

# MOBILE APP TERMS AND CONDITIONS

**Last modified:** JANUARY 13, 2020

## **Purpose**

WinGive (the “App”) is a mobile application that allows Users (as defined below) to setup their an account and public profile in which the User to identify both 1) their favorite teams in the NFL, NCAA (football and basketball), NBA, MLB, NHL, and any subsequent league or division the Company may incorporate at a later date (individually, the “Team(s)”, and collectively, the “Leagues”); and 2) their favorite charity / not-for-profit organization that the User seeks to support through crowdfunding. Users will also be able to connect with other Users of the App for the purpose of selecting the outcome or winner of any game played between the Teams in a League. After connecting on the App, Users may connect to select a League game and then “Challenge” other Users by placing a friendly “donation” as to who will win the selected game between the Teams. The donation is effected by the Users agreeing on a set amount of funds, or “WinGive”, that will be paid to the charities / non-for-profit organizations designated by the User who selects the winning Team. The App also allows Users to continuously share their results or "WinGive" with other Users and ask them to participate in their fundraising efforts.

## **How WinGive Works**

There are 3 ways in which someone can WinGive:

- 1) Individual WinGive:** A User can choose to setup their own campaign and either WinGive themselves or invite fellow users to participate by “donating” to a participating charity based upon the outcome of a either a selected League game or based upon the results of all games played within a Team’s season.
- 2) Peer to Peer WinGive:** Users may choose to participate in a “peer-to-peer” WinGive campaign where Users directly challenge other Users by choosing a game and charity of their choice prior to the start of the game. The User who selects the losing team will then have to WinGive to a charity of the User who chose the winning team in an amount that is also pre-selected between both Users.
- 3) Custom WinGive:** This allows a user to officiate / moderate any other competitive event that takes place outside of a League (i.e., high school football, a 5k race, etc.). The User who loses the competition will then have to WinGive to the winning User’s charity of choice in the amount predetermined before the event.

Before participating in WinGive, all Users must read and accept the Terms and Conditions provided below.

## **Acceptance of the Terms and Conditions**

These Terms and Conditions are entered into by and between You (the “**User**”) and WinGive.com, LLC (“**Company**,” “**we**,” or “**us**”). The following terms and conditions, together with any documents they expressly incorporate by reference (collectively, “**Terms and Conditions**”), govern your access to and use, including any content, functionality, and services offered on or through the mobile application “WinGive” (the “**App**”).

Please read the Terms and Conditions carefully before you start to use the App. **By downloading or using the App, you accept and agree to be bound and abide by these Terms and Conditions and our Privacy Policy, found within the App [More > Settings > Privacy Policy] and incorporated herein by reference.** If you do not want to agree to these Terms and Conditions or the Privacy Policy, you must not access or use the App.

The App is offered and available to Users who are 18 years of age or older, and reside in the United States or any of its territories or possessions. By using the App, you represent and warrant that you are 18 years of age or older and meet all of the foregoing eligibility requirements. If you do not meet all of these requirements, you must not access or use the App.

### **Processing Fees & User Responsibilities**

USERS ARE ADVISED THAT, IN ORDER TO CARRY-OUT AND COMPLETE ANY AND ALL BUSINESS BETWEEN THE COMPANY, THE USER(S) AND PARTICIPATING CHARITIES, ALL TRANSACTIONS MADE WITHIN THE APP ARE SUBJECT TO A THREE-PERCENT (3%) PROCESSING FEE, PLUS ANY COSTS INCURRED BY THE COMPANY. IN ORDER TO CARRY-OUT AND COMPLETE ANY AND ALL BUSINESS BETWEEN THE COMPANY, THE USER(S) AND PARTICIPATING CHARITIES (COLLECTIVELY THE “**FEE**”). THE FEE DOES NOT INCLUDE ANY ADDITIONAL FEE THAT MAY BE CHARGED OR IMPOSED BY STRIPE, INC. (“**STRIPE**”), THE THIRD-PARTY COMPANY USED BY THE COMPANY (THROUGH THE APP) TO PROCESS AND COLLECT CREDIT CARD AND DEBIT CARD PAYMENTS, OR ANY OTHER VENDORS OR CHARITIES THAT PARTICIPATE WITH THE APP AND/OR THE COMPANY. THE FEE DOES INCLUDE CHARGES FOR TRANSACTIONS COMPLETED THROUGH THE APP (SUCH AS PROCESSING A PAYMENT) AND FOR OTHER EVENTS CONNECTED WITH YOUR PROFILE AS A USER (SUCH AS HANDLING A DISPUTED CHARGE) INCLUDING, BUT LIMITED TO, COMPANY COSTS IN OPERATING THE APP. IN THE EVENT THAT A PARTICIPATING CHARITY CHOOSES NOT TO USE SWIPE OR ANY OTHER ELECTRONIC PAYMENT PROCESSING CHANNEL USED BY THE COMPANY, THE FEE INCLUDES COSTS FOR BANKING (CHECKS, ACCOUNT FEES, ETC.) AND OTHER COSTS IN TRANSMITTING FUNDS TO THE CHARITY (POSTAGE COSTS, ETC.). WHETHER OR NOT STRIPE, OR ANY OTHER THIRD-PARTIES MAKE CHANGES TO THEIR RATES OR PERCENTAGES, WE RESERVE THE RIGHT TO ALTER OR ADJUST THE FEE FROM TIME TO TIME. HOWEVER, WE WILL PROVIDE YOU WITH AT LEAST 30 DAYS’ ADVANCE NOTICE BEFORE REVISIONS BECOME APPLICABLE TO YOU.

