

## **SUPER CHIRP TERMS OF SERVICE**

Last Updated: May 10, 2009

### **About SUPER CHIRP**

SUPER CHIRP is a web-based software application that acts as a communication platform integrated with the twitter service ("TWITTER") provided by Twitter, Inc. The service is operated by 83 Degrees, Inc, ("83 Degrees") as the SUPER CHIRP service, and is found at [www.superchirp.com](http://www.superchirp.com) . By using the [www.superchirp.com](http://www.superchirp.com) website ("SUPER CHIRP" or the "Website"), or connecting to the service through TWITTER or other third party applicaitons you agree to be bound by these Terms of Use (this "Agreement").

This Agreement sets out the legally binding terms for your use of the Website and your Membership in the Service. SUPER CHIRP may modify this Agreement from time to time and such modification shall be effective upon posting by SUPER CHIRP on the Website. You agree to be bound to any changes to this Agreement when you use the Service after any such modification is posted. This Agreement includes SUPER CHIRP policy for acceptable use and content posted on the Website, your rights, obligations and restrictions regarding your use of the Website and the Service and Privacy Policy.

### **YOUR USE OF THE SITE AND THE SUPER CHIRP SERVICE CONSTITUTES YOUR ACCEPTANCE OF THE TERMS OF THE AGREEMENT.**

**1. Description of the SUPER CHIRP Service.** The SUPER CHIRP Service is a web-based message distribution service. It is comprised of two parts: 1) a system that allows publishers to message their paying subscribers; and 2) a system allowing subscribers to receive or have access to exclusive updates from publishers.

**2. Changes to the SUPER CHIRP Service and the Agreement.** SUPER CHIRP reserves the right, without liability to you, to modify or discontinue the SUPER CHIRP Service with or without notice to you, and you agree to be bound by such modifications or revisions. If you do not accept and abide by the terms of the Agreement, you may not use the SUPER CHIRP Service. SUPER CHIRP may change the TOU at any time in its sole discretion, so you should visit this page periodically to review these terms. In the event of any material or substantial change in the terms and conditions of the TOU, SUPER CHIRP may, but shall not be obligated to post an announcement of the changes together with a link to the new TOU on the SUPER CHIRP Service. By using the SUPER CHIRP Service after any change in the TOU, you acknowledge and agree to be bound by such amended TOU.

**3. Eligibility.** You must be thirteen years of age or older to register as a member of SUPER CHIRP or use the Web site. If you are under the age of 13, you are not allowed to register and become a member of SUPER CHIRP or access SUPER CHIRP content, features and services on the Web Site. Membership in the Service is void where prohibited. By using the Web site, you represent and warrant that you agree to and to abide by all of the terms and conditions of this Agreement. SUPER CHIRP may terminate your membership for any reason, at any time.

**4. Security.** Authentication is done by an OAuth service allowing your TWITTER credentials to be accessed by SUPER CHRIP. These credentials may be revoked by you at any time via TWITTER. Each account is to be used by an individual user. You are responsible for maintaining the confidentiality of your account, and are fully responsible for all activities that occur under your account. You agree to: (a) immediately notify SUPER CHIRP of any unauthorized use of your account or any other breach of security, and (b) ensure that you

exit from your account at the end of each session. SUPER CHIRP will not be liable for any loss or damage arising from your failure to comply with this Section 4.

**5. Privacy.** Personal information collected by SUPER CHIRP shall be used as set forth in the SUPER CHIRP Privacy Policy. As a condition to using the SUPER CHIRP Service, you agree to the terms of the SUPER CHIRP Privacy Policy as it may be updated from time to time. You agree that SUPER CHIRP may monitor, edit or disclose your personal information, including the content of your emails or message posts, if required to do so in order to comply with any valid legal process or governmental request (such as a search warrant, subpoena, statute, or court order), or as otherwise provided in the SUPER CHIRP Privacy Policy.

