

## Swagger Terms of Service

Dragit, LLC dba Swagger

Dragit, LLC dba Swagger (“Swagger” “we,” “us,” or “our”) provides services (described below) and related content to its visitors, customers and users (“you”) through our website(s) located at <https://giveswagger.com> (the “Site”) and related technologies and sales of goods and services (the “Service”). Access to the Site and use of the Service is subject to the terms and conditions contained in these Terms of Service (as amended from time to time, these “Terms of Service”). By accessing, browsing, or otherwise using the Site or any aspect of the Service, you acknowledge that you have read, understood, and agree to be bound by these Terms of Service. If you do not accept the terms and conditions of these Terms of Service, you will not visit, access or browse the Site, or otherwise use the Service. Any sales order, invoice or quotation incorporates these Terms and Conditions as though fully set forth. In the event of any conflict between these Terms of Service and any sales order, invoice or quotation, such sales order, invoice or quotation shall control.

We may, in our sole discretion, revise portions of these Terms of Service at any time. Any changes will be posted on this page and will indicate at the top of this page the date these Terms of Service were last revised. You may read a current, effective copy of these Terms of Service by visiting the “Terms of Service” link on the Site. Your continued use of the Site or the Service after the date any such changes become effective constitutes your acceptance of the new Terms of Service. You should periodically visit this page to review the current Terms of Service, so you are aware of any revisions. If you do not agree to abide by these or any future Terms of Service, you will not access, browse, or use (or continue to access, browse, or use) the Site or the Service.

BY VISITING THE SITE OR USING THE SERVICE, YOU AFFIRM THAT YOU ARE OF LEGAL AGE TO ENTER INTO THESE TERMS OF SERVICE. IF YOU ARE USING THE SERVICES ON BEHALF OF A COMPANY OR OTHER ORGANIZATION, THEN YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF YOURSELF AND SUCH ORGANIZATION, AND YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND SUCH ORGANIZATION TO THESE TERMS OF SERVICE.

Your Privacy: At Swagger, we respect the privacy of our users. For more information, please see our Privacy Policy, located at <http://giveswagger.com/wp-content/uploads/2021/08/Privacy-Policy.pdf> (“Privacy Policy”). By visiting the Site or using the Service, you consent to our collection, use and disclosure of personal data and other data as outlined therein.

In addition, when using certain features through the Service, including but not limited to the design and purchase of merchandise, you will be subject to any additional terms applicable to such features that may be posted on the Site or within the Service from time to time. All such terms are hereby incorporated by reference into these Terms of Service.

### **1. Access and Use of the Service**

**Service Description:** Swagger provides companies with a platform to create custom promotional products with quality merchandise from name-brand manufacturers dedicated to sustainability and quality.

**Your Obligations:** You may be required to provide information about yourself (e.g., name and email address) in order to access and use certain features of the Service. If you choose to register for the Service, you agree to provide and maintain true, accurate, current, and complete information about yourself as prompted by the Service’s registration form. Registration data and certain other information about you are governed by our Privacy Policy. If you are under 13 years of age, you are not authorized to use the

Service, with or without registering. In addition, if you are under 18 years old, you may use the Service, with or without registering, only with the approval of your parent or guardian.

**Member Account, Password and Security:** Once and if such functionality is available, you are solely responsible for maintaining the confidentiality of your login credentials, including username, password and account details, and you will remain fully responsible for any and all use of your account. You agree to (a) immediately notify Swagger of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you exit from your account at the end of each session when accessing the Service. Swagger will not be liable for any loss or damage arising from your failure to comply with this paragraph.

**Modifications to Service:** Swagger reserves the right to modify or discontinue, temporarily or permanently, any aspect of the Site or the Service (or any part thereof) without notice. You agree that Swagger will not be liable to you or to any third party for any modification, suspension or discontinuance of any aspect of the Site or the Service.

**Use and Storage:** You acknowledge that Swagger may establish policies, procedures and limits concerning use of the Site and the Service, including the maximum period of time that data or other content will be retained and the maximum storage space that will be allotted on Swagger's or any third-party service providers' servers on your behalf. You agree that Swagger has no responsibility or liability for the deletion or failure to store any data or other content uploaded by you to the Site or maintained by the Service. You acknowledge that Swagger reserves the right to terminate accounts that are inactive for an extended period of time. You further acknowledge that Swagger reserves the right to change these general practices and limits at any time, in its sole discretion, without notice.

