

# FSL Terms of Use

Effective Date: January 15, 2019

Welcome to Fantasy Sneaker League (“Fantasy Sneaker League” or “FSL”), an online service owned and operated by Colorway Inc. (“Colorway”, “Company”, “we”, “us” or “our”). This page explains the terms by which you may use our service. By accessing or using the Fantasy Sneaker League software application (the “App”) and the services, features, content, software or applications provided online and made available offline through or in connection with the service, including through a mobile device (collectively, the “Services”), you signify that you have read, understood, and agree to be bound by this Terms of Use Agreement (the “Agreement” or “Terms of Use”). These Terms of Use set forth the legally binding terms and conditions for your use of the Service. By using the Service you agree to the Terms of Use, whether or not you are a registered user of our Services.

PLEASE READ THESE TERMS OF USE CAREFULLY. THESE TERMS INCLUDE AN AGREEMENT TO MANDATORY ARBITRATION, WHICH MEANS THAT YOU AGREE TO SUBMIT ANY DISPUTE RELATED TO YOUR USE OF ANY OF THE SERVICES TO BINDING INDIVIDUAL ARBITRATION RATHER THAN PROCEED IN COURT. THE DISPUTES/ARBITRATION PROVISION ALSO INCLUDES A CLASS ACTION WAIVER, WHICH MEANS THAT YOU AGREE TO PROCEED WITH ANY DISPUTE INDIVIDUALLY AND NOT AS PART OF A CLASS ACTION. THIS AGREEMENT ALSO INCLUDES A JURY WAIVER.

We reserve the right to amend this Agreement at any time and without notice. If we do this, we will post the amended Agreement on this page and indicate at the top of the page the date the Agreement was last revised. Your continued use of the Services after any such changes constitutes your acceptance of the new Terms of Use. If you do not agree to any of these terms or any future Terms of Use, do not use or access (or continue to access) the Services. This Agreement applies to all visitors, users, and others who access the Services (“Users”).

## 1. Acceptance of Terms of Use.

- a. By signing up for, installing and/or using the App in any manner, you agree to these Terms of Use and all other operating rules, policies and procedures that may be published from time to time through the App by us, each of which is incorporated by reference and each of which may be updated from time to time without notice to you.
- b. Certain of the Services may be subject to additional terms and conditions specified by us from time to time; your use of such Services is subject to those additional terms and conditions, which are incorporated into these Terms of Use by this reference, including without limitation the [Fantasy Sneaker League Gameplay Rules](#).
- c. These Terms of Use apply to all users of the Services, including, without limitation, users who are contributors of content, information, and other materials or services, registered or otherwise. Our [Privacy Policy](#) is incorporated by reference into these Terms of Use.

d. **ARBITRATION NOTICE AND CLASS ACTION WAIVER: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION SECTION BELOW (SECTION 13), YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.**

2. **Eligibility.** Use of the Services is void where prohibited. Our Services are intended solely for users who are thirteen (13) years of age or older, and any registration, use, or access to the Services by anyone under 13 is unauthorized, unlicensed, and in violation of this Agreement. If you are under 18 years of age you may use the Services only if you are either a legally emancipated minor in your state of residence, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this Agreement, and to abide by and comply with this Agreement. Colorway may terminate your account, delete any content or information that you have posted on the Services, and/or prohibit you from using or accessing the Services (or any portion, aspect or feature of the Services) for any reason, at any time in its sole and absolute discretion, with or without notice, including without limitation if it believes that you are under 18. You represent and warrant that you are either: (a) an individual person at least 18 years of age, (b) if under 18 years of age but over 13 years of age are a legally emancipated minor in your state of residence, or (c) if under 18 years of age but over 13 years of age have obtained express consent from your parent or legal guardian to sign up for and use our Services. We may, in our sole discretion, refuse to offer the Services to any person or entity and change its eligibility criteria at any time. You are solely responsible for ensuring that these Terms of Use are in compliance with all laws, rules and regulations applicable to you and the right to access the Services is revoked where these Terms of Use or use of the Services is prohibited or to the extent offering, sale or provision of the Services conflicts with any applicable law, rule or regulation. Further, the Services are offered only for your use, and not for the use or benefit of any third party. You are not eligible for our Contests if you violate any provision of these Terms of Use or the Fantasy Sneaker League Gameplay Rules, as determined in our sole discretion.
3. **Account Registration.** You will need to register with FSL and create an account on the Services (an “Account”). Your Account gives you access to the services and functionality that we may establish and maintain from time to time and in our sole discretion. You may use your account settings to control your Account profile.
  - a. **Account Information.** You must provide accurate and complete information and keep your Account information updated. If you provide any information that is inaccurate, not current, or incomplete, or we have reason to suspect that such information is inaccurate, not current, or incomplete, Colorway may deny you access to the Services, including access to Contests, areas of the Services which require registration, disqualify you from Contests, revoke Prizes, and or terminate your Account, at its sole discretion. You agree that we may take steps to verify the accuracy of information you provide, including contact information for a parent or guardian.

