

Welcome to the Center of Hope - Haiti ("COHH") website ("Website"). This Website is offered as a convenience to our visitors and donors. COHH, its subsidiaries, partners, and affiliates appreciate your interest in COHH and its Website. The following terms and conditions of use ("TOU") set forth the basic rules that govern your use of the Website. **PLEASE READ THE TOU CAREFULLY BEFORE USING OUR WEBSITE. THESE TOU GOVERN YOUR USE OF OUR WEBSITE, AND IF YOU DO NOT AGREE TO THE TERMS STATED BELOW, YOU SHOULD NOT USE THE WEBSITE.**

## **1. Introduction**

Your use of the Website constitutes your knowledge, understanding, and acceptance of the TOU, and your agreement to be bound by the TOU. COHH may change, edit, modify, delete, revise, or update the TOU from time to time, with or without notice, and your use of our Website after any changes, edits, modifications, deletions, revisions, or updates are posted to the Website constitutes your agreement to comply with the posted TOU. By using our Website, you represent and warrant that you are at least the age of majority in your state, territory, province, or country of residence. If you are not the age of majority in your state, territory, province, or country of residence, you do not have permission to use the Website.

## **2. Trademarks**

The trademarks, trade names, trade dress, logos, and service marks (collectively, the "Trademarks") displayed on our Website are the registered and/or unregistered Trademarks of COHH, or such third-party licensors that may own the displayed Trademarks. Nothing contained on our Website or in the TOU serves to grant to you, by implication or otherwise, any license or right to use any Trademarks displayed on our Website without the written permission of COHH or such third-party licensors that may own the displayed Trademarks.

## **3. Website Contents and Copyright**

The text, Trademarks, logos, images, graphics, photos, digital video and audio files, application functionality, or any other digital media, and their arrangement on our Websites ("Content") are all subject to patent, copyright, trademark and other intellectual property protection. Content may not be copied for commercial use or distribution, nor may Content be modified, processed, or reposted to other websites. Access to and use of our Website is allowed solely for your education in connection with COHH campaigns, products and services, information, entertainment, and communications between you and COHH. You may download, copy or print the Content of our Website for your non-commercial limited use only. No right, title, or interest in any of the Content of our Website is transferred to you as a result of any downloading, copying, printing or use of our Website.

## **4. User Comments and Other Submissions**

While COHH desires to receive feedback from its customers, please do not send COHH any unsolicited creative or original concepts, ideas, materials or products, confidential or proprietary information, or the like ("Creative Submission(s)"). COHH is under no obligation to use or compensate you for your Creative Submissions. COHH will not respond to you regarding your

Creative Submissions, and your Creative Submissions will not be returned to you and will not be treated as confidential information.

## **5. License to Use Submissions**

Our Website may provide you with the opportunity to submit user-generated or third-party use submissions (“User Submissions”). By submitting items to our Website, you represent that you own or have unencumbered, transferable rights and permissions, including, without limitation, the right of publicity to the User Submissions that you submit. If your User Submission contains photographs or digital or video images that depict a child that is under the age of majority in their state, territory, province, or country of residence, you represent that you are, or have written permission from, the child's parent or guardian, and that you have authority to provide the photo, digital, or video image. If you make a User Submission to our Website, you automatically grant COHH a perpetual, worldwide, unlimited, irrevocable, transferable, assignable, royalty-free license for COHH to use that User Submission for any lawful purpose whatsoever, including, without limitation, the right to sublicense that User Submission to third parties for their lawful uses and purposes. Subject to existing laws, you waive any moral rights that you or your licensors may have in any User Submission.

## **6. No Endorsement or Liability for User-Generated or Third-Party Content**

Although User Submissions may be posted on our Website, the posting of those User Submissions does not constitute COHH's endorsement of those User Submissions. COHH is not responsible or liable for any claim, including, without limitation, loss or injury to real, tangible, or intellectual property, violations of personal privacy or privacy rights, actual, consequential or punitive damages, personal injury, or wrongful death in connection with any User Submissions.

## **7. Third-Party Links**

To the extent that the Website may allow third-party links, those links may direct you to third-party websites that are not affiliated with COHH. COHH is not liable for any harm or damages related to the purchase or use of goods, services, resources, content, or any other transactions (“Third-Party Products”) made in connection with any third-party websites. Please review carefully the third party's policies and practices and make sure you understand them before you engage in any transaction. Complaints, claims, concerns, or questions regarding Third-Party Products should be directed to the third party.

## **8. Copyrights and Digital Millennium Copyright Agents**

Pursuant to our rights under the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 512, we have designated a copyright agent to receive copyright infringement notices for claims of infringement related to materials found on our Websites. Our copyright agent is COHH's intellectual property counsel. Our intellectual property counsel can be reached at (212) 801-9200, [KushnickH@GTLaw.com](mailto:KushnickH@GTLaw.com), or via U.S. Mail at: Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 101066, Attn: Heath B. Kushnick

## **9. DMCA Infringement Notification**

To be effective, your infringement notification must include the following:

1. A physical or electronic signature of a 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 or content that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or have access disabled, and information reasonably sufficient to permit us to locate the material;
4. Information reasonably sufficient to permit us to contact the complaining party, including address, telephone number and email address where the complaining party may be contacted;
5. The following statement: "I have 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. The following statement: "The information in this notification is accurate and, under penalty of perjury, I swear that I am the copyright owner or that I am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed."

