

## **The Upper Deck Company e-Pack Terms and Conditions of Use**

*Date last modified: June 17, 2016.*

- 1. Acceptance.** The Upper Deck e-Pack™ mobile app and website, any downloadable material through the app and website, and all information, content, material, and related services contained within (collectively, “e-Pack”) are provided by The Upper Deck Company, a Nevada corporation (“Upper Deck”), located at 2251 Rutherford Road, Carlsbad, California 92008. e-Pack is available for your use, as described herein, subject to your compliance with The Upper Deck Company e-Pack Terms and Conditions of Use (the “Agreement”). Please read this Agreement carefully before using e-Pack. Your registration data, as well as information that you may provide at other times during your use of e-Pack, is subject to The Upper Deck Company e-Pack’s Privacy Policy (“Privacy Policy”) (available at <http://www.upperdeckepack.com>), which is incorporated herein and by reference into these terms.

e-Pack is intended for the use of adults 18 years or older. If you are under the age of 18, you are not permitted to use e-Pack and you agree you shall not use e-Pack. By using e-Pack, you certify that you are at least 18 years of age. You agree to provide us with accurate information concerning your age or identity upon registration. You also agree not to assist minors under the age of 18 in accessing e-Pack.

Anyone wishing to use or access e-Pack must register for his or her own account. Accounts are non-assignable and non-transferable. You may not allow others to use or access your account. If you allow others to use or access your account, you are solely responsible any and all of their activity on your account.

From time to time, Upper Deck may update and modify the terms of this Agreement as necessary and in its sole discretion. Your continued use of e-Pack indicates your full and binding acceptance of this Agreement in its then current form. If you do not agree to accept and be bound by the terms and conditions of this Agreement, do not download e-Pack in its mobile or tablet form, do not visit e-Pack in its website form, and/or promptly cease use of this e-Pack and remove it from your mobile or tablet device.

- 2. License.** Subject to your agreement and continuing compliance with this Agreement, and any other relevant Upper Deck policies, Upper Deck grants you a non-exclusive, non-transferable, non-sublicensable, revocable limited license to access and use e-Pack on your mobile, tablet, or desktop device for purchasing, viewing, and trading, digital trading cards; claiming physical copies of certain digital cards; and transferring certain cards in the e-Pack app or website to your Check Out My LLC (“COMC”) account at <http://www.comc.com>. You agree not to use e-Pack for any other purpose. Please be aware that this license only grants you permission to access and use e-Pack and its features; it does not grant or transfer any title of ownership to you. Any sale, transfer, or attempted sale or transfer, of your e-Pack account is a material breach and violation of the license and the terms of this Agreement.

Upper Deck reserves the right to change, suspend, or discontinue e-Pack and/or the availability of any feature or content, for any reason, at any time, with or without notice, and without liability to you or any third party, except as may be otherwise provided in this agreement. Upper Deck may also impose limits on certain features and services or restrict your access to parts or all of e-Pack without notice or liability.

- 3. Restrictions on Use.** You agree that you will NOT:
  - A.** Misuse e-Pack;

- B. Impersonate any other individual or entity, or otherwise misrepresent your affiliation with another person or entity, in connection with your use of e-Pack;
- C. Use any disparaging or derogatory language in the creation of your user name and your operation and use of e-Pack;
- D. Post, transmit, upload, or otherwise make available on e-Pack any content that (i) harasses, abuses, defames, or threatens other users; (ii) contains profanity or obscene or otherwise objectionable content; or (iii) degrades others on the basis of gender, race, class, ethnicity, national origin, religion, sexual preference, disability, or other classification;
- E. Post, transmit, upload, or otherwise make available on e-Pack any content that (i) contains any other party's intellectual property, unless you have all necessary rights to do so, or violates the privacy, publicity, or other personal rights of others; (ii) contains spam or other advertisements or solicitations (other than offers to trade e-Pack trading cards), promotes commercial entities, or otherwise engages in commercial activity, except as explicitly authorized herein; and/or (iii) contains software viruses or any other computer code, files, or programs, which interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
- F. Harass or stalk other users through e-Pack (e.g., sending repetitive and incessant trade requests);
- G. Harvest or otherwise collect information about users without their knowledge or consent;
- H. Engage in any fraudulent and/or misleading conduct, knowingly provide inaccurate, misleading, or false information regarding a transaction or trade, or fail to deliver items you have agreed to trade;
- I. Sell or transfer your account to anyone;
- J. Violate any applicable federal, state, local, and international laws or regulations;
- K. Make available, distribute, upload, copy, and/or share any video, photos, downloads, or other content provided by Upper Deck or through e-Pack, or any reproduction of such content, to any other website, app, streaming technology, peer-to-peer software, through text messaging or email, or any other unauthorized distribution channels unless expressly authorized to do so by Upper Deck;
- L. Use any meta tags or any other hidden text containing Upper Deck's, or any of its affiliates' (including third party licensors), name or trademarks;
- M. Decipher, decompile, disassemble, or reverse engineer any of the software comprising, or in any way making up, any part of e-Pack, whether in app or website form;
- N. Access any content not intended for your use or log onto a server or account that you are not authorized to access;
- O. Probe, scan, or test the vulnerability of a system network or breach security or authentication measures without proper authorization;