**6. User Conduct.** You agree to make use of this messaging platform in compliance with the guidelines set forth in this document. Your use of the SUPER CHIRP Service is subject to your acceptance of, and compliance with the Agreement. SUPER CHIRP reserves the right, but does not assume the responsibility, to monitor or review your conduct on the SUPER CHIRP Service. Your use of the SUPER CHIRP Service is subject to all applicable federal, state and local laws and regulations, and you agree that the following activities are strictly prohibited in conjunction with your use of the SUPER CHIRP Service:

- Promotion or encouragement of illegal activity
- Interference with other SUPER CHIRP users' use of the SUPER CHIRP Service
- Use of the SUPER CHIRP Service in violation of the rights of others
- Use of the SUPER CHIRP Service that is harmful to minors in any way
- The transmission, uploading, distribution or dissemination (or offer to do the same) of any unlawful, defamatory, harassing, abusive, fraudulent, infringing, obscene, or otherwise objectionable content
- Transmission of another's intellectual property or other proprietary information without permission
- Modification, adaptation, translation, or reverse engineering of any portion of the SUPER CHIRP Service or any software offered in connection with the SUPER CHIRP Service
- Transmission of email in violation of the CAN-SPAM Act or any other applicable anti-spam law
- The sale, exchange or distribution to a third party of the email addresses of any person without such person's knowing and continued consent to such disclosure
- The transmission of unsolicited emails to significant numbers of email addresses belonging to individuals and/or entities with whom you have no preexisting relationship
- Intentional distribution of viruses, worms, defects, Trojan horses, corrupted files, hoaxes, or any other items of a destructive or deceptive nature
- **Impersonation of another person (via the use of an email address or otherwise) or other misrepresentation of yourself or the source of any email**
- Creation of multiple user accounts in connection with any violation of the Agreement or creation of user accounts by automated means or under false or fraudulent pretenses
- The sale, trade, resale or other exploitation for any unauthorized commercial purpose or transfer any SUPER CHIRP account
- Removal if any copyright, trademark or other proprietary rights notices contained in or on the SUPER CHIRP Service
- Provision of material or resources in support of any organization(s) designated by the United States government as a foreign terrorist organization

- Perpetration or any click fraud by direct or indirect means in order to increase incoming links or advertising revenue.

Violation of any of the foregoing may result in immediate termination of this Agreement, and may subject you to state and federal penalties and other legal consequences. Your right to use the SUPER CHIRP Service is personal to you. The commercial use of the SUPER CHIRP Service is granted under the guidelines set forth in this document. You may not create bots or other computer generated automatic tools to create events, nor abuse the SUPER CHIRP Service in any manner. Use that constitutes abuse shall be determined by SUPER CHIRP in its sole discretion. SUPER CHIRP reserves the right to terminate your account if SUPER CHIRP determines you have not complied with any part of the Agreement. You represent and warrant that you have all necessary right, power and authority to enter into this Agreement and to perform the acts required of you hereunder.

**7. Content.** You understand that all information, data, text, photographs, graphics, messages or other materials ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from whom such Content originated. With respect to Content you submit or make available for inclusion on publicly accessible areas of the SUPER CHIRP Service, you grant SUPER CHIRP a world-wide, royalty free, non-exclusive license(s) to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the SUPER CHIRP Service solely for the purpose for which such Content was submitted or made available. SUPER CHIRP does not control the Content posted by any user of the SUPER CHIRP Service and thus does not guarantee the accuracy, integrity or quality of such Content. Under no circumstances will SUPER CHIRP be liable in any way for any Content posted by any user or third party, including, but not limited to, liability for any errors or omissions in any Content or for any loss or damage of any kind incurred as a result of the use of any Content posted, e-mailed, sent via text message, or otherwise transmitted via the SUPER CHIRP Service. "Publicly accessible" areas of the SUPER CHIRP Service are those areas intended by SUPER CHIRP to be available to the general public.

