

## Butterfly Memorial Garden Microsite USER TERMS AND CONDITIONS

Welcome to [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) and our terms of use.

IMPORTANT: BY CLICKING ON THE **I Accept** BUTTON AND/OR ACCESSING ANY PART OF THE BUTTERFLY MEMORIAL GARDEN SERVICE (THE "SERVICE") YOU ARE AGREEING TO ALL THE TERMS AND CONDITIONS IN THIS DOCUMENT AND ACKNOWLEDGE RECEIPT OF THE PRIVACY POLICY, AND CONSENT TO BE BOUND BY AND BECOME A PARTY TO THIS SERVICE AGREEMENT. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS OF THIS SERVICE AGREEMENT, OR CANNOT COMPLY WITH THESE TERMS AND CONDITIONS, CLICK THE BACK BUTTON; THE REGISTRATION AND OR USER PROCESS WILL NOT CONTINUE AND YOU WILL STOP ALL USE OF THE SERVICE AND WILL HAVE NO AUTHORITY TO USE THE SERVICE.

### The Service

Butterfly Memorial Garden Microsite is offered as a product of the Company EternalWings LLC (referred to as the "Company" from hereon) located online at [www.memorial.garden](http://www.memorial.garden). It is an interactive virtual platform, available to organizations by subscription that enables people to build a community to celebrate the memory of a deceased loved one. These Terms of Use constitute a binding agreement between you and EternalWings LLC. By visiting the microsite, you agree to be bound by all of the terms and conditions of the Terms of Use, whether you are a "Visitor" (which means you are just browsing [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) or a "Registered User" (which means you have registered an account with [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name)) or "User" (you are a contributor to the microsite).

The Company may also modify the Terms of Use at any time, without notice. Any modifications will be posted on this page, so we suggest you return to this page on a regular basis to view the Terms of Use. Your continued use of the microsite after any modification will mean you agree to the Terms of Use as modified. If you do not agree to a modification, you should stop visiting [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) immediately. If we believe you have breached the Terms of Use, we may, without notice, suspend or terminate your ability to access the [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) microsite and/or any other service, specific content provided to you by [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name), including any personal memorial garden.

### Global Site Editor

Every Subscribing Organization to [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) is monitored by a Global Site Editor which shall be the Company. The Global Site Editor has a unique screen name and password to access certain data entered by all Users on all subscribing sites.

### Site Administrators

Subscribing Organizations to [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) may appoint a Site Administrator. A Site Administrator may receive a unique screen name and password to access data entered by their particular site Users.

### Registered Users and Users

Visitors to [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) may choose to register their identifying information and become Users. Others may become a Registered User. As a Registered User, you have your own account and access to content, tools and other services reserved solely for Registered Users.

Each Registered User may receive a unique screen name and password. You are fully responsible for all activities that occur under your password or account. You may change your password at any time by updating your account on [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name). You are responsible for maintaining the confidentiality of your password, and you will be responsible for all usage of your user account and/or user name, whether authorized or not authorized by you. You agree to immediately notify the Site Administrator of any unauthorized use of your user account, user name or password. You agree to immediately notify the Site Administrator of any unauthorized use of your password or account or any other breach of security of which you become aware. The Company and the Subscribing Organization will not be liable for any loss or damage arising from your failure to comply with this section.

### Disclaimer/Warranty

This microsite and the services provided to you on and via this microsite are provided on an "AS IS" basis. You agree that the Global Site Editor and/or the Site Administrator reserves the right to modify or discontinue provision of this microsite and its services, and to remove the data you provide, either temporarily or permanently, at any time, without notice. The Global Site Editor and/or the Site Administrator will not be held responsible or liable for timeliness, removal of information, failure to store information, inaccuracy of information, or improper delivery of information.

### Improvements/Modifications/Updates

The Company may update or otherwise modify the Services at any time for any reason in the Company's sole discretion. The Company may shut down the Services for maintenance and development work when necessary. You acknowledge that you are familiar with the Services' functions, and that the Services are sufficient without modification to meet your requirements. The Company shall have no obligation whatsoever to customize, modify, or improve the Services.

### **Your Responsibilities and Registration Obligations**

In order to use this microsite or certain parts of it, you may be required to register for a user account; in this case, you agree to provide truthful information when requested, and you undertake that you are at least 13 years of age.

