

## TERMS OF USE

Welcome to Turtle Pond Publication's ("Turtle Pond") Owen and Mzee website ("Website"). We know that you and your child are going to enjoy everything that the Website has to offer as it was designed with just you in mind. However, before we can get to the fun there are a couple of ground rules that we must establish.

### General Use Rules

Your use of this Website is expressly conditioned on your acceptance of and agreement to this Terms of Use Agreement (the "Agreement"). This Agreement sets forth the terms and conditions which apply to your use of this Website and by your use you agree to abide by this Agreement. In addition, when using specific services or features, you agree to abide by any guidelines or rules posted in connection with such services or features, all of which are hereby incorporated by reference into this Agreement. If you do not agree with any posted guidelines or rules, or with any part of this Agreement, **you must not use this Website**.

Turtle Pond reserves the right to modify this Agreement at any time. Your continued use of this Website following the posting of any changes to this Agreement means that you accept and agree to abide by such changes. Turtle Pond expressly reserves the right to deny or restrict you and your child's access to the Website should either of you fail to follow the terms set forth herein.

The Website is designed for users of all ages; however, users who are under 18 years old may use the areas of this Website not directed only to parents or legal guardians **only** if a parent or legal guardian consents to such user's use of this Website, assumes the obligations provided in this Agreement, and assumes full responsibility for such user's use of this Website. If you are the parent or legal guardian of a user of this Website who is under 18 years old, you consent to such user's use of this Website, assume the obligations provided in this Agreement, and assume full responsibility for such user's use of this Website.

Turtle Pond reserves the right to limit, in its sole discretion, the provision and quantity of any feature, product or service to any person or geographic area. Any offer for any feature, product or service made on the Web Site is void where prohibited. If you choose to access the Web Site from outside the United States, you do so on your own initiative and you are solely responsible for complying with applicable local laws.

**Intellectual Property Rights.** This Website is protected by copyrights, trademarks and/or other proprietary rights, and except as specifically provided in this Agreement, your use of the Website and its services shall be governed and constrained by applicable copyright, trademark and other intellectual property laws, in addition to this Agreement. You specifically agree that Turtle Pond or its third-party licensors' own all intellectual property rights in and to the content offered on the Web Site (regardless of whether those rights are registered). All rights are herein expressly reserved.

**License to Use Web Site.** Turtle Pond hereby grants to you a limited, worldwide, non-exclusive, non-transferable, non-sublicenseable, and revocable license to use the services and/or the

materials available on the Web Site for personal, noncommercial use only, subject to the restrictions in this Agreement.

**Registration.** Some features and areas of the Website require that you register and provide Turtle Pond with certain information about yourself. During the registration process, you will be asked to choose a user name and password. The user name that you choose must not contain any information that could be used to contact you other than through the Website. You are solely responsible for maintaining the confidentiality of your password. If for any reason your password is stolen, please notify us immediately at:

Turtle Pond Publications  
375 Greenwich St  
7<sup>th</sup> Floor  
New York, NY 10013  
Phone: 212-941-3846  
Fax: 212-941-4083  
Email: [brian@turtlepondpublications.com](mailto:brian@turtlepondpublications.com)

By your registration on the Website, you represent, warrant, and covenant that: (1) you have the power and authority to enter into this Agreement; and (2) that you are at least eighteen (18) years of age. Your registration to use the Website is governed by the Website's Privacy Policy located at [www.owenandmzee.com/omweb/policy.pdf](http://www.owenandmzee.com/omweb/policy.pdf), which is hereby incorporated by reference. The Privacy Policy discusses and governs our collection and use of any information that is submitted to, or collected by, us.

### **User Conduct:**

**Content.** You understand that all postings, messages, information, data, text, files, images, photos, images, pictures, graphics, audio and video clips or other materials posted on, transmitted through, or linked on this Web Site (collectively, the "Content"), are the sole responsibility of the person from whom such Content originated. While Turtle Pond takes reasonable measures to ensure that the content offered on the Website is appropriate for all ages, you understand that Turtle Pond does not control, and is not responsible for Content made available through the Website. You agree that you must evaluate, and bear all risks associated with the use of any Content on behalf of yourself or any user that you have authorized to use the Website.

