

Terms of Use

LICENSE

1.1. Governing Agreement

The terms of this agreement ("Terms of Service" or "Terms") govern the relationship between you and Facebook by Fonetwish (hereinafter "Facebook by Fonetwish" or "Us" or "We") regarding your use of Facebook by Fonetwish's social games and related services, which include applications for mobile devices and Facebook by Fonetwish branded websites (the "Service"). In this agreement, "Facebook by Fonetwish" means Facebook by Fonetwish Inc. located at 699 8th Street, San Francisco, California 94103, if you are a user in the United States; or Facebook by Fonetwish Luxembourg S.a.r.l. located at 15, rue Edward Steichen, L-2540, Luxembourg, if you are a user outside the United States. In either case "Facebook by Fonetwish" includes Affiliates, which shall mean subsidiaries, parent companies, joint ventures and other corporate entities under common ownership.

1.2. Privacy Policy

Use of the Service is also governed by Facebook by Fonetwish's [Privacy Policy](#), which is incorporated herein by reference. Your privacy is important to Us. We designed Facebook by Fonetwish's Privacy Policy to make important disclosures about how We collect and use your content and information and how you can use the Service to share such information with others. We encourage you to read the Facebook by Fonetwish Privacy Policy carefully and use it to make informed decisions.

By creating an account or accessing or using the Service you accept and agree to be bound by these Terms of Service and consent to the collection, use and storage of your information as outlined in Facebook by Fonetwish's Privacy Policy.

1.3. Updates to the Terms of Service and Facebook by Fonetwish Privacy Policy

Facebook by Fonetwish reserves the right, at our discretion, to change, modify, add or remove portions of these Terms of Service and its Privacy Policy at any time by posting the amended Terms on or within the Service. You may also be given additional notice, such as an e-mail message or messaging within the Service, of any changes. You will be deemed to have accepted such changes by continuing to use the Service. Except as otherwise stated, all amended terms shall automatically be effective 30 days after they are initially posted. Facebook by Fonetwish may also revise other policies, codes or rules at any time, and the new versions will be available at www.fonetwish.com or in the Service. No amendment to the Terms of Service or Privacy Policy shall apply to any dispute of which Facebook by Fonetwish had actual notice before the date of the amendment.

This agreement may not be otherwise amended except in a writing hand signed by you and Us. For purposes of this provision, "writing" does not include an e-mail message and a signature does not include an electronic signature.

If at any point you do not agree to any portion of the then-current version of our Terms of Service, the Privacy Policy, rules or codes of conduct relating to your use of the Service, your license to use the Service shall immediately terminate and you must immediately stop using the Service.

To the extent the Terms of Service or Facebook by Fonetwish Privacy Policy conflict with any other Facebook by Fonetwish terms, policy, rules or codes of conduct, the terms contained in these Terms of Service and in the Facebook by Fonetwish Privacy Policy shall govern.

1.4. Grant of a Limited License to Use the Service

Subject to your agreement and continuing compliance with these Terms of Service and any other relevant Facebook by Fonetwish policies, such as the Forum Rules or Loyalty Program Terms, Facebook by Fonetwish grants you a non-exclusive, non-transferable, revocable limited license subject to the limitations in Sections 1.5-1.9 to access and use the Service using a Facebook by Fonetwish supported web browser (such as Mozilla Firefox or Microsoft Internet Explorer) or mobile device solely for your own non-commercial entertainment purposes. You agree not to use the Service for any other purpose.

You understand that while at times you may “earn” “buy” or “purchase” (a) virtual currency, including but not limited to virtual coins, cash, tokens, or points, all for use in the Service; or (b) virtual in-game items (together with virtual currency, “Virtual Items”); these real world terms are only being used as shorthand. You do not in fact “own” the Virtual Items and the amounts of any Virtual Item do not refer to any credit balance of real currency or its equivalent. Rather, you may purchase a limited license to use the Service, including software programs that occasionally manifest themselves as these items. The purchase and sale of the limited license referred to in these Terms of Service is a completed transaction upon receipt of your direct payment or redemption of a Facebook by Fonetwish game card or a third party virtual currency like Facebook Credits. Any “virtual currency” balance shown in your Account does not constitute a real-world balance or reflect any stored value, but instead constitutes a measurement of the extent of your license.