IN ADDITION TO THE FEE, ANY DONATIONS (OR “WINGIVE”) THAT YOU ARE RESPONSIBLE FOR, YOU ARE ALSO RESPONSIBLE FOR ANY PENALTIES OR FINES IMPOSED, INCLUDING THOSE IMPOSED BY STRIPE, OR ANY OTHER PAYMENT METHOD PROVIDER OR PAYMENT METHOD ACQUIRER, RESULTING FROM YOUR USE OF THE APP AND THE SERVICES OF STRIPE OR ANY OTHER PAYMENT METHOD PROVIDER CONTRACTED BY THE COMPANY FOR USE WITHIN THE APP.

### **Tax Reporting Requirements**

All Users are responsible for reporting all of their “WinGives” (aka donations) made through the app for tax purposes. The Company is not responsible for such reporting requirements and will not issue the requisite Internal Revenue Service (“IRS”) reporting form to users for such purposes. Users should consult with a tax professional when applying or reporting all “WinGives” (aka Donations) when preparing their tax returns. ALL USERS ACKNOWLEDGE THAT THE COMPANY IS HELD HARMLESS FROM ALL LIABILITY WITH REGARDS TO THIS TAX NOTICE AND ALL REPORTING REQUIREMENTS.

### **Participating Charities**

The Company does not have any formal affiliation with any qualified charities (i.e., qualified 501(c)(3) charities recognized by the IRS). All participating charities listed within the App are provided for convenience, but Users may not be limited to those that are already listed within the App. Users are free to either 1) select from one of the pre-listed charities while engaging in a “WinGive”, or 2) list a charity that has not been pre-listed by the Company within the App.

### **Payments to Participating Charities**

All “WinGives” (aka donations) that are made by Users through the App are held in a standard, interest bearing account and maintained under traditional banking and accounting practices. “WinGives” will be remitted to the designated charity (or charities) within 15-45 days of the date payments are processed from the Users through the App, depending on the charity selected by the Users. In the event that the Company is unable to deliver the “WinGive” to the charity you have selected, the Company will contact you either through the e-mail you have provided or through the App to ask for and/or recommend another charity for the WinGive to be paid to. If we

don't receive a response from you within five (5) business days, we'll deliver your "WinGive" to a similar charity. All other terms and conditions herein (and within our Privacy Policy) will still apply. All further inquiries as to the distribution of charitable funds to participating charities may be directed to the Company by e-mail at: [info@wingive.com](mailto:info@wingive.com).

### **Changes to the Terms and Conditions**

We may revise and update these Terms and Conditions from time to time in our sole discretion. All changes are effective immediately when we post them, and apply to all access to and use of the App thereafter. However, any changes to the dispute resolution provisions set out in Governing Law and 0 will not apply to any disputes for which the parties have actual notice on or before the date the change is posted on the App.

Your continued use of the App following the posting of revised Terms and Conditions means that you accept and agree to the changes. You are expected to check this page each time you access the App so you are aware of any changes, as they are binding on you.

### **Accessing the App and Account Security**

We reserve the right to withdraw or amend, or update/upgrade the App, and any service or material we provide on the App, in our sole discretion without notice. We will not be liable if for any reason all or any part of the App is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the App, or the entire App, to Users.