### **Your Access and Account Holders' Responsibilities**

You will be responsible for maintaining the confidentiality of any credentials you provide to access the Services, and shall not share such credentials with anyone else. You agree not to use the credentials of another User at any time or to disclose your credentials to anyone else. You agree to exit (or log-off) from your account at the end of each session and to immediately notify the Site Administrator of any unauthorized use of your credentials. You are solely responsible for any and all use of your account and for any actions that take place from the use of your account, including any damages or claims resulting from unauthorized access to your account. You also agree that the Company or third parties acting on our behalf may send you emails regarding important information regarding your use of the microsite and other electronic communications such as newsletters, promotional materials, and so on. You may opt out of receiving the newsletters and other promotional messages at any time by clicking the unsubscribe link on the email, but you may not opt-out of receiving important items regarding the use of the microsite or your account and the like. All suggestions and comments you provide become the intellectual property of the Company.

### **By using this microsite, you explicitly agree that:**

You will not provide any content or use this site in any way that may be construed as: unlawful; illegal; threatening; harmful; abusive; harassing; stalking; tortious; defamatory; libelous; vulgar; obscene; offensive; objectionable; pornographic; designed to interfere with or disrupt the operation of this microsite or any service provided; infected with a virus or other destructive or deleterious programming routine; giving rise to civil or criminal liability; or in violation of an applicable local, national or international law;

you will not impersonate or misrepresent your association with any person or entity; you will not forge or otherwise seek to conceal or misrepresent the origin of any content provided by you; you will not collect or harvest any information about other users; you will not provide, and you will not use this microsite to provide, any content or service in any commercial manner, or in any manner that would involve junk mail, spam, chain letters, pyramid schemes, or any other form of unauthorized advertising or commerce; you will not use this microsite to promote or operate any service or content without the Global Site Editor's prior written consent; you will not provide any content that may give rise to the Global Site Editor being held civilly or criminally liable, or that may be considered a violation of any local, national or international law, including -- but not limited to -- laws relating to copyrights, trademarks, patents, or trade secrets.

### **Submission of content on this microsite**

By providing any content to this microsite:

You agree to grant the Company and the Subscribing Organization a worldwide, royalty-free, perpetual, non-exclusive right and license to use, display, reproduce, modify, adapt, publish, distribute, perform, promote, archive, translate, and to create derivative works and compilations, in whole or in part. Such license will apply with respect to any form, media, technology already known at the time of provision or developed subsequently; you warrant and represent that you have all legal, moral, and other rights that may be necessary. You acknowledge and agree that the Company and/or the Subscribing Organization will have the right (but not obligation), at the Company and/or the Subscribing Organization entire discretion, to refuse to publish, or to remove, or to block access to any content you provide, at any time and for any reason, with or without notice.

### **Your conduct/Your Responsibilities**

You agree that all information or data of any kind, whether text, photographs or other materials ("content"), made available publicly or privately, will be under the sole responsibility of the person providing the said content, or of the person whose user account is used. You agree that this microsite may expose you to content that may be objectionable or offensive. The Company and/or the Subscribing Organization will not be responsible to you in any way for content displayed on this web site, nor for any error or omission.

### **Rules of Conduct/Use Restrictions**

The following rules of conduct apply to your use of the microsite and to any and all User Content you post on [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) whether the User Content is included in obituaries, tributes, memory books, private messages, e-mails, profiles, comments, or any other portion or feature of [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name).

You may not, in connection with the microsite, disclose what a reasonable person would consider a breach of confidentiality or privacy (such as by posting in a public forum something that was written in a private message or letter); a) a reasonable person would consider excessive, inappropriate, harassing, abusive, threatening, harmful, vulgar, profane, obscene, excessively violent, racially, ethnically or otherwise objectionable or offensive in any way; b) constitutes a breach of any person's privacy or publicity rights, a misrepresentation of facts, or hate speech; h) violates or encourages others to violate any applicable law, statute, ordinance or regulation; c) promotes software or services that deliver unsolicited e-mail or spam; d) contains viruses, Trojan horses, worms, time bombs, cancelbots or other similar harmful programming routines; e) harms minors in any way; f) solicits personal information from anyone under age 18; g) uses or creates inappropriate screen names or Honoree names; h) does anything to prevent the full and complete display of advertisements on memorial.garden pages (these include, but are not limited to overrides that effectively block or substantially impair the display of advertisements on pages within the microsite; i)

exceeds the scope of the services that you have signed up for j) allows usage by others in such a way as to violate the microsite's Terms of Use. You may not, except in designated area, use the microsite to: a) upload, post, email or otherwise transmit any User Content that provides any telephone numbers, street addresses, or email address; or b) engage in commercial activities within [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) (such as by advertising or selling products or services, or inducing Registered Users, Users and Visitors to the microsite to enroll in a promotional or money-making enterprise). In addition, you may not interfere in any way with the microsite's networks or network security, or attempt to use the microsite to gain unauthorized access to any other computer system.