## **2. Products and Purchase Terms.**

**Availability of Products.** The Site may make available listings, descriptions and images of goods or services (collectively, "Products"), as well as references and links to Products. Such Products may be made available by Swagger or by third parties. The availability through the Site of any listing, description or image of a third-party Product does not imply our endorsement of such Product or affiliation with the provider of such Product. We make no representations as to the completeness, accuracy or timeliness of such listings, descriptions or images (including any features, specifications and prices). Such information and the availability of any Product (including the validity of any promotional code) is subject to change at any time without notice. Certain weights, measures and similar descriptions are approximate and are for convenience only. We make reasonable efforts to accurately display the attributes of Products, including the applicable colors, however the actual colors you see will depend on the device you use to access the Site, and we cannot guarantee that your device will accurately display colors as intended. It is your responsibility to ascertain and obey all applicable local, state, federal and foreign laws (including minimum age requirements) regarding the purchase, possession, use and sale of any Product.

**Transaction and Payment Information.** We may make available the ability to purchase or otherwise obtain certain Products through the Site or otherwise such as telephone orders (a "Transaction"). If you wish to make a Transaction, you may be asked to supply certain relevant information, such as payment card or account information, your address, and your shipping information ("Payment Information"). YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT TO USE OR AUTHORIZE THE DEBIT OF ANY DEPOSITORY ACCOUNT, DEBIT OR CREDIT CARD THAT YOU SUBMIT IN CONNECTION WITH A TRANSACTION. By submitting such information, you grant to us the right to provide such information to third parties for purposes of facilitating Transactions. Verification of information may be required prior to

the acknowledgment or completion of any Transaction. You agree to pay all charges incurred by you or on your behalf through the Site, at the prices in effect when such charges are incurred, including all shipping and handling charges. In addition, you are responsible for any taxes applicable to your Transactions. While it is our practice to confirm orders by email, the receipt of an email order confirmation does not constitute our acceptance of an order or our confirmation of an offer to sell a product or service.

**Payment Processing:** Notwithstanding any amounts owed to Swagger hereunder, SWAGGER DOES NOT PROCESS PAYMENT FOR ANY SERVICES. To facilitate payment for the Service via bank account, credit card, or debit card, we use a third-party payment processor ("Payment Processors"). These payment processing services are subject to the terms and conditions and other policies of such Payment Processors (collectively, the "Payment Processor Agreements"). By agreeing to these Terms of Service, users that use the payment functions of the Service also agree to be bound by the Payment Processor Agreement, as the same may be modified by Payment Processors from time to time. You hereby authorize Swagger to store and continue billing your specified payment method even after such payment method has expired, to avoid interruptions in payment for your use of the Service. Swagger assumes no liability or responsibility for any payments you authorize or make through the Site or the Service.

**ACH Payment:** If and when such functionality is available, by choosing to use a bank account as your payment method, you will be able to pay the payment due for the Products by using any valid automated clearing house ("ACH") enabled bank account at a United States-based financial institution. Whenever you choose to pay by ACH, you are authorizing Swagger (or its agent) to debit your bank account for the total amount due. Your transaction must be payable in U.S. dollars. Swagger, in its sole discretion, may refuse this payment option service to anyone or any user without notice for any reason at any time. Transactions that we process using your bank account will be identified as "Swagger" (or similar identifier) on the statement issued by your bank or other financial institution holding your account. All questions relating to any transactions made using your bank account by us should be initially directed to us, but may also require involvement of your bank.

By choosing your bank account as your payment method, you agree that: (a) you have read, understand and agree to these Terms of Service, and that this agreement constitutes a "writing signed by you" under any applicable law or regulation, (b) you consent to the electronic delivery of the disclosures contained in these Terms of Service, (c) you authorize Swagger (or its agent) to make any inquiries we consider necessary to validate any dispute involving your payment, which may include ordering a credit report and performing other credit checks or verifying the information you provide against third party databases, and (d) you authorize Swagger (or its agent) to initiate one or more ACH debit entries (withdrawals), and you authorize the financial institution that holds your bank account to deduct such payments, in the amounts and frequency designated in your then-current payment plan.