- P. Interfere with e-Pack or servers or networks connected to e-Pack, or disobey any requirements of networks connected to e-Pack; and
- Q. Use e-Pack to distribute spam by publishing or distributing repetitive commercial content.

Violation of the above restrictions, or any attempts to violate the restrictions, may result in the immediate termination or suspension of your account(s). Additionally, any violation of the above restrictions on access or security may result in the forfeiture of your right to claim the physical copy of any digital trading cards associated with your account. All determinations will be made by Upper Deck in its sole discretion, on a case-by-case basis, taking into consideration the severity of the violation or attempted violation. The above restrictions are not intended to be exhaustive. Upper Deck reserves the right to determine what conduct it considers inappropriate use of e-Pack and to take such measures as it sees fit, including, but not limited to, removing content it deems offensive and objectionable or suspending accounts. Upper Deck also reserves the right to add to or amend this list of restrictions at any time.

If you believe your account has been compromised and used in violation of any of the above restrictions, or if you believe any user has violated the above restrictions, please contact Upper Deck immediately as provided for in Section 22 herein.

- 4. **Chat Feature and User Content.** e-Pack contains a chat forum and private messaging feature (together, “Chat Feature”) intended to facilitate communication between users that wish to discuss and exchange e-Pack trading cards. You understand and acknowledge that all postings and content submitted to and posted on e-Pack and the Chat Feature (“User Content”), whether privately transmitted or made publicly available, are the sole responsibility of the person from which such User Content originated, and not the responsibility of Upper Deck. You are entirely responsible for all User Content that you post, upload, share, submit, transmit, or otherwise make available to e-Pack; under no circumstances shall Upper Deck be liable in any way for any User Content. Additionally, User Content does not represent the opinions or views of Upper Deck.

You also understand and acknowledge that Upper Deck has the right, but not the obligation, in its sole discretion to pre-screen, refuse, permanently delete, modify, and/or move any User Content at any time and for any reason. Upper Deck does not control the frequency with which e-Pack users may message others, nor does it restrict the content in these messages (except as set forth above in Section 3). You understand that by using e-Pack and the Chat Feature, you may be exposed to User Content that you find offensive or objectionable; you bear all risks associated with the use or disclosure of and the exposure to any User Content.

If you no longer wish to receive direct messages from a user, you have the ability to block that user in your sole discretion. If you feel that an e-Pack user is harassing or threatening you in any way, posting obscene or objectionable content, or otherwise using the Chat Feature in violation of the restrictions set forth in Section 3, you may contact Upper Deck as provided for in Section 22 herein. Upper Deck, in its sole discretion, may pursue any action it deems necessary to address alleged violations.

- 5. **Purchases.** If you wish to purchase a trading card product on e-Pack, you will be asked to supply certain information including credit card and/or other payment information. You agree that Upper Deck has permission to process payment using third-party vendors of its choosing. You agree that all information that you provide will be accurate, complete, and current and that you have authorization to use and provide such information. You agree to pay all charges incurred by users of your credit card or other payment mechanism at the prices in effect when such charges are incurred. Upper Deck reserves the right

to change prices for products available on e-Pack at any time. In accordance with state and local law, your e-Pack purchases will be taxed using the applicable sales and/or use tax rate for your shipping address, which will be reflected in your invoice. You will be responsible for paying any applicable taxes, along with any applicable fees, relating to your purchases.

