



Terms of Service

Last Updated: September 14, 2021

IMPORTANT NOTICE: DISPUTES ABOUT THESE TERMS ARE SUBJECT TO BINDING ARBITRATION AND A WAIVER OF CLASS ACTION RIGHTS AS DETAILED IN THE "MANDATORY ARBITRATION AND CLASS ACTION WAIVER" PROVISIONS BELOW IN SECTION 14.

These Terms of Service (the "Terms") are a legal agreement between you and GetSanta.com ("Santa," "we," "us," and "our"). These Terms apply to your use of the Santa services through the Santa website, mobile application, and related products and services (the "Services"). All references to "you" or "your," as applicable, mean the person who accesses, uses, and/or participates in the Services in any manner, and each of your heirs, assigns, and successors.

You acknowledge and agree that, by accessing or using the Services, you have read, understand, and agree to be bound by these Terms. If you do not agree to these Terms, then you have no right to access or use the Services.

We may, from time to time, modify these Terms. Please check this page periodically for updates. Any changes will be posted on the Services. If you do not agree to, or cannot comply with, the modified Terms, you must stop using the Services. The updated Terms will take effect after their posting and will apply on a going-forward basis, unless otherwise provided in a notice to you or as required by applicable law, and except as provided in the Mandatory Arbitration and Class Action Waiver Section 14 of these Terms. Your continued use of the Services after any such update constitutes your binding acceptance of such changes.

1. ELIGIBILITY

To use the Services you must be, and represent and warrant that you are, of legal age (18 years of age or older or otherwise of legal age in your jurisdiction, or, if you have parental consent, 13 years

of age) and competent to agree to these Terms. If Santa has previously prohibited you from accessing or using the Services, you are not permitted to access or use the Services.

2. ACCOUNT REGISTRATION AND USE

2.1 Account Registration and Confidentiality. You may be required to create an account to use the Services. If so, during the registration process, you must select a username and password and provide us with additional information, such as your email and physical address. You agree to provide us with accurate, complete, and current registration information about yourself. It is your responsibility to ensure that your password remains confidential and secure. By registering, you agree that you are fully responsible for all activities that occur under your username and password. We may assume that any communications we receive under your account have been made by you.

2.2 Unauthorized Account Use. You are responsible for notifying us at support@getsanta.com if you become aware of any unauthorized use of or access to your account. You understand and agree that we may require you to provide information that may be used to confirm your identity and help ensure the security of your account. Santa will not be liable for any loss, damages, liability, expenses or attorneys' fees that you may incur as a result of someone else using your password or account, either with or without your knowledge and/or authorization, and regardless of whether you have or have not advised us of such unauthorized use. You will be liable for losses, damages, liability, expenses and attorneys' fees incurred by Santa or a third party due to someone else using your account.

3. OUR PROPRIETARY RIGHTS

The Services are owned and operated by Santa and contain materials (including all software, design, text, editorial materials, informational text, photographs, illustrations, audio clips, video clips, artwork and other graphic materials, and names, logos, trademarks and services marks) which are derived in whole or in part from materials supplied by Santa and its partners, as well as other sources, and that are protected by United States copyright laws, international treaty provisions, trademarks, service marks and other intellectual property laws. The Services are also protected as a collective work or compilation under U.S. copyright and other law and treaties. You agree to abide by all applicable copyright and other laws, as well as any additional copyright notices or restrictions contained in the Services.

You acknowledge that the Services have been developed, compiled, prepared, revised, selected, and arranged by Santa and others through the application of methods and standards of judgment developed and applied through the expenditure of substantial time, effort, and money and constitute valuable intellectual property of Santa and such others. You agree to protect the proprietary rights of Santa and all others having rights in the Services during and after the term of these Terms and to comply with all reasonable written requests made by Santa or its suppliers and licensors (collectively, "Suppliers") of content or otherwise to protect their and others' contractual,

statutory, and common law rights in the Services. You agree to notify Santa immediately upon becoming aware of any claim that the Services infringe upon any copyright, trademark, or other contractual, statutory, or common law rights. All present and future rights in and to trade secrets, patents, copyrights, trademarks, service marks, know-how, and other proprietary rights of any type under the laws of any governmental authority, domestic or foreign, including without limitation rights in and to all applications and registrations relating to the Services shall, as between you and Santa, at all times be and remain the sole and exclusive property of Santa.

