**Fifthpint, LLC**

**Terms of Use Agreement**

*Last Revised on November 19, 2019*

This Terms of Use Agreement (“ToU”) is made between Fifthpint, LLC (“Fifthpint,” “we,” “us” or ”our”) and you, the individual choosing to use our online services (“you” or the “user”, “VIP User” or “Fan”).

**Services this ToU Covers**

Fifthpint is a software development company that owns the photo and electronic autographing app, Graflr. This ToU applies to all online services operated by Fifthpint, including this website, our social media accounts, our app, and any future online services that we develop (the “Services”).

**Services this ToU Doesn’t Cover**

We love supporting our partners and sponsors, and to show our appreciation, we occasionally link to their websites and services. When you click on one of these links, you are leaving Fifthpint, and this ToU no longer applies. The way our partners or other third-parties do business is out of our hands, and we assume no responsibility for the content, privacy policies, or practices of any third-party website or service that we link to.

**Acceptance of ToU**

We know these ToU’s aren’t very exciting to read. However, by accessing our Services, it is assumed that you have read this ToU and that you agree to comply and be legally bound by the terms and conditions set out, which is why you really should stick it out and read the whole thing. While you are at it, you should also head over and check out our [Privacy Policy](https://www.fifthpint.com/privacy) as well.

**Changes to Terms**

From time to time, we may need to make changes to this ToU and may do so at any time. The date at the top of this ToU represents when this ToU was last revised. If we make a change to any terms that we believe in our discretion materially affects the way our Services apply to you, we will notify you in advance. It is important to check this ToU from time to time to ensure that you are all caught up to date. By continuing to access or use our Services after a change has occurred, you agree to be bound by our updated ToU.

**Conditions Before You Access Our Services**

Our Services are not targeted or intended to be used by people under the age of 16, and all children between the ages of 16 and 18 must have permission from their parent or guardian before accessing our Services. Additionally, to purchase any of our content or to make a donation to our business, you must be over the age of 18. If you are accessing our Services on behalf of a company, you must be authorized by the company to use our Services and enter into this ToU.

**Types of Users**

When using our Services, there are two different types of users that have access to various features. These are “Fans” and “VIP Users”.

* Fans: A “Fan” is a general user of our Services. If you are a fan wanting to use our Services to take photos and collect an electronic autograph from a VIP User, or if you wish to simply browse our app, social media pages or website, then no account is needed to do so.

* VIP Users: If you are a VIP User wanting to use our Services to sign electronic autographs for Fans, then you will need to set up an account so that we can verify your VIP status and authenticate your electronic autographs. To register for an account, you will be required to log into our Services using a compatible third-party social media platform login such as Twitter, Facebook, or Instagram. Verification is instantaneous and based on several factors, such as whether you hold a verified account on the third-party social media platform, the number of followers that you have, and the number of interactions you have had with other users on the particular social media platform. Once your account has been verified you will be able to choose when you would like to be available to electronically autograph photos for Fans. You can either set the service to automatically autograph on your behalf or choose to manually autograph photos for Fans.

**App Purchases**

Currently, our Services are available to all users for free. However, we may offer some paid features within our app. You will always be notified if a feature that you wish to use in the app is a paid feature. There also may come a time when we need to charge a fee for our app or may need to make changes to our in-app pricing; as such, prices advertised are not guaranteed. Payment for in-app features are due upon confirmation of a purchase, and such purchases will be processed through your native app store.

**Non-Refundable Purchase**

Once you have paid for a paid-feature, you will not be able to cancel your purchase, and Fifthpint is not under any obligation to issue refunds for purchases. It is your responsibility to ensure that the operating system that you are using is compatible with our app or a particular paid feature, BEFORE making a purchase.

**Access to Content**

Autographed photos taken using our service are stored directly onto your device’s hard drive. The VIP User that autographed the photo, and other Fans, will not be able to see or save the photo that was taken. However, the Fan that took the specific photo will have the ability to share the autographed photo with other third-party apps and social media platforms. We recommend regularly backing up your device to a cloud storage system to ensure that autographed photos are not lost as we do not store any autographed photos and will not be able to provide a backup of a photo.

**App User Guidelines**

To make sure that our Services are enjoyable for everyone, we have established some ground rules to follow. Fifthpint will not be liable for any photos taken by Fans or signed by VIP Users, but we may as an administrator remove users that, in our discretion, we find inappropriate.