If you believe that any payment transaction initiated by Swagger (or its agent) with respect to your bank account is erroneous, or if you need more information about any such transaction, you should contact us as soon as possible as [hello@giveswagger.com](mailto:hello@giveswagger.com). Notify us immediately if you believe the password associated with your account has been lost or stolen, or if someone has attempted (or may attempt) to make a transfer from your bank account without your permission. We reserve the right to cancel the ability to pay by bank account for any reason at any time.

Federal law limits your liability for any fraudulent, erroneous unauthorized transaction from your bank account based on how quickly you report it to your financial institution. As general rule, you should report any fraudulent, erroneous or unauthorized transactions to your bank within 60 days after the questionable transaction FIRST appeared on your bank account statement. You should contact your depository institution for more information about the policies and procedures that apply to your account and any unauthorized transactions, including any limits on your liability.

### **3. Fees and Payment Terms.**

You shall pay the fees set forth in the applicable checkout page, order form, or invoice in accordance with the payment terms set forth therein. Fees are non-refundable unless otherwise required by applicable laws. If you dispute any charges you must let Swagger know within thirty (30) days after the date that Swagger charges you. We reserve the right to change Swagger's prices. If Swagger does change prices, Swagger will provide notice of the change through the Service user interface, a pop-up notice, email, or through other reasonable means, at Swagger's option, at least thirty (30) days before the change is to take effect. Your continued use of the Service after the price change becomes effective constitutes your agreement to pay the changed amount. You will be responsible for all taxes associated with the Service, other than taxes based on Swagger's net income or capital.

Payments are due and payable as set forth in any sales order, invoice or quotation. Payments not made within three (3) days of due dates will be subject to an overdue interest at the rate of one and one-half percent (1.5%) per month, or the maximum allowable under applicable laws, whichever is less, and you will indemnify and hold Swagger harmless from and against any costs, including reasonable attorneys' fees, incurred in connection with its collection of any fees or interest properly due hereunder.

Swagger will contact you if all or any portion of your order is canceled or if additional information is required to accept your order. If your order is canceled after your payment has been received, Swagger will issue a credit to your account in the amount of the charge.

Restrictions. Swagger reserves the right, including without prior notice, to limit the available quantity of or discontinue making available any Product; to impose conditions on the honoring of any coupon, discount or similar promotion; to bar any user from making any Transaction; to cancel any Transaction even after it has been placed online through the Site, and to refuse to provide any user with any Product. By making a Transaction, you represent that the applicable Products will be used only in a lawful manner. You agree that you will not resell any products or services obtained through a Transaction, unless we have provided our express prior written consent for you to do so.

Consent Agreement for Storing Payment Information. You agree that we may store your Payment Information following your completion of a Transaction. We will only use Payment Information to finalize complete payment for any Product purchased online through the Site, via customer service, in a Gallery, and/or in an Outlet and/or to facilitate future Transactions you may initiate through the Site. You may withdraw your consent permitting Swagger to store your Payment Information by adjusting your settings in "My Account". Any changes to the terms of this consent permitting Swagger to store your Payment Information will be communicated to you as described in Section 1 of these Terms of Service.

Refunds & Exchanges. Due to the custom nature of our Products, we are unable to offer refunds or exchanges. Once any order is placed by you, either expressly or by proceeding with any Transaction, you will be responsible for payment for the Product.

Shipping. You agree to pay all charges incurred by you or on your behalf through the Site, at the prices in effect when such charges are incurred, including all shipping and handling charges. Title to and all risk of loss of or damage to the goods shall pass to and be assumed by you EXW when delivered to the carrier. You are responsible for all transportation charges and for filing timely and proper claims against carriers if goods are lost or damaged in transit. Any delivery date(s) are approximate and subject to scheduling changes made after the date hereof. We are not be liable for any loss or expense, whether by contract or tort, incurred by you resulting from failure to meet the estimated delivery date.

