

# Plastic Innovation Prize Website Terms of Use

**EFFECTIVE: [April 27th, 2021]**

Welcome to the Plastic Innovation Prize Website Terms of Use (the “**Agreement**”). This Agreement is important and contains terms and conditions that affect your legal rights, so please read it carefully.

By accessing or using the <https://plasticprize.org> website (or any successor to such website) and related online products and services (collectively, the “**Site**”) provided by Lonely Whale or our affiliates (herein referred to as “**Lonely Whale**,” “**we**,” “**us**” or “**our**”), pursuant to which we highlight our efforts to create healthier oceans and host an innovation competition to reduce the amount of plastic in our oceans (the “**Competition**”), you agree to be bound by the terms and conditions contained in this Agreement and all other terms incorporated herein by reference. The Competition may be subject to additional terms and conditions we specify from time to time; and your participation in the Competition is subject to those additional terms and conditions. This Agreement applies to all users of the Site. If there is a conflict between these Terms and the additional terms, the additional terms will control for that conflict.

We reserve the right, at our sole discretion, to change or modify portions of this Agreement at any time. If we do this, we will post the changes on this page and will indicate at the top of this page the date this Agreement was last revised. You may read a current, effective copy of this Agreement at any time by selecting the “Terms of Use” link on the Site. We will also notify you of any material changes either through a pop-up notice, e-mail or through other reasonable means. Your continued use of the Site after any such changes constitutes your acceptance of the new Agreement. You should periodically visit this page to review the current Agreement so you are aware of any revision to which you are bound. If you do not agree to abide by this or any future Agreement, do not use or access (or continue to use or access) the Site.

ARBITRATION NOTICE AND CLASS ACTION WAIVER: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION SECTION BELOW OR WHERE PROHIBITED BY APPLICABLE LAW, YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

## 1. Privacy Policy.

1.1 Please refer to our Privacy Policy for information about how we collect, use, disclose and otherwise process information about you.

## 2. Eligibility.

2.1 If you are below the age of legal majority under applicable law in the country in which you reside, then your parent or legal guardian must read and accept this Agreement in your name and on your behalf.

2.2 You represent and warrant that you are at least 18 years of age. If the applicable law in the country in which you reside requires that you must be older than 18 to visit the Site, then the minimum age is the legally required one. If you are under age 18 (or age of legal majority where you reside), you may not, under any

circumstances or for any reason, use the Site. We may, in our sole discretion, refuse to offer the Site to any person or entity and change our eligibility criteria at any time.

2.3 You are solely responsible for ensuring that your use of the Site complies with all laws, rules and regulations applicable to you. The right to access the Site is revoked where this Agreement or use of the Site is prohibited or to the extent offering of the Site conflicts with any applicable law, rule or regulation.

### 3. Registration.

To use certain portions of the Site, you are not required to sign up for an Account. However, participation in the Competition requires you to register for an account on the Site (an “**Account**”). You must provide accurate and complete information and keep your Account information updated. You shall not: (i) select or use as a username a name of another person with the intent to impersonate that person; (ii) use as a username a name subject to any rights of a person other than you without appropriate authorization; or (iii) use as a username a name that is otherwise offensive, vulgar or obscene. You are solely responsible for the activity that occurs on your Account, and for keeping your Account password secure. You may never use another person's Account or registration information for the Site without permission. You must notify us immediately of any change in your eligibility to use the Site, breach of security or unauthorized use of your Account. You should never publish, distribute or post login information for your Account. You may delete your Account at any time.

### 4. Use of the Site.

4.1 The Site contains material, including but not limited to software, text, graphics and images (collectively referred to as the “**Content**”). As between you and us, we or our third-party licensors own all of the Content, and all rights, title and interest therein and thereto. While we strive to provide accurate, science-based information, we do not guarantee that any Content you access on or through the Site is or will continue to be accurate. The Content is protected by United States and foreign intellectual property laws. Unauthorized use of the Content may result in violation of copyright, trademark, and other laws. You have no rights in or to the Content, and you will not use, copy or display the Content, including but not limited to use of framing or mirrors, except as permitted under this Agreement. No other use is permitted without our prior written consent. If we consent to your copying of the Content, you must retain all copyright and other proprietary notices contained in the original Content on any copy you make of the Content. You may not sell, transfer, assign, license, sublicense, or modify the Content or reproduce, display, publicly perform, make a derivative version of, distribute, or otherwise use the Content in any way for any public or commercial purpose. The use or posting of any of the Content on any other website or in a networked computer environment for any purpose is expressly prohibited. If you violate any part of this Agreement, your right to access and/or use the Content and Site shall automatically terminate and you shall immediately destroy any copies you have made of the Content.