* Please don’t:
* Use our Services to facilitate the sending of “spam” or unsolicited commercial email;
* Circumvent or hack any technology used by Fifthpint to protect our Services and our users;
* Transmit any worms or viruses or any code of a destructive nature;
* Use any other person’s login information to access the VIP User features or impersonate a VIP User;
* Copy or fraudulently reproduce a VIP User’s autograph;
* Continue to ask a VIP User to electronically sign photos once they have decided to turn their visibility off;
* Remove or alter any intellectual property notices, including the branding located on an autographed photo;
* Sell, lease, rent or commercially use any photo or autographed photo that was taken using our Services;
* Access our private API by any other means other than our app;
* Take any photo that infringes or violates the rights of any third-party, including, without limitation, any intellectual property rights, rights of privacy, rights in contract, rights of publicity, or rights in confidential information;
* Take any photo that is unlawful, abusive, defamatory, pornographic or obscene; or
* Take any photo that promotes or incites violence, terrorism, illegal acts, or hatred on the grounds of race, ethnicity, cultural identity, religious belief, disability, gender, identity, or sexual orientation.
* Please do:
* Share autographed photos with other people and on your other social media platforms;
* Tell your family and friends about our Services;
* Take responsibility for any activity or conduct that you engage in;
* Take photos and interact with VIP Users in a friendly and appropriate way; and
* Be a nice human!

**Suspension and Termination of Users**

* Involuntary Suspension or Termination of Your Account

Fifthpint will make best efforts to notify you if we have a reason to believe that you have violated this ToU and may issue you a written warning outlining the behavior that we believe is in violation. However, we reserve the right to suspend or terminate your access to our Services without warning at any time.

* Voluntary Termination of Your Account

You are free to voluntarily delete your VIP User account or our app. While we have systems in place to automatically delete any information associated with your usage of our app when you delete your account or our app, we cannot guarantee that ALL information that you have previously provided to Fifthpint will be deleted along with your account or the app – if you want to ensure that this happens, please contact us.

**Fifthpint’s Intellectual Property**

Our Services contain content that is protected by copyright, trademark, patent, trade secret, and other laws. We own and retain all rights in such content, and by granting you access to our Services, Fifthpint does not grant or transfer to you any other rights, title, or interest, other than a limited license defined below. You also do not have permission to remove or alter any intellectual property notices or branding that may be contained in our content including on any autographed photo.

**Fifthpint Grant of License**

Fifthpint grants to you a limited, non-exclusive, non-transferable, revocable license to access, share, and use Fifthpint’s Services for personal non-commercial purposes only. While we encourage you to share autographed photos with family and friends, this license does not permit you to sell autographed photos or to use autographed photos for any commercial purpose. Further, you are not permitted to make unauthorized reproductions of any autographed photos. Fifthpint reserves the right to terminate this license at any time if your use of our Services is not in strict compliance with this ToU.

**User’s Ownership in Content and Grant of License**

Fifthpint does not have any ownership rights in the text, files, images, autograph, photos, or other materials that are created by a user of our Services. By using our Services to create such content, you grant to Fifthpint a non-exclusive, fully paid and royalty-free, worldwide, perpetual, irrevocable license to use, modify, delete from, add to, publicly display and reproduce such content in any media format through any media channel, except that Fifthpint shall not share publicly any content that has not already been publicly shared by a user.

**Autograph Disclaimer**

A VIP User’s autograph is not a legally binding signature and must not be reproduced, imitated, or used by a Fan for any fraudulent or commercial purpose. VIP Users agree not to use an autograph that is the same or substantially similar to the signature that they use to bind them into legal agreements.

**Licensed Third-Party Content**

We use some open source and licensed third-party content in our Services, for example, fonts and graphics. We do not make any claim of ownership to this content, and no user shall be permitted to use third-party content in a way that violates third-party licensing agreements.

**Copyright Policy**

Fifthpint respect’s the intellectual property rights of others. It is our policy to respond to and investigate any claim that content used in connection with our Services infringes on the copyright or other intellectual property rights of any person or entity. If you are a copyright owner or an authorized agent of a copyright owner, and you believe that content on our Services infringes on another copyrighted work, please submit your claim via email to legal@fifthpint.com, with the subject line: “Copyright Infringement” and include in your claim a detailed description of the alleged infringement. In accordance with 17 U.S.C. 512(c)(3) of the Digital Millennium Copyright Act (DMCA), your claim must include:

* an electronic or physical signature of the copyright owner or the person authorized to act on behalf of the copyright owner;
* a description of the copyrighted work that you claim has been infringed, including the URL (i.e., web page address) of the location where the copyrighted work exists or a copy of the copyrighted work;
* identification of the URL or other specific location on our Services where the material that you claim is infringing is located;
* your address, telephone number, and email address;
* a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
* a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized agent permitted to act on the copyright owner’s behalf.