You are responsible for both:

- Making all arrangements necessary for you to have access to the App.
- Ensuring that all persons who access the App through your internet or data connection (through your mobile provider) are aware of these Terms and Conditions and comply with them.

To access the App or some of the resources it offers, you may be asked to provide certain registration details or other information, including your name, location and e-mail in addition to address and credit or debit card information for processing payments made through the App and through Stripe, our third-party payment processing service. It is a condition of your use of the App that all the information you provide on the App is correct, current, and complete. You agree that all information you provide to register with the App or otherwise, including, but not limited to, through the use of any interactive features on the App, is governed by our Privacy Policy [*More > Settings > Privacy Policy*], and you consent to all actions we take with respect to your information consistent with our Privacy Policy.

Upon creating a profile within the App, you must establish a password. You must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to the App or portions of it using your user name, password, or other security information. You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. 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.

We have the right to disable any user name, password, or other identifier, whether chosen by you or provided by us, 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 and Conditions.

### **Intellectual Property Rights**

The App and its entire contents, features, and functionality (including but not limited to all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof) are owned by the

Company, its licensors, or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws.

These Terms and Conditions permit you to use the App for your personal, non-commercial use only. You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store, or transmit any of the material on our App, except as follows:

- Your mobile device may temporarily store copies of such materials incidental to your accessing and viewing those materials.
- You may download the App mobile device solely for your own personal, non-commercial use, provided you agree to be bound by our End User License Agreement for such applications.
- If we provide social media features with certain content, you may take such actions as are enabled by such features.

You must not:

- Modify copies of any materials from the App.
- Use any illustrations, photographs, video or audio sequences, or any graphics separately from the accompanying text.
- Delete or alter any copyright, trademark, or other proprietary rights notices from copies of materials from the App.

You must not access or use for any commercial purposes any part of the App or any services or materials available through the App.

If you copy, modify, download, or otherwise use or provide any other person with access to any part of the App in breach of the Terms and Conditions, your right to use the App will stop immediately and you must, at our option, return or destroy any copies of the materials you have made. No right, title, or interest in or to the App or any content on the App is transferred to you, and all rights not expressly granted are reserved by the Company. Any use of the App not expressly permitted by these Terms and Conditions is a breach of these Terms and Conditions and may violate copyright, trademark, and other laws.

### **Trademarks**

The Company name, the term(s) “WinGive”, the Company logo, and all related names, logos, product and service names, designs, and slogans are trademarks of the Company or its affiliates or licensors. You must not use such marks without the prior written permission of the Company. All other names, logos, product and service names, designs, and slogans on the App are the trademarks of their respective owners.

### **Prohibited Uses**

You may use the App only for lawful purposes and in accordance with these Terms and Conditions. You agree not to use the App:

- In any way that violates any applicable federal, state, local, or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries).
- For the purpose of exploiting, harming, or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise.
- To send, knowingly receive, upload, download, use, or re-use any material that does not comply with the Content Standards (as defined below) set out in these Terms and Conditions.
- To transmit, or procure the sending of, any advertising or promotional material, including any "junk mail," "chain letter," "spam," or any other similar solicitation.

- To impersonate or attempt to impersonate the Company, a Company employee, another user, or any other person or entity (including, without limitation, by using email addresses or screen/user names associated with any of the foregoing).
- To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the App, or which, as determined by us, may harm the Company or users of the App, or expose them to liability.

Additionally, you agree not to:

- Use the App in any manner that could disable, overburden, damage, or impair the site or interfere with any other party's use of the App, including their ability to engage in real time activities through the App.
- Use any robot, spider, or other automatic device, process, or means to access the App for any purpose, including monitoring or copying any of the material on the App.
- Use any manual process to monitor or copy any of the material on the App, or for any other purpose not expressly authorized in these Terms and Conditions, without our prior written consent.
- Use any device, software, or routine that interferes with the proper working of the App.
- Introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful.
- Attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the App, the server on which the App is stored, or any server, computer, or database connected to the App.
- Attack the App via a denial-of-service attack or a distributed denial-of-service attack.
- Otherwise attempt to interfere with the proper working of the App.

### **User Contributions**

The App may contain message boards, direct messages or profiles, and other interactive features (collectively, "**Interactive Services**") that allow users to post, submit, publish, display, or transmit to other users or other persons (hereinafter, "**post**") content or materials (collectively, "**User Contributions**") on or through the App.

All User Contributions must comply with the Content Standards set out in these Terms and Conditions.