Upon receipt of the written notification containing the information as outlined in 1 through 6 above:

1. COHH will remove or disable access to the content that is alleged to be infringing;
2. COHH will forward the written notification to the alleged infringer; and
3. COHH will take reasonable steps to promptly notify the alleged infringer that we have removed or disabled access to the content.

### **DMCA Infringement Counter Notification**

Pursuant to the DMCA, after the alleged infringer receives a notice of infringement from COHH, the alleged infringer will have the opportunity to respond to COHH with a counter notification ("Counter Notification"). To be effective, a Counter Notification must be a written communication provided to COHH's designated copyright agent, and must include the following:

1. A physical or electronic signature of the subscriber;
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 disabled;
3. The following statement: "I swear under penalty of perjury that it is my good faith belief that the material identified above was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled"; and
4. The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of the federal district court for the judicial district in which the subscriber's address is located, or if the subscriber's address is outside of the United States, or any judicial district in which COHH may be found, and that the subscriber will accept service of process from the person who provided notification or an agent of such person.

Upon the copyright agent's receipt of a Counter Notification containing the information as outlined in 1 through 4 above, the DMCA provides that the removed material will be restored or access re-enabled and we will comply with this requirement as required by law, provided that the designated agent has not received notice from the original complaining party that an action

has been filed seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on our network.

## **10. Prohibited Uses**

In addition to other prohibitions as set forth in the TOU, you are prohibited from using our Website or Content: (a) for any unlawful purpose; (b) to solicit others to perform or participate in any unlawful acts; (c) to violate any international, federal, or state regulations, rules, laws, or local ordinances; (d) to infringe upon or violate our intellectual property rights or the intellectual property rights of others; (e) to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability; (f) to submit false or misleading information; (g) to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of our Website, other websites, or the Internet; (h) to collect or track the personal information of others; (i) to spam, phish (email fraud), pharm (web traffic redirection fraud), pretext, spider, crawl, or scrape; (j) for any obscene or immoral purpose; or (k) to interfere with or circumvent the security features of our Website, other websites, or the Internet. We reserve the right to terminate your use of our Website for violating any of the prohibited uses.

## **11. Registration, Accounts and Passwords**

You are responsible for the personal protection and security of any password or username that you may use to access our Website, if any. You are responsible for all direct or indirect damages and liable for all activity conducted on our Websites that can be linked or traced back to any prohibited uses of the Website conducted under your username or password. You are obligated to immediately report a lost or stolen password or username to COHH.

## **12. Website Updates**

COHH undertakes no obligation to update, amend or clarify information on our Website, including, without limitation, monetary information, except as required by law. No specified update or refresh date applied on our Website should be taken to indicate that all information on the Website has been modified or updated. Please remember when reviewing information on our Website that such information may not represent the complete information available on a subject. In addition, subsequent events or changes in circumstances may cause existing information on our Website to become inaccurate or incomplete.

On occasion, information on our Website may contain errors, including, without limitation, typographical errors, inaccuracies, or omissions related to particular campaigns, fund raising, special offers, product promotions, pricing information, product descriptions, or product shipping charges and transit times. COHH reserves the right to, at any time without prior notice, correct any errors, inaccuracies or omissions and to change or update information or cancel donations if any information on the Website is inaccurate (including, without limitation, after you have submitted your information).

## **13. Service and Donation Information**

Monetary figures posted, if any, on the Website are for informational purposes only, and COHH reserves the right to change such information at any time. All descriptions of campaigns, fundraising events, and services are subject to change at any time without notice at the sole

discretion of COHH or its third-party partners. COHH reserves the right to discontinue any campaigns or fundraising events at any time. Any offer for any campaign, fundraising event, promotion or service made available on our Website are void where prohibited.

Our Website, Content, product information, and any products and services offered through the Website are intended to comply with U.S. laws and regulations. If you are a non-U.S. user, be advised that other countries may have laws and regulatory requirements that are different than those established in the U.S.

#### **14. Limitations on Liability**

YOU ACKNOWLEDGE, BY YOUR USE OF THIS SITE: (1) THAT YOUR USE OF OUR WEBSITE IS AT YOUR SOLE RISK; (2) THAT YOU ASSUME FULL RESPONSIBILITY FOR ALL COSTS ASSOCIATED WITH ALL NECESSARY SERVICING OR REPAIRS OF ANY EQUIPMENT THAT YOU USE IN CONNECTION WITH YOUR USE OF THIS WEBSITE; AND (3) THAT COHH WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND RELATED TO YOUR USE OF OR INABILITY TO USE OUR WEBSITE, INCLUDING, WITHOUT LIMITATION, FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, COMPUTER VIRUS, OR NETWORK OR INTERNET FAILURE, OR INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, SPECIAL, COMPENSATORY OR CONSEQUENTIAL DAMAGES, LOST PROFITS AND/OR LOSS OF OR DAMAGE TO PROPERTY WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF COHH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL COHH'S TOTAL LIABILITY FOR ANY CLAIMS RELATED TO THIS SITE EXCEED TEN (\$10) DOLLARS.

BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, COHH'S AND ITS AFFILIATES', AGENTS', LICENSORS' AND SUPPLIERS' DAMAGES IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

#### **15. Disclaimer**

THE CONTENT PROVIDED ON OUR WEBSITE IS PROVIDED "AS IS" AND "WITH ALL FAULTS." COHH MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO ITS USE, AVAILABILITY, CONTENT ACCURACY, APPROPRIATENESS OR PERFORMANCE OF OUR WEBSITE. AS A USER, YOU ASSUME ALL RISKS AND RESPONSIBILITIES FOR ITS USE OR NON-USE, AND COHH MAKES NO REPRESENTATION THAT THE CONTENT APPEARING ON OR DOWNLOADED FROM OUR WEBSITE IS COMPATIBLE WITH YOUR COMPUTER OR FREE FROM ERROR OR VIRUSES. NO COHH EMPLOYEE, AGENT OR REPRESENTATIVE IS AUTHORIZED TO MODIFY OR AMEND THIS WARRANTY. TO THE EXTENT ALLOWABLE BY EXISTING LAW, COHH DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO OUR WEBSITE AND CONTENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LIMITATION ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

COHH RESERVES THE RIGHT TO ALTER OR REMOVE WEB SITE CONTENT, OR SUSPEND OR TERMINATE YOUR USE IN ANY WAY, AT ANY TIME, FOR ANY REASON,

WITHOUT PRIOR NOTIFICATION, AND COHH WILL NOT BE LIABLE IN ANY WAY FOR POSSIBLE CONSEQUENCES OF THAT ACTION.

#### **16. Indemnification**

YOU AGREE TO INDEMNIFY AND HOLD COHH, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, AND AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, COSTS AND EXPENSE, INCLUDING ATTORNEY'S FEES, ARISING FROM OR RELATED TO YOUR USE OF OUR WEBSITE OR BREACH OF THESE TOU.

#### **17. Release**

ALL USERS OF OUR WEBSITE ACKNOWLEDGE AND AGREE THAT COHH AS AN INDEMNIFIED PARTY IS RELEASED, DISCHARGED, AND HELD HARMLESS FROM ANY AND ALL LIABILITY FROM THIRD-PARTY CLAIMS MADE IN CONNECTION WITH THE WEB SITES, INCLUDING, WITHOUT LIMITATION, WRONGFUL DEATH AND PERSONAL INJURY, MONEY DAMAGES, OUT-OF-POCKET AND COURT COSTS, ATTORNEY'S FEES, DAMAGE TO TANGIBLE PROPERTY OR REPUTATION, INCLUDING, WITHOUT LIMITATION, LIBEL, DEFAMATION, RIGHT OF PUBLICITY AND INVASION OF PRIVACY. COHH RESERVES ITS RIGHT TO ALL FORMS OF EQUITABLE AND LEGAL RELIEF RELATED TO FRAUD OR ILLEGAL ACTIVITY CONNECTED TO THE USE OF OUR WEBSITE.

#### **18. Termination**

COHH may terminate the TOU at any time and may do so immediately without notice and, accordingly refuse or terminate your access to the Website, if, in COHH's sole discretion, you fail to comply with any term or condition of the TOU.

#### **19. Choice of Law and Forum**

These TOU will be governed and construed in accordance with the laws of the State of Connecticut, USA, without regard to its conflicts of law rules. For all disputes arising out of or relating to our Websites or TOU, you submit to exclusive personal jurisdiction and venue of the state and federal courts located in Fairfield County, CT

#### **20. Notice and Consent to Electronic Communications**

When you visit our Website or send e-mails to us, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices on our Website. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be signed in writing.

#### **21. Privacy Statement**

COHH is committed to protecting the privacy of the visitors to our Website. For information on how information is collected, used, or disclosed by COHH in connection with your use of the Websites, please consult our Privacy Policy which is incorporated into the TOU by reference.

#### **22. No other Agreements**

The provisions and conditions of the TOU constitute the entire agreement between you and COHH related to the use of the Website and supersedes any prior agreements or understandings not incorporated in the TOU. The TOU are effective as of the Effective Date. Continued use of the Website by you after the Effective Date constitutes your acceptance of the TOU after the Effective Date.

Should you have any questions concerning the TOU, or if you desire to contact COHH for any reason, please contact our [COHH-IP@centerofhope-haiti.org](mailto:COHH-IP@centerofhope-haiti.org).

*CHI 60,357,989v1 10-12-10*