cease from any attempted or actual access or use our Services.

iv. In no event whatsoever will our maximum aggregate liability exceed \$50 for damages, harms, losses, costs, fees, expenses, penalties, and fines arising out of or relating to Ocho, our Services, and/or your account.

- d. **Indemnification.** *You agree to indemnify Ocho and its Affiliates and hold Ocho and its Affiliates harmless* in connection with any claims, obligations, liabilities, costs, debt, expenses, losses, damages, settlement amounts, charges, fees, penalties, or fines, arising out of or relating to your account, our Services, your use of our Services, acts and omissions in connection with our Services and/or a breach of these Terms of Service. (This includes but is not limited to indemnifying and holding harmless Ocho and its Affiliates in connection with all matters concerning your Content or the Content of any other user.) You acknowledge and agree that Ocho reserves the exclusive right to control the defense and settlement of any claim, dispute, suit, matter, or controversy for which you are bound to provide indemnification by this clause or any other term or condition.
- e. **Third Parties.** To provide a better user experience, our Services may make use of third party services, feature third party content, run third party applications, or link to third party web sites.
- i. ***Ocho does not make any representations or warranties*** regarding any third party content, web site, application, or other service with which you come into contact via our Services. Furthermore, we do not support, affiliate with, or endorse any third party or its content, web site(s), application(s), or other service(s) unless we explicitly state otherwise in writing.
 - ii. You agree that ***Ocho is not responsible*** for any claims, obligations, liabilities, costs, debt, expenses, losses, damages, charges, fees, penalties, or fines, arising out of or relating a third party and/or its content, web site(s), application(s) and/or other service(s). These third parties are wholly and completely responsible for their own content, web site(s), application(s), usage of your data and information, and/or other service(s).
 - iii. We do not examine or audit any third party services or offerings. ***You are solely responsible*** for evaluating any third party services and offerings – you

access and/or use these services and offerings at your own risk. Therefore, we encourage you to carefully review all third party terms and conditions, privacy policies, operational histories, and security protocols.

- f. Injunctive Relief.** You agree that under no circumstances will you seek to enjoin or restrain Ocho from running its Services, including without limitation operation of our mobile application - which enables users to create, post, view, edit, manipulate, upload, download, share, and respond to audio content, video content, and audiovisual content – and curation of related data, materials, information, and content . You acknowledge and agree that you are not entitled to injunctive relief, rescissions, or any other equitable remedy under this Agreement.
- g. Advertising & Marketing.** We reserve the right to run advertisements, sponsored content, and promotions through our Services – and anywhere in our Services (including but not limited to in proximity to or conjunction with your Content) – and to receive a bonus and/or commission in connection with any purchases relating to our ads and promotions. We further reserve the right to run promotions, sponsored content, and advertisements without labeling them as promotional, sponsored advertising content.
- h. Non-Endorsement & Non-Responsibility.** Ocho does not support or endorse any Content (including but not limited to your Content) or any other third party materials, content, or information that appears in connection with our Services; any Content or third party materials, content, or information solely reflects the statements, advice, offers, and opinions of its author(s)/creator(s) In this connection, Ocho is not in any way responsible for the veracity, accuracy, reliability, legitimacy, legality, proper attribution/usage, or substance of any Content – including but not limited to user profile information and user videos.
- i. Construed in Favor of Ocho.** Everybody makes mistakes, and unfortunately, we are no different. Insofar as these Terms of Service include any errors or ambiguities related to spelling, grammar, or syntax – or any other clear errors or ambiguities – these errors and ambiguities shall be construed in a light most favorable to Ocho. This includes, without limitation:

i. Any ambiguities, inconsistencies, misuses, or uncertainties around the usage of the words “and” vs. “or” vs. “and/or” shall be construed in favor of protecting the rights, interests, liability exposure of Ocho.

ii. Our use of the word “including” shall not be an exclusive term – but shall mean “including without limitation” – unless otherwise noted.

