

# TERMS OF SERVICE

Effective Date: September 01, 2023

## INTRODUCTION

This Platform is operated by Enviago LLC (hereinafter referred to as “**we**,” “**us**,” “**our**,” or “**Company**”). The Company offers this website, including all information, tools, services, and other content available on this site to you, the “**user**,” or “**you**”, conditioned upon your acceptance of all the terms, conditions, policies, and notices stated in these Terms of Service (hereinafter, the “**Terms**”). These Terms apply to all websites, software platforms, mobile apps, or other online offerings (collectively, the “**Platform**,” “**website**,” or “**Site**”), and will be available by link on all sites and offerings which it covers. These Terms apply to all users, including users who are also contributors of Content (as defined below) of the Platform.

These Terms apply to users of, including visitors to, our Site. Use of our Site is also subject to our current [Acceptable Use Policy](#) and [Community Guidelines](#).

“**Content**” includes the text, software, scripts, graphics, photos, sounds, music, videos, audiovisual combinations, interactive features, textual content, and other materials you may view, upload, publish, submit, make available, display, communicate or post on, or transmit to other users or other persons or access through, the Platform.

Please read these Terms carefully before accessing or using our Platform. Your access to and use of the Platform or our services is conditioned upon your compliance with these Terms. These Terms apply to all visitors, users, and others who wish to access or use our Platform or services.

By accessing or using any part of the Platform or our services, you agree to be bound by these Terms. If you do not agree to any or all of the terms and conditions set forth in these Terms, you do not have permission to access the Platform or use our services.

Any new features or tools which are added to the current Platform or our services shall also be subject to these Terms. You can review the most current version of these Terms at any time on this page. We reserve the right to update, change, modify, or replace all or any part of these Terms by posting updates, modifications, and/or changes to our Platform. It is your responsibility to check this page periodically for any such changes or updates. Your continued use of or access to the Platform or our services following the posting of any changes, modifications, or updates constitutes your express acceptance thereof.

## IMPORTANT NOTICES

PLEASE READ THESE TERMS CAREFULLY BEFORE DOWNLOADING, INSTALLING, OR USING THE PLATFORM. IF YOU DO NOT AGREE TO THESE TERMS, YOU ARE NOT PERMITTED TO USE THE PLATFORM AND YOU MUST IMMEDIATELY CEASE DOWNLOADING, INSTALLING, OR USING THE PLATFORM.

BY DOWNLOADING, INSTALLING, ACCESSING, BROWSING, SIGNING UP, OR USING THIS PLATFORM, YOU ACCEPT AND AGREE TO THESE TERMS WHICH BIND YOU LEGALLY, AND YOU FURTHER:

1. ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THESE TERMS;
2. REPRESENT AND WARRANT YOU ARE AT LEAST 18 YEARS OF AGE OR THE AGE OF MAJORITY IN YOUR JURISDICTION, WHICHEVER IS HIGHER (THE "**AGE OF MAJORITY**"), AND THAT YOU HAVE THE LEGAL CAPACITY TO ENTER INTO THIS AGREEMENT. IF YOU HAVE NOT ATTAINED THE AGE OF MAJORITY, YOU MUST EXIT THE PLATFORM IMMEDIATELY AND MAY NOT USE OR ACCESS ALL OR ANY PART OF THE PLATFORM FOR ANY REASON NOR MAY YOU PRINT OR DOWNLOAD ANY CONTENTS OR PURCHASE ANY CONTENTS FROM THE PLATFORM;
3. ACKNOWLEDGE THAT WE WILL COLLECT AND USE YOUR INFORMATION TO PROVIDE THE PRODUCTS AND SERVICES YOU REQUEST THROUGH THE PLATFORM;
4. ACKNOWLEDGE THAT THE PLATFORM CONTAINS ONLY IMAGES PROTECTED BY THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION. IF YOU ARE SEEKING OBSCENITY OR CHILD PORNOGRAPHY, PLEASE LEAVE THIS PLATFORM IMMEDIATELY;
5. WARRANT THAT ALL INFORMATION PROVIDED UPON REGISTRATION AS PART OF YOUR ACCOUNT IS TRUE, COMPLETE, AND ACCURATE, AND THAT YOU WILL PROMPTLY INFORM US OF ANY CHANGES TO SUCH INFORMATION BY UPDATING THE INFORMATION ON YOUR ACCOUNT;
6. AGREE TO TERMS OF THE COMPANY'S PRIVACY POLICY ("PRIVACY POLICY"), AVAILABLE AT <https://fangift.com/privacy-policy>; and
7. ACKNOWLEDGE AND AGREE THAT THE PLATFORM ACCESSES AND USES YOUR LOCATION INFORMATION BASED ON THE LOCATION OF YOUR DEVICE AT THE TIME OF CONNECTION.

If at any time after reviewing or using the Platform you wish to terminate such use or these Terms, you must uninstall, remove, and/or cease the use of the Platform from your Device completely and delete any copies thereof in your possession. "**Device**" means any Android or iOS compatible basic phone, smartphone, smart watch, tablet, smart tv, or computer or any other such device that may access our platform via the internet.

## SECTION 1 – OVERVIEW

**Our Services.** Our Site is a gifting and e-commerce platform allowing online content creators to create a wishlist of products they want or establish an online store of products they want to sell and fans to buy gifts for creators or products from creators in a privacy-first and enjoyable way.

**Collection of Location and Other Information.** The Platform accesses and uses your Device Location information for our analysis of geographic dispersion of our services based on the area where your Device is located. In addition, this Platform collects and uses your name, address, email address, phone number, IP Address, cookie data, Device Information (such as OS, browser user agent string). It is your responsibility to keep your Device and access to the Platform secure. If you access the Platform from locations outside the United States, you do so on your own initiative and are responsible for the consequences and for compliance with all applicable laws.

**Location Alerts.** You agree to receive pre-programmed notifications (“**Location Alerts**”) on your Device if you have turned on locational services on your mobile telephone or other handheld devices (as the case may be).

You understand and agree that any alerts provided to you through the Platform may be delayed or prevented by a variety of factors. The Company may make commercially reasonable efforts to provide alerts in a timely manner with accurate information, but cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. We shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on an alert.

Because alerts are not encrypted, we will never include your passcode. However, alerts may include your username and some information about your accounts. Anyone with access to your email will be able to view the content of these alerts. At any time you may disable future alerts.

The Platform also permits other users to contact you or provide you notifications on their own behalf via telephone, email, short message service, or text message. You agree to receive notifications from other users at any of the contact information or numbers (including wireless numbers) you have provided to us through any means authorized under these Terms.