4. USER CONTENT AND SUBMISSIONS

4.1 User Content and Submissions. The Services may enable you to submit, post, upload, or otherwise make available (collectively, "Post") content such as photographs, questions, public messages, ideas, product feedback, comments and other content (collectively, "User Content") that may or may not be viewable by other users.

4.2 Our License to User Content. When you Post User Content on or through the Services or otherwise provide us with any feedback about our products or services, you grant Santa a world-wide, perpetual, irrevocable, royalty-free, non-exclusive, and sub-licenseable license to use, copy, distribute, reproduce, modify, edit, adapt, publicly perform, publicly display, translate, create derivative works from, sell, lease, transmit, disassemble, and publish such User Content or feedback, in whole or in part, in any format or medium now known or developed in the future, including without limitation for promoting and redistributing part or all of the Services (and derivative works thereof) in any media formats and through any media channels. Notwithstanding the foregoing, our use of your personal data shall be governed by the Santa [Privacy Policy](#).

4.3 User Content Representations. You acknowledge and agree that all User Content that you Post is your sole responsibility. You further agree that you have all required rights to Post such User Content without violation of any third-party rights. You understand that Santa does not control, and is not responsible for, User Content, and that by using the Services, you may be exposed to User Content from other users that is offensive, indecent, inaccurate, misleading, or otherwise objectionable. Please also note that User Content may contain typographical errors, other inadvertent errors or inaccuracies. You agree that you will indemnify, defend, and hold harmless Santa for all claims resulting from User Content you Post. We reserve the right, at our own expense, to assume the exclusive defense and control of such disputes, and in any event you will cooperate with us in asserting any available defenses.

4.4 User Content Review. You acknowledge and agree that Santa and its designees may or may not, at Santa's discretion, pre-screen User Content before its appearance on the Services, but that Santa has no obligation to do so. You further acknowledge and agree that Santa reserves the right (but does not assume the obligation) in its sole discretion to reject, move, edit or remove any User Content that is contributed to the Services. Without limiting the foregoing, Santa and its designees shall have the right to remove any User Content that violates these Terms or is otherwise objectionable in Santa's sole discretion. You acknowledge and agree that Santa does not

verify, adopt, ratify, or sanction User Content, and you agree that you must evaluate and bear all risks associated with your use of User Content or your reliance on the accuracy, completeness, or usefulness of User Content.

5. LICENSE AND PROHIBITED CONDUCT

5.1 Your License. Subject to your compliance with these Terms, we grant you a limited, non-exclusive, non-sublicensable, non-transferable, and revocable right to access and use the Services only for your own internal, personal, or non-commercial use, and only in a manner that complies with all legal requirements that apply to you or your use of the Services. Santa may revoke this license at any time, in its sole discretion.

5.2 Prohibited Uses. Use of the Services for any illegal purpose, or any other purpose not expressly permitted in these Terms, is strictly prohibited. Without limitation, you will not:

- Post User Content or engage in any action that harasses, abuses, or threatens any other person, or that contains obscene content; is false, misleading, or inaccurate; degrades others on the basis of gender, race, class, ethnicity, national origin, religion, sexual preference, disability or any other classification; is unlawful, harmful, tortious, defamatory, libelous, or invasive of another's privacy;
- Use the Services commercially, for benchmarking, or to compile information for a product or service;
- Copy, download (other than through page caching necessary for personal use, or as otherwise expressly permitted by these Terms), modify, distribute, post, transmit, display, perform, reproduce, broadcast, duplicate, publish, republish, upload, license, reverse engineer, create derivative works from, or offer for sale any content or other information contained on or obtained from or through the Services, by any means except as provided for in these Terms or with the prior written consent of Santa;
- Scrape, access, monitor, index, frame, link, or copy any content or information on the Services by accessing the Services in an automated way, using any robot, spider, scraper, web crawler, or any other method of access other than manually accessing the publicly available portions of the Services through a browser or accessing the Services through any API approved by Santa;
- Violate the restrictions in any robot exclusion headers of the Services, if any, or bypass or circumvent other measures employed to prevent or limit access to the Services;
- Post material that advocates illegal activity or discusses illegal activities with the intent to commit them;
- Post or otherwise make available any material that contains any software, device, instructions, computer code, files, programs and/or other content or feature that is designed to interrupt, destroy, harm, or limit the functionality of any computer software or hardware or telecommunications equipment (including without limitation any time bomb, virus, malware, software lock, worm, self-destruction, drop-device, malicious logic, Trojan horse, trap door, "disabling," "lock out," "metering" device or any malicious code);