- b. **Usernames.** You shall not: (i) select or use as a username a name of another person with the intent to impersonate that person; (ii) use as a username a name subject to any rights of a person other than you without appropriate authorization; (iii) use, as a username, a name that is otherwise offensive, vulgar or obscene; or (iv) provide false details for a parent or guardian.
- c. **Requirements.** You are solely responsible for the activity that occurs on your Account, and for keeping your Account password and login credentials secure. You may never use another person's user Account or registration information for the Services without permission. You must notify us immediately of any change in your eligibility to use the Services, breach of security or unauthorized use of your Account. You should never publish, distribute or post login information for your Account. You shall have the ability to delete your Account, either directly or through a request made to one of our employees or affiliates. Although Colorway will not be liable for your losses caused by any unauthorized use of your account, you shall be liable for the losses of Colorway or others due to such unauthorized use.
- d. **One Account Per Person.** You may establish, maintain, use and control only one Account on the Service. Each Account on the Service may only be owned, maintained, used and controlled by one individual. For avoidance of doubt, users may not "co-own" accounts on the Service. In the event we determine that you have opened, maintained, used or controlled more than one Account, in addition to any other rights that Colorway may have, Colorway reserves the right to suspend or terminate any or all of your accounts and terminate, withhold or revoke the awarding of any Prizes.
- e. **Communications and Notifications.** By providing Colorway with your email address, you consent to our use of the email address to send you Service-related notices, including, among other things, notices required by law, in lieu of postal mail. We may also use your email address to send you other messages, including changes to Colorway features, marketing messages, and special offers. If you do not want to receive such email messages, you may opt out by clicking on the "unsubscribe" link at the bottom of the email, sending us an email at [info@Colorwayco.com](mailto:info@Colorwayco.com) or by sending mail to the following postal address:

Customer Support  
Colorway Inc.  
PO Box 206  
Minturn, CO 81657

Opting out may prevent you from receiving email messages regarding updates, improvements, or special offers.

- f. **Reporting.** Each year all winners over the previous year may be required to provide updated address and social security (or other tax identification number) details to Company. These details will be used to allow Company to comply with tax regulations

and may be shared with appropriate tax authorities. You, not Company, are responsible for filing and paying applicable state and federal taxes on any winnings. Company does not provide tax advice, nor should any statements in this Agreement or on the Service be construed as tax advice. In any instance where a Prize is awarded with a value of \$600 or more, recipient will be required to send a completed Form W9 or other required tax documentation to Colorway in advance of receiving such Prize.