**User Submitted Content.** Turtle Pond does not claim ownership to the Content you provide to the Web Site (including feedback and suggestions) or post, upload, input or submit to the Web Site, except that Turtle Pond retains all intellectual property rights to the underlying materials made available for your use for such services as the karaoke feature and video maker. However, by posting, uploading, inputting, providing or submitting your Content, you are granting Turtle Pond and its licensors a perpetual, irrevocable, worldwide, royalty-free and fully-sublicensable (through multiple tiers) right to use your Content, including, without limitation, the license rights to: copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate and reformat your Content; publish your name in connection with your Content; and

sublicense such any such rights. No compensation will be paid with respect to the use of your Content as provided herein. Turtle Pond is under no obligation to post or use any Content you may provide, and Turtle Pond may remove any Content at any time in its sole discretion. By submitting Content you warrant and represent that you own or otherwise control all of the rights to your Content as described in this Agreement including, without limitation, all the rights necessary for you to provide, post, upload, input or submit the Content.

Turtle Pond is not responsible for any user's Content that may appear on the Web Site; nor is Turtle Pond responsible for or involved in reviewing, editing, or removing any Content on this Site. Turtle Pond also does not have any control over and does not guarantee the quality, applicability or accuracy of any Content. Turtle Pond does not assume any liability associated with a user's use of the Web Site, or anything contained hereon, including, without limitation, intellectual property infringement relating to or concerning any Content. Please make sure that the Content you provide conforms to all applicable intellectual property right laws.

**Additionally, you are expressly forbidden from posting uploading, inputting, providing or submitting Content containing any personally identifiable information about yourself or any user authorized by you to use the Website, including without limitation a full name, address, telephone number, email address or other information that can be used to identify or contact you.**

By submitting contributions to the Web Site, including ideas, suggestions, and/or proposals of any kind, you acknowledge and agree that: (a) your contributions do not contain any confidential or proprietary information belonging to another; (b) Turtle Pond is not under any obligation of confidentiality, express or implied, with respect to the contributions; (c) Turtle Pond shall be entitled to use or disclose (or choose not to use or disclose) such contributions for any purpose, in any way, in any media worldwide; (d) Turtle Pond may have something similar to the contributions already under consideration or in development; (e) your contributions automatically become the property of Turtle Pond without any obligation of Turtle Pond to you; and (f) you are not entitled to any compensation or reimbursement of any kind from Turtle Pond under any circumstances.

**General Rules of Conduct.** We ask that each User respect one another and Turtle Pond by following these general rules of conduct. You shall not:

- a. upload, post, email, transmit or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, defamatory, tortious, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise deemed by us to be objectionable;
- b. upload, post, email, transmit or otherwise make available any Content that can be used to personally identify you including without limitation full name, address, telephone number, email address or other information that can be used to identifiable or contact you;
- c. harm minor in any way or act in any way predatory toward minors;

- d. impersonate any person or entity, including, but not limited to, Turtle Pond, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- e. manipulate identifiers in order to disguise the origin of any Content transmitted through to the Web Site;
- f. upload, email, post, or otherwise make available any Content that you do not have a right to make available, including without limitation, any Content that infringes any patent, trademark, copy right, trade secret or other proprietary rights of another party;
- g. upload, email, post, or otherwise make available any unsolicited or unauthorized advertising, promotional advertising, junk mail, spam, chain letters, pyramid schemes, or any other form of solicitation;
- h. disrupt the normal flow of dialogue or otherwise act in a manner that negatively affects other users' ability to enjoy the services of the Web Site;
- i. interfere with or disrupt the Web Site, its services, or servers;
- j. intentionally or unintentionally violate any applicable local, state, national or international law.
- k. stalk or otherwise harass another, and/or;
- l. collect or store personal data about other users in connection with the prohibited conduct and activities set forth herein.

Turtle Pond may revoke your right to use or access the Website if you violate any of the aforementioned rules.

**Monitoring the Site.** You agree that Turtle Pond may or may not screen Content, but that Turtle Pond and its designees shall have the right (but not the obligation) in their sole discretion to screen, refuse or remove any Content that is available via the Web Site. Without limiting the foregoing, Turtle Pond and its designees shall have the right to remove any Content that violates these terms of use or is otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content.

You agree that Turtle Pond has no responsibility or liability for: (a) the deletion of Content, (b) failure to store or to deliver any messages and other communications, (c) the modification or malformation of data communications over the Web Site, or (d) other Content maintained or transmitted by the Web Site.