#### **4. Warehouse of Inventory**

Warehouse Option. If you select our Warehouse Option when you purchase products, or you do not provide us with instructions and addresses for shipping of some or all of your purchased products, we or our agents may hold some or all of your purchased product in inventory upon your purchase and before delivery of such items to the carrier (“Inventory”), and you will be charged a storage fee, either as mutually agreed in your order, or in the absence of such mutual agreement in accordance with Swagger’s fee schedule. Our obligations regarding products held in Inventory will be limited to a duty to exercise reasonable care in handling and storage of such products. You agree that Swagger may take exception to certain products held in Inventory and require you to take physical possession of such products at any time and for any reason, and further, Swagger may suspend or terminate the Warehouse Option, in its sole discretion. In the event that Swagger requires you to take physical possession of your products held in Inventory, Swagger will require you to provide an address for delivery and pay any additional charges for shipment within fifteen (15) days of our notice to you, unless otherwise mutually agreed by the parties in writing. Swagger reserves the right to destroy, donate or otherwise dispose of any Inventory that remains unclaimed after such period. You agree that Swagger may ship products held in Inventory to you or your designee upon your request and at your expense. Swagger will ship products held in Inventory upon payment of any and all additional charges required by Swagger, including, without limitation, additional charges for shipment and pre-shipment storage. You agree to accept all liability for all products held in Inventory and any and all additional charges that may apply. Title to products held in Inventory, as well as the risk of loss for such products, passes to you when Swagger or our supplier delivers these items to the carrier. In the event that you request shipment of products held in Inventory and subsequently cancel a portion or all of such request, you will be liable for any and all applicable cancellation, restocking, any similar charges imposed by Swagger or its suppliers.

Risk of Loss. All products that may be purchased from or via the Service are transported and delivered to you by an independent carrier not affiliated with, or controlled by, Swagger. Title to products purchased on the Site or through the Service, as well as the risk of loss for such products, passes to you when Swagger or our supplier delivers these items to the carrier.

#### **5. Conditions of Access and Use**

You are solely responsible for all code, video, images, information, data, text, software, music, sound, photographs, graphics, messages, and other materials (“content”) that you make available to Swagger, including by uploading, posting, publishing, or displaying (hereinafter, “upload(ing)”) via the Service or by emailing or otherwise making available to us or other users of the Service (collectively, “User Content”). The following are examples of the kinds of content and/or uses that are illegal or prohibited by Swagger. Swagger reserves the right to investigate and take appropriate legal action against anyone who, in Swagger’s sole discretion, violates this provision, including removing the offending content from the Service, canceling any Transaction, suspending or terminating the account of such violators, and reporting the violator to law enforcement authorities. You agree to not use the Service to:

- a. email or otherwise upload any content that (i) infringes any intellectual property or other proprietary rights of anyone; (ii) you do not have a right to upload under any law or under contractual, fiduciary or statutory relationships; (iii) contains software viruses or any other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment; (iv) poses or creates a privacy or security risk to any person; (v) constitutes unsolicited or unauthorized advertising, promotional materials, commercial activities and/or sales, “junk mail,” “spam,” “chain letters,” “pyramid schemes,” “contests,” “sweepstakes,” or any other form of solicitation; (vi) is unlawful, harmful,

threatening, abusive, harassing, tortious, excessively violent, defamatory, vulgar, obscene, pornographic, invasive of another's privacy, hateful, discriminatory, or otherwise objectionable; or (vii) in the sole judgment of Swagger, is objectionable or which restricts or inhibits any other person from using or enjoying the Service, or which may expose Swagger or its users to any harm or liability of any type;