4.2 “Lonely Whale,” and the trademarks, service marks, and logos of Lonely Whale (the “**Lonely Whale Trademarks**”) used and displayed in connection with the Site are registered and unregistered trademarks or service marks of Lonely Whale. Other company, product, and service names located on the Site or otherwise used in connection with the Site may be trademarks or service marks owned by third parties (the “**Third Party Trademarks**”, and, collectively with the Lonely Whale Trademarks, the “**Trademarks**”). Nothing on the Site or in this Agreement should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Trademark displayed on the Site without our prior written consent specific for each such use. The Trademarks may not be used to disparage us or any applicable third party, our or the applicable third party's

products or services, or in any manner (using commercially reasonable judgment) that may damage any goodwill in the Trademarks. Use of any Lonely Whale Trademarks as part of a link to or from any website is prohibited without our prior written consent. All goodwill generated from the use of any Lonely Whale Trademark shall inure to our benefit.

4.3 You agree not to: (a) take any action that imposes an unreasonable load on the Site's infrastructure; (b) use any device, software or routine to interfere or attempt to interfere with the proper working of the Site or any activity being conducted on the Site; (c) attempt to decipher, decompile, disassemble or reverse engineer any of the software comprising or making up the Site; (d) delete or alter any material we or any other person or entity posts on the Site; or (e) otherwise take any action in violation of our guidelines and policies.

## 5. External Sites.

The Site may contain links to the Lonely Whale website, third party websites, services or other resources on the Internet, and other websites, services or resources may contain links to the Site ("**External Sites**"). These links are provided solely as a convenience to you and not as an endorsement by us of all the content on such External Sites. The content of such External Sites may be developed and provided by others. You should contact the site administrator for those External Sites if you have any concerns regarding such links or any content located on such External Sites. Except for the Lonely Whale website, we are not responsible for the content of any linked External Sites and do not make any representations regarding the content or accuracy of any materials on such External Sites. You should take precautions when downloading files from all websites to protect your computer from viruses and other destructive programs. If you decide to access any External Sites, you do so at your own risk. You acknowledge and agree that we 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 the use of or reliance on any content, goods or services available on or through any External Sites.

## 6. Feedback.

You may voluntarily post, submit or otherwise communicate to us any questions, comments, suggestions, ideas, original or creative materials or other information about Lonely Whale or our Site or the Competition (collectively, "**Feedback**"). You understand that we may use such Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you, including to develop, copy, publish, or improve the Feedback in Lonely Whale's sole discretion. You understand that Lonely Whale may treat Feedback as nonconfidential.

## 7. Prohibited Conduct

7.1 You will not violate any applicable law, contract, intellectual property right or other third-party right or commit a tort, and you are solely responsible for your conduct while using our Site. You will not:

- Engage in any harassing, threatening, intimidating, predatory or stalking conduct;
- Use or attempt to use another user's account without authorization from that user and Lonely Whale;
- Impersonate any person or entity or otherwise misrepresent your affiliation with a person or entity;
- Sell, resell or commercially use our Content;
- Copy, reproduce, distribute, publicly perform or publicly display all or portions of our Content or the Site, except as expressly permitted by us or our licensors;

- Modify our Content, remove any proprietary rights notices or markings, or otherwise make any derivative works based upon our Site or the Content;
- Use our Site other than for their intended purpose and in any manner that could interfere with, disrupt, negatively affect or inhibit other users from fully enjoying our Site or that could damage, disable, overburden or impair the functioning of our Site in any manner;
- Use any data mining, robots or similar data gathering or extraction methods designed to scrape or extract data from our Site;
- Develop or use any applications that interact with our Site without our prior written consent;
- Bypass or ignore instructions contained in our robots.txt file; or
- Use our Site for any illegal or unauthorized purpose, or engage in, encourage or promote any activity that violates these Terms.