1.5. Accessing the Service

By accessing or using the Service, including browsing any Facebook by Fonetwish website or accessing a game, you accept and agree to these Terms of Service and the Privacy Policy. You may also be required to register an account on the Service (an “Account”), have a valid account on the social networking service (“SNS”) through which you connect to the Service, if any, or have an account with the applications provider for your mobile device. You warrant that you are not prohibited from receiving products of U.S. origin, including services or software. If you are between the ages of 13 and 17, you represent that your legal guardian has reviewed and agreed to these Terms.

You must provide all equipment and software necessary to connect to the Service, including, but not limited to, a mobile device that is suitable to connect with and use the Service, in cases where the Service offers a mobile component.

You are responsible for any fees, including internet connection or mobile fees that you incur when accessing the Service.

1.6. Use of the Service

The following restrictions apply to the use of the Service:

- a. You shall not create an Account or access the Service if you are under the age of 13;
- b. You shall monitor your Account to restrict use by minors, and you will deny access to children under the age of 13. You accept full responsibility for any unauthorized use of the Service by minors in connection with your Account. You are responsible for any use of your credit card or other payment instrument (e.g. PayPal and Facebook Credits) by minors;
- c. You shall not have more than one Account, per platform or SNS, at any given time, and shall not create an account using a false identity or information, or on behalf of someone other than yourself;
- d. You shall not create an Account or use the Service if you are a convicted sex offender;
- e. You shall not have an Account or use the Service if you have previously been removed by Facebook by Fonetwish or previously been banned from playing any Facebook by Fonetwish game;
- f. You shall not use the Service if you are located in a country embargoed by the United States or if you are on the U.S. Treasury Department's list of Specially Designated Nationals.
- g. You shall use your Account only for non-commercial purposes;
- h. You shall not use your Account to advertise, solicit, or transmit any commercial advertisements, including chain letters, junk e-mail or repetitive messages (spim and spam) to anyone;
- i. You shall not use your Account to engage in any illegal conduct;
- j. You shall not sublicense, rent, lease, sell, trade, gift, bequeath or otherwise transfer your Account or any Virtual Items associated with your Account to anyone without Facebook by Fonetwish's written permission;
- k. You shall not access or use an Account or Virtual Items that have been sublicensed, rented, leased, sold, traded, gifted, bequeathed, or otherwise transferred from the original Account creator without Facebook by Fonetwish's permission; and
- l. If you access the Service from an SNS you shall comply with its terms of service/use as well as these Terms of Service.

1.7. Account Information

When creating or updating an Account on the Service, you may be required to provide Facebook by Fonetwish with certain personal information, which may include your name, birth date, e-mail address, and, in some cases, payment information. This information will be held and used in accordance with Facebook by Fonetwish's [Privacy Policy](#) and relevant “just-in-time” notices, if any, provided at the point of information collection or use. You agree that you will supply accurate and complete information to Facebook by Fonetwish, and that you will update that information promptly after it changes.

You understand that on certain Facebook by Fonetwish websites your user ID number, name and profile picture will be publicly available and that search engines may index your name and profile photo.

1.8. Username and Password

During the Account creation process, you may be required to select a password ("Login Information"). The following rules govern the security of your Login Information:

- a. You shall not share the Account or the Login Information, let anyone else access your account, or do anything else that might jeopardize the security of your Account;
- b. In the event you become aware of or reasonably suspect any breach of security, including without limitation any loss, theft, or unauthorized disclosure of the Login Information, you must immediately notify Facebook by Fonetwish and modify your Login Information;
- c. You are solely responsible for maintaining the confidentiality of the Login Information, and you will be responsible for all uses of the Login Information, including purchases, whether or not authorized by you; and
- d. You are responsible for anything that happens through your Account.

Facebook by Fonetwish reserves the right to remove or reclaim any usernames at any time and for any reason, including but not limited to claims by a third party that a username violates such third party's rights.

1.9. License Limitations

Any use of the Service in violation of these License Limitations is strictly prohibited, can result in the immediate revocation of your limited license granted by Section 1.4, and may subject you to liability for violations of law. ANY ATTEMPT BY YOU TO DISRUPT OR INTERFERE WITH THE SERVICE INCLUDING UNDERMINING OR MANIPULATING THE LEGITIMATE OPERATION OF ANY FACEBOOK BY FONETWISH GAME IS A VIOLATION OF FACEBOOK BY FONETWISH POLICY AND MAY BE A VIOLATION OF CRIMINAL AND CIVIL LAWS.