- Post or do anything that could disable, overburden, or impair the proper working of the Services;
- Post material that impedes or otherwise prohibits communication or disrupts user discussion;
- Post, utilize, or otherwise make available any other party's intellectual property unless you have the right to do so, or remove or alter any copyright, trademark or other proprietary notice contained on the Services;
- Post any trade secrets or other confidential information, or post any material that you do not have a right to make available under any law or under contractual or fiduciary relationships, including but not limited to inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under non-disclosure agreements;
- Falsely state or otherwise misrepresent your affiliation with a person or entity, or impersonate any person or entity in a manner that does not constitute parody;
- Create more than one account, or use another person's account without authorization;
- Solicit personal or sensitive information from other users including without limitation address, credit card or financial account information, or passwords;
- Send spam or other advertisements or solicitations, surveys, contents, pyramid schemes, promote commercial entities, or otherwise engage in commercial activity on or through the Services;
- Frame, inline link, or similarly display the Services or any portion of the Services;
- Interfere with any other party's use and enjoyment of the Services; or
- Attempt to do any of the foregoing directly or indirectly.

6. PAYMENT TERMS.

Santa is a unique platform that allows you to have products delivered to your door, and in many instances, delay payment for such products until you decide to keep them. Before delivering a product to you, we will secure your promise to pay by disclosing the terms and conditions applicable to the purchase of a particular product and securing your affirmative consent to those terms, including your promise to pay the total amount owed in accordance with the specific terms. Specifically, by agreeing to such terms at the point of selection, you agree to abide by any payment terms provided to you when you select a product for use, including with respect to length of use before payment, payment dates, and return policies. While using a product, you expressly agree to keep the product in the same condition with which it was provided to you. Loss of a product, or damage to a product may result in automatic payment requirements in accordance with the specific terms provided to you.

You further acknowledge and agree that certain products will require immediate payment upon delivery, as indicated at the time of selection. You agree to pay the full amount owed on such products, along with any applicable sales tax or other taxes depending on your location. You acknowledge and agree that Santa may use third-party payment processors to process such transactions.

You understand that Santa does not manufacture or inspect any of the items sold through the Services. We provide the Services and delivery program that brings the items to your door; however, the items available on the Services are produced, listed, and sold directly by independent sellers. This means that Santa cannot and does not make any warranties about their quality, safety, or even their legality. Any legal claim related to an item you purchase must be brought directly against the seller of the item. You release Santa from any claims related to items sold through our Services, including for defective items, misrepresentations by sellers, or items that caused physical injury (like product liability claims).

7. LEGAL COMPLIANCE

You acknowledge, consent, and agree that Santa may access, preserve, and disclose your information and/or any User Content you submit or make available for inclusion on the Services, if required to do so by law or in a good faith belief that such access, preservation, or disclosure is permitted by Santa's [Privacy Policy](#) or reasonably necessary or appropriate for any of the following reasons: (1) to comply with legal process; (2) to enforce these Terms, our Privacy Policy, or other contracts with you, including investigation of potential violations thereof; (3) to respond to claims that any content violates the rights of third parties; (4) to respond to your requests for customer service; and/or (5) to protect the rights, property, or personal safety of Santa, its agents and affiliates, its users, and the public. This includes exchanging information with other companies and organizations for fraud protection, and spam/malware prevention, and similar purposes.

8. PRIVACY

For information about how we collect, use, and share the data we collect from and about you, please see our [Privacy Policy](#) which is incorporated by reference into these Terms.