Please be aware that you may be held accountable for damages (including costs and attorneys’ fees) for misrepresentation or bad-faith claims relating to content that you report as being allegedly infringing in nature.

**Representations and Warranties**

* Fifthpint’s Representations and Warranties

FIFTHPINT’S SERVICES ARE PROVIDED “AS IS” AND “WITH ALL FAULTS.” FIFTHPINT MAY USE REASONABLE EFFORTS TO CORRECT ERRORS AND OMISSIONS IN OUR SERVICES. HOWEVER, FIFTHPINT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE FULLEST EXTENT THAT THE LAW OF THE JURISDICTION PERMITS. FIFTHPINT DOES NOT WARRANT THAT USE WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, THAT DEFECTS WILL BE CORRECTED, OR THAT DATA WILL NOT BE LOST. FIFTHPINT IS NOT RESPONSIBLE FOR ENSURING THAT YOU COMPLY WITH ALL OF OUR TERMS AND CONDITIONS AND WILL NOT BE LIABLE FOR ANY ACTIONS THAT RESULT FROM YOUR NON-COMPLIANCE.

* User Representations and Warranties

By using Fifthpint’s Services, you represent and warrant that:

* You are free to enter into and comply with this ToU and are not under any disability, restriction or prohibition, contractual or otherwise, that prevents you from entering into this ToU or any grant of license contained herein;
* You have read and agree to this ToU and our Privacy Policy and will not use Fifthpint’s Services for any fraudulent or inappropriate purpose or in a way that violates these terms and conditions;
* You will not try to reverse engineer our site or software to circumvent access to our content; and
* You will not violate our intellectual property rights in the content licensed to you under this ToU.

**Limitation of Liability**

IN NO EVENT WILL FIFTHPINT BE LIABLE FOR ANY CONTENT THAT YOU CREATE USING OUR SERVICES THIS INCLUDES ANY CLAIMS ARISING AS A RESULT OF OBSCENE, NEGATIVE OR DEFAMATORY CONTENT, YOUR FAILURE TO PROVIDE ACCURATE OR COMPLETE INFORMATION, OR YOUR FAILURE TO COMPLY WITH ANY OTHER LAWS. FIFTHPINT WILL ALSO NOT BE LIABLE FOR ANY LOSS OF USE, LOSS OF DATA, CHANGES TO THE SERVICES OR PLATFORM, TEMPORARY OR PERMANENT SUSPENSION OF SERVICES, DAMAGE TO COMPUTER OR HARDWARE, SECURITY BREACHES, SOFTWARE BUGS, INTERRUPTION OF BUSINESS, LOST PROFITS, BREACH OF A THIRD-PARTY CONTRACT, OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER RESULTING FROM AN ACTION UNDER CONTRACT, TORT, STRICT PRODUCT LIABILITY OR OTHERWISE. IN NO EVENT WILL THE AGGREGATE LIABILITY OF FIFTHPINT UNDER THIS TOU EXCEED THE AMOUNT (IF ANY) PAID BY YOU TO FIFTHPINT FOR OUR SERVICES. IN THE EVENT THAT APPLICABLE LAW DOES NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY ABOVE, FIFTHPINT’S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY THE APPLICABLE JURISDICTION. YOU ACKNOWLEDGE AND AGREE THAT SUCH LIMITATIONS AND EXCLUSIONS REFLECT A FAIR AND REASONABLE ALLOCATION OF RISK AND HAVE BEEN REACHED DUE TO FUNDAMENTAL BARGAINING BETWEEN YOU AND FIFTHPINT.

**Indemnification**

You agree to indemnify and hold Fifthpint harmless from any and all claims, losses, liability, damages, expenses, and costs (including attorney fees, mediation, arbitration, and court costs), resulting from:

* any breach by you of this ToU;
* any third-party claim arising from content that you created using our Services, including, but not limited to, claims of copyright infringement, trademark infringement, right of publicity, rights of privacy, breach of contract, defamation, fraud, misrepresentation, inaccuracy, discrimination, abuse, pornography or obscenity; and
* any activity related to your account, unless the activity was caused by the act or default of Fifthpint.

**Privacy, Cookies and Data Protection**

We care about your personal information, and all personal information that you provide to us is collected by us and used in accordance with our[Privacy Policy](https://www.fifthpint.com/privacy). Our use of cookies and data protection systems are also explained in our Privacy Policy.