Upper Deck is not responsible in any way for e-Pack transactions outside of the e-Pack platform, including, without limitation, sales of e-Pack cards on eBay, PayPal, Amazon, and Craigslist. You are solely responsible for all transactions regarding or related to e-Pack outside of the e-Pack platform.

Upper Deck will not sell or ship Marvel trading card products to e-Pack consumers residing or located outside of the following territories: Australia, Canada, Cook Islands, French Polynesia, New Zealand, Pitcairn Islands, United States and its territories and possessions, and Western Samoa.

6. **Trades.** e-Pack provides the ability to exchange trading cards between users on the e-Pack platform. Initiated trades that are not accepted, declined, or countered within twenty-four (24) hours from the date of submission will expire. If you have initiated a trade and it has expired prior to receiving a response, you may initiate the trade again, subject to your compliance with Section 3 herein. All trades that have been accepted are final and cannot be undone. As set forth in Section 12 below, Upper Deck makes no representations, warranties, or determinations regarding the value or fairness of a trade; you acknowledge and agree that you are trading cards solely at your own risk.
7. **Card Fee; Shipping.** Certain digital cards on e-Pack will be released with a physical card counterpart. By purchasing a digital card pack that has physical card counterparts, you maintain the option to subsequently receive the physical card(s) at a fee of \$0.25 per physical card, plus shipping and handling (the "Card Fee"). The Card Fee is automatically charged to you when you opt to have the physical cards mailed to you on e-Pack. You are not obligated to obtain the physical card, if you do not wish to do so. Upper Deck shall waive the Card Fee for consumers who transfer the corresponding physical card(s) to COMC; additional COMC fees may apply.

All domestic packages are shipped with USPS Delivery Confirmation. You will receive an email with the Delivery Confirmation number that you can check status at the USPS website. Only Express or Registered international packages include tracking information. Cards are placed in penny sleeves and are braced with plastic top loaders. We carefully pack each order using either durable bubble mailers or cardboard boxes. Larger orders are shipped in boxes with each card placed in a penny sleeve. There is no extra shipping fee when using our Standard or Rapid shipping services to have shipments delivered outside the United States. However, there is an extra fee when using any of the other shipping services for international orders. Orders sent out of the country often take 4 to 6 weeks for delivery, although we do not guarantee any shipping timeframes. If you need it faster than that, please use the Priority Shipping option.

Upper Deck is not liable for any shipping disruption, or delay. Upper Deck may, but is not obligated to, attempt to notify you if there is any shipping disruption. Upper Deck is not responsible for any loss or damage incurred during the shipping of the physical cards.

8. **Return Policy: All Sales Final, No Returns.** ALL E-PACK TRADING CARD SALES ARE FINAL, EXCEPT AS REQUIRED BY LAW. E-PACK TRADING CARDS, BOTH DIGITAL AND PHYSICAL, ARE NON-RETURNABLE, NON-REFUNDABLE, AND NON-EXCHANGEABLE. Once a trading card pack, case, or box is purchased, the trading cards contained therein are immediately made available to you and only you and thus, we cannot accept any requests for returns, refunds, or

exchanges for any reason regardless of whether or not you have chosen to “open” the pack, case, or box. If there is a technical error with the receipt of your digital cards, please contact Upper Deck immediately so we can address and handle the matter accordingly.

For customers located within the European Union: as explained above, upon completing your purchase order, the digital trading cards and the right to receive any physical counterpart are immediately made available to you and only you. Thus, by purchasing e-Pack trading cards, you acknowledge and agree to the above terms of our return policy and waive any right you may have to withdraw from the purchase.

9. **Termination.** Upper Deck may terminate or suspend indefinitely e-Pack and any or all of its functions, any and all related services, and any registered account immediately, without prior notice or liability, for any reason including, without limitation, if you breach any terms and conditions of this Agreement. As noted above in Section 3, any violation or attempt to violate this Agreement may result in the immediate termination of your account, to be determined by Upper Deck in its sole discretion on a case-by-case basis in addition to and without waiving any other legal or equitable remedies available to Upper Deck. The consequences of such termination and any action affecting your account shall also be determined by Upper Deck in its sole discretion, taking into consideration the severity of the violation or attempted violation. Upon termination of your account by Upper Deck, your right to use e-Pack and related services will immediately cease.

All provisions of this Agreement which by their nature should survive termination, shall survive termination, including, without limitation, warranty disclaimers, limitation of liability, and indemnity.