10. Miscellaneous but Important

a. **Liquidated Damages.** When we say that we want to preserve a constructive community for our users, we mean business. Ocho reserves the right to recover – as liquidated damages (i.e. not a penalty) – a \$2,000 “Prohibited Commercial Activity Charge” for each instance of unauthorized commercial activity in connection with our Services. (For example, someone who posts 30 videos which advertise a chance to earn thousands per week working from home would draw \$60,000 in Prohibited Commercial Activity Charges. Same for someone who sends 30 solicitous messages to users with whom that sender has no reasonable connection.) You acknowledge that the Prohibited Commercial Activity Charge is a fair and good-faith estimate of our damages and losses, and that you agreed on this amount with Ocho in advance of any dispute given the difficult of calculating actual harm and losses (e.g. lost opportunity, harm to reputation). You agree that you will pay any Prohibited Commercial Activity Charge within 17 days of receipt of an invoice from Ocho.

b. **Force Majeure.** Ocho shall hold no liability or responsibility for any harms, damages, penalties, losses, costs, expenses, fees, or issues that result from factors beyond the scope of our reasonable control.

c. **Severability.** If any of the Terms of Service herein – or any portion thereof – are held unenforceable, the impact of that unenforceability (i.e. limitation or exclusion of terms) will be construed as narrowly as possible; moreover, the remainder of the Terms of Service herein – and all other portions thereof – shall nevertheless remain in full force and effect. Your jurisdiction may not allow the disclaimer of certain warranties or limitations of certain types of damages. Thus, it is possible that portions of these Terms of Service may not apply to you. However, the limitation or exclusion of a particular disclaimer, restriction, limitation, term, or condition shall in

no manner impact any other provision herein, nor shall it affect the validity or force of that disclaimer, restriction, limitation, term, or condition in other jurisdictions.

- d. **Translation.** Any translation of these Terms of Service is merely provided as a convenience. Any discrepancy or dispute involving a translated version of these Terms of Service and the English version of these Terms of Service shall be resolved in favor of the English version.

- e. **Non-Waiver.** We don't think you'll mind us giving you a "get of jail free card." You acknowledge and agree that any failure by Ocho to require your strict adherence to any term or condition herein shall in no manner be construed as a waiver of any right by Ocho, nor shall such a failure be construed to remove or dilute the effect of any term, condition, or requirement herein stated. In other words, we may enforce and/or exercise our rights under these Terms of Service as we deem fit, without having to waive them at any point.

- f. **Entire Agreement.** These Terms of Service and the incorporated Statement on Privacy represent the entire agreement between you and Ocho with respect to your access to and use of our Services. These terms and conditions supersede any conflicting agreements or terms or conditions therein – however and whenever established – between you and Ocho, unless Ocho explicitly states otherwise. We reject any term or condition, however and whenever set forth, that conflicts with any term or condition herein listed. You hereby agree that any term or condition you set forth, however and whenever set forth, that conflicts with any term or condition herein listed shall be void and of no force or effect, regardless of any statement or indication to the contrary.

- g. **Choice of Law & Venue.** All disputes will be handled in San Francisco, CA. Any claim, dispute, suit, matter, or controversy arising out of or relating to Ocho, our Services and/or these Terms of Service will be construed and governed in accordance with the laws of the State of California, without regard to its conflict of laws principles. You agree that claims, disputes, cause of actions, and proceedings against Ocho must commence within one year of when the cause of action arises and shall be submitted exclusively to the jurisdiction of a state or federal court located San Francisco, CA. You hereby waive any defense or claim of lack of personal jurisdiction, the inappropriateness of venue, or forum non conveniens. You acknowledge and agree that this provision is not intended to, in any manner, limit or negate the force or effect of the immediately subsequent provision entitled "Arbitration of Claims."

h. Arbitration of Claims. Arbitration is a great way to avoid a protracted legal dispute. Any claim, dispute, suit, matter, or controversy arising out of or relating to Ocho, our Services, and/or these Terms of Service may – at Ocho’s sole discretion – be settled exclusively and finally by arbitration. The arbitration shall be conducted in accordance with the commercial arbitration rules created by the American Arbitration Association and before a sole arbitrator. Under no circumstance shall punitive damages be awarded in the arbitration. Any award rendered in such arbitration proceedings shall be final and binding on each of the parties, and judgment may be entered thereon in a court of competent jurisdiction.

