

Terms of Use

Effective Date. October 18th, 2019

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Service Age Restriction. You must be at least 13 years old to use the Service.

Your Obligations. If you use the Service, you agree to do each of the following: (a) comply with all laws, rules and regulations (for example, federal, state, local and provincial) applicable to your use of the Service and Your Content, including but not limited to, copyright laws; and (b) be fully responsible for your conduct and Your Content on the Service.

Restrictions on Use. You may not engage in any of the following in connection with your use of the Service: (a) use the Service for any illegal or unauthorized purpose; (b) use Gradient Content in combination with Your Content in a pornographic, defamatory, or deceptive context, or in a manner that could be considered libelous, obscene, or illegal; (c) portray any person depicted in Gradient Content in a way that a reasonable person would find offensive, including but not limited to (i) in connection with pornography, adult videos, adult entertainment venues, escort services, dating services, or the like, or (ii) engaging in immoral or criminal activities; (d) use the Service for commercial purposes; (e) infringe upon any third party’s trademark or other intellectual property right, or give rise to a claim of deceptive advertising or unfair competition; (f) interfere with or disrupt the Service or servers or networks connected to the Service, including by transmitting any worms, viruses, spyware, malware or any other code of a destructive or disruptive nature; (g) inject content or code or otherwise alter or interfere with the way any Gradient page is rendered or displayed in a user’s browser or on a user’s device; or (h) access or collect data from our Service using automated means or attempt to access data you do not have permission to access.

Service Interruptions and Availability. There may be occasions when the Service will be interrupted or unavailable, including, without limitation, for scheduled maintenance or upgrades, for emergency repairs, or due to failure of telecommunications links and/or equipment. Gradient shall have no liability for any such interruptions.

Termination or Modification of Service. Gradient reserves the right, in its sole discretion, to modify or terminate the Service, or your access to the Service, for any reason, without notice, at any time, and to refuse access to the Service to anyone for any reason at any time. If Gradient terminates your access to the Service, Your Content will no longer be accessible to you. Upon termination, all licenses and other rights granted to you in these Terms of Use will immediately cease. Gradient will not be liable to you for any modification, suspension, or discontinuation of the Service, or for the loss of Your Content.

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Intellectual Property Ownership of Your Content. Gradient does not claim ownership of Your Content that you upload to or stylize through the Service.

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Representations and Warranties. You represent and warrant to Gradient that: (a) you own Your Content or otherwise have the right to grant the rights and licenses set forth in these Terms of Use; (b) you agree to pay for all royalties, fees, and any other monies owed for Your Content, as stylized through the Service, as applicable; (c) you are at least 13 years old; (d) you have the legal right and capacity to enter into these Terms of Use in your jurisdiction; and (e) if you are using the Service on behalf of a legal entity, you are authorized to enter into an agreement on behalf of that legal entity.

Gradient Content. The Service contains Gradient Content. Gradient Content is protected by copyright, trademark, patent, trade secret and other laws, and, as between you and Gradient, Gradient owns and retains all rights in the Gradient Content and the Service. You will not remove, alter or conceal any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Gradient Content and you will not reproduce, modify, adapt, prepare derivative works based on, perform, display, publish, distribute, transmit, broadcast, sell, license or otherwise exploit the Gradient Content.

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Removal of Content. Gradient reserves the right to remove Your Content from the Service for any reason, without prior notice. Content removed from the Service may continue to be stored by Gradient, including, without limitation, in order to comply with certain legal obligations, but may not be retrievable without a valid court order. You agree that you will not rely on the Service for the purposes of backup or storage of Your Content.