- b. interfere with or disrupt the Site or the Service or servers or networks connected to the Site or the Service, or disobey any requirements, procedures, policies, or regulations of networks connected to the Service;
- c. violate any applicable local, state, national, or international law, or any regulations having the force of law;
- d. impersonate any person or entity, or falsely state or otherwise misrepresent your identity or affiliation with a person or entity;
- e. solicit personal information from anyone under the age of 18;
- f. harvest or collect email addresses or other contact information of other users of the Site or the Service by electronic or other means for any purpose including, without limitation, the sending unsolicited emails or other unsolicited communications;
- g. advertise or offer to sell or buy any goods or services for any business purpose that is not specifically authorized;
- h. further or promote any criminal activity or enterprise or provide instructional information about illegal activities;
- i. obtain or attempt to access or otherwise obtain any content or information through any means not intentionally made available or provided for through the Service;
- j. circumvent, remove, alter, deactivate, degrade, or thwart any of the content protections in or geographic restrictions on any content (including Service Content (as defined below)) available on or through the Service, including through the use of virtual private networks;
- k. engage in or use any data mining, robots, scraping, or similar data gathering or extraction methods. If you are blocked by Swagger from accessing the Service (including by blocking your IP address), you agree not to implement any measures to circumvent such blocking (e.g., by masking your IP address or using a proxy IP address or virtual private network).

## **6. Intellectual Property Rights**

**Service Content:** You acknowledge and agree that the Service may contain content or features ("Service Content") that are protected by copyright, patent, trademark, trade secret, or other proprietary rights and laws. Except as expressly authorized by Swagger, you agree not to modify, copy, frame, scrape, rent, lease, loan, sell, distribute, or create derivative works based on the Service or the Service Content, in whole or in part, except that the foregoing does not apply to your own User Content that you upload to or make available through the Service in accordance with these Terms of Service. Any use of the Service or the Service Content other than as specifically authorized herein is strictly prohibited.

**Trademarks:** The Swagger name and logos are trademarks and service marks of Swagger (collectively the "Swagger Trademarks"). Other Swagger, product, and service names and logos used and displayed via the Service may be trademarks or service marks of their respective owners who may or may not endorse or be affiliated with or connected to Swagger. Nothing in these Terms of Service, the Site, or the Service should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any of Swagger Trademarks or other trademarks displayed on the Site or in connection with the Service, without our prior written permission in each instance. All goodwill generated from the use of Swagger Trademarks will inure to our exclusive benefit.

**Third-Party Material:** Under no circumstances will Swagger be liable in any way for any content or materials of any third parties (including users), including for any errors or omissions in any content, or for any loss or damage of any kind incurred as a result of the use of any such content. You acknowledge that Swagger does not pre-screen content, but that Swagger and its designees will have the right (but not the obligation) in their sole discretion to refuse or remove any content that is available via the Service. Without limiting the foregoing, Swagger and its designees will have the right to remove any content that violates these Terms of Service or is deemed by Swagger, in its sole discretion, to be otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any content, including any reliance on the accuracy, completeness, or usefulness of such content.

**User Content:** You represent and warrant that you own all right, title and interest, or have secured a lawful and permissible license, in and to such User Content, including all copyrights and rights of publicity contained therein. You hereby grant Swagger and its affiliated companies, successors, and assigns a non-exclusive, worldwide, royalty-free, fully paid-up, transferable, sublicensable (directly and indirectly through multiple tiers), perpetual, and irrevocable license to copy, display, upload, perform, distribute, store, modify, and otherwise use your User Content in connection with the operation of the Site or the Service in any form, medium or technology now known or later developed. You assume all risk associated with your User Content and the transmission of your User Content, and you have sole responsibility for the accuracy, quality, legality and appropriateness of your User Content.

You hereby authorize Swagger and its third-party service providers to derive statistical and usage data relating to your use of the Site and the Service (“Usage Data”). We may use Usage Data for any purpose in accordance with applicable law and our Privacy Policy.

Any questions, comments, suggestions, ideas, feedback, reviews, or other information about the Site and the Service (“Submissions”), provided by you to Swagger are non-confidential and Swagger will be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment, attribution, or compensation to you.

You acknowledge and agree that Swagger may preserve User Content and may also disclose User Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process, applicable laws, or government requests; (b) enforce these Terms of Service; (c) respond to claims that any content violates the rights of third parties; or (d) protect the rights, property, or personal safety of Swagger, its personnel, its users, or the public. You understand that the technical processing and transmission of the Service, including your User Content, may involve (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices.

**Copyright/Trademark Complaints:** Swagger respects the intellectual property of others, and we ask our users to do the same. If you believe that your work has been copied in a way that constitutes copyright or trademark infringement, or that your intellectual property rights have been otherwise violated, you should notify Swagger of your infringement claim in accordance with the procedure set forth below.