#### **Contributions Posted by Butterfly Memorial Garden Users**

[www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) is an online destination where friends and family can come together to share memories, create personal tribute to Honorees. The interactive nature of postings on [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) makes it impossible for the Company and/or Subscribing Organizations to assume responsibility for any of the materials posted by Registered Users, Users and Visitors. The content, ideas, suggestions, opinions, comments, and observations made by microsite users, and any text, data, photographs, video, music, sound, commemoration content, files or other material provided to us by [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name). Registered Users, Users and Visitors (all of which are referred to as "User Content") are not endorsed by [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) and we make no guarantee regarding the reliability, accuracy, or quality of any User Content that is posted on the microsite. You acknowledge that you will evaluate and bear any risks related to your use of any User Content, including any reliance on the accuracy, completeness, or usefulness of such User Content. All User Content posted to the microsite is the sole responsibility of the person who originally posted the User Content. By sending User Content to [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) or posting it on the microsite, you are representing that you are the creator of the material you submit, or have authorization to distribute it, and that the User Content does not violate these Terms of Use.

#### **Terminate Account**

A Site Administrator and/or Global Site Editor, in its sole discretion, may terminate your password, account or use of the Service and remove and discard any data within the Service if you fail to comply with this Agreement. You may terminate your user account upon notice to the Site Administrator at any time. Upon termination of an account, the Company and/or the Subscribing Organization shall have no obligation to maintain any Data stored in your account or to forward any data to you or any third party.

#### **Disputes**

You are solely responsible for your interactions with other Registered Users, Users or Visitors to the microsite. The Company and/or Subscribing Organization reserves the right, but has no obligation, to monitor or take action regarding disputes between Registered Users, Users and/or Visitors. In the event of disputes, the Global Site Editor and/or the Site Administrator may in its sole discretion take such action as it deems appropriate, including but not limited to suspending or terminating your account or your ability to access the microsite.

#### **Third-party services (Other Parties and Websites)**

Goods and services of third parties may be advertised and/or may be made available on or through this microsite. Representations made regarding products and services provided by third parties will be governed by the policies and representations made by these third parties. The Company and the Subscribing Organization will not in any manner be liable for or responsible for any of your dealings or interaction with third parties. Please be advised that a microsite may contain certain hyperlinks to other websites. Although these websites may have privacy policies, all of these websites and their privacy policies are independent of our microsite and our Policy. We are not responsible for compliance with other websites' privacy policies or data collection practices. You should review these privacy policies carefully before providing personal information to these websites.

#### **Information Related to Children**

COPPA requires that we inform parents and legal guardians about how we collect, use, and disclose personal information from children under 13 years of age. The microsite is not directed at children under 13 years of age but, we recognize that with proper adult supervision some parents might permit their children to visit and utilize the microsite. COPPA requires that we obtain the consent of parents and guardians in order for children under 13 years of age to use certain features of the microsite. When your child attempts to register and/or provide personal information to the microsite, we require a parent or legal guardian to: a) Complete the registration b) Review this Policy and to verify that the child's parent or guardian knows about and authorizes our information practices related to children protected by COPPA using the consent form opt in box at the end of these terms. Without parental consent, we will not knowingly collect personal information of children under 13 years of age, and if we learn that we have inadvertently collected such information, we will promptly delete it and not disclose or transfer any such information to third parties.

#### **The Company Products and Services**

The Company may offer products and services within the microsite. Such products and services may consist of user-generated content, Internet-based memory books and other functionalities.

#### **Proprietary Software/Copyright**

The Company is the owner of the microsite as a whole. All microsite content is protected under the copyright and intellectual property laws of the United States and other countries. The microsite also includes works that are the property of others (i.e. open source Wordpress platform). Copyright and other intellectual property laws, too, protect these works. You may display and, unless otherwise noted, download and print out portions of <http://memorial.garden> +[ADD URL OF SUBSCRIBER] content solely for your own personal, non-commercial use. Any redistribution, retransmission, or publication of any copyrighted material is strictly prohibited without the express written consent of the copyright owner. You agree not to change or delete any proprietary notices from materials downloaded from [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) .You may not incorporate the information, content, or other material on [www.memorial.garden/subscriber name](http://www.memorial.garden/subscriber name) in any database, compilation, archive or cache. You may not modify, copy, distribute, re-publish, transmit, display, perform, reproduce, publish, reuse, resell, license, create derivative works from, transfer, or sell any information, content, material, software, products or services obtained from this microsite, except as specifically noted above.