9. WARRANTIES AND DISCLAIMERS

THE SERVICES, THEIR CONTENTS, AND THE PRODUCTS AVAILABLE THROUGH THE SERVICES, WHETHER PROVIDED BY SANTA, ITS LICENSORS, ITS VENDORS OR ITS USERS, AND OTHER INFORMATION ON OR ACCESSIBLE FROM THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY, REPRESENTATION, CONDITION, OR GUARANTEE OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES, REPRESENTATIONS, CONDITIONS OR GUARANTEES OF QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ALL OF WHICH ARE DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. SPECIFICALLY, BUT WITHOUT LIMITATION, SANTA DOES NOT WARRANT THAT: (i) THE INFORMATION AVAILABLE ON THE SERVICES IS FREE OF ERRORS; (ii) THE FUNCTIONS OR FEATURES (INCLUDING BUT NOT LIMITED TO MECHANISMS FOR THE DOWNLOADING AND UPLOADING OF CONTENT) WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS; (iii)

DEFECTS WILL BE CORRECTED, OR (iv) THE SERVICES OR THE SERVER(S) THAT MAKE THE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

IN NO EVENT SHALL SANTA OR ITS AFFILIATES, LICENSORS, VENDORS, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR OTHER REPRESENTATIVES BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, LOSS OF USE, OR COSTS OF OBTAINING SUBSTITUTE GOODS OR SERVICES), ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, ANY MATERIALS, INFORMATION, OR RECOMMENDATIONS APPEARING ON THE SERVICES, OR ANY LINK PROVIDED ON THE SERVICES, WHETHER OR NOT SANTA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER BASED UPON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, VIOLATION OF STATUTE, OR OTHERWISE. THIS EXCLUSION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. IN ANY EVENT, OUR AGGREGATE LIABILITY WILL NOT EXCEED THE HIGHER OF THE AMOUNT PAID BY YOU TO SANTA FOR THE PRODUCT OR SERVICE TO WHICH THE CLAIM RELATES, OR \$100.

If you are a California resident, you hereby waive California Civil Code §1542, 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 released party. " This release includes the criminal acts of others. If you are not a California resident, you waive your rights under any statute or common law principle similar to Section 1542 that governs your rights in the jurisdiction of your residence.

10. EXCLUSIONS AND LIMITATIONS

Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages such as above in Section 9. Accordingly, some of the above limitations may not apply to you. If you are a New Jersey resident, or a resident of another state that permits the exclusion of these warranties and liabilities, then the limitations in Section 9 specifically do apply to you.

11. INDEMNITY

YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD SANTA AND ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, SHAREHOLDERS, OR REPRESENTATIVES (AND ALL SUCCESSORS AND ASSIGNS OF ANY OF THE FOREGOING), HARMLESS FROM AND AGAINST ANY CLAIM OR DEMAND, INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS, MADE BY ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF YOUR VIOLATION OF THE TERMS OR SANTA PRIVACY POLICY, YOUR

VIOLATION OF AN APPLICABLE LAW, YOUR SUBMISSION, POSTING, OR TRANSMISSION OF USER CONTENT TO THE SERVICES, AND/OR YOUR VIOLATION OF ANY RIGHTS OF ANOTHER. WE RESERVE THE RIGHT, AT OUR OWN EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF SUCH DISPUTES, AND IN ANY EVENT YOU WILL COOPERATE WITH US IN ASSERTING ANY AVAILABLE DEFENSES.

12. THIRD-PARTY LINKS AND SERVICES

The Services may provide (1) information and content provided by third parties; and (2) links to third-party websites or resources. Santa is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for (i) any content or other materials on or available from such sites or resources, (ii) any errors or omissions in these websites or resources, or (iii) any information handling practices or other business practices of the operators of such sites or resources. You further acknowledge and agree that Santa shall 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 linked sites or resources. Your interactions with such third parties will be governed by the third parties' own terms of service and privacy policies, and any other similar terms.