10. **Proprietary and Intellectual Property Rights.** All e-Pack material, including, but not limited to, text, data, graphics, logos, button icons, images, audio clips, video clips, links, digital downloads, data compilations, and software and any derivatives, modifications, and improvements thereof are owned by, controlled by, licensed to, or used with permission by Upper Deck and is and may be protected by patent, copyright, trademark, and other intellectual property rights. The e-Pack material is made available solely for your personal, non-commercial use and may not be copied, reproduced, republished, modified, uploaded, posted, transmitted, or distributed in any way, including by email or other electronic means, without the express prior written consent of Upper Deck in each instance. You may download material that is intentionally made available for downloading through e-Pack solely for your use as permitted herein, provided that you keep intact any and all patent, copyright, trademark, and other proprietary notices that may appear on such materials and that you continue to comply with all terms of this Agreement with respect to the additional material.

The availability of Upper Deck’s trading card products is strictly contingent upon Upper Deck obtaining and maintaining relevant licenses with certain third-party licensors. If Upper Deck does not obtain or maintain such requisite licenses at any time and for any reason, Upper Deck may, in its sole discretion, discontinue the affected trading card products. In such event, Upper Deck will notify you and you will have the option during the time prescribed to either (a) claim (i.e., have mailed to you) any affected cards in your account, or (b) transfer the cards to COMC into a separate COMC account. If you do nothing, Upper Deck will transfer the affected cards to COMC on your behalf. Once transferred, the cards will be subject to COMC’s terms and conditions, and Upper Deck will have relinquished all liability with respect to the affected cards.

Nothing contained in e-Pack shall be construed as granting, by implication, estoppel, or otherwise, any license or right to use any of the material or content displayed on e-Pack, including any intellectual property, without the written permission of Upper Deck or any third party that may own or license the

material or content. Any misuse of the material and content on e-Pack is strictly prohibited. Upper Deck will aggressively enforce its intellectual property rights to the fullest extent of the law, including seeking criminal prosecution.

11. **DMCA Notice of Copyright Infringement.** The Digital Millennium Copyright Act (“DMCA”) provides a mechanism for notifying service providers of claims of unauthorized use of copyrighted materials. Under the DMCA, a claim must be sent to the service provider’s designated agent. If you believe in good faith that Upper Deck should be notified of a possible online copyright infringement involving e-Pack, please provide written notification to Upper Deck’s designated agent:

The Upper Deck Company  
2251 Rutherford Road  
Carlsbad, CA 92008  
ATTN: General Counsel  
Email: contracts@upperdeck.com

Please be aware that, in order for notice to be effective, your notice of claim must comply with the detailed requirements set forth in the DMCA. To meet the notice requirements under the DMCA, the notification must be a written communication and must include the following:

- A. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- B. Identification of the copyrighted work claimed to have been infringed or, if multiple copyrighted works is covered by a single notification, a representative list of multiple works;
- C. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Upper Deck to locate the material;
- D. Information reasonable sufficient to permit Upper Deck to contact the complaining party (e.g., complaining party’s address, phone number, email address, etc.);
- E. A statement that the complaining party has a good faith belief that the use of the material in dispute is not authorized by the copyright owner, its agent, or the law; and
- F. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

You are encouraged to review the DMCA requirements (see 17 U.S.C. §512(c)(3)) before submitting such notice. Failure to comply with DMCA requirements may result in a dismissal of such claim.

12. **Disclaimers.** E-PACK, ANY IN-APP/IN-WEBSITE PURCHASES, ANY RELATED SERVICES, AND THE CONTENT, MATERIALS, OR INFORMATION CONTAINED WITHIN, ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITH ALL FAULTS. UPPER DECK MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT AS TO E-PACK, IN-APP/IN-WEBSITE PURCHASES, RELATED SERVICES AND ALL CONTENT, MATERIALS, OR

INFORMATION CONTAINED WITHIN. UPPER DECK DOES NOT REPRESENT OR WARRANT THE AVAILABILITY, VALUE, COMPLETENESS, TIMELINESS, FUNCTIONALITY, RELIABILITY, SEQUENCING, OR SPEED OF DELIVERY OF E-PACK AND/OR THE CONTENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM UPPER DECK OR THROUGH OR FROM E-PACK SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF E-PACK, IN-APP/IN-WEBSITE PURCHASES, RELATED SERVICES, AND HYPERLINKED WEBSITES, INCLUDING FOR ANY DAMAGE TO YOUR OPERATING SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF ANY DOWNLOADABLE CONTENT AVAILABLE THROUGH E-PACK. IT IS ALSO YOUR RESPONSIBILITY TO PROTECT YOUR PASSWORD INFORMATION AND UPPER DECK BEARS NO RESPONSIBILITY FOR LOSS OF ACCOUNT INFORMATION OR ANY UNAUTHORIZED ACCESS TO YOUR ACCOUNT RESULTING FROM THE LOSS OR DISCLOSURE OF YOUR PASSWORD THROUGH NO FAULT OF UPPER DECK.