**8. SUPER CHIRP Intellectual Property Rights; Copyright Policy.** You acknowledge that SUPER CHIRP owns all right, title and interest in and to the SUPER CHIRP Service, including without limitation all intellectual property rights (the "SUPER CHIRP Rights"), and such SUPER CHIRP Rights are protected by U.S. and international intellectual property laws. The SUPER CHIRP Rights include rights to: (a) the SUPER CHIRP Service developed and provided by SUPER CHIRP and all trademarks and other intellectual property associated therewith; and (b) all software associated with the SUPER CHIRP Service. You agree that you will not copy, reproduce, alter, modify, or create derivative works from the SUPER CHIRP Service or any Content placed on the SUPER CHIRP Service by SUPER CHIRP or any third party. If you believe that your work has been copied and posted on the SUPER CHIRP Service without your permission or in any way that constitutes copyright infringement, please provide SUPER CHIRP with the following information: a description of the copyrighted work that you claim has been infringed; a description of where the material you claim is infringing is located on the SUPER CHIRP Service; your address, telephone number, and email address; and a written statement by you stating that you have a good faith belief that the disputed use is not authorized by you, your agent, or the law; and a statement by you, made under penalty of perjury, that you own the claimed infringing material together with any evidence of such ownership. Please contact SUPER CHIRP at the following address:

83 Degrees, Inc.  
Attn: SUPER CHIRP Copyright Infringement  
81 Lovell Ave.  
Mill Valley, CA 94941

Note: SUPER CHIRP is not affiliated with Twitter, Inc.

**9. Advertisements.** You agree and understand that some parts of the SUPER CHIRP Service may display ads and other information adjacent to and related to the service or other services. Any such ads or other information may be served using a completely automated process. No email content, addresses, or other personally identifiable information will be provided to advertisers as part of the SUPER CHIRP Service. Your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the SUPER CHIRP Service, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such advertiser. You agree that SUPER CHIRP shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers on the SUPER CHIRP Service.

**10. Software.** Your use of any software associated with the SUPER CHIRP Service will be governed by the terms and conditions of the end user license agreement ("EULA") accompanying such software. If you receive any software that is not accompanied by a EULA, then SUPER CHIRP grants to you a non-exclusive, revocable, personal, non-transferable license to use such software solely in connection with the SUPER CHIRP Service and in accordance with this Agreement. SUPER CHIRP reserves all rights to such software not expressly granted to you in any EULA or in this Agreement. Such software is protected by copyright and other intellectual property laws and treaties. SUPER CHIRP or its suppliers own all right, title and interest in and to such software (including all intellectual property rights), and such software is licensed, not sold to you. You will not disassemble, decompile, or reverse engineer, such software, except and only to the extent that such activity is expressly permitted by applicable law.

**11. Information Available from the SUPER CHIRP Service.** SUPER CHIRP and its suppliers do not warrant or guarantee the accuracy or timeliness of any information available from the SUPER CHIRP service, even if such information appears in e-mail, cell phone or other alerts available through the SUPER CHIRP Service. SUPER CHIRP and its suppliers do not authorize the use of information available from the SUPER CHIRP Service for any purpose other than your personal use, and prohibit the resale, redistribution, and use of this information for commercial purposes. SUPER CHIRP does not endorse or recommend any particular product or service. Nothing contained in the SUPER CHIRP Service is intended to constitute professional advice of any kind.

**12. Disclaimer of Warranties.**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

- A. YOUR USE OF THE SUPER CHIRP SERVICE IS AT YOUR SOLE RISK. THE SUPER CHIRP SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. SUPER CHIRP EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- B. SUPER CHIRP MAKES NO WARRANTY THAT (i) THE SUPER CHIRP SERVICE WILL MEET YOUR REQUIREMENTS, (ii) THE SUPER CHIRP SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SUPER CHIRP SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SUPER CHIRP SERVICE WILL MEET YOUR EXPECTATIONS, AND (v) ANY ERRORS IN ANY

SOFTWARE PROVIDED TO OR USED BY YOU IN CONNECTION WITH THE SUPER CHIRP SERVICE WILL BE CORRECTED.

- C. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SUPER CHIRP SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
- D. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM SUPER CHIRP OR THROUGH OR FROM THE SUPER CHIRP SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOU.

**13. Limitation of Liability; Your Exclusive Remedy.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT SUPER CHIRP (83 DEGREES, INC) SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF SUPER CHIRP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a) THE USE OR THE INABILITY TO USE THE SITE OR THE SUPER CHIRP SERVICE; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SUPER CHIRP SERVICE; (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SITE OR THE SUPER CHIRP SERVICE; OR (e) ANY OTHER MATTER RELATING TO THE SITE OR THE SUPER CHIRP SERVICE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE LIMITATIONS SET FORTH IN SECTIONS 13, 14 AND 15 MAY NOT APPLY TO YOU.