**Term and Termination.** These Terms and the license granted hereunder shall be effective from the time you download, install, copy, or otherwise use the Platform until terminated. The Company may, in our sole and absolute discretion, at any time and for any or no reason, suspend or terminate the license and the rights afforded to you hereunder with or without prior notice. Furthermore, if you fail to comply with any provision of these Terms, then the license and any rights afforded to you hereunder shall immediately terminate automatically, without the necessity of notice or other action by the Company. Upon the termination of the license granted to you hereunder, you shall cease all use of the Platform and uninstall and delete the Platform from your Device. We may, without notice to you, disable the Platform at any time. We will not be liable to you or any third party for compensation, indemnity, or damages of any sort as a

result of suspending or terminating the license hereunder in accordance with these Terms, and such suspension or termination will be without prejudice to any other right or remedy we may have now or in the future. These obligations shall survive the termination of the license and these Terms.

**Scope.** We are offering the Platform to use for your own personal use only, and you are not allowed to copy or modify any Company trademarks, logos, copyrightable material, or the Platform or any part thereof in any way. You are not permitted to attempt to extract the source code of the Platform, and you shall not try to translate the Platform into other languages or make derivative versions. The Platform and all the trademarks, copyright, database rights, and other intellectual property rights related thereto belong solely to Company.

**Revisions to Terms.** Company may change or revise these Terms from time to time in our sole discretion, with or without notice to its users. Users are bound by any such changes and revisions and should therefore periodically visit our Platform to review our then-current Terms. Your continued access and use of the Platform will be governed by our most current Terms and constitute your acceptance thereof and your agreement to be bound accordingly.

**Updates.** From time to time, we may provide updates to the Platform. You may not be able to use the Platform until you have installed the latest version.

**Electronic Notices.** You understand and agree that we transact with the Platform users electronically and, therefore, may provide you with required notices and terms electronically, such as by posting a notice in the Platform, and/or sending you an email.

**Software and Downloads Available Through This Platform.** Any software that is made available to access, use, view and/or download in connection with a Website or Internet Service ("**Software**"), including applications, audio streaming, or video streaming, is owned or controlled by the Company and/or licensors, affiliates and suppliers and is protected by copyright laws and international treaty provisions. Your use of the Software is limited to private, non-commercial use and is governed by the terms of the Company End User License Agreement ("**End User License Agreement**"), if any, which accompanies or is included with the Software. Company accepts no responsibility or liability in connection with any Software owned or controlled by third parties.

## **SECTION 2 - GENERAL CONDITIONS**

Company reserves the right to refuse service to anyone for any reason at any time. You understand that your content (not including credit card information), may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices. You agree not to reproduce, duplicate, copy, sell, resell or exploit any portion of the Platform or our services, use of our services, or access to our services or any contact on the Platform through which the services are provided, without our prior written permission. The headings used in these Terms are included for convenience only and shall not limit or otherwise affect these Terms.

## **SECTION 3 - ACCURACY, COMPLETENESS AND TIMELINESS OF INFORMATION**

Company may, but has no obligation to, update our product and service offerings on the Platform, and may experience delays in updating information on the Platform or in our advertising on other platforms. You agree that it is your responsibility to monitor changes to our Platform. We are not responsible if information made available on this Platform is not accurate, complete, or current. The material on this Platform is provided for general information only and should not be relied upon or used as the sole basis for making decisions without consulting primary, more accurate, more complete, or more timely sources of information. Any reliance on the material on this Platform is at your own risk. The information found on this Platform may contain errors or inaccuracies and may not be complete or current. Products or services may be mispriced, described inaccurately, or unavailable on the Platform, and we cannot guarantee the accuracy or completeness of any information found on the Platform. We therefore reserve the right to change or update information and to correct errors, inaccuracies, or omissions at any time without prior notice.

## **SECTION 4 - MODIFICATIONS TO THE SERVICE AND PRICES**

Prices for our products and services are subject to change at any time without notice at our sole discretion. We reserve the right to modify or discontinue any products, services, or the Platform (or any part or content thereof) without prior notice at any time. We shall not be liable to you or to any third party for any modification, price change, suspension, or discontinuance of any of our products, services, or the Platform.

## **SECTION 5 - LICENSE GRANT AND USE RESTRICTIONS**

**License Grant.** Subject to these Terms and the Privacy Policy, we grant you a personal, revocable, non-exclusive, non-transferable, non-sublicensable, limited right to download, install, and use a copy of the Platform on a Device owned and controlled by you, and to access and use the Platform on such Device in accordance with these Terms and all applicable local, national, and international laws and regulations. You represent, warrant, and agree that you are using the Platform solely for access premises via the Platform and not for redistribution or transfer of any kind. Any other use of the Platform is strictly prohibited. We reserve any and all rights in and to the Platform. We also reserve the right to revoke or terminate the license granted hereunder at any time in our sole discretion, with or without prior notice. Unless we tell you otherwise in writing, upon any such revocation or termination, (i) the rights and license granted to you under these Terms will end immediately, and (ii) you must immediately stop using the Platform and delete it from your Device.

**Restrictions on Use.** You shall not: (a) decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, or create derivative works based on the whole or any part of the Platform, for any purpose whatsoever; (b) modify, adapt, improve, or create any derivative work from the Platform or any part thereof or permit the Platform or any part of the Platform to be combined with or become incorporated in any other programs; (c) violate any applicable

laws, rules or regulations in connection with your access or use of the Platform; (d) remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of Company or its affiliates, partners, or suppliers; (e) use the Platform in a manner that derives revenue directly from the Platform, or use the Platform for any other purpose for which it is not designed or intended; (f) distribute the Platform to multiple Devices; (g) make the Platform available over a network or other environment permitting access or use by multiple Devices or users at the same time; (h) use the Platform for creating a product, service or software that is, directly or indirectly, competitive with or in any way a substitute for any services, product or software offered by the Company; (i) use the Platform to send automated queries to any website or to send any unsolicited commercial e-mail; (j) use any proprietary information, interfaces or other intellectual property of the Company, or its affiliates, partners, or suppliers in the design, development, manufacture, licensing or distribution of any applications, accessories or devices for use with the Platform; (k) circumvent, disable or tamper with any security-related components or other protective measures applicable to the Platform or your Device; (l) reproduce, archive, retransmit, distribute, disseminate, sell, lease, rent, exchange, modify, broadcast, synchronize, publicly perform, publish, publicly display, make available to third parties, transfer or circulate the Platform; (m) copy, reproduce, reuse, upload, post, transmit, or distribute any content presented in or provided by the Platform, including, without limitation, for public or commercial purposes, including any text, images, audio, and video; (n) rent, lease, sub-license, loan, distribute, time-share, or translate the Platform in any way; (o) sell, resell, or exploit the Platform in whole or in part (including object and source code), in any form to any person or entity; or (p) use the Platform in a way that could damage, disable, overburden, impair, or compromise our systems or security or interfere with other users, or restrict or inhibit any other user from using the Platform.