Any User Contribution you post to the site will be considered non-confidential and non-proprietary. By providing any User Contribution on the App, you grant us and our affiliates and service providers, and each of their and our respective licensees, successors, and assigns the right to use, reproduce, modify, perform, display, distribute, and otherwise disclose to third parties any such material for any purpose.

You represent and warrant that:

- You own or control all rights in and to the User Contributions and have the right to grant the license granted above to us and our affiliates and service providers, and our licensees, successors, and assigns.
- All of your User Contributions do and will comply with these Terms and Conditions.

You understand and acknowledge that you are responsible for any User Contributions you submit or contribute, and you, not the Company, have full responsibility for such content, including its legality, reliability, accuracy, and appropriateness.

We are not responsible or liable to any third party for the content or accuracy of any User Contributions posted by you or any other user of the App.

### **Monitoring and Enforcement; Termination**

We have the right to:

- Remove or refuse to post any User Contributions for any or no reason in our sole discretion.
- Take any action with respect to any User Contribution that we deem necessary or appropriate in our sole discretion, including if we believe that such User Contribution violates the Terms and Conditions, including the Content Standards, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the App or the public, or could create liability for the Company.
- Disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy.
- Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the App.
- Terminate or suspend your access to all or part of the App for any or no reason without notice, including without limitation, any violation of these Terms and Conditions.

Without limiting the foregoing, we have the right to cooperate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through the App. YOU WAIVE AND HOLD HARMLESS THE COMPANY AND ITS AFFILIATES, LICENSEES, AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING, OR TAKEN AS A CONSEQUENCE OF, INVESTIGATIONS BY EITHER SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES.

However, we do not undertake to review material before it is posted on the App, and cannot ensure prompt removal of objectionable material 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 nonperformance of the activities described in this section.

### **Content Standards**

These content standards apply to any and all User Contributions and use of Interactive Services. User Contributions must in their entirety comply with all applicable federal, state, local, and international laws and regulations. Without limiting the foregoing, User Contributions must not:

- Contain any material that is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful, inflammatory, or otherwise objectionable.
- Promote sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age.
- Infringe any patent, trademark, trade secret, copyright, or other intellectual property or other rights of any other person.
- Violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with these Terms and Conditions and our Privacy Policy.
- Be likely to deceive any person.
- Promote any illegal activity, or advocate, promote, or assist any unlawful act.
- Cause annoyance, inconvenience, or needless anxiety or be likely to upset, embarrass, alarm, or annoy any other person.
- Impersonate any person, or misrepresent your identity or affiliation with any person or organization.
- Involve commercial activities or sales, such as contests, sweepstakes, and other sales promotions, barter, or advertising.

- Give the impression that they emanate from or are endorsed by us or any other person or entity, if this is not the case.

### **Copyright Infringement**

If you believe that any User Contributions violate your copyright, please send us a notice of copyright infringement. It is the policy of the Company to terminate the user accounts of repeat infringers.

### **Reliance on Information Posted**

The information presented on or through the App is made available solely for general information purposes. We do not warrant the accuracy, completeness, or usefulness of this information. Any reliance you place on such information is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such materials by you or any other visitor to the App, or by anyone who may be informed of any of its contents.

The App does or may include content provided by third parties, including materials provided by participating charities, other users, 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 the Company, are solely the opinions and the responsibility of the person or entity providing those materials. These materials do not necessarily reflect the opinion of the Company. 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.

### **Changes to the App**

We may update the content on the App from time to time, but its content is not necessarily complete or up-to-date. Any of the material on the App may be out of date at any given time, and we are under no obligation to update such material.

### **Information About You and Your Visits to the App**

All information we collect on the App is subject to our Privacy Policy. By using the App, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

### **Transactions and Other Terms and Conditions**

All transactions through our App, or resulting from use or visits made by you, are governed by our Terms and Conditions and Privacy Policy. Additional terms and conditions may also apply to specific portions, services, or features of the App. All such additional terms and conditions are hereby incorporated by this reference into these Terms and Conditions.

### **Linking to the App and Social Media Features**

The App may provide certain social media features that enable you to:

- Send emails or other communications with certain content, or links to certain content, on the App.
- Cause limited portions of content on the App to be displayed or appear to be displayed on your own or certain third-party Apps.

You may use these features solely as they are provided by us, and solely with respect to the content they are displayed with, and otherwise in accordance with any additional terms and conditions we provide with respect to such features. Subject to the foregoing, you must not:

- Establish a link from any App that is not owned by you.
- Cause the App or portions of it to be displayed on, or appear to be displayed by, any other site, for example, framing, deep linking, or in-line linking.