**International Users**

Fifthpint’s Services are controlled, operated and administered from our offices within the United States of America and are not intended to be subject to the laws or jurisdiction of any country outside of the United States of America. WE DO NOT REPRESENT OR WARRANT THAT OUR SERVICES ARE APPROPRIATE, LEGAL OR AVAILABLE FOR USE IN ANY PARTICULAR JURISDICTION OTHER THAN THE UNITED STATES OF AMERICA. Those who choose to access Fifthpint outside of the United States of America do so on their own initiative and assume all risks associated with such access, including but not limited to any compliance with their particular jurisdictions’ laws and regulations and any United States export controls. We reserve the right to limit our Services, in whole or in part, to any geographic location or jurisdiction we choose.

**Dispute Resolution**

THIS SECTION OF OUR TERMS AND CONDITIONS SIGNIFICANTLY AFFECTS YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT. PLEASE ENSURE THAT YOU READ THIS SECTION CAREFULLY AND FULLY UNDERSTAND THIS SECTION BEFORE USING AND ACCESSING OUR SERVICES. THIS SECTION WILL SURVIVE TERMINATION OF THIS TOU AND THE TERMINATION OF YOUR FIFTHPINT ACCOUNT.

* Letting Us Know About Complaints

At Fifthpint, we hope that we can work out any complaints or differences that we may have with you respectfully and calmly. If you have any concerns about the Services that Fifthpint has provided, please reach out to Fifthpint to let us know. If we cannot work out our differences together, then the following mandatory binding arbitration will apply to resolve the dispute.

* Mandatory Binding Arbitration

If any controversy or claim arising out of, or relating to, this ToU, Fifthpint’s Services, our Privacy Policy or any other legal agreement entered into relating to Fifthpint, cannot be amicably resolved, such controversy or claim will be determined by binding arbitration rather than in a court of law. Except that mandatory binding arbitration will not apply with respect to any claims relating to infringement or misuse of intellectual property.

The binding arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer-Related Disputes of the American Arbitration Association (the “AAA”) and administered by the AAA. Arbitration must be commenced by filing a demand for arbitration with the AAA within one (1) year after the claim occurs or within one (1) year of the party asserting the claim becoming reasonably aware of the act or omission giving rise to the claim. If applicable law prohibits a one-year statute of limitations for asserting claims, claims must be asserted within the shortest period of time permitted by the applicable law. Except for attorney fees, all other costs associated with the arbitration will be shared equally between the parties, except where the AAA Rules provide otherwise. If an arbitrator determines a claim against Fifthpint to be frivolous or an opinion is found in our favor by the arbitrators, you agree to reimburse Fifthpint for all reasonable fees associated with the arbitration, including attorneys’ fees and arbitration costs.

* Class Action Waiver

You agree to waive any right to participate in a class or representative action or proceeding and warrant that any claims brought against Fifthpint will be initiated only in your individual capacity. Any relief awarded by an arbitrator or otherwise will not affect other users of Fifthpint’s Services.

**Assignment**You are not entitled to assign this ToU, in whole or in part, to another person, without the prior written consent of Fifthpint. Fifthpint reserves the right to assign this ToU, in whole or in part, to any third party at any time without notice, including but not limited to any individual or entity acquiring all or substantially all of the Fifthpint business or assets. However, we will do our best to let you know if there has been a substantial change in the ownership of Fifthpint.

**Survival of Terms Beyond Termination**

All provisions in this ToU that specifically state or logically ought to survive the termination of this ToU, or the termination of a user’s account, will survive such termination.

**Waiver and Severability**

No waiver by Fifthpint of any term or condition in this ToU will be deemed or construed to be a waiver of such term or condition in the future, or of any preceding or subsequent breach of the same, or any other term or condition of this ToU or any other agreement. If any term or condition in this ToU is declared to be invalid, illegal or unenforceable, for any reason, the remainder of the provisions will remain in effect and will be enforceable to the fullest extent possible.

**Applicable Law and Jurisdiction**

Except where otherwise required by mandatory law, this ToU, as well as our Privacy Policy, are to be governed by and interpreted, constructed, and enforced in accordance with the laws of Texas and in the exclusive jurisdiction of Travis County.

**Entire Agreement**

This ToU represents the entire and exclusive agreement between Fifthpint and our users. All previous written and oral agreements and communications related to the subject matter of this ToU are superseded.

**Contact Us**

Thanks for your patience in getting through all of the necessary legal language of this document! We have tried to be as clear as possible in communicating our expectations when it comes to using our Services. However, if you have any questions about this ToU, our Privacy Policy, or Fifthpint’s Services in general, just reach out! We would be more than happy to explain.

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