You agree that you will not, under any circumstances:

- a. Engage in any act that Facebook by Fonetwish deems to be in conflict with the spirit or intent of the Service, including but not limited to circumventing or manipulating these Terms, our game rules, game mechanics or policies;
- b. Make improper use of Facebook by Fonetwish's support services, including by submitting false abuse reports or using profane and abusive language in your communications with our support personnel; or
- c. Use the Service, intentionally or unintentionally, in connection with any violation of any applicable law or regulation, or do anything that promotes the violation of any applicable law or regulation;

CHEATING AND HACKING - You agree that you will not, under any circumstances:

- d. Use cheats, exploits, automation software, bots, hacks, mods or any unauthorized third party software designed to modify or interfere with the Service or any Facebook by Fonetwish game experience;
- e. Use the Service in order to design or assist in the design of cheats, automation software, bots, hacks, mods or any other unauthorized third party software designed to modify or interfere with the Service or any Facebook by Fonetwish game experience;
- f. Without Facebook by Fonetwish's express written consent, modify or cause to be modified any files that are a part of the Service;
- g. Disrupt, overburden, or aid or assist in the disruption or overburdening of (1) any computer or server used to offer or support the Service or any Facebook by Fonetwish game environment (each a "Server"); or (2) the enjoyment of the Service or any Facebook by Fonetwish game by any other person;
- h. Institute, assist or become involved in any type of attack, including without limitation distribution of a virus, denial of service attacks upon the Service, or other attempts to disrupt the Service or any other person's use or enjoyment of the Service; or
- i. Attempt to gain unauthorized access to the Service, Accounts registered to others or to the computers, Servers, or networks connected to the Service by any means other than the user interface provided by Facebook by Fonetwish, including but not limited to, by circumventing or modifying, attempting to circumvent or modify, or encouraging or assisting any other person to circumvent or modify, any security, technology, device, or software that is part of the Service;

OFFENSIVE OR INFRINGING CONTENT - You agree that you will not, under any circumstances:

- j. Post any information that is abusive, threatening, obscene, defamatory, libelous, or racially, sexually, religiously, or otherwise objectionable or offensive;

- k. Post any information that contains nudity, excessive violence, or offensive subject matter or that contains a link to such content;
- l. Attempt to, or harass, abuse, or harm, or advocate or incite harassment, abuse or harm of another person, group, including Facebook by Fonetwish employees, including Facebook by Fonetwish's customer service representatives; or
- m. Make available through the Service any material or information that infringes any copyright, trademark, patent, trade secret, right of privacy, right of publicity, or other right of any person or entity or impersonates any other person, including without limitation a Facebook by Fonetwish employee;

COMMERCIAL ACTIVITY - You agree that you will not, under any circumstances:

- n. Without Facebook by Fonetwish's express written consent, use the Service or any part thereof for any commercial purpose, including but not limited to (1) communicating or facilitating any commercial advertisement or solicitation, or (2) gathering or transferring Virtual Items for sale;
- o. Use the Service or any part thereof for performing in-game services, such as power-leveling and item collection services, in exchange for payment outside the Service; or
- p. Transmit unauthorized communications through the Service, including junk mail, chain letters, spam and any materials that promote malware, spyware and downloadable items;

UNAUTHORIZED USE OR CONNECTION TO THE SERVICE - You agree that you will not, under any circumstances:

- q. Interfere or attempt to interfere with the proper functioning of the Service or connect to or use the Service in any way not expressly permitted by these Terms of Service;
- r. Use any unauthorized third party software that accesses, intercepts, "mines", or otherwise collects information from or through the Service or that is in transit from or to the Service, including, without limitation, any software that reads areas of RAM or streams of network traffic used by the Service to store information about Facebook by Fonetwish game characters, elements, or environment. Facebook by Fonetwish may, at its sole and absolute discretion, allow the use of certain third party user interfaces;
- s. Intercept, examine or otherwise observe any proprietary communications protocol used by a client, a Server, or the Service, whether through the use of a network analyzer, packet sniffer or other device;
- t. Make any automated use of the system, or take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our infrastructure;