**Termination.** You agree that Turtle Pond may, under certain circumstances and without prior notice, immediately terminate your account, any associated email address, and access to the Web Site's services. Cause for such termination shall include, but not be limited to, (a) breaches or violations of this Agreement or other incorporated agreements or guidelines, (b) requests by law enforcement or other government agencies, (c) a request by you (self-initiated account deletions),

(d) discontinuance or material modification to the Web Site or its services (or any part thereof), (e) unexpected technical or security issues or problems, (f) extended periods of inactivity, (g) engagement by you in fraudulent or illegal activities, and/or (h) nonpayment of any fees owed by you in connection with the Web Site's services. Termination of your account includes (a) removal of access to all offerings within the Web Site and its services, (b) deletion of your password and all related information, files and content associated with or inside your account (or any part thereof), and (c) barring of further use of the Web Site and its services. Further, you agree that terminations for shall be made in Turtle Pond's sole discretion and that, except as explicitly provided herein, Turtle Pond shall not be liable to you or any third party for any termination of your account, any associated email address, or access to the Web Site or its services. Upon any termination of this Agreement, you shall immediately discontinue use of the Web Site and its services

Additionally, if the Web Site visitor is under the age of 18, Turtle Pond will terminate the Web Site visitor's account and access to the Web Site's services upon request from his or her parent or guardian. Please read the Web Site's Privacy Policy [www.owenandmzee.com/omweb/policy.pdf](http://www.owenandmzee.com/omweb/policy.pdf) for more information regarding the rights of a parent or guardian to review and delete collected information.

**Links.** The Web Site may provide, or third parties may provide, links to other web sites. Turtle Pond has no control over such sites, therefore, you acknowledge and agree that Turtle Pond is not responsible for the availability of such external sites or resources, and do not endorse and is not responsible or liable for any Content, advertising, products or other materials on or available from such sites. You further acknowledge and agree that Turtle Pond shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content, goods, or services available on or through any such site or resource.

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**INDEMNITY.** YOU AGREE TO INDEMNIFY AND HOLD TURTLE POND AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, AGENTS, EMPLOYEES, PARTNERS AND LICENSORS HARMLESS FROM ANY CLAIM OR DEMAND, INCLUDING

REASONABLE ATTORNEYS' FEES, MADE BY ANY THIRD PARTY DUE TO OR ARISING OUT OF CONTENT YOU SUBMIT, POST, TRANSMIT OR OTHERWISE MAKE AVAILABLE THROUGH THE WEB SITE OR ITS SERVICES, YOU USE OF THE WEB SITE OR ITS SERVICES, YOUR VIOLATION OF THESE TERMS OF USE, OR YOUR VIOLATION OF ANY RIGHTS OF ANOTHER.

### **General Information.**

**Entire Agreement.** The Terms of Use constitutes the entire agreement between you and Turtle Pond and governs your use of the Web Site and its services, superseding any prior agreements between you and Turtle Pond with respect to the Web Site and its services. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other services, affiliate services, third-party content or third-party software.

**Choice of Law and Forum.** The Terms of use and the relationship between you and Turtle Pond shall be governed by the laws of the State of New York without regard to its conflict of law provisions. You and Turtle Pond agree to submit to the personal and exclusive jurisdiction of the courts located within the county of New York.

**Waiver and Severability of Terms.** The failure of Turtle Pond to exercise or enforce any right or provision of the Terms of Use shall not constitute a waiver of such right or provision. If any provision of the Terms of Use 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 Terms of Use remain in full force and effect.

**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 Web Site, its services or the Terms of Use must be filed within one (1) year after such claim or cause of action arose or be forever barred.

**Headings.** The section titles in the Terms of Use are for convenience only and have no legal or contractual effect.

### **Notice and Procedure for Making Claims of Copyright or Intellectual Property**

**Infringement.** Turtle Pond respects the intellectual property of others, and we ask our Users to do the same. Turtle Pond may, in appropriate circumstances and at its discretion, disable and/or terminate the accounts of users who may be repeat infringers. If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide Turtle Pond with the following information:

1. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
2. a description of the copyrighted work or other intellectual property that you claim has been infringed;

3. a description of where the material that you claim is infringing is located on the site;
4. your address, telephone number, and email address;
5. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
6. a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

Turtle Pond's agent for notice of claims of copyright or other intellectual property infringement can be reached as follows:

Turtle Pond Publications  
375 Greenwich Street - 7th Floor  
New York, NY 10013

**Violations.** Please report any violations of the Terms of Use to [brian@turtlepondpublications.com](mailto:brian@turtlepondpublications.com)