Swagger will process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act (“DMCA”) and other applicable intellectual property laws with respect to any alleged or actual infringement. A notification of claimed copyright infringement should be emailed to Swagger at [hello@giveswagger.com](mailto:hello@giveswagger.com) (Subject line: “DMCA Takedown Request”).

To be effective, the notification must be in writing and contain the following information:

- a physical or electronic signature of a person authorized to act on behalf of the owner of the copyright or other intellectual property interest that is allegedly infringed;

- identification of the copyrighted/trademarked work or other intellectual property that you claim has been infringed, or, if multiple copyrighted/trademarked works or other intellectual property are covered by a single notification, a representative list of such works or other intellectual property;
- details regarding the registration of the copyright/trademark with the United States or any other government authority;
- identification of the content that is claimed to be infringing or to be the subject of infringing activity, and where the content that you claim is infringing is located on the Site or the Service, with enough detail that we may find it on the Site or in connection with the Service;
- your address, telephone number, and email address;
- a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright/trademark or intellectual property owner, its agent, or the law;
- a statement by you that the information in your notice is accurate and, under penalty of perjury, that you are the copyright/trademark or intellectual property owner or are authorized to act on the behalf of the owner of the copyright or intellectual property that is allegedly infringed.

Counter-Notice: If you believe that your User Content that was removed (or to which access was disabled) pursuant to a DMCA Takedown Request is not infringing, or that you have the authorization from the copyright/trademark owner, the copyright/trademark owner's agent, or pursuant to the law, to upload and use the content in your User Content, you may send a written counter-notice containing the following information to the Copyright Agent:

- your physical or electronic signature;
- identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- a statement by you, made under penalty of perjury, that you have a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content to be removed or disabled;
- your name, address, telephone number, and email address, a statement that you consent to the jurisdiction of the federal court located within the Northern District of California and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, Swagger will send a copy of the counter-notice to the original complaining party informing them that Swagger may replace the removed content or cease disabling it within ten (10) business days. Unless the owner of the applicable copyrighted/trademarked work or other intellectual property files an action seeking a court order against Swagger or the user, the removed content may be replaced, or access to it restored, within ten (10) to fourteen (14) business days or more after receipt of the counter-notice, at our sole discretion.

Repeat Infringer Policy: In accordance with the DMCA and other applicable law, Swagger has adopted a policy of terminating, in appropriate circumstances and at Swagger's sole discretion, the accounts of users who are deemed to be repeat infringers or repeat DMCA Takedown Notice submitters without lawful claims. Swagger may also at its sole discretion limit access to the Service and/or terminate the accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

## **7. Third-Party Services and Websites**

The Site and the Service may provide links or other access to services, sites, technology, and resources that are provided or otherwise made available by third parties (the "Third-Party Services"). Additionally, you may enable or log in to the Service via various online Third-Party Services, like Salesforce and Slack.

Your access and use of the Third-Party Services may also be subject to additional terms and conditions, privacy policies, or other agreements with such third party, and you may be required to authenticate to or create separate accounts to use Third-Party Services on the websites or via the technology platforms of their respective providers. Some Third-Party Services will provide us with access to certain information that you have provided to third parties, including through such Third-Party Services, and we will use, store and disclose such information in accordance with our Privacy Policy. For more information about the implications of activating Third-Party Services and our use, storage and disclosure of information related to you and your use of such Third-Party Services on the Site or within the Service, please see our Privacy Policy. Swagger has no control over and is not responsible for such Third-Party Services, including for the accuracy, availability, reliability, or completeness of information shared by or available through Third-Party Services, or on the privacy practices of Third-Party Services. We encourage you to review the privacy policies of the third parties providing Third-Party Services prior to using such services. You, and not Swagger, will be responsible for any and all costs and charges associated with your use of any Third-Party Services. Swagger enables these Third-Party Services merely as a convenience and the integration or inclusion of such Third-Party Services does not imply an endorsement or recommendation. Any dealings you have with third parties while using the Service are between you and the third party. Swagger will not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any Third-Party Services.