- u. Bypass any robot exclusion headers or other measures We employ to restrict access to the service or use any software, technology, or device to send content or messages, scrape, spider, or crawl the Service, or harvest or manipulate data;
- v. Use, facilitate, create, or maintain any unauthorized connection to the Service, including without limitation (1) any connection to any unauthorized server that emulates, or attempts to emulate any part of the Service; or (2) any connection using programs, tools, or software not expressly approved by Facebook by Fonetwish;
- w. Except where permitted by law or relevant open source licenses, reverse engineer, decompile, disassemble, decipher or otherwise attempt to derive the source code for any underlying software or other intellectual property used to provide the Service, or to obtain any information from the Service using any method not expressly permitted by Facebook by Fonetwish; or
- x. Copy, modify or distribute rights or content from any Facebook by Fonetwish site or game, or Facebook by Fonetwish's copyrights or trademarks or use any method to copy or distribute the content of the Service except as specifically allowed in these Terms of Service;

COLLECTION AND PUBLICATION OF PERSONAL INFORMATION - You agree that you will not, under any circumstances:

- y. Solicit or attempt to solicit personal information from other users of the Service;
- z. Collect, harvest or post anyone's private information, including personally identifiable information (whether in text, image or video form), identification documents, or financial information through the Service; or
- aa. upload or transmit or attempt to upload or transmit, without Facebook by Fonetwish's express permission, any material that acts as a passive or active information collection or transmission mechanism, including, without limitation, clear graphics interchange formats ("gifs"), 1x1 pixels, web bugs, cookies or other similar devices (sometimes referred to as "spyware," "passive collection mechanisms" or "pcms").

1.10. Suspension and Termination of Account and Service

WITHOUT LIMITING ANY OTHER REMEDIES, FACEBOOK BY FONETWISH MAY LIMIT, SUSPEND, TERMINATE, MODIFY, OR DELETE ACCOUNTS OR ACCESS TO THE SERVICE OR PORTIONS THEREOF IF YOU ARE, OR FACEBOOK BY FONETWISH SUSPECTS THAT YOU ARE, FAILING TO COMPLY WITH ANY OF THESE TERMS OF SERVICE OR FOR ANY ACTUAL OR SUSPECTED ILLEGAL OR IMPROPER USE OF THE SERVICE, WITH OR WITHOUT NOTICE TO YOU. YOU CAN LOSE YOUR USER NAME AND PERSONA AS A RESULT OF ACCOUNT TERMINATION OR LIMITATION, AS WELL AS ANY BENEFITS, PRIVILEGES, EARNED ITEMS AND PURCHASED ITEMS ASSOCIATED WITH YOUR USE OF THE SERVICE, AND FACEBOOK BY FONETWISH IS UNDER NO OBLIGATION TO COMPENSATE YOU FOR ANY SUCH LOSSES OR RESULTS.

WITHOUT LIMITING OUR OTHER REMEDIES, WE MAY LIMIT, SUSPEND OR TERMINATE THE SERVICE AND USER ACCOUNTS OR PORTIONS THEREOF, PROHIBIT ACCESS TO OUR GAMES AND SITES, AND THEIR CONTENT, SERVICES AND TOOLS, DELAY OR REMOVE HOSTED CONTENT, AND TAKE TECHNICAL AND LEGAL STEPS TO PREVENT USERS FROM ACCESSING THE SERVICE IF WE BELIEVE THAT THEY ARE CREATING RISK OR POSSIBLE LEGAL LIABILITIES, INFRINGING THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR ACTING INCONSISTENTLY WITH THE LETTER OR SPIRIT OF OUR TERMS OR POLICIES. ADDITIONALLY, WE MAY, IN APPROPRIATE CIRCUMSTANCES AND AT OUR SOLE DISCRETION, SUSPEND OR TERMINATE ACCOUNTS OF USERS WHO MAY BE REPEAT INFRINGERS OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

Facebook by Fonetwish reserves the right to stop offering and/or supporting the Service or a particular game or part of the Service at any time either permanently or temporarily, at which point your license to use the Service or a part thereof will be automatically terminated or suspended. In such event, Facebook by Fonetwish shall not be required to provide refunds, benefits or other compensation to users in connection with such discontinued elements of the Service.

Termination of your Account can include disabling your access to the Service or any part thereof including any content you submitted or others submitted.

You may cancel any Account registered to you at any time by following the instructions at Facebook by Fonetwish.com.

USER CONTENT

2.1. Content Screening

You are entirely responsible for all User Content you post or otherwise transmit via the Service. Facebook by Fonetwish assumes no responsibility for the conduct of any user submitting any User Content, and assumes no responsibility for monitoring the Service for inappropriate or illegal content or conduct.