7.2 Enforcement of this Section 7 is solely at Lonely Whale’s discretion, and failure to enforce this section in some instances does not constitute a waiver of our right to enforce it in other instances. In addition, this Section 7 does not create any private right of action on the part of any third party or any reasonable expectation that the Site will not contain any content that is prohibited by such rules.

7.3 Please note that parental control protections (such as computer hardware, software or filtering services) may be commercially available to assist you in limiting access to material that is harmful to minors. Information identifying current providers of such protections should be available at: [https://en.wikipedia.org/wiki/Comparison\\_of\\_content-control\\_software\\_and\\_providers](https://en.wikipedia.org/wiki/Comparison_of_content-control_software_and_providers) (last checked on January 27, 2021).

## **8. Limitation of Liability and Disclaimer of Warranties.**

8.1 EXCEPT AS OTHERWISE PROVIDED BY US IN WRITING, LONELY WHALE, OUR AFFILIATES, AND OUR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, OR LICENSORS (COLLECTIVELY, THE “**LONELY WHALE PARTIES**”) MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE SITE OR CONTENT, INCLUDING BUT NOT LIMITED TO THE SITE’S ACCURACY, RELIABILITY, COMPLETENESS, TIMELINESS OR RELIABILITY. THE LONELY WHALE PARTIES SHALL NOT BE SUBJECT TO LIABILITY FOR THE TRUTH, ACCURACY OR COMPLETENESS OF THE CONTENT OR THE SITE OR ANY OTHER INFORMATION CONVEYED TO YOU OR FOR ERRORS, MISTAKES OR OMISSIONS THEREIN OR FOR ANY DELAYS OR INTERRUPTIONS OF THE DATA OR INFORMATION STREAM FROM WHATEVER CAUSE. YOU AGREE THAT YOU USE THE SITE AT YOUR OWN RISK.

8.2 THE LONELY WHALE PARTIES DO NOT WARRANT THAT THE SITE WILL OPERATE ERROR FREE OR THAT THE SITE, ITS SERVERS, OR THE CONTENT ARE FREE OF COMPUTER VIRUSES OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES. IF YOUR USE OF THE SITE OR THE CONTENT RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, NO LONELY WHALE PARTY SHALL BE RESPONSIBLE FOR THOSE COSTS.

8.3 EXCEPT AS OTHERWISE PROVIDED BY US IN WRITING, THE CONTENT AND THE SITE ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND. THE LONELY WHALE PARTIES DISCLAIM ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, NON-INFRINGEMENT OF THIRD PARTIES RIGHTS.

8.4 IN NO EVENT SHALL ANY LONELY WHALE PARTY BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, INCIDENTAL AND CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION) RESULTING FROM THE USE OR INABILITY TO USE THE SITE OR THE CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE),

OR ANY OTHER LEGAL THEORY, EVEN IF SUCH LONELY WHALE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) \$500.00.

8.5 Some jurisdictions do not allow exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the above limitations or exclusions may not apply to you. IN SUCH JURISDICTIONS, THE LIABILITY OF THE LONELY WHALE PARTIES SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. NOTHING IN THESE TERMS AFFECTS ANY LEGAL RIGHTS AND REMEDIES YOU HAVE UNDER LOCAL LAW.

## **9. Indemnification and Release.**

9.1 To the fullest extent permitted by applicable law, you agree to defend, indemnify, and hold harmless the Lonely Whale Parties from and against any claims, actions or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from your breach of this Agreement or your access to, use or misuse of the Content or the Site. We shall provide notice to you of any such claim, suit, or proceeding that triggers this indemnification obligation, and you agree to do the same by writing to the Lonely Whale Legal Department at [aquintero@globalwildlife.org](mailto:aquintero@globalwildlife.org). We reserve the right to assume the exclusive defense and control of any matter which is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.