## **8. Indemnification**

You agree to defend, indemnify, and hold harmless Swagger, its affiliates, and its and their respective officers, employees, directors, members, service providers, licensors, and agents (collectively, the “Swagger Parties”) from any and all losses, damages, expenses, including reasonable attorneys’ fees, rights, claims, actions of any kind, and injury (including death) arising out of or relating to your use of the Site, the Service, any User Content, your connection to the Site or Service, your violation of these Terms of Service, or your violation of any rights of another. Notwithstanding the foregoing, you will have no obligation to indemnify or hold harmless any Swagger Party from or against any liability, losses, damages, or expenses incurred as a result of any gross negligence or willful misconduct of such Swagger Party. Swagger will provide notice to you of any such claim, suit, or proceeding. Swagger reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this section, and you agree to cooperate with any reasonable requests assisting Swagger’s defense of such matter. You may not settle or compromise any claim against the Swagger Parties without Swagger’s written consent. If you are a California resident, you waive California Civil Code Section 1542, as revised, amended or replaced, which says: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or releasing party.” If you are a resident of another jurisdiction, you waive any comparable statute or doctrine.

## **9. Disclaimer of Warranties**

All Swagger Transactions are of a commercial nature, and the Site and Service is not intended for personal, household or family use. YOUR USE OF THE SITE OR SERVICE OR PURCHASE OF PRODUCTS IS AT YOUR SOLE RISK. THE SITE, SERVICE AND PRODUCTS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. SWAGGER EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

SWAGGER MAKES NO WARRANTY THAT (A) THE SERVICE OR PRODUCTS WILL MEET YOUR REQUIREMENTS; (B) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR- FREE; (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE; OR (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS.

#### **10. Limitation of Liability**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT SWAGGER WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF PROFITS INCLUDING DAMAGES FOR LOSS OF GOODWILL, USE, OR DATA OR OTHER INTANGIBLE LOSSES (EVEN IF SWAGGER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, RESULTING FROM: (A) THE PRODUCTS OR THE USE OR THE INABILITY TO USE THE SITE OR SERVICE; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM THE SITE, ANY GOODS, DATA, INFORMATION, OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SITE OR THE SERVICE; (C) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (D) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (E) ANY OTHER MATTER RELATING TO THE PRODUCTS OR SERVICE. IN NO EVENT WILL SWAGGER'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, OR CAUSES OF ACTION EXCEED THE AMOUNT YOU HAVE PAID SWAGGER IN THE LAST SIX (6) MONTHS, OR, IF GREATER, ONE HUNDRED DOLLARS (\$100).

SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OR EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU OR BE ENFORCEABLE WITH RESPECT TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICE OR WITH THESE TERMS OF SERVICE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICE.

IF YOU ARE A USER FROM NEW JERSEY, THE FOREGOING SECTION TITLED "DISCLAIMER OF WARRANTIES" AND "LIMITATION OF LIABILITY" ARE INTENDED TO BE ONLY AS BROAD AS IS PERMITTED UNDER THE LAWS OF THE STATE OF NEW JERSEY. IF ANY PORTION OF THESE SECTIONS IS HELD TO BE INVALID UNDER THE LAWS OF THE STATE OF NEW JERSEY, THE INVALIDITY OF SUCH PORTION WILL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THE APPLICABLE SECTIONS.

#### **Important Note to New Jersey Consumers.**

All Swagger Transactions are of a commercial nature, and the Site and Service is not intended for personal, household or family use. If you are a consumer residing in New Jersey, the following provisions of this Terms of Service do not apply to you (and do not limit any rights that you may have) to the extent that they are unenforceable under New Jersey law: (a) the disclaimer of liability for any indirect, incidental, consequential, special, exemplary or punitive damages of any kind (for example, to the extent unenforceable under the New Jersey Punitive Damages Act, New Jersey Products Liability Act, New Jersey Uniform Commercial Code and New Jersey Consumer Fraud Act; (b) the limitation on liability for lost profits or loss or misuse of any data (for example, to the extent unenforceable under the New Jersey Identity Theft Protection Act and New Jersey Consumer Fraud Act); (c) application of the limitations of liability to the recovery of damages that arise under contract and tort, including negligence, strict liability or any other theory (for example, to the extent such damages are recoverable by a consumer under New Jersey law, including the New Jersey Products Liability Act; (d) the requirement that you indemnify Swagger (for example, to the extent the scope of such indemnity is prohibited under New Jersey law); and

(e) the California governing law provision (for example, to the extent that your rights as a consumer residing in New Jersey are required to be governed by New Jersey law).