We have no obligation to monitor User Content. If We choose at any time, in our sole discretion, to monitor the Service, We have the right, in our sole discretion, to edit, refuse to post, or remove any User Content and We may monitor and/or record your interaction with the Service or communications (including without limitation chat text and voice communications) when you are using the Service. By entering into these Terms of Service, you hereby provide your irrevocable consent to such monitoring and recording.

2.2. Information Use by Other Members of the Service

2.2.1. Public Discourse & Unsolicited Ideas

The Service may include various forums, blogs and chat features where you can post User Content, including your observations and comments on designated topics. Facebook by Fonetwish cannot guarantee that other members will not use the ideas and information that you share. Therefore, if you

have an idea or information that you would like to keep confidential and/or don't want others to use, do not post it on the Service. Facebook by Fonetwish shall have no responsibility to evaluate, use or compensate you for any ideas or information you may choose to submit.

If you submit suggestions, proposals, comments or other materials (collectively "Submissions") within the Service you understand and agree that Facebook by Fonetwish (1) shall have no obligation to keep your Submissions confidential; (2) shall have no obligation to return your Submissions or respond in any way; and (3) may use your Submissions for any purpose in any way without notice or compensation to you.

FACEBOOK BY FONETWISH IS NOT RESPONSIBLE FOR A MEMBER'S MISUSE OR MISAPPROPRIATION OF ANY CONTENT OR INFORMATION YOU POST IN ANY FORUMS, BLOGS AND CHAT ROOMS.

2.2.2. Responsible For Your Own Content

You are solely responsible for the information that you post on, through or in connection with the Service and that you provide to others.

Information, materials, products or services provided by other users (for instance, in their profiles) may, in whole or in part, be unauthorized, impermissible or otherwise violate these Terms of Service, and Facebook by Fonetwish assumes no responsibility or liability for this material. If you become aware of misuse of the Service by any person, please use any "Report Abuse" link provided or contact us at [Customer Support](#).

Facebook by Fonetwish may reject, refuse to post or delete any User Content for any or no reason, including, but not limited to, User Content that in the sole judgment of Facebook by Fonetwish may violate these Terms of Service.

Facebook by Fonetwish reserves the right to limit the storage capacity of User Content that you post on, through or in connection with the Service.

2.3. Disclosure

Your information, and the contents of all of your online communications (including without limitation chat text, voice communications, IP addresses and your personal information) may be accessed and monitored as necessary to provide the Service and may be disclosed: (i) when We have a good faith belief that We are required to disclose the information in response to legal process (for example, a court order, search warrant or subpoena); (ii) to satisfy any applicable laws or regulations (iii) where We believe that the Service is being used in the commission of a crime, including to report such criminal activity or to exchange information with other companies and organizations for the purposes of fraud protection and credit risk reduction; (iv) when We have a good faith belief that there is an emergency that poses a threat to the health and/or safety of you, another person or the public generally; and (v) in order to protect the rights or property of Facebook by Fonetwish, including to enforce our [Terms of Service](#). By entering into these Terms of Service, you hereby provide your irrevocable consent to such monitoring, access and disclosure.

2.4. User Interactions

2.4.1 Member Disputes

You are solely responsible for your interactions with other users of the Service and any other parties with whom you interact through the Service and/or Facebook by Fonetwish games. Facebook by Fonetwish reserves the right, but has no obligation, to become involved in any way with these disputes.

2.4.2 Release

If you have a dispute with one or more users, you release Us (and our officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes, including damages for loss of profits, goodwill, use or data. If you are a California resident, you waive California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor."

4. THIRD PARTY ADVERTISING

4.1. Third Party Advertisements

You understand that the Service and Facebook by Fonetwish games may feature advertisements from Facebook by Fonetwish or third parties. Facebook by Fonetwish's disclosure of information for third party advertising is addressed in [Facebook by Fonetwish's Privacy Policy](#).