i. Class Action Waiver. We can’t let a few angry users gang-up to send us out of business. You may only pursue a claim, dispute, suit, matter, or controversy arising out of or relating to Ocho, our Services and/or these Terms of Service in an individual capacity. You agree that you shall not be involved with any class or representative proceeding – or otherwise participate as a lead plaintiff or class member, in a putative or certified class – involving any claim, proceeding, action, controversy, or dispute arising out of or relating to Ocho, our Services, our Affiliates, and/or any agreement you may have formed with us.

j. Negotiations. It’s important that we can negotiate freely. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration, a civil lawsuit, or any other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

k. Export Control Laws. To be clear, United States export control laws regulate the export and re-export of technology originating in the United States. This includes the electronic transmission of information and software to foreign countries and to certain foreign nationals. As with all applicable laws, rules, regulations, and standards, you are agree to abide by all applicable laws, rules, regulations, and standards concerning export control.

l. Digital Millennium Copyright Act (17 U.S.C. §512)

i. Reporting Infringement. If you believe that your copyrighted work appears in connection with our Services and/or is accessible through our Services in a way that constitutes copyright infringement, please notify Ocho by providing us with the following information in writing to the address listed below: (1) the physical or electronic signature of either the copyright owner or of a person authorized to act on the owner's behalf; (2) a description of the copyrighted work you claim has been infringed, and a description of the activity that you claim to be infringing; (3) identification of the URL or other specific location where the material or activity you claim to be infringing is located or is occurring; (4) your name, address, telephone number and, if you have one, your e-mail address; (5) a statement by you that you have a good faith belief that use in our Services of the copyrighted work in the manner you are complaining of is not authorized by the copyright owner, any agent of the copyright owner, or the law; and (6) a statement by you, made under penalty of perjury, that the information you have provided in your notice is accurate and that you are either the copyright owner or are authorized to act on behalf of the copyright owner.

ii. Counter-Claims of Infringement. If you believe you are the subject of an improper infringement claim, please notify Ocho by providing us with the following information in writing to the address listed below: (1) the physical or electronic signature of either the copyright owner or of a person authorized to act on the owner's behalf; (2) a detailed description of the copyrighted work you claim has been subject to an improper infringement claim; (3) identification of the URL or other specific location from where the allegedly infringing material has been removed, modified, and/or deleted; (4) your name, address, telephone number and, if you have one, your e-mail address; (5) the following statement: "I hold a legitimate, good faith belief that the allegedly offending material, as herein described, has been subject to complaint, removed, or rendered inaccessible as the result of misidentification, misfeasance, malfeasance, and/or mistake. All of the factual information I have provided in connection with this document is true and correct. I consent to the jurisdiction of the District Court in the United States judicial district in which I live – or, to the extent I reside outside the United States, in the Northern District of California– and will accept service of process from the person or the agent of the person who sent the initial notice of infringement to Ocho. All attestations herein are given under penalty of perjury."

m. Headings. Our headings and section titles – in these Terms of Service and the incorporated Statement on Privacy – are provided strictly for your convenience; they have no binding or representative effect on either Party.

n. Contacting Ocho.

i. **Your feedback matters to us.** Please let us know if you have any questions or concerns regarding these Terms of Services or our Statement on Privacy by emailing legal@ocho.co. Likewise, please give us your feedback and share ideas by visiting fdbk.com/ocho. In sharing your feedback and ideas, you acknowledge and agree that this information was shared voluntarily, and that Ocho may freely save, disclose, transfer, adapt, modify, or otherwise use any such feedback and/or idea with any limitation or obligation

ii. **California Consumer Affairs.** Per California Code of Civil Procedure 1789.3, California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs: 1625 North Market Blvd., Sacramento, CA 95834; (916) 445-1254 or (800) 952-5210.

iii. **Legal Notices.** You agree that all legal notices and legal-related correspondence will be provided in hard copy to:

Mass Lab, Inc.
Attn: Legal Department
407 9th Street #3
Brooklyn, NY 11215