13. MODIFICATION AND TERMINATION

13.1 Modification of Services. Santa reserves the right at any time to modify or discontinue, temporarily or permanently, the Services (or any part thereof), with or without notice. You agree that Santa shall not be liable to you or any third party for any modification, suspension or discontinuance of the Services.

13.2 Termination. These Terms are effective unless and until terminated by you or us. We may, in our sole and absolute discretion, deny you access to all or part of the Services at any time for any or no reason at all, with or without notice to you. If we terminate your right to access the Services, these Terms will terminate and all rights you have to access the Services will immediately terminate; however, certain provisions of these Terms will still apply post termination, including without limitation, the Mandatory Arbitration and Class Action Waiver provisions below in Section 14. Termination of your account may also include, at Santa's sole discretion, the deletion of your account and/or User Content.

14. MANDATORY ARBITRATION AND CLASS ACTION WAIVER

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

14.1 Application. You and Santa agree that these Terms affect interstate commerce and that the Federal Arbitration Act governs the interpretation and enforcement of these arbitration provisions. This Section 14 is intended to be interpreted broadly and governs any and all disputes

between us including but not limited to claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; claims that arose before these Terms or any prior agreement (including, but not limited to, claims related to product availability, purchases, and advertising); and claims that may arise after the termination of these Terms. The only disputes excluded from this broad prohibition are the litigation of certain intellectual property and small court claims, as provided below.

14.2. Initial Dispute Resolution. Most disputes can be resolved without resort to arbitration. If you have any dispute with us, you agree that before taking any formal action, you will contact us at legal@getsanta.com, and provide a brief, written description of the dispute and your contact information (including your username, if your dispute relates to an account). Except for intellectual property and small claims court claims, the parties agree to use their best efforts to settle any dispute, claim, question, or disagreement directly through consultation with Santa, and good faith negotiations shall be a condition to either party initiating a lawsuit or arbitration. Failure to engage in this process could result in the award of fees against you in arbitration.

14.3 Binding Arbitration. If the parties do not reach an agreed-upon solution within a period of thirty (30) days from the time informal dispute resolution is initiated under the Initial Dispute Resolution provision above, then either party may initiate binding arbitration as the sole means to resolve claims, (except as provided in section 14.7 below) subject to the terms set forth below. Specifically, all claims arising out of or relating to these Terms (including the Terms' formation, performance, and breach), the parties' relationship with each other, and/or your use of the Services or any services provided by Santa shall be finally settled by binding arbitration administered by JAMS in accordance with the JAMS Streamlined Arbitration Procedure Rules for claims that do not exceed \$250,000 and the JAMS Comprehensive Arbitration Rules and Procedures for claims exceeding \$250,000 in effect at the time the arbitration is initiated, excluding any rules or procedures governing or permitting class or representative actions.

14.4 Arbitrator's Powers. Except as explicitly set forth in this Section 14, the arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability, or formation of these Terms including but not limited to any claim that all or any part of these Terms is void or voidable, whether a claim is subject to arbitration, and any dispute regarding the payment of JAMS administrative or arbitrator fees (including the timing of such payments and remedies for nonpayment). The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The parties agree that the arbitrator may allow the filing of dispositive motions if they are likely to efficiently resolve or narrow issues in dispute. The arbitrator's award shall be written and shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration.

The rules governing the arbitration may be accessed at www.jamsadr.org or by calling JAMS at (800) 352-5267. If you commence arbitration in accordance with these Terms, you will be required to pay \$250 to initiate the arbitration. To the extent the filing fee for the arbitration exceeds the cost of filing a lawsuit, the arbitrator may require Santa to pay the additional cost. You are responsible for your own attorneys' fees unless the arbitration rules and/or applicable law provide otherwise. If the arbitrator finds the arbitration to be non-frivolous, Santa will pay all of the actual filing and arbitrator fees for the arbitration, provided your claim does not exceed \$75,000. For claims above \$75,000, fees and costs will be determined in accordance with applicable JAMS rules. The arbitration rules permit you to recover attorney's fees in certain cases.