4.2. Links to Third Party Sites and Dealings With Advertisers

Facebook by Fonetwish may provide links on the Service to third party websites or vendors who may invite you to participate in a promotional offer in return for receiving an optional component of the Service and/or upgrades (such as in-game currency). Any charges or obligations you incur in your dealings with these third parties are your responsibility. Facebook by Fonetwish makes no representation or warranty regarding any content, goods and/or services provided by any third party even if linked to from our Service, and will not be liable for any claim relating to any third party content, goods and/or services. The linked sites are not under the control of Facebook by Fonetwish and may collect data or solicit personal information from you. Facebook by Fonetwish is not responsible for their content, business practices or privacy policies, or for the collection, use or disclosure of any information those sites may collect. Further, the inclusion of any link does not imply endorsement by Facebook by Fonetwish of these linked sites.

5. COPYRIGHT NOTICES/COMPLAINTS

It is Facebook by Fonetwish's policy to respond to notices of alleged copyright infringement that comply with the Digital Millennium Copyright Act ("DMCA"). For more information, please go to [Facebook by Fonetwish's Copyright Page](#) to review our DMCA Notification Guidelines. Facebook by Fonetwish

reserves the right to terminate without notice any User's access to the Service if that User is determined by Facebook by Fonetwish, in its sole discretion, to be a "repeat infringer." In addition, Facebook by Fonetwish accommodates and does not interfere with standard technical measures used by copyright owners to protect their materials.

6. UPDATES TO THE SERVICE

You understand that the Service is an evolving one. Facebook by Fonetwish may require that you accept updates to the Service and to Facebook by Fonetwish's games you have installed on your computer or mobile device. You acknowledge and agree that Facebook by Fonetwish may update the Service with or without notifying you. You may need to update third party software from time to time in order to receive the Service and play Facebook by Fonetwish's Games.

7. DISCLAIMERS / LIMITATIONS / WAIVERS / INDEMNIFICATION

7.1. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK AND IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (EXCEPT ONLY TO THE EXTENT PROHIBITED UNDER APPLICABLE LAW WITH ANY LEGALLY REQUIRED WARRANTY PERIOD TO THE SHORTER OF THIRTY DAYS FROM FIRST USE OR THE MINIMUM PERIOD REQUIRED).

WITHOUT LIMITING THE FOREGOING, NEITHER FACEBOOK BY FONETWISH NOR ITS AFFILIATES OR SUBSIDIARIES, OR ANY OF THEIR DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, THIRD-PARTY CONTENT PROVIDERS, DISTRIBUTORS, LICENSEES OR LICENSORS (COLLECTIVELY, "FACEBOOK BY FONETWISH PARTIES") WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

7.2. LIMITATIONS; WAIVERS OF LIABILITY

YOU ACKNOWLEDGE AND AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY ANY APPLICABLE LAW, THE DISCLAIMERS OF LIABILITY CONTAINED HEREIN APPLY TO ANY AND ALL DAMAGES OR INJURY WHATSOEVER CAUSED BY OR RELATED TO USE OF, OR INABILITY TO USE, THE SERVICE UNDER ANY CAUSE OR ACTION WHATSOEVER OF ANY JURISDICTION, INCLUDING, WITHOUT LIMITATION, ACTIONS FOR BREACH OF WARRANTY, BREACH OF CONTRACT OR TORT (INCLUDING NEGLIGENCE) AND THAT THE FACEBOOK BY FONETWISH PARTIES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING FOR LOSS OF PROFITS, GOODWILL OR DATA, IN ANY WAY WHATSOEVER ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICE.

YOU FURTHER SPECIFICALLY ACKNOWLEDGE THAT THE FACEBOOK BY FONETWISH PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD THE FACEBOOK BY FONETWISH PARTIES LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OTHER USERS OF THE SERVICE AND OPERATORS OF EXTERNAL SITES, AND THAT THE RISK OF THE SERVICE AND EXTERNAL SITES AND OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU.

TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, UNDER NO CIRCUMSTANCES WILL THE FACEBOOK BY FONETWISH PARTIES BE LIABLE TO YOU FOR MORE THAN THE AMOUNT YOU HAVE PAID FACEBOOK BY FONETWISH IN THE ONE HUNDRED AND EIGHTY DAYS (180) DAYS IMMEDIATELY PRECEDING THE DATE ON WHICH YOU FIRST ASSERT ANY SUCH CLAIM.