You agree to abide by the rules and policies which are established from time to time by the Company in these Terms or any amendments, modifications, revisions, or updates thereto. Such rules and policies may include, for example, required or automated updates, modifications, and/or reinstallations of the Platform and obtaining available patches to address security, interoperability, or performance issues. Your continued use of the Platform indicates your agreement to any revised license rights. Accordingly, we urge you to frequently review the license and any amendments thereto, and, if you do not agree to the terms of such rules and policies or any revisions thereto, you must cease using the Platform immediately.

## **SECTION 6 – YOUR ACCOUNT**

You are responsible for ensuring that all persons who access the Platform through your internet connection are aware of these Terms and comply with them.

To access the Platform or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the Platform that all the information you provide on the Platform is correct, current and complete. You agree that all information you provide to register with the Platform or otherwise, including but not limited to through the use of any interactive features on the Platform, is governed by our Privacy Policy

found at <https://fangift.com/privacy-policy> and you consent to all actions we take with respect to your information consistent with our Privacy Policy.

If you choose, or are provided with, a username, password or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person. You are fully responsible for all activities that occur under your username or password. You also acknowledge that your account is personal to you and agree not to provide any other person with access to the Platform or portions of the Platform using your username, password or other security information. You agree to notify us immediately of any unauthorized access to or use of your username or password or any other breach of security by contacting us at support@fangift.com. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information. Although the Platform will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of the Platform or others due to such unauthorized use.

If you interact with us or with third-party service providers, and you provide information, including account or credit card or other payment information, you agree that all information that you provide will be accurate, complete, and current. You will review all policies and agreements applicable to use of third-party services. In the event you use our Platform over mobile devices, you hereby acknowledge that your carrier's normal rates and fees, such as excess broadband fees, will still apply.

Company has the right to disable any username, password or other identifier, whether chosen by you or provided by Company, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms.

You acknowledge that we reserve the right to charge fees for our services and the Platform access and to change our fees in our sole discretion.

## **SECTION 7 – PAYMENTS AND BILLING INFORMATION**

**Billing Information.** If you wish to purchase any product or service made available through the Platform, you may be asked to supply certain information relevant to your purchase, including, without limitation, your credit card number, the expiration date of your credit card, your billing address, and your shipping information. You represent and warrant that: (i) you have the legal right to use any credit card(s) or other payment method(s) in connection with any purchase; and (ii) the information you supply is true, correct, and complete. The Platform may employ the use of third-party services for the purpose of facilitating payment and the completion of purchases. By submitting your information, you grant us the right to provide the information to these third parties subject to our Privacy Policy.

You agree to provide current, complete and accurate purchase and account information for all purchases made. You agree to promptly update your account and other information, including

your email address and credit card numbers and expiration dates, so that we can complete your transactions and contact you as needed. Inaccurate, incomplete, or obsolete information may result in the immediate termination of your account.

**Payments & Fees.** You agree to pay all fees when due, if any, according to the billing terms. Company posts the current fees for each product and/or services as part of the registration or checkout process. Company reserves the right to change the Platform's fees at any time, with or without prior notice to you. Company reserves the right to contract with a third party to process all payments. Such third parties may impose additional terms and conditions governing payment processing. You authorize the Company and its agents to make payments for the services provided to you through the Platform by automatic check, debit and credit card, and any other form of payment on your behalf. You hereby agree not to falsely report the credit card or check card lost or stolen, without good reason that it is lost or stolen, that you have used for payment of Company's goods or services, including subscriptions.

**Taxes.** Value-Added Tax ("VAT"), Sales Tax or other excise tax may be included in, or added to, your purchase depending on your country, state, territory, city, or on other applicable local regulations. Tax rates may vary accordingly. With regards to gifts or products purchased, all prices and fees displayed are exclusive of applicable federal, provincial, state, local or other governmental sales, goods and services or other taxes, fees or charges now in force or enacted in the future. Any applicable Taxes are based on the rates applicable to the billing address you provide to us, and will be calculated at the time a transaction is charged. Unless otherwise indicated, all prices, fees and other charges are in U.S. dollars, and all payments shall be in U.S. currency.

**Cancellation.** At any time, and without cause, subscription to the service may be terminated by either: the Company, or the user upon notification of the other by electronic or conventional mail, by chat, or by telephone. Users are liable for charges incurred until the date of the termination. Users may cancel at any time by going to our [Customer Service](#)

**Billing Errors.** If you believe that you have been erroneously billed, please notify us immediately of such an error. If we do not hear from you within fifteen (15) days after such billing error first appears on any account statement, such fee will be deemed acceptable by you for all purposes, including resolution of inquiries made by your credit card issuer.

**Refund Policy.** Company provides hassle-free refunds up to 30 days from the purchase. We may grant on-site credits to resolve customer service issues. The billing system used by the Company or our authorized agents provides extensive credit card fraud protection measures and our Platform includes many features to protect users from accidental charges. Therefore, refunds to your credit card will be provided only under the rarest of circumstances such as persistent technical problems originating with our equipment.

## SECTION 8 - WISHLIST & GIFTING TERMS

8.1. All gifts are subject to the terms and conditions of the applicable vendor, which terms and conditions are stated on the applicable Merchant Profile Page and on the applicable creator's ordering list. Vendor, and not the Site, is solely responsible for the condition of gifts. All images of gifts are for illustrative purposes only, and gifts may vary from the pictures. Gift availability is subject to change without notice, and availability is not guaranteed. Although the Site uses its best efforts to ensure that the availability, colors and details of the gift are as described in the Services, the Site does not guarantee that it will match in every instance.

8.2. If you are a creator who receives a gift from your wish list:

8.2.1. You acknowledge and agree that you are not a service provider to the Site.

8.2.2. You acknowledge and agree that the gift is a voluntary transfer from gifter to creator without compensation or restriction.

8.2.3. The Site will place gift orders for items listed in the internal Partner Store as well as from verified stores listed at <https://www.fangift.com/merchants>.

8.2.4. You acknowledge and agree that the Site reserves the right, at its election, to send gifts from the Site, itself, on behalf of merchants, which may or may not be from your wish list at no additional cost to you.

8.2.5. You acknowledge and agree that a gift cannot be (i) claimed in cash by the creator except as explicitly permitted by these Terms of Service, (ii) assigned by the creator to a third party, (iii) received as consideration for transactions, (iv) received as payment for services rendered to a fan or third party, (v) received as payment for delivery of goods, (vi) received as a promise for access to creator's content, services or goods or (vii) exchanged for other goods or services.

8.2.6. If applicable, you may enable crowdfunding, which allows more than one fan to contribute to the purchase of the gift.

8.2.7. You will receive a notice of the gift via electronic notification from the Site with status. The gift will be shipped to the physical address or e-mail address the creator has provided us.

8.2.8. For digital gifts, a redemption link for the gift might be provided (or the gift might be sent to the creator's email).

8.2.9. Each gift will be delivered in accordance with the applicable retailer's terms for such gift, and the delivery of the gift will be handled by the retailer's designated carrier.