**14. Additional Liability Limitation.** As you use the SUPER CHIRP Service, you should expect to receive, access or use Content originated by SUPER CHIRP and persons other than SUPER CHIRP (any such person is referred to as a "third party"). Without limiting the generality of sections 13 and 14, you acknowledge and agree that neither SUPER CHIRP nor its licensors or other suppliers are responsible or liable for: (a) any content, including without limitation, any infringing, inaccurate, obscene, indecent, threatening, offensive, defamatory, or illegal content, or (b) any third party conduct, transmission or data. In addition, you acknowledge and agree that SUPER CHIRP is not responsible or liable for: (i) any viruses or other disabling features that affect your access to or use of the SUPER CHIRP Service, (ii) any incompatibility between the SUPER CHIRP Service and other web site, services, software, and hardware, (iii) any delays or failures you may experience in initiating, conducting, or completing any transmissions or transactions in connection with the SUPER CHIRP Service in an accurate or timely manner, or (iv) any damages or costs of any type arising out of or in any way connected with your use of any services available from third parties through links contained on the SUPER CHIRP Service.

**15. Indemnification.** You agree to indemnify and hold SUPER CHIRP (83 Degrees, Inc.), and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and officers, directors, employees, successors and assigns harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of the following actions by you or other user of the SUPER CHIRP Service using your account: (a) use of the SUPER CHIRP Service, (b) violation of any part of the Agreement, (c) infringement of any intellectual property or other right of any person or entity, (d) violation of any federal, state or local law or regulation; (e) Content you submit, post, transmit or make available through the SUPER CHIRP Service, or (f) violation of any rights of another.

**16. Links to Third Party Sites.** Any web sites that are accessible via links included within the SUPER CHIRP Service that take you to another web site or out of the SUPER CHIRP Service are not under SUPER CHIRP's control, and SUPER CHIRP shall not be responsible for the content, products or services of any linked web site. All such web sites shall be subject to the policies and procedures of the owner of such web sites. SUPER CHIRP encourages you to read those policies and know your rights under any web site you visit.

**17. Agreement Violations by Others.** SUPER CHIRP asks that you participate in ensuring that all users of the SUPER CHIRP Service follow the terms of the Agreement by reporting any violations of these terms. To report a violation of the Agreement, please email us at [privacy@superchirp.com](mailto:privacy@superchirp.com).

**18. General.**

- A. Entire Agreement. The Agreement constitutes the entire agreement between you and SUPER CHIRP and govern your use of the SUPER CHIRP Service, superceding any prior agreements between you and SUPER CHIRP. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other SUPER CHIRP services, affiliate services, third-party content or third-party software.
- B. Assignment. SUPER CHIRP may assign this Agreement, in whole or in part, at any time with or without notice to you. You may not assign or otherwise transfer any of your rights or obligations under this Agreement.
- C. Choice of Law and Forum. The Agreement and the relationship between you and SUPER CHIRP shall be governed by the laws of the State of Washington without regard to its conflict of law provisions or your actual state or country of residence. You and SUPER CHIRP agree to submit to the personal and exclusive jurisdiction of the courts located within King County, Washington.
- D. Waiver and Severability of Terms. The failure of SUPER CHIRP to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect.
- E. Statute of Limitations. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the SUPER CHIRP Service or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.
- F. No Third Party Beneficiaries. You agree that, except as otherwise expressly provided in the Agreement, there shall be no third party beneficiaries to this Agreement.
- G. Section Headings. The section titles in the Agreement are for convenience only and have no legal or contractual effect.
- H. Notice. SUPER CHIRP may, but shall not be obligated to provide you with notices, including those regarding changes to the Agreement, by either email, regular mail, or postings on the SUPER CHIRP Service.

**19. Copyright and Trademark Notices; Other Acknowledgements.** All contents of the SUPER CHIRP Service are Copyright © 2008 83 Degrees, Inc. and/or its suppliers. All rights reserved.