- Link to any part of the App other than the homepage.
- Otherwise take any action with respect to the materials on the App that is inconsistent with any other provision of these Terms and Conditions.

The App from which you are linking, or on which you make certain content accessible, must comply in all respects with the Content Standards set out in these Terms and Conditions. We may disable all or any social media features and any links at any time without notice in our discretion.

### **Links from the App**

If the App contains links to other sites and resources provided by third parties, these links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. We have no control over the contents of those sites or resources, and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third-party Apps linked to the App, you do so entirely at your own risk and subject to the terms and conditions of use for such Apps.

### **Geographic Restrictions**

The owner of the App is based in the State of South Carolina in the United States. We provide the App for use only by persons located in the United States. We make no claims that the App or any of its content is accessible or appropriate outside of the United States. Access to the App may not be legal by certain persons or in certain countries. If you access the App from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

### **Disclaimer of Warranties**

You understand that we cannot and do not guarantee or warrant that files available for downloading from the internet or the App will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to our site for any reconstruction of any lost data. TO THE FULLEST EXTENT PROVIDED BY LAW, WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES, OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR MOBILE DEVICE. COMPUTER, COMPUTER PROGRAMS, DATA, OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE App OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE App OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY App LINKED TO IT.

YOUR USE OF THE App, ITS CONTENT, AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE App IS AT YOUR OWN RISK. THE App, ITS CONTENT, AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE App ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER THE COMPANY NOR ANY PERSON ASSOCIATED WITH THE COMPANY MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE App. WITHOUT LIMITING THE FOREGOING, NEITHER THE COMPANY NOR ANYONE ASSOCIATED WITH THE COMPANY REPRESENTS OR WARRANTS THAT THE App, ITS CONTENT, OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE App WILL BE ACCURATE, RELIABLE, ERROR-FREE, OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT OUR SITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE App OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE App WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

TO THE FULLEST EXTENT PROVIDED BY LAW, THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE,



INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

#### **Limitation on Liability**

TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL THE COMPANY, ITS AFFILIATES, OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE App, ANY LINKS CONTAINED WITHIN THE App, ANY CONTENT ON THE App OR SUCH OTHER AppS, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE.

The limitation of liability set out above does not apply to liability resulting from our gross negligence or willful misconduct.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

#### **Indemnification**

You agree to defend, indemnify, and hold harmless the Company, its affiliates, licensors, and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating to your violation of these Terms and Conditions or your use of the App, including, but not limited to, your User Contributions, any use of the App's content, services, and products other than as expressly authorized in these Terms and Conditions, or your use of any information obtained from the App.

#### **Governing Law and Jurisdiction**

All matters relating to the App and these Terms and Conditions, and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of South Carolina without giving effect to any choice or conflict of law provision or rule (whether of the State of South Carolina or any other jurisdiction).

Any legal suit, action, or proceeding arising out of, or related to, these Terms and Conditions or the App shall be instituted exclusively in the federal courts of the United States or the courts of the State of South Carolina, in each case located in the City of Charleston and County of Charleston, although we retain the right to bring any suit, action, or proceeding against you for breach of these Terms and Conditions in your state or country of residence. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

#### **Arbitration**

Any disputes arising from these Terms and Conditions or use of the App, including disputes arising from or concerning their interpretation, violation, invalidity, non-performance, or termination, to final and binding arbitration under the Rules of Arbitration of the American Arbitration Association applying South Carolina law.

#### **Limitation on Time to File Claims**

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS OR THE App MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

#### **Waiver and Severability**

No waiver by the Company of any term or condition set out in these Terms and Conditions shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of the Company to assert a right or provision under these Terms and Conditions shall not constitute a waiver of such right or provision.

If any provision of these Terms and Conditions is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms and Conditions will continue in full force and effect.

#### **Entire Agreement**

These Terms and Conditions, our Privacy Policy, and our End User Agreement constitute the sole and entire agreement between you and WinGive.com, LLC regarding the App and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the App.

#### **Your Comments and Concerns**

The App is operated by WinGive.com, LLC, P.O. Box 31918, Charleston, SC 29417.

All notices of copyright infringement claims should be sent to the copyright agent designated in our Copyright Policy in the manner and by the means set out therein.

All feedback, comments, requests for technical support, and other communications relating to the App, including notices of copyright infringement claims, should be directed to: [info@wingive.com](mailto:info@wingive.com).