8.2.10. In order to submit a refund request, the Site may request additional evidence or documentation from the creator including, but not limited to, a police report.

8.2.11. The delivery estimate given by the Site stems directly from the retailer's delivery estimate and the Site takes no responsibility if this delivery estimate is exceeded due to circumstances out of our control.

8.2.12. Each creator is solely responsible for updating wish lists for non-partner and unverified stores with current pricing and details.

8.2.13. A return request may be rejected at the Site's discretion except in the case of a faulty item from a partner or non-partner store. The partner store's return policy will govern the return process of gifts purchased from a partner store. For a faulty item purchased from a non-partner store, the Site will submit a return request with the merchant, but the Site will not be obligated to offer a refund if the non-partner store rejects the return request.

8.3. Wish lists may not include any of the following items ("Prohibited Items"):

8.3.1. Alcohol

8.3.2. Tobacco

8.3.3. Items containing THC

8.3.4. Firearms

8.3.5. Live animals

8.4. If you are a gifter who purchases from a creator's wish list:

8.4.1. Once gifter has purchased an item through the Site, the order cannot be canceled or refunded unless the creator chooses to cancel the order or refund the gifter themselves.

8.4.2. The Site endeavors to keep ordering times as low as possible but please allow 30 business days for orders to be placed. If the order is not placed within 30 business days, gifter can request a refund. The gifter agrees to not dispute payments for orders that have not been placed within 30 business days of purchase.

8.4.3. For the avoidance of doubt, the service provided by the Site to the gifter constitutes purchasing a given physical or digital good for the creator, the gifter will not receive any tracking or order status information or physical or digital goods.

8.4.4. The Site reserves the right to refuse any order in its sole discretion.

8.4.5.the Site reserves the right to ban a gifter who abuses the gift suggestion tool.

## **SECTION 9 - COMMERCE & STOREFRONTS**

9.1. A creator is responsible for curating their storefront for fans, which may include partner store products or non-partner store products for purchase. Further, “partnership” in these Terms of Service is used in the colloquial sense to refer to an arrangement where the products or services of two parties are sold, branded, or otherwise marketed together, or the products of a party are somehow promoted to consumers of another party’s products. “Partner” used in this context does not refer to any kind of partnership in a legal sense.

9.2. A storefront may not include any Prohibited Items.

9.3. If you are a fan who purchases from a creator’s storefront:

9.3.1.Upon purchasing a product, you will become a customer of the partner store or the verified store.

9.3.2.All products are subject to the terms and conditions of the applicable vendor, which terms and conditions are stated on the applicable Merchant Profile Page. Vendor, and not the Site, is solely responsible for the condition of the products. All images of products are for illustrative purposes only, and products may vary from the pictures. Product availability is subject to change without notice, and availability is not guaranteed. Although the Site uses its best efforts to ensure that the availability, colors and details of the products are as described in the Services, the Site does not guarantee that it will match in every instance.

9.3.3.Each product will be delivered in accordance with the applicable retailer’s terms for such product, and the delivery will be handled by the retailer’s designated carrier.

9.3.4. In order to submit a refund request, the Site may request additional evidence or documentation from the fan including, but not limited to, a police report.

9.3.5.The delivery estimate given by the Site stems directly from the retailer’s delivery estimate and the Site takes no responsibility if this delivery estimate is exceeded due to circumstances out of our control.

9.3.6.the Site endeavors to keep ordering times as low as possible but please allow 30 business days for orders to be placed. If the order is not placed within 30 business days, fan can request a refund. The fan agrees to not dispute payments for orders that have not been placed within 30 business days of purchase.

9.3.7. A return request may be rejected at the Site's discretion except in the case of a faulty item. The partner store's return policy will govern the return process of products purchased from a partner store.

9.3.8. the Site reserves the right to refuse any order in its sole discretion.

9.3.9. For the avoidance of doubt, the service provided by the Site to a fan constitutes purchasing a physical or digital good on behalf of such fan.

## **SECTION 10 - INTELLECTUAL PROPERTY RIGHTS**

**Rights to Platform.** You acknowledge and agree that the source and object code of the Platform (including whether or not present on your Device; and including, without limitation, any copy that you download, install, or use on your Device) and the format, directories, queries, algorithms, structure and organization of the Platform are the intellectual property and proprietary and confidential information of us, our affiliates, licensors, or suppliers. The Platform is licensed, not sold, to you. Title to the Platform shall remain at all times with us. We and our partners, collaborators, licensors, and suppliers reserve the right to change, suspend, terminate, remove, impose limits on the use of or access to, disable access to, or require the return of the Platform (or any copy thereof) at any time without notice and will have no liability to you or any third party for doing so. Except as expressly stated in these Terms, you are not granted any intellectual property rights in or to the Platform, whether by implication, estoppel or other legal theory, and all rights in and to the Platform not expressly granted to you under these Terms are hereby reserved and retained by the Company. These obligations survive the termination of these Terms and the license granted hereunder.

**License to Content.** You grant us an irrevocable license that is non-exclusive, royalty-free, fully paid, unlimited, and universal. This license extends to sublicensing through multiple tiers and persists perpetually. It encompasses all manners and forms of media, both current and future inventions. This license enables us to use, reproduce, license, distribute, modify, adapt, reformat, publicly perform, publicly display, and create derivative works from the specified content for the purposes of operating our Site, enhancing our products and services, and promoting our Site, products, and services through advertising and marketing efforts.

**Company Marks.** Trademarks (including, but not limited to, the Company logo) that are used or displayed in the Platform are owned by us or our affiliates, licensors, or suppliers. Our trademarks may not be copied or used, in whole, partial or modified form, without the prior written permission of us or, if applicable, our licensors. In addition, Company custom graphics, logos, button icons, scripts, and page headers are covered by trademark, trade dress, copyright, or other proprietary right law, and may not be copied, imitated, or used, in whole, partial or modified form, without our prior written permission. You may not use any meta tags or any other "hidden text" utilizing a Company name, trademark, or product name without our express written consent. These obligations survive the termination of these Terms and the license granted hereunder.

**Open-Source Software.** The Platform may utilize or include third party software that is subject to open-source license terms (“Open-Source Software”). You acknowledge and agree that your right to use such Open-Source Software as part of the Platform is subject to and governed by the terms and conditions of any applicable open-source license, including, without limitation, any applicable acknowledgements, license terms and disclaimers contained therein (collectively, the “Open-Source License Terms”). In the event of a conflict between these Terms and the Open-Source License Terms, the Open-Source License Terms shall control.

## **SECTION 11 - OPTIONAL TOOLS**

We may provide you with access to third-party tools which we neither monitor nor have any control or input over. You acknowledge and agree that we provide access to such tools “as is” and “as available” without any warranties, representations, or conditions of any kind and without any endorsement. We shall have no liability whatsoever arising from or relating to your use of such optional third-party tools. Any use by you of optional tools offered through the Platform is entirely at your own risk and discretion and you should ensure that you are familiar with and approve of the terms on which such tools are provided by the relevant third-party provider(s). We may also, from time to time, offer new services and/or features through the Platform (including, the release of new tools and resources). Such new features and/or services shall also be subject to these Terms.