9.2 To the fullest extent permitted by applicable law, you release the Lonely Whale Parties from responsibility, liability, claims, demands and/or damages (actual and consequential) of every kind and nature, known and unknown (including claims of negligence), arising out of or related to disputes between users and the acts or omissions of third parties. If you are a consumer who resides in California, you hereby waive your rights under California Civil Code § 1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

## **10. ARBITRATION CLAUSE AND CLASS ACTION WAIVER—IMPORTANT—PLEASE REVIEW AS THIS AFFECTS YOUR LEGAL RIGHTS.**

PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH LONELY WHALE AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US, UNLESS YOU OPT OUT OF ARBITRATION BY FOLLOWING THE INSTRUCTIONS SET FORTH BELOW. NO CLASS OR REPRESENTATIVE ACTIONS OR ARBITRATIONS ARE ALLOWED UNDER THIS ARBITRATION AGREEMENT. IN ADDITION, ARBITRATION PRECLUDES YOU FROM SUING IN COURT OR HAVING A JURY TRIAL.

10.1 YOU AND LONELY WHALE AGREE THAT ANY DISPUTE ARISING OUT OF OR RELATED TO THIS AGREEMENT IS PERSONAL TO YOU AND LONELY WHALE AND THAT ANY DISPUTE WILL BE RESOLVED SOLELY THROUGH INDIVIDUAL ACTION, AND WILL NOT BE BROUGHT AS A CLASS ARBITRATION, CLASS ACTION OR ANY OTHER TYPE OF REPRESENTATIVE PROCEEDING.

10.2 Except for small claims disputes in which you or Lonely Whale seeks to bring an individual action in small claims court located in the county of your billing address or disputes in which you or Lonely Whale seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, you and Lonely Whale waive your rights to a jury trial and to have any dispute arising out of or related to this Agreement resolved in

court. Instead, for any dispute or claim that you have against Lonely Whale or relating in any way to the Site or the Content, you agree to first contact Lonely Whale and attempt to resolve the claim informally by sending a written notice of your claim (“**Notice**”) to Lonely Whale by email at [aquintero@globalwildlife.org](mailto:aquintero@globalwildlife.org) or by certified mail addressed to Lonely Whale Legal Department, PO Box 129, Austin, TX 78767. The Notice must (a) include your name, residence address, email address, and telephone number; (b) describe the nature and basis of the claim; and (c) set forth the specific relief sought. Our notice to you will be similar in form to that described above. If you and Lonely Whale cannot reach an agreement to resolve the claim within thirty (30) days after such Notice is received, then either party may submit the dispute to binding arbitration administered by JAMS or, under the limited circumstances set forth above, in court. All disputes submitted to JAMS will be resolved through confidential, binding arbitration. Arbitration proceedings will be held in Travis County, Texas or may be conducted telephonically or via video conference for disputes alleging damages less than \$500, in accordance with the JAMS Streamlined Arbitration Rules and Procedures (“**JAMS Rules**”). The most recent version of the JAMS Rules are available on the [JAMS website](#) and are hereby incorporated by reference. You either acknowledge and agree that you have read and understand the JAMS Rules or waive your opportunity to read the JAMS Rules and waive any claim that the JAMS Rules are unfair or should not apply for any reason.

10.3 You and Lonely Whale agree that this Agreement affects interstate commerce and that the enforceability of this Section 10 will be substantively and procedurally governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the “**FAA**”), to the maximum extent permitted by applicable law. As limited by the FAA, this Agreement and the JAMS Rules, the arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any dispute and to grant any remedy that would otherwise be available in court, including the power to determine the question of arbitrability. The arbitrator may conduct only an individual arbitration and may not consolidate more than one individual’s claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.

10.4 The arbitrator, Lonely Whale, and you will maintain the confidentiality of any arbitration proceedings, judgments and awards, including, but not limited to, all information gathered, prepared and presented for purposes of the arbitration or related to the dispute(s) therein. The arbitrator will have the authority to make appropriate rulings to safeguard confidentiality, unless the law provides to the contrary. The duty of confidentiality does not apply to the extent that disclosure is necessary to prepare for or conduct the arbitration hearing on the merits, in connection with a court application for a preliminary remedy or in connection with a judicial challenge to an arbitration award or its enforcement, or to the extent that disclosure is otherwise required by law or judicial decision.