Any arbitration demand or counterclaim asserted by either party must contain sufficient information to provide fair notice to the other party of the asserting party's identity, the claims being asserted, and the factual allegations on which they are based. The arbitrator and/or JAMS may require amendment of any demand or counterclaim that does not satisfy these requirements. The arbitrator has the right to impose sanctions in accordance with JAMS Rule 24 for any claims the arbitrator determines to be frivolous or improper (under the standard set forth in Federal Rule of Civil Procedure 11).

The parties agree that JAMS has discretion to modify the amount or timing of any administrative or arbitration fees due under JAMS's Rules where it deems appropriate, provided that such modification does not increase the costs to you, and you waive any objection to such fee modification. The parties also agree that a good-faith challenge by either party to the fees imposed by JAMS does not constitute a default, waiver, or breach of this Section 14 while such challenge remains pending before JAMS, the arbitrator, and/or a court of competent jurisdiction.

The parties understand that, absent this mandatory provision, they would have the right to sue in court and have a jury trial. They further understand that, in some instances, the costs of arbitration could exceed the costs of litigation and the right to discovery may be more limited in arbitration than in court.

14.5 Location. If you are a resident of the United States, arbitration will take place at any reasonable location within the United States convenient for you, unless you and we both agree to another location or telephonic arbitration. You and Santa agree to submit to the personal jurisdiction of any federal or state court in New York, New York in order to compel arbitration, stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.

14.6 Class Action Waiver. The parties further agree that the arbitration shall be conducted in the party's respective individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. **YOU AND SANTA AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** If there is a final judicial

determination that applicable law precludes enforcement of this paragraph's limitations as to a particular remedy, then that remedy (and only that remedy) must be severed from the arbitration and may be sought in court. The parties agree, however, that any adjudication of remedies not subject to arbitration shall be stayed pending the outcome of any arbitrable claims and remedies.

14.7 Exception: Litigation of Intellectual Property and Small Claims Court Claims.

Notwithstanding the parties' decision to resolve all disputes through arbitration, either party may bring enforcement actions, validity determinations or claims arising from or relating to theft, piracy or unauthorized use of intellectual property in state or federal court with jurisdiction or in the U.S. Patent and Trademark Office to protect its intellectual property rights ("intellectual property rights" means patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights). Either party may also seek relief in a small claims court for disputes or claims within the scope of that court's jurisdiction. Either party may also seek a declaratory judgment or other equitable relief in a court of competent jurisdiction regarding whether a party's claims are time-barred or may be brought in small claims court in your state and county of residence. Seeking such relief shall not waive a party's right to arbitration under this agreement.

14.8 30-Day Right to Opt Out. You have the right to opt out and not be bound by the arbitration and class action waiver provisions set forth above by sending written notice of your decision to opt out to legal@getsanta.com with the subject line, "ARBITRATION AND CLASS ACTION WAIVER OPT-OUT." The notice must be sent within thirty (30) days of (a) the "Last Updated" date first set forth above; or (b) your first date that you used the Services that contained any versions of the Terms that included this version of the mandatory arbitration and class action waiver, whichever is later. Otherwise you shall be bound to arbitrate disputes in accordance with the terms of these paragraphs. If you opt out of these arbitration provisions, Santa also will not be bound by them.

14.9 Changes to This Section. Santa will provide thirty (30) days' notice of any changes affecting the substance to this section by posting on the Services. Amendments will become effective thirty (30) days after they are posted on the Services or sent to you by email. If you continue to use the site after the 30th day, you agree that any unfiled claims of which Santa does not have actual notice are subject to the revised clause.

14.10 Survival. This Mandatory Arbitration and Class Action Waiver section shall survive any termination of your use of the Services.

15. CONTROLLING LAW AND SEVERABILITY

These Terms shall be construed in accordance with and governed by the laws of the State of New York notwithstanding its conflicts of law principles. Except for claims subject to mandatory arbitration, any dispute arising out of these terms and conditions or the use of this site shall be initiated and conducted in the state or federal courts of New York, New York and you and Santa consent to the exclusive jurisdiction of such courts.

16. GENERAL TERMS

16.1 Force Majeure. Under no circumstances shall Santa or its licensor or supplier be held liable for any delay or failure in performance resulting directly or indirectly from an event beyond its reasonable control.