## **SECTION 12 - THIRD-PARTY LINKS**

Certain content, advertisements, recommendations, information, products, and services available via our Platform may include materials from or links to third party websites or services, which are not controlled or owned by the Company. Third-party links on this site may direct you to third-party websites that are not affiliated with the Company. The Company is not responsible for examining or evaluating their content for accuracy, and we do not warrant and will not have any liability or responsibility for any third-party materials, websites, or platforms, or for any other materials, products, or services of third parties. The Company has no control over and assume no responsibility for the content, privacy policies, or practices of any third-party website, platforms, or services. The Company does not warrant the offerings of any third-party providers or their platforms.

You acknowledge and agree that Company shall not be liable, whether directly or indirectly, for any harm, loss, or damages caused or alleged to be caused by or in connection with your use or reliance on such content, goods, resources, transactions, or services available on or through any third-party websites/platforms. We strongly advise you to review carefully any third-party's policies, terms, conditions, and practices before you engage in any transaction. Complaints, claims, concerns, or questions regarding third-party products or services should be directed to the third-party.

## **SECTION 13 - USER COMMENTS, FEEDBACK, AND OTHER SUBMISSIONS**

If, at our request, you send certain specific submissions (for example, contest entries) or without a request from us you send creative ideas, suggestions, proposals, plans, or other materials, whether online, by email, by postal mail, or otherwise (collectively, “comments”), you agree that we may, at any time, without restriction, edit, copy, publish, distribute, translate, and otherwise use in any medium any comments that you forward to us. The Company is not and shall be under no obligation to: (1) maintain any comments in confidence; (2) pay compensation for any comments; or (3) respond to any comments. The Company may, but has no obligation to, monitor, edit, or remove Content that we determine in our sole discretion to be unlawful, offensive, threatening, libelous, defamatory, obscene, or otherwise objectionable or violating any party’s intellectual property rights or these Terms. You agree that your comments will not violate any right of any third-party, including copyright, trademark, privacy, personality or other personal or proprietary right. You further agree that your comments will not contain libelous or otherwise unlawful, abusive or obscene material, or contain any computer virus or other malware that could in any way affect the operation of the Platform or any related website. You may not use a false e-mail address, pretend to be someone other than yourself, or otherwise mislead Company or third parties as to the origin of any comments. You are solely responsible for any comments you make and their accuracy. The Company takes no responsibility and assumes no liability for any comments posted by you or any third-party.

## **SECTION 14 - PERSONAL INFORMATION**

Your submission of personal information through the Platform is governed by our Privacy Policy. Please review our Privacy Policy at <https://fangift.com/privacy-policy> for more detailed information.

## **SECTION 15 - ERRORS, INACCURACIES AND OMISSIONS**

Occasionally there may be information on our Platform, products, content, or services that contains typographical errors, inaccuracies or omissions that may relate to product descriptions, pricing, promotions, offers, product shipping charges, transit times and availability. We reserve the right to correct any errors, inaccuracies or omissions, and to change or update information or cancel orders if any information on the Platform or on any related platform is inaccurate at any time without prior notice (including after you have submitted your order). The Company undertakes no obligation to update, amend or clarify information on the Platform or on any related platform, including, without limitation, pricing information or Content, except as required by law. No specified update or refresh date applied on the Platform or on any related platform, should be taken to indicate that all information on the Platform or on any related platform has been modified or updated.

## SECTION 16 - PROHIBITED USES

In addition to other prohibitions as set forth in these Terms, you are prohibited from using the Platform or its content: (a) for any unlawful purpose; (b) to solicit others to perform or participate in any unlawful acts; (c) to violate any international, federal, provincial, state, or local regulations, rules, laws, or ordinances; (d) to infringe upon or violate our intellectual property rights or the intellectual property rights of others; (e) to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability; (f) to submit false or misleading information; (g) to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Platform or of any related website, other websites, related platforms, or the Internet; (h) to collect or track the personal information of others; (i) to spam, phish, pharm, pretext, spider, crawl, or scrape; (j) for any obscene or immoral purpose; (k) to post any Content that depicts any person under 18 years of age (or older in any other location in which 18 is not the minimum age of majority) whether real or simulated; (l) post any Content for which you have not maintained written documentation sufficient to confirm that all subjects of your posts are, in fact, over 18 years of age (or older in any other location in which 18 is not the minimum age of majority); (m) post any Content depicting underage sexual activity, non-consensual sexual activity, revenge porn, blackmail, intimidation, snuff, torture, death, violence, incest, racial slurs, or hate speech, (either orally or via the written word); (n) to post any Content containing unsolicited or unauthorized advertising, promotional materials, spam, junk mail, chain letters, pyramid schemes, or any other form of unauthorized solicitation; (o) use the Platform (or post any Content that) in any way that promotes or facilitates prostitution, solicitation of prostitution, human trafficking, or sex trafficking; (p) use the Platform to arrange any in-person meetings for purposes of sexual activity for hire; or (q) to interfere with or circumvent the security features of the Platform or any related platform/website, other websites/platforms, or the Internet. We reserve the right to terminate your use of the Platform or any related website/platform for committing any of the prohibited uses.

## SECTION 17 – CONTENT POSTED

Our platform offers personalized content (videos, photos and texts) featuring celebrities, creators and influencers, and others ("**Creators**"). These videos are tailored to you or a designated recipient ("**Recipient**"). Creators determine how they fulfill requests and create the content at their discretion, which might not precisely align with your request. We retain the right to decline requests at our discretion. You are buying the license right to use the content, rather than ownership rights.

Upon full payment, you are granted limited rights to use the content strictly for personal, non-commercial, and non-promotional purposes. This encompasses a non-exclusive, royalty-free, fully paid, global, sublicensable, and revocable license to utilize, reproduce, distribute, and publicly display the video across various media, both existing and in the future.

Selling, commercializing, or creating non-fungible tokens (NFTs) is prohibited unless pre-approved by us in writing. You can sublicense your rights solely to facilitate the permitted use of the content, like sharing it on social media or sending it to a Recipient. We maintain the right to terminate these licenses partially or entirely, and to remove content from our platform without prior notice.

You may submit Content to the Platform and other websites linked to the Platform including photos, videos and user comments. You understand that the Platform does not guarantee any confidentiality with respect to any Content you submit.

You shall be solely responsible for your own Content and the consequences of posting, uploading, publishing, transmitting, or otherwise making available your Content on the Platform. You understand and acknowledge that you are responsible for any Content you submit or contribute, and you, not us, have full responsibility for such Content, including its legality, reliability, accuracy, and appropriateness. We do not control Content you submit or contribute, and we do not make any guarantee whatsoever related to Content submitted or contributed by users. Although we sometimes review Content submitted or contributed by users, we are not obligated to do so. Under no circumstances will we be liable or responsible in any way for any claim related to Content submitted or contributed by users.