YOU ACKNOWLEDGE AND AGREE THAT IF YOU HAVE NOT PAID FACEBOOK BY FONETWISH ANY AMOUNTS IN THE ONE HUNDRED AND EIGHTY DAYS (180) DAYS IMMEDIATELY PRECEDING THE DATE ON WHICH YOU FIRST ASSERT ANY SUCH CLAIM, YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH FACEBOOK BY FONETWISH IS TO STOP USING THE SERVICE AND TO CANCEL YOUR ACCOUNT.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. THEREFORE, SOME OF THE ABOVE LIMITATIONS IN THE SECTION MAY NOT APPLY TO YOU. IN PARTICULAR, NOTHING IN THESE TERMS SHALL AFFECT THE STATUTORY RIGHTS OF ANY CONSUMER OR EXCLUDE OR RESTRICT ANY LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM ANY NEGLIGENCE OR FRAUD OF FACEBOOK BY FONETWISH.

7.3. Indemnification

You agree to indemnify, save, and hold Facebook by Fonetwish, its affiliated companies, contractors, employees, agents and its third-party suppliers, licensors, and partners harmless from any claims, losses, damages, liabilities, including legal fees and expenses, arising out of your use or misuse of the Service, any violation by you of these Terms of Service, or any breach of the representations, warranties, and covenants made by you herein. Facebook by Fonetwish reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Facebook by Fonetwish, and you agree to cooperate with Facebook by Fonetwish's defense of these claims. Facebook by Fonetwish will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it.

You agree that the provisions in this paragraph will survive any termination of your Account(s) or of the Service.

8. DISPUTE RESOLUTION

8.1. General

If a dispute arises between you and Facebook by Fonetwish, our goal is to provide you with a neutral and cost effective means of resolving the dispute quickly. Accordingly, you and Facebook by Fonetwish agree that We will resolve any claim or controversy at law or equity that arises out of this Agreement or the Service (a "Claim") in accordance with one of the subsections below or as We and you otherwise agree in writing. Before resorting to these alternatives, We strongly encourage you to first contact Us directly to seek a resolution by going to [Customer Support](#). We will consider reasonable requests to resolve the dispute through alternative dispute resolution procedures, such as mediation or arbitration, as alternatives to litigation.

8.2. Law and Forum for Legal Disputes

If you are a resident of the United States, this Agreement and any dispute arising out of or related to it or the Service shall be governed in all respects by the laws of the State of California as they apply to agreements entered into and to be performed entirely within California between California residents, without regard to conflict of law provisions. You agree that any claim or dispute you may have against Facebook by Fonetwish must be resolved exclusively by a state or federal court located in San Francisco County, California, except as otherwise agreed by the parties or as described in the Arbitration Option paragraph below. You agree to submit to the personal jurisdiction of the courts located within San Francisco County, California for the purpose of litigating all such claims or disputes.

If you reside outside of the United States, this Agreement and any dispute arising out of or related to it or the Service shall be governed in all respects by the laws of the Grand Duchy of Luxembourg and shall be considered to have been made and accepted in the Grand Duchy of Luxembourg, without regard to conflict of law provisions. You agree that any claim or dispute you may have against Facebook by Fonetwish Luxembourg S.a.r.l. must be resolved exclusively by the courts in Luxembourg, except as otherwise agreed by the parties or as described in the Arbitration Option paragraph below. You agree to submit to the personal jurisdiction of the courts in Luxembourg for the purpose of litigating all such claims or disputes.

8.3. Arbitration Option

For any claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, the party requesting relief may elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration. In the event a party elects arbitration, they shall initiate such arbitration through an established alternative dispute resolution ("ADR") provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, and the specific manner shall be chosen by the party initiating the arbitration; (b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (c) any judgment on the award rendered by the arbitrator shall be final and may be entered in any court of competent jurisdiction.

8.4. Improperly Filed Claims

All claims you bring against Facebook by Fonetwish must be resolved in accordance with this Legal Disputes Section. All claims filed or brought contrary to Section 8.2 shall be considered improperly filed. Should you file a claim contrary to Section 8.2, Facebook by Fonetwish shall be entitled to recover attorneys' fees and costs up to \$1000, provided that Facebook by Fonetwish has notified you in writing of the improperly filed claim, and you have failed to promptly withdraw the claim.

9. SEVERABILITY

You and Facebook by Fonetwish agree that if any portion of these Terms of Service or of the Facebook by Fonetwish Privacy Policy is found illegal or unenforceable, in whole or in part by any court of competent jurisdiction, such provision shall, as to such jurisdiction, be ineffective solely to the extent of such determination of invalidity or unenforceability without affecting the validity or enforceability thereof in any other manner or jurisdiction and without affecting the remaining provisions of the Terms, which shall continue to be in full force and effect.