16.2 No Waiver. No waiver of any provision of these Terms will be binding unless in writing, no waiver of any provisions of these Terms will be deemed a further or continuing waiver of such provision or any other provision, and the failure of Santa to exercise or enforce any right or remedy in these Terms does not waive that right or remedy. If an arbitrator or a court of competent jurisdiction finds any provision of these Terms to be invalid, the parties agree that the court should endeavor to give effect, to the maximum extent permitted by law, to the parties' intentions as reflected in the provision, and the other provisions of these Terms will remain in full force and effect.

16.3 Third-Party Beneficiaries/Relationship between the Parties. You agree that, except as otherwise expressly provided in these Terms, there shall be no third-party beneficiaries to these Terms. No agency or employment between you and Santa is created as a result of the Terms or your use of the Services.

16.4 Statute of Limitations. Except for residents of New Jersey, you agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the use of the Services and/or these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.

16.5 Miscellaneous. These Terms (and all terms and conditions incorporated herein) constitute the entire agreement between you and Santa and govern your use of the Services, and supersede any prior agreements between you and Santa on the subject matter. These Terms, and any rights or licenses granted hereunder, may not be assigned or delegated by you. These Terms, and any rights or licenses granted hereunder, may be assigned or delegated by Santa without restriction. These Terms bind and inure to the benefit of each party and the party's successors and permitted assigns. These Terms may not be modified by an oral statement by a representative of Santa. You agree that any agreements made by and between you and us in electronic form are as legally binding as if made in physical written form. If you are using the Services for or on behalf of the U.S. government, your license rights do not exceed those granted to non-government consumers. The section titles in these Terms are for convenience only and have no legal or contractual effect. Any provision of these Terms that by its nature is reasonably intended to survive beyond termination of these Terms shall survive.

16.6 Notices. We may deliver notice to you by e-mail, posting a notice on the Services or any other method we choose and such notice will be effective on dispatch. If you give notice to us, it will be

effective when received and you must use the following physical or email address: (1) Santa Inc., 2578 Broadway #541, New York, NY 10025-8844; or (2) legal@getsanta.com.

16.7 Application License. Subject to your compliance with these Terms, Santa grants you a limited non-exclusive, non-transferable license to download and install a copy of Santa mobile app on a device that you exclusively control and to run such copy of the app solely for your own personal use. Santa reserves all rights in and to the app not expressly granted to you under these Terms. You will not run any version of the app on a jailbroken device. If you have downloaded our app, you agree to promptly download and install any new version that we make available through the iTunes App Store or Google Play store, as applicable. Some new versions may contain updated Terms. Some new versions may contain security fixes and service improvements, whether or not we disclose that they do; accordingly, failure to promptly update your version of the App may in some cases expose you to increased security risks or malfunctions in the Services.

17. QUESTIONS

If you have any questions about these Terms, please contact us by email at support@getsanta.com.

18. iOS TERMS

You acknowledge and agree that (i) these Terms are binding between you and Santa only, and Apple is not a party hereto, and (ii) as between Santa and Apple, it is Santa that is responsible for the app and the content thereof. You must use the iOS app only on an Apple-branded product that runs iOS. Your use of the app must comply with the terms of use applicable to the Apple source from which you obtain it (including the Usage Rules set forth in the Apple App Store Terms of Service). You acknowledge that Apple has no obligation to furnish you with any maintenance and support services with respect to the app.

You acknowledge that Apple is not responsible for addressing any claims you have or any claims of any third party relating to the app or your possession and use of the app, including, but not limited to (i) product warranty or liability claims; (ii) any claim that the app fails to conform to any applicable legal or regulatory requirement; (iii) claims arising under consumer protection or similar legislation; or (iv) claims that the app infringes a third party's intellectual property rights.

In the event of any failure of the iOS version of the app to conform to any applicable warranty that has not been effectively disclaimed by these Terms, you may notify Apple, and Apple will refund the purchase price for the app (if any) to you; to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the app, and, as between Apple and Santa, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Santa's responsibility, but only to the extent provided by these Terms. Please read the entire Terms, as other sections of these Terms limit Santa's liability in this regard.