10.5 You and Lonely Whale agree that for any arbitration you initiate, you will pay the filing fee and Lonely Whale will pay the remaining JAMS fees and costs. For any arbitration initiated by Lonely Whale, Lonely Whale will pay all JAMS fees and costs. You and Lonely Whale agree that the state or federal courts of the State of Texas and the United States sitting in Travis County, Texas have exclusive jurisdiction over any appeals and the enforcement of an arbitration award.

**10.6 Any claim arising out of or related to this Agreement must be filed within one year after such claim arose; otherwise, the claim is permanently barred, which means that you and Lonely Whale will not have the right to assert the claim. You have the right to opt out of binding arbitration within 30 days of the date you first accepted the terms of this Section 10 by emailing [aquintero@globalwildlife.org](mailto:aquintero@globalwildlife.org).** In order to be effective, the opt-out notice must include your full name and address and clearly indicate your intent to opt out of binding arbitration. By opting out of binding arbitration, you are agreeing to resolve disputes in accordance with Section 14.1.

10.7 If any portion of this Section 10 is found to be unenforceable or unlawful for any reason, (a) the unenforceable or unlawful provision shall be severed from this Agreement; (b) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the remainder of this Section 10 or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to this Section 10; and (c) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration. Further, if any part of this Section 10 is found to prohibit an individual claim seeking public injunctive relief, that provision will have no effect to the extent such relief is allowed to be sought out of arbitration, and the remainder of this Section 10 will be enforceable.

## **11. Termination.**

We reserve the right, in our sole discretion, to restrict, suspend, or terminate this Agreement and your access to all or any part of the Site or the Content at any time and for any reason (including if we believe that you have engaged in any suspected fraudulent or abusive activity, or violated or acted inconsistently with the letter or spirit of this Agreement) without prior notice or liability, which may result in the forfeiture and destruction of all information associated with your Account. We reserve the right to change, suspend, or discontinue all or any part of the Site or the Content at any time without prior notice or liability. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity, limitations of liability, class action waivers and arbitration.

## **12. User Must Comply with Applicable Laws.**

12.1 You are solely responsible for ensuring compliance with the laws of your specific jurisdiction and for abiding by all applicable local, state, provincial, national and international laws and regulations.

12.2 The United States controls the export of products and information. You expressly agree to comply with such restrictions and not to export or re-export any of the Content to countries or persons prohibited under the export control laws. By downloading the Content, you are expressly agreeing that you are not in a country where such export is prohibited or are a person or entity for which such export is prohibited. You are solely responsible for compliance with the laws of your specific jurisdiction regarding the import, export, or re-export of the Content.

## **13. Transfer and Processing of Personal Data.**

In order for us to provide the Site and the Competition, you agree that we may process, transfer and store information about you in the United States and other countries, where you may not have the same rights and protections as you do under local law.

## **14. Miscellaneous.**

14.1 This Agreement is governed by the internal substantive laws of the State of Texas, without respect to its conflict of laws provisions. Any dispute between you and Lonely Whale that is not subject to arbitration or cannot be heard in small claims court will be resolved in state and federal courts sitting in Travis County,

Texas. If any provision of this Agreement is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect. Our failure to act on or enforce any provision of this Agreement shall not be construed as a waiver of that provision or any other provision in this Agreement. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. We shall not be liable for any failure to perform our obligations hereunder where such failure results from any cause beyond our reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation. Any information you submit to or provide through the Site might be publicly accessible, and you should protect important and private information. We are not liable for protection of privacy of email or other information transferred through the Internet or any other network that you may use.

14.2 The section headings are provided merely for convenience and shall not be given any legal import. This Agreement is personal to you, and is not assignable, transferable or sublicensable by you except with our prior written consent. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect. Unless otherwise specified in this Agreement, all notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Electronic notices should be sent to [aquintero@globalwildlife.org](mailto:aquintero@globalwildlife.org).

14.3 Lonely Whale, LLC is a non-profit corporation that is fiscally sponsored by Global Wildlife Conservation, a 501(c)(3) with TAX ID 26-2887967. You may contact us at the following address: PO Box 129, Austin, TX 78767, or at the following email address: [aquintero@globalwildlife.org](mailto:aquintero@globalwildlife.org).