You affirm, represent, and warrant that you own or have the necessary licenses, rights, consents, and permissions to publish Content you submit; and you license to the Platform all patent, trademark, trade secret, copyright, or other proprietary rights in and to such Content for publication on the Platform pursuant to these Terms.

You further agree that Content you submit to the Platform will not contain third party copyrighted material, or material that is subject to other third-party proprietary rights, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to post the material and to grant to the Platform all of the license rights granted herein.

You agree and understand that the Platform (and their successors' and affiliates') may make use of your Content for promotional or commercial purposes and to render the services pursuant to these Terms. For clarity, you retain all of your ownership rights in your Content. By submitting Content to the Platform, you hereby grant the Platform's operators an unlimited, worldwide, perpetual, non-exclusive, royalty-free, sublicensable, and transferable license to use, reproduce, publish, distribute, broadcast, market, create derivative works of, adapt, translate, publicly display, communicate, or perform, make available or otherwise use all of the Content, including without limitation for promoting and redistributing part or all of the Platform (and derivative works thereof) in any media formats and through any media channels. You also waive to the full extent permitted by law any and all claims against us related to moral rights in the Content. In no circumstances will the Company be liable to you for any exploitation of any Content that you post. You also hereby grant each user of the Platform a non-exclusive, royalty free license to access your Content through the Platform, and to use, reproduce, display, communicate, and perform such Content as permitted through the functionality of the Platform

and under these Terms. The above licenses granted by you in photo and/or video Content you submit to the Platform terminate within a commercially reasonable time after you remove or delete your Content from the Platform. You understand and agree, however, that the Platform may retain, but not display, distribute, or perform, server copies of your Content that has been removed or deleted. The above licenses granted by you in user comments you submit are perpetual and irrevocable.

The Platform does not endorse any Content submitted by any user or other licensor, or any opinion, recommendation, or advice expressed therein, and the Platform expressly disclaims any and all liability in connection with Content. The Platform does not permit copyright infringing activities and infringement of intellectual property rights on the Platform, and the Platform will remove all Content if properly notified that such Content infringes on another's intellectual property rights. The Platform reserves the right to remove Content without prior notice.

All Content you submit must comply with the Content standards set out in these Terms.

If any of the Content that you post to or through the Platform contains ideas, suggestions, documents, and/or proposals to us, we will have no obligation of confidentiality, express or implied, with respect to such Content, and we shall be entitled to use, exploit, or disclose (or choose not to use or disclose) such Content in our sole discretion without any obligation to you whatsoever (i.e. you will not be entitled to any compensation or reimbursement of any kind from us under any circumstances).

In the process of posting Content to the Platform, you may be asked to provide some personally identifying information, such as your name, address, email address, a password, and other documentation. You may also be asked to provide such information in order to use certain features of the Platform. We will keep a record of the information you provide, including your personally identifiable information. That information may be linked in our records to other information you provide, including Content. We will not provide your name or other personally identifying information to our advertisers or business partners without your permission. Please note that some of the information you provide in registering for and using the Platform, including the name used in registering for and using the Platform or other personally identifying information, may be displayed to other members of the Platform, and may become public. In addition, we may disclose the personally identifying information and documentation you provide in some limited circumstances, including but not limited to responses to subpoenas or requests by law enforcement, or as required by taxing authorities.

## **SECTION 18 – MONITORING AND ENFORCEMENT**

We have the right but not the obligation to: (i) remove or refuse to post any Content you submit or contribute to the Platform for any or no reason in our sole discretion; and/or (ii) monitor any communication occurring on or through the Platform to confirm compliance with these Terms, the security of the Platform, or any legal obligation; (iii) take any action with respect to any Content posted by you that we deem necessary or appropriate in our sole discretion, including if we believe that such Content violates these Terms, infringes any intellectual property right or

other right of any person or entity, threatens the personal safety of users of the Platform or the public, or could create liability for us; (iv) disclose your personally identifying information or other information about you to any third party who claims that Content posted by you violates their rights, including their intellectual property rights, or their right to privacy; (v) take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the Platform; and/or (vi) terminate or suspend your access to all or part of the Platform for any or no reason, including without limitation, any violation of these Terms.

Without limiting the foregoing, we have the right to fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any Content on or through the Platform. YOU WAIVE AND HOLD THE COMPANY AND OUR PLATFORM OPERATORS HARMLESS, AS WELL AS THEIR PARENT CORPORATION, THEIR RESPECTIVE AFFILIATES, LICENSORS, SERVICE PROVIDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY THE COMPANY OR ANY OF THE FOREGOING PARTIES DURING OR AS A RESULT OF ITS INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER US, SUCH PARTIES, OR LAW ENFORCEMENT AUTHORITIES.

The Platform takes a powerful stand against any form of child exploitation or human trafficking. If we discover that any Content involves underage individuals, or any form of force, fraud, or coercion, we will remove the Content and submit a report to the proper law enforcement authorities. If you become aware of any such Content, you agree to report it to the Platform by contacting [legal@fangift.com](mailto:legal@fangift.com).

To maintain our services in a manner we deem appropriate for our venue and to the maximum extent permitted by applicable laws, the Platform may, but will not have any obligation to, review, monitor, display, reject, refuse to post, store, maintain, accept, or remove any Content posted (including, without limitation, private messages, public comments, public group chat messages, private group chat messages, or private instant messages) by you, and we may, in our sole discretion, delete, move, re-format, remove, or refuse to post or otherwise make use of Content without notice or any liability to you or any third party in connection with our operation of the Platform in an appropriate manner. Without limitation, the Company may do so to address Content that comes to our attention that we believe is offensive, obscene, violent, harassing, threatening, abusive, illegal, or otherwise objectionable or inappropriate, or to enforce the rights of third parties or these Terms or any applicable additional terms, including, without limitation, the Content restrictions set forth herein.

However, we do not undertake to review Content before it is posted on the Platform and cannot ensure prompt removal of objectionable Content after it has been posted. Accordingly, we assume no liability for any action or inaction regarding transmissions, communications, or Content provided by any user or third party. We have no liability or responsibility to anyone for performance or non-performance of the activities described in this section.

**Account Termination Policy.** Pornographic and adult-oriented Content is NOT accepted. The Platform reserves the right to decide whether Content is appropriate or violates these Terms for reasons other than copyright infringement and violations of intellectual property rights, such as, but not limited to, obscene or defamatory material. The Platform may at any time, without prior notice and in their sole discretion, remove such Content and/or terminate a user's account for submitting such material in violation of these Terms. If you violate the letter or spirit of these Terms, or otherwise create risk or possible legal exposure for us, we can terminate access to the Platform or stop providing all or part of the Platform to you.