ALL TRADES, PURCHASES, TRANSFERS TO COMC, AND PHYSICAL CARD CLAIMS (WHICH ARE HANDLED BY COMC) OF TRADING CARDS AND TRADING CARD PACKS, AND ALL IN-APP/IN-WEBSITE PURCHASES ARE FINAL, AND UPPER DECK BEARS NO RESPONSIBILITY FOR LOSS OF INCOME OR VALUE ASSOCIATED WITH ANY SUCH TRANSACTION. UPPER DECK DOES NOT MAKE ANY GUARANTEES, DETERMINATIONS, REPRESENTATIONS, OR WARRANTIES REGARDING SUCH TRANSACTIONS, INCLUDING, BUT NOT LIMITED, TO ANY ASSOCIATED VALUE, AND UPPER DECK DOES NOT GUARANTEE, REPRESENT, OR WARRANT THAT E-PACK WILL BE COMPLETELY FREE FROM ERROR. YOU HEREBY ACKNOWLEDGE AND AGREE THAT YOU ARE PURCHASING, SELLING, TRADING, TRANSFERRING, AND CLAIMING TRADING CARDS AT YOUR OWN RISK. ADDITIONALLY, UPPER DECK IS NOT RESPONSIBLE FOR ANY MISCALCULATIONS OR INACCURACIES ASSOCIATED WITH THE CALCULATION OF ANY POINTS, ACHIEVEMENTS, STATISTICS REGARDING TRADES, OR RANKINGS. UPPER DECK FURTHER DISCLAIMS ANY RESPONSIBILITY OR LIABILITY WHATSOEVER WITH REGARDS TO THE TRANSFER OF TRADING CARDS TO COMC AND ANY SUBSEQUENT PHYSICAL CARD CLAIMS OR SALE IN COMC; ALL SUCH TRANSACTIONS WILL BE HANDLED BY COMC AND ONCE TRANSFERRED, ANY PHYSICAL CARD CLAIMS OR OTHER TRANSACTION OF SUCH TRADING CARDS SHALL BE SUBJECT TO COMC'S TERMS AND CONDITIONS.

YOUR SOLE REMEDY FOR DISSATISFACTION WITH E-PACK, IN-APP/IN-WEBSITE PURCHASES, ITS RELATED SERVICES, AND/OR HYPERLINKED WEBSITES IS TO CEASE USING E-PACK AND/OR THE SERVICES.

13. **Third-Party Websites.** Upper Deck makes no representations whatsoever about any other website or app that you may access through the e-Pack app or website. When you access a non-Upper Deck website or app, including, without limitation, the COMC website, such website or app is independent from Upper Deck, and Upper Deck is not affiliated with the website host or operator and does not have control over the content on that site. Upper Deck is not responsible or liable in any way for the content, services, products, advertising, or materials appearing on or available from any third-party website. Furthermore, a hyperlink to a non-Upper Deck website or app does not in any way imply or express that Upper Deck endorses or accepts any responsibility for the content, or the use, of the linked site.