Except as specifically authorized by the Company you may not access this microsite with any robot, spider, web crawler, extraction software, or any other automated process or device to scrape, copy, or monitor any portion of this microsite or any information, content, or material on this microsite. The Company reserves all of its statutory and common law rights against any person or entity who violates this paragraph. You may not frame to any pages of this microsite or any content contained therein, whether in whole or in part.

#### **Indemnification**

You agree to indemnify and hold harmless the Company, the Subscribing Organization and the Company's and Subscriber Organizations' editor/admin representatives, subsidiaries, affiliates, related parties, officers, directors, employees, agents, independent contractors, advertisers, partners, and co-branders, from any loss, exposure, including reasonable legal fees, arising out of your conduct or connection with this web site or service, your provision of content, your violation of these Terms of use, or any other violation by you of the rights of another person or party.

#### **Reservation of rights**

The Company reserves all rights, including but not limited to any and all copyrights, trademarks, patents, trade secrets, and any other proprietary right that the Company may have in respect of this microsite, its content, and goods and services that may be provided. The use of the Company's rights and property requires the Company's prior written consent. By making services available to you, the Company is not providing you with any implied or express licenses or rights, and you have no rights to make any commercial use of this web site or provided services without the site editor's prior written consent.

#### **Applicable law**

You agree that these Terms of use and any dispute arising out of your use of this microsite or products or services provided will be governed by and construed in accordance with Kentucky state laws. You accept the jurisdiction of the Kentucky courts and that any disputes will be heard by such courts.

#### **Miscellaneous information**

In the event that any provision of these Terms of use is deemed to conflict with ruling by a court with jurisdiction over the parties, the said provision will be interpreted to reflect the original intentions of the parties in accordance with applicable law, and the remainder of these Terms of use will remain valid and applicable; The failure of either party to assert any right under these Terms of use will not be considered to be a waiver of that party's right, and the said right will remain in full force and effect; You agree that any claim or cause in respect of this microsite or its services must be filed within one (1) year after such claim or cause arose, or the said claim or cause will be forever barred, without regard to any contrary law.

#### **DISCLAIMER OF WARRANTIES**

YOU UNDERSTAND AND AGREE THAT YOUR USE OF THIS MICROSITE AND OF ANY SERVICES OR CONTENT PROVIDED (THE "SERVICE") IS AT YOUR OWN RISK. SERVICES AND CONTENT ARE PROVIDED TO YOU "AS IS", AND THE SITE EDITOR EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EITHER IMPLIED OR EXPRESS, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, AND NON-INFRINGEMENT. THE COMPANY MAKES NO WARRANTY, EITHER IMPLIED OR EXPRESS, THAT ANY PART OF THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, VIRUS-FREE, TIMELY, SECURE, ACCURATE, RELIABLE, OR OF ANY QUALITY, NOR IS IT WARRANTED EITHER IMPLICITLY OR EXPRESSLY THAT ANY CONTENT IS SAFE IN ANY MANNER FOR DOWNLOAD. YOU UNDERSTAND AND AGREE THAT THE COMPANY AND THE SUBSCRIBING ORGANIZATION PROVIDES NO PROFESSIONAL ADVICE OF ANY KIND AND THAT ANY ADVICE OR ANY OTHER INFORMATION OBTAINED VIA THIS MICROSITE MAY BE USED SOLELY AT YOUR OWN RISK, AND THAT THE COMPANY AND SUBSCRIBING ORGANIZATION WILL NOT BE HELD LIABLE IN ANY WAY.

#### **LIMITATION OF LIABILITY**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE COMPANY AND THE SUBSCRIBING ORGANIZATION WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES; THIS INCLUDES, BUT IS NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF THE COMPANY AND/OR SUBSCRIBING ORGANIZATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM (I) THE USE OF SERVICES OR THE INABILITY TO USE SERVICES, (II) THE COST OF OBTAINING SUBSTITUTE GOODS AND/OR SERVICES RESULTING FROM ANY TRANSACTION ENTERED INTO ON THROUGH SERVICES, (III) UNAUTHORIZED ACCESS TO OR ALTERATION

OF YOUR DATA TRANSMISSIONS, (IV) STATEMENTS BY ANY THIRD PARTY OR CONDUCT OF ANY THIRD PARTY USING SERVICES, OR (V) ANY OTHER MATTER RELATING TO SERVICES.

**Company:** Eternal Wings, PO BOX, Company Representative: Mary York [bflymgarden@gmail.com](mailto:bflymgarden@gmail.com)

**Subscribing Organization:** [Insert website], [Insert Site Administrator]

\_X\_ I Accept Terms

\_X\_ I am Legal Guardian of Child User

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