#### 4. **Content.**

- a. **Definition.** For purposes of these Terms of Use, the term "Content" includes, without limitation, information, data, text, photographs, videos, audio clips, written posts and comments, software, scripts, graphics, and interactive features generated, provided, or otherwise made accessible on or through the Services. For the purposes of this Agreement, "Content" also includes all User Content (as defined below).
- b. **User Content.** All Content added, created, uploaded, submitted, distributed, or posted to the Services by users (collectively "User Content"), whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such User Content. You represent that all User Content provided by you is accurate, complete, up-to-date, and in compliance with all applicable laws, rules and regulations. You retain ownership of any and all User Content created and/or uploaded by you. You acknowledge that all Content, including User Content, accessed by you using the Services is at your own risk and you will be solely responsible for any damage or loss to you or any other party resulting therefrom. We do not guarantee that any Content you access on or through the Services is or will continue to be accurate.
- c. **Our Proprietary Rights; Notices and Restrictions.** For the purposes of this Agreement, "Intellectual Property Rights" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction. Except for your User Content, the Services and its Content, and all Intellectual Property Rights related thereto, are the exclusive property of Colorway and its licensors. You shall abide by and maintain all copyright notices, information, and restrictions contained in any Content accessed through the Services.
- d. **Use License.** Subject to these Terms of Use, we grant each user of the Services a worldwide, non-exclusive, non-sublicensable and non-transferable license to use (i.e., to download and display locally) Content solely for purposes of using the Services. Use, reproduction, modification, distribution or storage of any Content (other than your User Content) for other than purposes of using the Services is expressly prohibited without prior written permission from us. You shall not sell, license, rent, or otherwise use or exploit any Content (other than your User Content) for commercial use or in any way that violates any third party right.

- e. **License Grant.** By submitting User Content through the Services, you hereby do and shall grant us a worldwide, non-exclusive, royalty-free, fully paid, sublicensable and transferable license to use, edit, modify, manipulate, truncate, aggregate, reproduce, distribute, prepare derivative works of, display, perform, and otherwise fully exploit the User Content in connection with the App, the Services and our (and our successors' and assigns') businesses, including without limitation for promoting and redistributing part or all of the App or the Services (and derivative works thereof) in any media formats and through any media channels (including, without limitation, third party websites and feeds), and including after your termination of your Account or the Services. For the sake of clarity, to the extent any User Content you submit includes your name, likeness, voice, video, or photograph, you acknowledge and agree that the foregoing license of this Section 4(e) shall apply to the same. You also hereby do and shall grant each user of the App and/or the Services a non-exclusive license to access your User Content through the App and/or the Services, and to use, reproduce, distribute, display and perform such User Content as permitted through the functionality of the Services and under these Terms of Use, including after your termination of your Account or the Services. For clarity, the foregoing license granted to us and our users does not affect your other ownership or license rights in your User Content, including the right to grant additional licenses to your User Content, unless otherwise agreed in writing. You represent and warrant that you have all rights to grant such licenses to us without infringement or violation of any third party rights, including without limitation, any privacy rights, publicity rights, copyrights, trademarks, contract rights, or any other intellectual property or proprietary rights.
  
- e. **Availability of Content.** We do not guarantee that any Content will be made available on the App or through the Services. We reserve the right to, but do not have any obligation to, (i) remove, edit or modify or otherwise manipulate any Content in our sole discretion, at any time, without notice to you and for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if we are concerned that you may have violated these Terms of Use), or for no reason at all and (ii) to remove or block any Content from the Services.
  
- f. **Ideas and Comments.** You may choose to or we may invite you to submit comments or ideas about the Services, including without limitation about how to improve the Services or our products ("Ideas"). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited, non-proprietary, non-confidential, and without restriction and will not place Colorway under any fiduciary or other obligation, that we are free to disclose the Ideas on a non-confidential basis to anyone or otherwise use the Ideas without any additional compensation to you. You acknowledge that, by acceptance of your submission, Colorway does not waive any rights to use similar or related ideas previously known to Colorway, or developed by its employees, or obtained from sources other than you.

## 5. Rules of Conduct.

- a. As a condition of use, you promise not to use the Services for any purpose that is prohibited by these Terms of Use. The Services are for the personal use of Users only

and may not be used with any commercial endeavors except those that are specifically endorsed or expressly approved in writing by Colorway. You are responsible for all of your activity in connection with the Services. Violation of our rules may result in the termination and cancellation of your Account and forfeiture of your winnings. You acknowledge and agree that we may terminate any Fantasy Sneaker League Account at any time for any reason (including, but not limited to, our independent assessment or the receipt of claims or allegations from third parties or authorities). Appropriate legal action will be taken for any illegal or unauthorized use of the Services.