## **SECTION 19 - DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY**

YOUR USE OF THE PLATFORM, INCLUDING ANY CONTENT OR INFORMATION CONTAINED WITHIN THE PLATFORM, ANY PLATFORM-RELATED SERVICE OR SOFTWARE THAT IS PROVIDED TO YOU, IS AT YOUR SOLE RISK. THE PLATFORM, INCLUDING ANY CONTENT, SOFTWARE OR INFORMATION CONTAINED WITHIN THE PLATFORM AND ANY PLATFORM-RELATED SERVICE, IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE AND OUR SUPPLIERS, LICENSORS, AND OTHER RELATED PARTIES, AND THEIR RESPECTIVE OFFICERS, AGENTS, REPRESENTATIVES, AND EMPLOYEES, EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ACCURACY OF DATA, SATISFACTORY QUALITY, AND NON-INFRINGEMENT. BECAUSE SOME JURISDICTIONS MAY NOT PERMIT THE EXCLUSION OF CERTAIN WARRANTIES, SOME OF THESE EXCLUSIONS MAY NOT APPLY TO YOU.

NEITHER WE NOR OUR SUPPLIERS, LICENSORS, AND OTHER RELATED PARTIES, NOR OUR OR THEIR RESPECTIVE OFFICERS, AGENTS, REPRESENTATIVES, AND EMPLOYEES MAKE ANY REPRESENTATION OR WARRANTY THAT: (i) THE PLATFORM WILL MEET YOUR REQUIREMENTS; (ii) MATERIALS, SOFTWARE OR CONTENT AVAILABLE FROM THE PLATFORM ARE ACCURATE, FREE OF INFECTION OR VIRUSES, WORMS, TROJAN HORSES, OR OTHER CODE THAT MANIFESTS CONTAMINATING OR DESTRUCTIVE PROPERTIES; (iii) THE PLATFORM WILL BE UNINTERRUPTED, TIMELY, SECURE (INCLUDING FREE FROM UNAUTHORIZED ACCESS), PROVIDE CONTINUOUS STORAGE OR ACCESS, OR ERROR-FREE; (iv) THE RESULTS OR INFORMATION THAT MAY BE OBTAINED FROM THE USE OF THE PLATFORM WILL BE ACCURATE, COMPLETE, CURRENT, OR RELIABLE; (v) THE QUALITY OF ANY PRODUCTS, SERVICES, SOFTWARE, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE PLATFORM WILL MEET YOUR EXPECTATIONS; AND (vi) ANY ERRORS IN OUR PLATFORM OR SOFTWARE WILL BE CORRECTED.

ANY MATERIAL DOWNLOADED, UPLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE PLATFORM IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL

BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR BUSINESS OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR UPLOAD OF ANY SUCH MATERIAL OR THE USE OF THE PLATFORM.

THE PLATFORM DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT, CONTENT, OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE PLATFORM OR OUR SERVICES OR ANY HYPERLINKED SERVICES OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND, THE PLATFORM WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH OR FROM THE PLATFORM SHALL CREATE ANY WARRANTY. ADVICE OR INFORMATION RECEIVED BY MEANS OF THE PLATFORM SHOULD NOT BE RELIED UPON FOR SIGNIFICANT PERSONAL, BUSINESS, MEDICAL, LEGAL OR FINANCIAL DECISIONS AND YOU SHOULD CONSULT AN APPROPRIATE PROFESSIONAL FOR SPECIFIC ADVICE TAILORED TO YOUR PARTICULAR SITUATION. THE COMPANY IS NOT INTENDED TO PROVIDE LEGAL, TAX OR FINANCIAL ADVICE.

## **SECTION 20 – LIMITATIONS OF LIABILITY; INDEMNIFICATION**

**Limitation of Liabilities.** IN NO EVENT SHALL WE OR OUR EMPLOYEES, OFFICERS, REPRESENTATIVES, OPERATORS, SERVICE PROVIDERS, SUPPLIERS, LICENSORS, AND AGENTS BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFITS, OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH: (I) THE USE OR INABILITY TO USE THE PLATFORM OR THE CONTENT, MATERIALS, SOFTWARE, INFORMATION OR TRANSACTIONS PROVIDED ON OR THROUGH THE PLATFORM; (II) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE PLATFORM OR THE CONTENT, MATERIALS, SOFTWARE, INFORMATION, PRODUCTS, OR SERVICES ON OR AVAILABLE THROUGH THE PLATFORM; (III) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY PRODUCTS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE PLATFORM; (IV) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (V) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE PLATFORM; (VI) THE DELAY OR FAILURE IN PERFORMANCE RESULTING FROM AN ACT OF FORCE MAJEURE, INCLUDING, WITHOUT LIMITATION, ACTS OF GOD, NATURAL DISASTERS, COMMUNICATIONS FAILURE, GOVERNMENTAL ACTIONS, WARS, STRIKES, LABOR DISPUTES, RIOTS, SHORTAGES OF LABOR OR

MATERIALS, VANDALISM, TERRORISM, FAILURE OF THE TELECOMMUNICATIONS OR INFORMATION SERVICES INFRASTRUCTURE, HACKING, SPAM, OR ANY FAILURE OF A COMPUTER, SERVER OR SOFTWARE, NON-PERFORMANCE OF THIRD PARTIES OR ANY REASONS BEYOND THEIR REASONABLE CONTROL; OR (VII) ANY OTHER MATTER RELATING TO THE PLATFORM, EVEN IF WE OR OUR AUTHORIZED REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOUR SOLE REMEDY FOR DISSATISFACTION WITH THE PLATFORM OR PLATFORM-RELATED SERVICES IS TO STOP USING THE PLATFORM AND/OR THOSE SERVICES. WE ARE NOT RESPONSIBLE OR LIABLE FOR YOUR ILLEGAL, UNAUTHORIZED, OR IMPROPER USE OF INFORMATION TRANSMITTED, MONITORED, STORED, OR RECEIVED USING THE PLATFORM.

YOU SPECIFICALLY ACKNOWLEDGE THAT THE PLATFORM SHALL NOT BE LIABLE FOR CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY, AND THAT THE RISK OF HARM OR DAMAGE FROM THE FOREGOING RESTS ENTIRELY WITH YOU.

YOU FURTHER ACKNOWLEDGE THAT ANY CONTENT UPLOADED TO THE PLATFORM MAY BE VIEWED, DOWNLOADED, REPUBLISHED, AND DISTRIBUTED – POTENTIALLY IN VIOLATION OF YOUR RIGHTS OR THIS AGREEMENT – AND THAT YOU ASSUME SUCH RISKS AS A MATERIAL PART OF THESE TERMS.

YOU AGREE NOT TO FILE ANY LAWSUIT OR PROCEEDING INCONSISTENT WITH THE FOREGOING LIABILITY LIMITATIONS.

APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OF LIABILITY, IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES SET FORTH ABOVE, SO THIS LIMITATION OF LIABILITY MAY NOT APPLY TO YOU. IF ANY PART OF THIS LIMITATION ON LIABILITY IS FOUND TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF US UNDER SUCH CIRCUMSTANCES FOR LIABILITIES THAT OTHERWISE WOULD HAVE BEEN LIMITED SHALL NOT EXCEED ONE HUNDRED U.S. DOLLARS (\$100.00).

**Reliance on Information Posted.** The Platform includes Content provided by third parties, including materials provided by other users, bloggers and third-party licensors, syndicators, aggregators, and/or reporting services. All statements and/or opinions expressed in these materials, and all articles and responses to questions and other content, other than the content provided by us, are solely the opinions and the responsibility of the person or entity providing those materials. These materials do not necessarily reflect our opinion. We are not responsible, or liable to you or any third party, for the content or accuracy of any materials provided by any third parties.

**Indemnification.** To the extent permitted by applicable law, you agree to defend, indemnify and hold harmless the Platform, its site operator, its parent corporation, its respective affiliates, licensors, service providers, officers, directors, employees, agents, successors and assigns

from and against any and all claims, damages, judgments, awards, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Platform; (ii) your violation of any term of these Terms; (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that your Content caused damage to a third party. This defense and indemnification obligation will survive these Terms and your use of the Platform. You agree that we shall have the sole right and obligation to control the legal defense against any such claims, demands, or litigation, including the right to select counsel of our choice and to compromise or settle any such claims, demands, or litigation.

## **SECTION 21 – SEVERABILITY**

In the event that any provision of these Terms is determined to be unlawful, void, or unenforceable, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms, and any such determination shall not affect the validity and enforceability of any other remaining provisions.

## **SECTION 22 – TERMINATION**

The obligations and liabilities of the parties incurred prior to the termination date shall survive the termination of these Terms for all purposes. The Company may terminate or suspend your account, your access to the site, our services, or these Terms at any time without prior notice or liability in our sole discretion for any reason whatsoever, including, but not limited to, your violation of any provision of these Terms. You may terminate these Terms at any time by discontinuing our services and ceasing to use the Company's Platform. Notwithstanding any termination of these Terms, you will remain liable for all amounts due and outstanding up to and including the date of termination. All provisions of these Terms which by their nature are intended to survive the termination of these Terms shall survive the termination of these Terms, including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitations of liability.

## **SECTION 23 – NO WAIVER; ENTIRE AGREEMENT; AMBIGUITIES**

The failure of the Company to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. These Terms and any policies or operating rules posted by the Company on this Platform or in respect to our services or products constitutes the entire agreement and understanding between you and the Company and govern your use of the Platform, our products, and our services, superseding any prior or contemporaneous agreements, communications and proposals, whether oral or written, between you and Company (including, but not limited to, any prior versions of these Terms). Any ambiguities in the interpretation of these Terms shall not be construed against the drafting party.

## SECTION 24 - ARBITRATION AGREEMENT

Arbitration. You agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Platform (collectively, "Disputes") will be settled by final and binding arbitration between you and Company. This Arbitration Agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16). Notwithstanding anything else contained herein, each party retains the right to bring an individual action in small claims court and the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights. You acknowledge and agree that you and the Company are each waiving the right to a trial by jury or to participate as a plaintiff or class in any purported class action or representative proceeding. Further, unless both you and the Company otherwise agree in writing, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Arbitration Agreement" section will be deemed void. Except as provided in the preceding sentence, this "Arbitration Agreement" section will survive any termination of these Terms.

**Arbitration Rules and Governing Law.** The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the AAA's Commercial Arbitration Rules (the "AAA Rules") then in effect, except as modified by this Arbitration Agreement. The parties agree that the arbitrator ("Arbitrator"), and not any federal, state, or local court or agency, shall have exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability or formation of this Arbitration Agreement, including any claim that all or any part of this Arbitration Agreement is void or voidable. The Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to whether the Terms are unconscionable or illusory and any defense to arbitration, including waiver, delay, laches, or estoppel.

The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The arbitrator shall be a licensed attorney or retired judge with experience in the law underlying the dispute.

**Arbitration Process.** If either party wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought.

**Arbitration Location and Procedure.** The arbitration shall take place in Miami-Dade County, Florida. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and Company submit to the arbitrator, unless you request a hearing, or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the

arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

**Arbitrator's Decision.** The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and the amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim.

**Fees.** The party initiating the arbitration must bear the costs and fees related thereto.

**Severability and Survival.** This arbitration agreement is the full and complete agreement relating to the formal resolution of disputes covered by this Arbitration Agreement. In the event any portion of this Arbitration Agreement is deemed unenforceable, the remainder of this Arbitration Agreement will be enforceable. Therefore, terms of this Arbitration Agreement shall be severed, to the smallest extent possible, if required to uphold the enforceability of this Arbitration Agreement. The Arbitration Agreement is a contractual agreement to mutually arbitrate claims.

## **SECTION 25 - GOVERNING LAW; JURISDICTION; ATTORNEY'S FEES; JURY TRIAL**

These Terms are governed by and construed in accordance with the laws of the State of Florida, U.S.A., without giving effect to any conflict of law principles. For all claims not subject to the Arbitration Agreement in Section 22, you agree that they will be brought exclusively in the federal or state courts of competent jurisdiction sitting in Miami-Dade County, Florida, and you expressly agree that such courts shall have jurisdiction over you. The prevailing party in any dispute arising hereunder or from your use of the Platform shall be entitled to an award of its reasonable attorney's fees and legal costs against the non-prevailing party.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, YOU AND THE COMPANY AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE PLATFORM MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED. YOU HEREBY WAIVE ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ANY ACTION OR LITIGATION IN ANY WAY ARISING OUT OF OR RELATED TO THESE TERMS OR YOUR USE OF THE PLATFORM.

## **SECTION 26 - CHANGES TO TERMS OF SERVICE**

You can review the most current version of these Terms at any time on this page. Company reserves the right, at our sole discretion, to update, change, modify, or replace all or any part of

these Terms by posting updates and changes to our Platform. It is your responsibility to check our Platform periodically for changes. Your continued use of or access to our Platform or our services following the posting of any changes to these Terms constitutes your express acceptance of those changes.

## **SECTION 27 - TRANSFERABILITY**

Except as explicitly provided in these Terms, nothing contained in these Terms is intended or shall be construed to confer upon any person (other than the parties hereto) any rights, benefits or remedies of any kind or character, or to create any obligations or liabilities of a party to any such person.

The Company may assign our rights and duties under these Terms to any party at any time without notice to you. Your rights and duties under these Terms are not assignable by you without the Company's prior written consent.

## **SECTION 28 - CONTACT INFORMATION**

Questions about these Terms should be sent to us at [legal@fangift.com](mailto:legal@fangift.com).