14. **Indemnity.** You agree to indemnify and hold harmless Upper Deck, its affiliates, subsidiaries, employees, contractors, telecommunication providers, content providers, licensors, and assignees and their respective officers, employees, and agents (collectively the “Indemnified Parties”) from and against any and all liabilities, claims, actions, demands, damages, costs, losses, and expenses (including, but not limited to, costs and attorney’s fees) made by any third party arising from or related to your use of e-Pack, any transaction resulting from your use of e-Pack (including, but not limited to, any trade or sale of trading cards), your use of the Chat Feature, your account, your connection to e-Pack, your violation of the terms of this Agreement, and/or your violation of any proprietary or privacy rights of another. In the event of such defense, Upper Deck shall select legal counsel, and you will not enter into any settlements or make any admissions on the Indemnified Parties’ behalf without the Indemnified Parties’ prior written consent.
15. **Limitation of Liability.** IN NO EVENT SHALL UPPER DECK, ITS AFFILIATES, LICENSORS, DIRECTORS, EMPLOYEES, AGENTS, AND SPONSORS BE RESPONSIBLE OR LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT, E-PACK, RELATED SERVICES, CONTENT OR INFORMATION CONTAINED WITHIN E-PACK, STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON E-PACK, AND/OR ANY HYPERLINKED WEBSITE.
16. **Choice of Law; Dispute Resolution; Class Action Waiver.** These terms and conditions shall be governed by, and construed in accordance with, the laws of the State of California, without regard to its conflict of laws principles. You hereby irrevocably consent to the exclusive jurisdiction of the state and federal courts within San Diego, California, and waive any jurisdictional, venue, or inconvenient forum objections to such courts.

Any claim, dispute, or controversy (“Claim”) arising out of or relating to this Agreement or your use of e-Pack shall be resolved by binding arbitration, rather than in court, administered by Judicate West and to be decided by one arbitrator, who shall be a retired judge on Judicate West’s panel in San Diego, California. The arbitrator’s decision shall be final, binding, and non-appealable. Judgment upon the award may be entered and enforced in any court having jurisdiction. This clause is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act. Neither party shall sue the other party (i) except as provided herein, (ii) for enforcement of this clause, or (iii) of the arbitrator’s award. Any suit regarding the enforcement of this clause or the arbitration award may be brought only in Federal District Court, or if any such court lacks jurisdiction, in any state court that has jurisdiction. The arbitrator, and not any federal, state, or local court, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, arbitrability, unconscionability, enforceability, or formation of this Agreement, including any claim that all or any part of the Agreement is void or voidable. However, the preceding sentence shall not apply to the clause.

Notwithstanding the above, to the extent you have in any manner violated or threatened to violate Upper Deck’s intellectual property rights, or the intellectual property rights of its affiliates or licensors, Upper Deck may seek injunctive or other appropriate relief in any state or federal court in the State of California, and you consent to exclusive jurisdiction and venue in such courts.

Any Claim must be brought in the respective party’s individual capacity, and not as plaintiff or class member in any purported class, collective, representative, multiple-plaintiff, or similar proceeding (“Class

Action”). The parties expressly waive any ability to maintain any Class Action in any forum. The arbitrator shall not have authority to combine or aggregate similar claims, conduct any Class Action, or make an award to any person or entity not a party to the arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator.

17. **Notices.** Upper Deck may provide you with notices, including those regarding changes to this Agreement and the Privacy Policy, by email or postings on e-Pack, but this section places no requirements on Upper Deck not already expressly set forth herein.
18. **Waiver.** The failure to enforce any term or provision of this Agreement shall not be construed as a waiver by Upper Deck. No term or provision of this Agreement will be considered waived, and no breach excused, by Upper Deck unless such waiver or consent is in writing and signed on behalf of Upper Deck. Any consent by Upper Deck to, or waiver of, a breach by any user, shall not constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by any user.
19. **Entire Agreement.** This Agreement, which incorporates the Privacy Policy, constitutes the entire agreement between you and Upper Deck with respect to e-Pack. Upper Deck may modify or amend this Agreement at any time and for any reason, and your continued use of e-Pack provides affirmative and continued acceptance of the terms and conditions set forth in this Agreement and any modifications thereof.
20. **Severability.** If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, such portion, or provision, shall be, as to such jurisdiction, ineffective to the extent it is declared invalid or unenforceable and severable from the remainder of this Agreement. The validity and enforceability of the remaining provisions of this Agreement shall not be affected and the remainder of this Agreement shall remain enforceable to the fullest extent permitted by law.
21. **Limitation of Actions.** You agree that any claim or cause of action you may have against Upper Deck resulting from use of e-Pack or this Agreement must be commenced within two (2) years after the event has occurred, unless a shorter period applies under applicable law.
22. **Contacting Upper Deck.** For any questions and inquiries regarding this Agreement and Upper Deck’s practices, please use the “Contact Us” submission page at [www.upperdeckepack.com](http://www.upperdeckepack.com).
23. **Pre-ordered Products.** If you pre-order items, such pre-ordered items will not be available to open until the product is released. Release dates may be subject to change.