- b. By way of example, and not as a limitation, you shall not (and shall not permit any third party to) either (a) take any action or (b) upload, download, post, submit or otherwise distribute or facilitate distribution of any Content on or through the Service, including without limitation any User Content, that:
  - i. infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity or violates any law or contractual duty, including but not limited to, facilitating the rebroadcast of the FSL Services (see our DMCA Copyright Policy in Section 14 below);
  - ii. uses the Services for any unauthorized purpose, or in violation of any applicable law, including intellectual property laws;
  - iii. uses or launches any automated system that sends more request messages to our servers than a human can reasonably produce in the same period of time by utilizing a conventional on-line web browser;
  - iv. you know is false, misleading, untruthful or inaccurate, including, but not limited to, providing inaccurate contact or Account information;
  - v. illicitly alters our Contest and data, and affects a Contest or gameplay or other benefits or prospective rewards therein or therefrom by providing inaccurate information, buying or selling such benefits, creating multiple accounts, or any other means to alter the gameplay for any player in any manner to benefit or create disadvantages for any player that affects the outcome of a game;
  - vi. results in the creation or operation of multiple user accounts;
  - vii. creates multiple entries into Contests, by any means, including multi-accounting;
  - viii. logs an Account into multiple devices simultaneously;
  - ix. logs an Account into more than five different devices over the course of the history of the Account;
  - x. logs multiple Accounts into a single device over the course of the history of any of the Accounts;

- xi. enters you into a contest for which you are not eligible, whether by multi-accounting, providing misleading information, masking or altering your IP address, or other means;
  - xii. results in the sale or transfer of your Account;
  - xiii. is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, vulgar, pornographic, offensive, profane, contains or depicts nudity, contains or depicts sexual activity, otherwise violates any law or right of any third party, or is otherwise inappropriate as determined by us in our sole discretion;
  - xiv. constitutes unauthorized or unsolicited advertising, junk or bulk email ("spamming");
  - xv. contains software viruses or any other computer codes, files, content, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password or other information of ours or of any third party;
  - xvi. is designed or intended to obtain password, Account, or private information from any Fantasy Sneaker League User;
  - xvii. impersonates any person or entity, including any of our employees, representatives, or users;
  - xviii. promotes or links to affiliate programs, multi-level marketing schemes, sites repurposing existing stories or off-topic content; or
  - xix. includes anyone's identification documents or sensitive financial information.
- c. You shall not: (i) take any action that imposes or may impose (as determined by us in our sole discretion) an unreasonable or disproportionately large load on our (or our third party providers') infrastructure; (ii) interfere or attempt to interfere with the proper working of the Services or any activities conducted on the Services; (iii) bypass, circumvent or attempt to bypass or circumvent any measures we may use to prevent or restrict access to the Services (or other accounts, computer systems or networks connected to the Services); (iv) run any form of auto-responder or "spam" on the Services; (v) use manual or automated software, devices, or other processes to "crawl" or "spider" any page of the App without our express written permission; (vi) harvest or scrape any Content from the Services; (vii) collect or harvest any personally identifiable information, including usernames and/or email addresses of Account holders, by electronic or other means; (viii) use any portion of our Services as a destination linked

from any unsolicited bulk messages or unsolicited commercial messages; or (ix) otherwise take any action in violation of our guidelines and policies.