10. GENERAL PROVISIONS

10.1. Assignment

Facebook by Fonetwish may assign or delegate these Terms of Service and/or the Facebook by Fonetwish Privacy Policy, in whole or in part, to any person or entity at any time with or without your consent. You may not assign or delegate any rights or obligations under the Terms of Service or Privacy Policy without Facebook by Fonetwish's prior written consent, and any unauthorized assignment and delegation by you is void and ineffective.

10.2. Supplemental Policies

Facebook by Fonetwish may publish additional policies related to specific services such as applications for mobile devices, forums, contests or loyalty programs. Your right to use such services is subject to those specific policies and these Terms of Service.

10.3. Entire Agreement

These Terms of Service, any supplemental policies and any documents expressly incorporated by reference herein (including Facebook by Fonetwish's Privacy Policy), contain the entire understanding of you and Facebook by Fonetwish, and supersede all prior understandings of the parties hereto relating to the subject matter hereof, whether electronic, oral or written, or whether established by custom, practice, policy or precedent, between you and Us with respect to the Service.

10.4. Language of the Terms of Service

If we provide you with a translation of the English language version of these Terms of Service, the Facebook by Fonetwish Privacy Policy or any other policy (collectively "Facebook by Fonetwish Policies"), then you agree that the translation is provided for informational purposes only and does not modify the English language version of the Facebook by Fonetwish Policies.

In the event of a conflict between a translation of the Facebook by Fonetwish Policies and the English version, the English version of the Facebook by Fonetwish Policies will control.

10.5. No Waiver

The failure of Facebook by Fonetwish to require or enforce strict performance by you of any provision of these Terms of Service or the Facebook by Fonetwish Privacy Policy or failure to exercise any right under

them shall not be construed as a waiver or relinquishment of Facebook by Fonetwish's right to assert or rely upon any such provision or right in that or any other instance.

The express waiver by Facebook by Fonetwish of any provision, condition, or requirement of these Terms of Service or the Facebook by Fonetwish Privacy Policy shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

Except as expressly and specifically set forth in these Terms of Service, no representations, statements, consents, waivers, or other acts or omissions by Facebook by Fonetwish shall be deemed a modification of these Terms of Service nor be legally binding, unless documented in physical writing, hand signed by You and a duly appointed officer of Facebook by Fonetwish.

10.6. Notices

We may notify you via postings on facebook, and via e-mail or any other communications means to contact information you provide to us. If you are a user in the United States, all notices given by you or required from you under these Terms of Service or the Facebook by Fonetwish Privacy Policy shall be in writing and addressed to: Facebook by Fonetwish Inc., Attn: LEGAL DEPARTMENT, 699 8th Street, San Francisco, CA 94103. If you are a user outside of the United States, all notices given by you or required from you under these Terms of Service or the Facebook by Fonetwish Privacy Policy shall be in writing and addressed to: Facebook by Fonetwish Luxembourg S.a.r.l. located at 15, rue Edward Steichen, L-2540, Luxembourg.

Any notices that you provide without compliance with this Section on Notices shall have no legal effect.

10.7. Equitable Remedies

You acknowledge that the rights granted and obligations made under these Terms of Service to Facebook by Fonetwish are of a unique and irreplaceable nature, the loss of which shall irreparably harm Facebook by Fonetwish and which cannot be replaced by monetary damages alone. Accordingly, Facebook by Fonetwish shall be entitled to injunctive or other equitable relief (without the obligations of posting any bond or surety or proof of damages) in the event of any breach or anticipatory breach by you.

You irrevocably waive all rights to seek injunctive or other equitable relief, or to enjoin or restrain the operation of the Service or any Facebook by Fonetwish game, exploitation of any advertising or other materials issued in connection therewith, or exploitation of the Service or any content or other material used or displayed through the Service and agree to limit your claims to claims for monetary damages, limited by Section 7.2 (if any).

10.8. Force Majeure

Facebook by Fonetwish shall not be liable for any delay or failure to perform resulting from causes outside the reasonable control of Facebook by Fonetwish, including without limitation any failure to perform hereunder due to unforeseen circumstances or cause beyond Facebook by Fonetwish's control

such as acts of God, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, network infrastructure failures, strikes, or shortages of transportation facilities, fuel, energy, labor or materials.