## **11. Termination**

You agree that Swagger, in its sole discretion, may suspend or terminate your account (or any part thereof) or use of the Site or the Service and remove and discard any content within the Site or Service, for any reason, including for lack of use or if Swagger believes that you have violated or acted inconsistently with the letter or spirit of these Terms of Service. Any suspected fraudulent, abusive, or illegal activity that may be grounds for termination of your use of the Site or Service, may be referred to appropriate law enforcement authorities. Swagger may also in its sole discretion and at any time discontinue providing the Site or the Service, or any part thereof, with or without notice. You agree that any termination of your access to the Site or the Service under any provision of these Terms of Service may be effected without prior notice, and acknowledge and agree that Swagger may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Site or the Service. Further, you agree that Swagger will not be liable to you or any third party for any termination of your access to the Service.

## **12. User Disputes**

You agree that you are solely responsible for your interactions with any other user in connection with the Service, and Swagger will have no liability or responsibility with respect thereto. Swagger reserves the right, but has no obligation, to become involved in any way with disputes between you and any other user of the Service.

## **13. General**

These Terms of Service (together with the terms incorporated by reference herein) constitute the entire agreement between you and Swagger governing your access and use of the Site and the Service, and any Transaction in connection with Products and supersede any prior agreements between you and Swagger with respect to the Service. You also may be subject to additional terms and conditions that may apply when you use Third-Party Services, third-party content or third-party software. These Terms of Service will be governed by the laws of the State of California without regard to its conflict of law provisions. With respect to any disputes or claims not subject to arbitration, as set forth below, you and Swagger submit to the personal and exclusive jurisdiction of the state and federal courts located within San Francisco County, California. You agree that all claims brought against us, or any claim we bring against you must be brought in such party's individual capacity, and not as a plaintiff or class member in any purported class action, collective action, private attorney general action or other representative proceeding, except to the extent such restriction is prohibited by applicable law. The failure of Swagger to exercise or enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision. Any waiver of any provision of these Terms of Service shall only be effective if memorialized in a signed writing. If any provision of these Terms of Service is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms of Service remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or these Terms of Service must be filed within one (1) year after such claim or cause of action arose or be forever barred. A printed version of these Terms of Service and of any notice given in electronic form, including posting on the Site, will be admissible in judicial or

administrative proceedings based upon or relating to these Terms of Service to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You may not assign these Terms of Service without the prior written consent of Swagger, but Swagger may assign or transfer these Terms of Service, in whole or in part, without restriction. The section titles in these Terms of Service are for convenience only and have no legal or contractual effect. As used in these Terms of Service, the words “include” and “including,” and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words “without limitation.” Notices to you may be made via the Site, the Service, email or regular mail. The Site and the Service may also provide notices to you of changes to these Terms of Service or other matters by displaying notices or links to notices generally on the Service. Swagger will not be in default hereunder by reason of any failure or delay in the performance of its obligations where such failure or delay is due to civil disturbances, riot, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or unavailability of electrical power, network access or equipment, governmental action, or any other circumstances or causes beyond Swagger’s reasonable control.

#### **14. U.S. Government Restricted Rights**

The Site and Service is made available to agencies of the U.S. government with “RESTRICTED RIGHTS.” Use, duplication, or disclosure by the U.S. government is subject to the restrictions contained in 48 CFR 52.227-19 and 48 CFR 252.227-7013 et seq., as amended, revised, or replaced. Access or use of the Site and the Service (including the Software) by the U.S. government constitutes acknowledgement of our proprietary rights in the Service (including the Software).

#### **Questions? Concerns? Suggestions?**

---

Please contact us at [hello@giveswagger.com](mailto:hello@giveswagger.com) or by mail at 13802 N. Scottsdale Rd., Suite 151-49, Scottsdale, AZ 85254-3403 to report any violations of these Terms of Service or to pose any questions regarding these Terms of Service, Products, the Site or the Service.