- d. You shall not (directly or indirectly): (i) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Services (including without limitation any application), except to the limited extent applicable laws specifically prohibit such restriction, (ii) modify, translate, or otherwise create derivative works of any part of the Services, or (iii) copy, rent, lease, distribute, or otherwise transfer any of the rights that you receive hereunder. You shall abide by all applicable local, state, national and international laws and regulations.
  - e. We also reserve the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce these Terms of Use, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of us, our users and the public.
  - g. If for any reason the Service is not running as originally planned (e.g., if it becomes corrupted or does not allow the proper usage and processing of entries in accordance with the rules, or if infection by a computer virus, bugs, tampering, unauthorized intervention, actions by entrants, fraud, technical failures, or any other causes of any kind, in the sole opinion of Company corrupts or affects the administration, security, fairness, integrity or proper conduct of the Service), Company reserves the right, in its sole discretion, to disqualify any individual implicated in or relating to the cause and/or to cancel, terminate, extend, modify or suspend the Services, and select the winner(s) from all eligible entries. If such cancellation, termination, modification or suspension occurs, notification may be posted on the Services.
6. **Third-Party Websites, Advertisers, or Services.** The Services may permit you to link to or otherwise access other websites, services or resources on your device and the Internet, and other websites, services or resources may contain links to or be accessed by the Services or the App (including, without limitation, sites and services to synchronize video to music). These other resources are not under our control, and you acknowledge that we are not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any such link or access does not imply our endorsement or any association between us and their operators. Your dealings with or participation in promotions of advertisers or third parties to which you opt-in or find on the Services are solely between you and such advertisers or third parties. You further acknowledge and agree that we 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 the use of or reliance on any such content, goods or services available on or through any such website or resource.
7. **Location-Based Services.** We may offer features that are based on the location of users and which may report on the locations of those users as they use the Services (the "Location-



Based Services"). You may partake in using these Location-Based Services solely at your own discretion, and may opt out of providing such information by turning off those features. Should you use Location-Based Services, you are consenting to our collection and dissemination of your location information through the Services. Under no circumstances shall we be liable for claims or damages therefrom arising out of your informed decision to disseminate your location information through the Services.

8. **In-App Purchases.** Through the Applications, you may purchase ("In App Purchase") certain goods designed to enhance the performance of the Services ("Goods"). When you purchase Goods, you are doing so through either Apple iTunes service or the Google Play service and you are agreeing to their respective Terms and Conditions. (<http://www.apple.com/legal/internet-services/itunes/us/terms.html>; [http://play.google.com/intl/en\\_us/about/play-terms.html](http://play.google.com/intl/en_us/about/play-terms.html)). We are not a party to any In App Purchase.
9. **Term; Termination.** This Agreement shall remain in full force and effect while you use the Services. We may permanently or temporarily terminate, suspend, or otherwise refuse to permit your access to all or any part of the Services at any time, with or without cause, with or without notice, without liability, effective immediately, which may result in the forfeiture and destruction of all information associated with your use of the Services. If you wish to terminate your Account, you may do so by removing the App from your device and following the instructions on the App or through the Services. All provisions of these Terms of Use which by their nature should survive termination shall survive termination, including, without limitation, licenses of User Content, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

## 10. Mobile Use

Colorway makes the App available for use with mobile devices. You acknowledge that certain services, such as offers, location-based services, and service-related information (such as the availability of App upgrades), may be provided from time to time in the form of text (SMS) messages delivered to your registered mobile device instead of directly through the App. By registering your mobile device or providing us with your mobile phone number, you agree to receive such SMS-based communications to the mobile number associated with your registered mobile device. To opt-out of receiving these SMS-based communications, follow the instructions in the body of the SMS message. In the event you elect to opt-out of such SMS-based communications, you may receive an additional message from the Service confirming your election. Colorway does not warrant that the text messaging service will be uninterrupted or error free.

Though you may access the Services via a mobile device, Colorway shall not be liable for any delay in performing or failure to perform any obligation hereunder by circumstances beyond our reasonable control including (without limitation) any technical problems beyond the control of Colorway such as (for example) defects, congestion or failures of capacity or otherwise in the public data or telephone or mobile carrier network or caused by atmospheric interference, your

mobile device being turned off for an extended period of time so that messages are not retained, or your being unable to obtain mobile network coverage.

11. **Privacy.** We care about the privacy of our Users. [Click here](#) to view our Privacy Policy. By using the Service, you are consenting to have your personal data transferred to and processed in the United States.

12. **Security.** Colorway has implemented commercially reasonable technical and organizational measures designed to secure your personal information and User Content from accidental loss and from unauthorized access, use, alteration or disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information and User Content for improper purposes. You acknowledge that you provide your personal information at your own risk.