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Limitation of Liability; Waiver. Under no circumstances will the Gradient Parties be liable to you for any loss or damages of any kind (including, without limitation, for any direct, indirect, economic, exemplary, special, punitive, incidental or consequential losses or damages) that are directly or indirectly related to: (a) the Service; (b) the Gradient Content; (c) Your Content; (d) your use of, inability to use, or the performance of the Service; (e) any action taken in connection with an investigation by the Gradient Parties or law enforcement authorities regarding your or any other party's use of the Service; (f) any action taken in connection with copyright or other intellectual property rights; (g) any errors or omissions in the Service's operation; or (h) any damage to any user's computer, mobile device, or other equipment or technology including, without limitation, damage from any security breach or from any virus, bugs, tampering, fraud, error, omission, interruption, defect, delay in operation or transmission, computer line or network failure or any other technical or other malfunction. This limitation of liability includes, without limitation, damages for lost profits, loss of goodwill, loss of data, work stoppage, accuracy of results, or computer failure or malfunction, even if foreseeable or even if the Gradient Parties have been advised of or should have known of the possibility of such damages, whether in an action of contract, negligence, strict liability or tort (including, without limitation, whether caused in whole or in part by negligence, acts of God, telecommunications failure, or theft or destruction of the Service). In no event will the Gradient Parties be liable to you or anyone else for loss, damage or injury, including, without limitation, death or personal injury. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. In no event will the Gradient Parties' total liability to you for all damages, losses or causes or action exceed One Hundred U.S. Dollars (\$100.00). **Waiver.** By accessing the Service, you understand that you may be waiving rights with respect to claims that are at this time unknown or unsuspected, and in accordance with such waiver, you acknowledge that you have read and understand, and hereby expressly waive, the benefits of Section 1542 of the Civil Code of California, and any similar law of any state or territory, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Indemnification. You (and also any third party for whom you operate an account or activity on the Service) agree to defend (at Gradient's request), indemnify and hold the Gradient Parties harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation, reasonable attorneys' fees and costs, arising out of or in any way connected with any of the following (including as a result of your direct activities on the Service or those conducted on your behalf): (a) Your Content or your access to or use of the Service; (b) your breach or alleged breach of these Terms of Use; (c) your violation of any third-party right, including without limitation, any intellectual property right, publicity, confidentiality, property or privacy right; (d) your violation of any laws, rules, regulations, codes, statutes, ordinances or orders of any governmental and quasi-governmental authorities, including, without limitation, all regulatory, administrative and legislative authorities; or (e) any misrepresentation made by you. You agree to cooperate as fully required by Gradient in the defense of any claim. Gradient reserves the right to assume the exclusive defense and control of any matter subject to indemnification by you, and you will not in any event settle any

claim without the prior written consent of Gradient.

About these Terms of Use Acceptance. By accessing or using the Service, however accessed, you agree to be bound by these Terms of Use. The Service is owned or controlled by Gradient. These Terms of Use affect your legal rights and obligations. If you do not agree to be bound by all of these Terms of Use, do not access or use the Service.

Violation. Violation of these Terms of Use may, in Gradient's sole discretion, result in a ban of Gradient usage. You understand and agree that Gradient cannot and will not be responsible for Your Content (defined below) on the Service and you use the Service at your own risk. If you violate the letter or spirit of these Terms of Use, or otherwise create risk or possible legal exposure for Gradient, Gradient can stop providing all or any part of the Service to you.

Special Terms. There may be times when Gradient offers a special feature that has its own terms and conditions that apply in addition to these Terms of Use. In those cases, the terms specific to the special feature control to the extent there is a conflict with these Terms of Use.

Modification of Terms of Use. Gradient reserves the right, in its sole discretion, to change these Terms of Use ("Updated Terms") from time to time. Gradient may notify you of the Updated Terms by posting them on the Service, and your use of the Service after the effective date of the Updated Terms constitutes your agreement to the Updated Terms. The Updated Terms will be effective as of the time of posting, or such later date as may be specified in the Updated Terms, and will apply to your use of the Service from that point forward. These Terms of Use will govern any disputes arising before the effective date of the Updated Terms.

Dispute Resolution. These Terms of Use are governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any principles of conflicts of law AND WILL SPECIFICALLY NOT BE GOVERNED BY THE UNITED NATIONS CONVENTIONS ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, IF OTHERWISE APPLICABLE. You agree to resolve any dispute you have with Gradient exclusively in a state or federal court located in San Francisco, California, and to submit to the personal jurisdiction of the courts located in San Francisco County for the purpose of litigating all such disputes. You agree that any claim you may have arising out of or related to your relationship with Gradient must be filed within one year after such claim arose; otherwise, your claim is permanently barred.

Entire Agreement. These Terms of Use, together with the Privacy Policy, constitute the entire agreement between you and Gradient and govern your use of the Service, superseding any prior agreements between you and Gradient.

Assignment. You will not assign the Terms of Use or assign any rights or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Gradient. Any purported assignment or delegation by you without the appropriate prior written consent of Gradient will be null and void. Gradient may assign these Terms of Use or any rights hereunder without your consent.

Severability. If any provision of these Terms of Use is found by a court of competent jurisdiction to be invalid or otherwise unenforceable, the parties nevertheless agree that such portion will be deemed severable from these Terms of Use and will not affect the validity and enforceability of the remaining provisions, and the remaining provisions of the Terms of Use remain in full force and effect.

No Waiver. Gradient's failure to insist upon or enforce strict performance of any provision of these Terms of Use will not be construed as a waiver of any provision or right. No waiver of any term of these Terms of Use will be deemed a further or continuing waiver of such term or condition or any other term or condition.