13. **Warranty Disclaimer.**

- a. We have no special relationship with or fiduciary duty to you. You acknowledge that we have no duty to take any action regarding:
  - i. which users gain access to the Services;
  - ii. what Content you access via the Services; or
  - iii. how you may interpret or use the Content.
- b. You release us from all liability for you having acquired or not acquired Content through the Services. We make no representations concerning any Content contained in or accessed through the Services, and we will not be responsible or liable for the accuracy, copyright compliance, or legality of material or Content contained in or accessed through the Services.
- c. THE SERVICES AND CONTENT ARE PROVIDED "AS IS", "AS AVAILABLE" AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. WE, AND OUR DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, PARTNERS AND CONTENT PROVIDERS DO NOT WARRANT THAT: (I) THE SERVICES WILL BE SECURE, UNINTERRUPTED, OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; (II) ANY DEFECTS OR ERRORS WILL BE CORRECTED; (III) ANY CONTENT OR SOFTWARE AVAILABLE AT OR THROUGH THE SERVICES IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (IV) THE RESULTS OF USING THE SERVICES WILL MEET YOUR REQUIREMENTS. YOUR USE OF THE SERVICES IS SOLELY AT YOUR OWN RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD.

COLORWAY DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE COLORWAY SERVICES AND COLORWAY WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

**14. Indemnification.** You agree to defend, indemnify, and hold harmless us, our affiliates and each of our and their respective employees, contractors, officers, directors, suppliers and representatives from all liabilities, claims, and expenses, including reasonable attorneys' fees, that arise from or relate to: (i) your use or misuse of, or access to, the Services, Content, or otherwise from your User Content; (ii) violation of these Terms of Use; (iii) infringement by you, or any third party using your Account or identity in the Services, of any Intellectual Property Rights, rights of privacy, publicity rights, or other right of any person or entity; (iv) your violation of any law, rule or regulation of the United States or any other country; (v) any claim of damages that arises as a result of any information submitted via your Account; or (vi) any other party's access and use of the Service with your unique username, password, or other security code. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with us in asserting any available defenses.

**15. Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL COLORWAY, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR ITS LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THIS SERVICE. COLORWAY IS NOT RESPONSIBLE FOR THE CONDUCT, WHETHER ONLINE OR OFFLINE, OF ANY ACCOUNT HOLDER OR OTHER USER OF THE SERVICE. UNDER NO CIRCUMSTANCES WILL COLORWAY BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COLORWAY ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SERVICES, INCLUDING VIEWING, PLAYING OR DOWNLOADING ANY MATERIALS ON OR FROM THE SERVICES, OR OTHERWISE IN CONNECTION WITH THE SERVICES; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICES; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE

TRANSMITTED TO OR THROUGH OUR SERVICES BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICES; AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL COLORWAY, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR LICENSORS BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE GREATER OF (A) THE AMOUNT YOU PAID TO COLORWAY HEREUNDER OR (B) \$50.00.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF COLORWAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

**16. DISPUTE RESOLUTION; ARBITRATION CLAUSE & CLASS ACTION WAIVER– IMPORTANT–PLEASE REVIEW AS THIS AFFECTS YOUR LEGAL RIGHTS**

PLEASE READ THIS SECTION CAREFULLY. IT INCLUDES A MANDATORY ARBITRATION PROVISION, WHICH MEANS THAT YOU AGREE TO SUBMIT ANY DISPUTE RELATED TO YOUR USE OF ANY OF THE SITES TO BINDING INDIVIDUAL ARBITRATION RATHER THAN PROCEED IN COURT. THIS PROVISION ALSO INCLUDES A CLASS ACTION WAIVER, WHICH MEANS THAT YOU AGREE TO PROCEED WITH ANY DISPUTE INDIVIDUALLY AND NOT AS PART OF A CLASS ACTION. THIS SECTION ALSO INCLUDES A JURY WAIVER.

You and Colorway agree that any dispute that has arisen or may arise between us relating in any way to your use of or access to the Services or Site, the Products, any breach, enforcement, or termination of these Terms, or otherwise relating to Colorway in any way (collectively, “Covered Matters”) will be resolved in accordance with the provisions set forth in this Section 16.

- a. **Informal Resolution.** If a dispute arises between You and Colorway, you agree to first provide Colorway with notice of your complaint via email to [info@colorwayco.com](mailto:info@colorwayco.com) so that the parties may attempt to resolve the dispute informally within sixty (60) days from the date your complaint is received.
- b. **Applicable Law and Venue.** Except as otherwise provided herein, You and Colorway each agree that these Terms of Use and the relationship between the parties shall be governed by, construed, and enforced in accordance with the laws of the State of New York without regard to its conflict of law provisions. Except as provided below, You and Colorway agree to submit to the exclusive jurisdiction of the state and federal courts located in Eagle County, Colorado, including for any action seeking to compel arbitration or vacate an arbitral award, and consent to the personal jurisdiction of such courts. The

parties agree to waive any and all objections to the exercise of jurisdiction over the parties by such courts and to venue in such courts.

**c. Arbitration Agreement.**

**(1) Arbitration.**

With the exception of class actions, small claims court filings, or actions for preliminary injunctive relief (as further discussed below), any other dispute of any kind between you and Colorway arising under this Agreement or in connection with your use of the Service (“Dispute(s)”), if unresolved through the informal process outlined above, will be resolved by binding arbitration in Eagle County, Colorado. If you are an individual consumer using the Service primarily for personal reasons (“Individual Consumer”), as opposed to an individual accessing the Service for business purposes, and you are located within the United States, you may alternatively select your state of residence as the place of arbitration, but all other actions remain subject to the venue and choice of law provisions in Section 16(b).

The arbitrator presiding over a Dispute will be a retired judge or justice of any state or federal court with substantial experience in the subject matter relevant to the matter in dispute and will follow {California} law, exclusive of conflict or choice of law rules, in adjudicating the dispute. BY AGREEING TO ARBITRATE, YOU WAIVE ANY RIGHT YOU HAVE TO A COURT OR JURY TRIAL.

The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement will be governed by the Federal Arbitration Act.

The parties agree that the arbitrator presiding over a Dispute will be instructed, whenever practicable, to resolve threshold legal issues by way of motions filed by the parties. The parties also agree that they will follow JAMS’ streamlined arbitration rules and procedures then in effect in arbitrating any Dispute, except to the extent that the JAMS rules are inconsistent with this Section 16(c) including the class action waiver described below. The JAMS rules are available at [www.jamsadr.com](http://www.jamsadr.com).

The arbitrator, and not any federal, state, or local court or agency, will have exclusive authority to resolve all Disputes arising out of or relating to the interpretation, applicability, enforceability, or formation of these Terms of Use, including, but not limited to, any claim that all or any part of these Terms of Use is void or voidable, or whether a claim is subject to arbitration. The arbitrator will be empowered to grant whatever relief would be available in a court under law or in equity, other than class relief. The arbitrator’s award will be written, and binding, on the parties and may be entered as a judgment in any court of competent jurisdiction. If you are an Individual Consumer, Colorway will pay all

arbitration administrative fees and fees for the arbitrator's services, other than the \$250 filing fee required for you to initiate a claim.

If you are an Individual Consumer and the claim you wish to assert against us is for less than \$10,000 then, at your election, (i) the arbitration may proceed in-person, by telephone, or by written briefs or (ii) you may in lieu of arbitration bring your claim in small claims court. If either party files a claim in state or federal court that is required by these Terms of Use to have been brought to arbitration, then the other party will be entitled to such party's reasonable attorneys' fees incurred in successfully compelling arbitration.

Both parties reserve the right to seek a preliminary injunction or temporary restraining order from a federal or state court located in Eagle County, Colorado. However, after such request for relief has been adjudicated by such court, the remainder of the Dispute will be resolved by binding arbitration as set forth herein.

Further, notwithstanding the parties' decision to resolve all disputes through arbitration, either party may bring an action in state or federal court to protect its Intellectual Property Rights.

(2) **Class Action Waiver.**

YOU AND COLORWAY AGREE THAT DISPUTES WILL BE RESOLVED ON AN INDIVIDUAL BASIS AND THAT ANY CLAIMS BROUGHT UNDER THESE TERMS OF USE OR IN CONNECTION WITH THE SERVICE MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITIES, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PUTATIVE CLASS, COLLECTIVE, OR REPRESENTATIVE PROCEEDING. The parties further agree that they will not participate in any class action (existing or future) brought by any third party arising under this Agreement or in connection with the Service. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration hereunder can proceed on a class-wide basis, then such class action is not subject to arbitration and must be litigated in state or federal court in Los Angeles County, California.

(3) **Opt-Out.**

IF YOU ARE A NEW USER OF THE SERVICE, YOU CAN CHOOSE TO REJECT THE AGREEMENT TO ARBITRATE PROVISION ("OPT-OUT") BY EMAILING US AN OPT-OUT NOTICE TO [INFO@COLORWAYCO.COM](mailto:INFO@COLORWAYCO.COM) ("OPT-OUT NOTICE") OR VIA U.S. MAIL TO: Colorway, Attn: Arbitration Opt-Out, PO. Box 206 Vail, CO 81657. THE OPT-OUT NOTICE MUST BE RECEIVED NO LATER THAN THIRTY (30) DAYS AFTER THE DATE YOU ACCEPT THESE TERMS FOR THE FIRST TIME. IF YOU ARE NOT A NEW USER OF THE SERVICE, YOU HAVE UNTIL THIRTY (30) DAYS AFTER

## THE POSTING OF THE NEW TERMS TO SUBMIT AN ARBITRATION OPT-OUT NOTICE.

In order to opt-out, you must email your name, address (including street address, city, state, and zip code), and email address(es) associated with your User account(s) to which the opt-out applies, and the date you started using the Service to: [info@colorwayco.com](mailto:info@colorwayco.com). This procedure is the only way you can opt out of the agreement to arbitrate. If you opt out of the agreement to arbitrate, all other parts of these Terms of Use and its Disputes Section will continue to apply to you. Opting out of this agreement to arbitrate has no effect on any previous, other, or future arbitration agreements that you may have with us.

- (4) **WAIVER.** BY AGREEING TO THESE TERMS OF USE, YOU HEREBY IRREVOCABLY WAIVE ANY RIGHT YOU MAY HAVE TO A COURT TRIAL (OTHER THAN SMALL CLAIMS COURT AS PROVIDED ABOVE) OR TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT, ARBITRATION OR OTHER PROCEEDING FILED AGAINST US AND/OR RELATED THIRD PARTIES.
  
- (5) **STATUTE OF LIMITATIONS.** REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO USE OF THE SITE, SERVICE, OR THIS AGREEMENT MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION ARISES OR IT WILL BE FOREVER BARRED.

17. **Modification.** Except as otherwise provided in this Agreement, we reserve the right, in our sole discretion, to modify or replace any of these Terms of Use, or change, suspend, or discontinue the Services (including without limitation, the availability of any feature, database, or content) at any time by posting a notice on the App or by sending you notice through the Services, via email or by another appropriate means of electronic communication. We may also impose limits on certain features and services or restrict your access to parts or all of the Services without notice or liability. While we will timely provide notice of modifications, it is also your responsibility to check these Terms of Use periodically for changes. Your continued use of the Services following notification of any changes to these Terms of Use constitutes acceptance of those changes, which will apply to your continued use of the Services going forward. Your use of the Services is subject to the Terms of Use in effect at the time of such use.

## 18. DMCA Copyright Policy.

- a. The Company has adopted the following general policy toward copyright infringement in accordance with the Digital Millennium Copyright Act (“DMCA”). The address of the

Designated Agent to Receive Notification of Claimed Infringement ("Designated Agent") is listed below in this Section.

- b. **Procedure for Reporting Copyright Infringement.** If you believe that material or content residing on or accessible through the Services infringes a copyright, please send a notice of copyright infringement containing the following information to the Designated Agent listed below:
1. A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright that has been allegedly infringed;
  2. Identification of works or materials being infringed;
  3. Identification of the material that is claimed to be infringing including information regarding the location of the infringing materials that the copyright owner seeks to have removed, with sufficient detail so that Company is capable of finding and verifying its existence;
  4. Contact information about the notifier including address, telephone number and, if available, email address;
  5. A statement that the notifier has a good faith belief that the material is not authorized by the copyright owner, its agent, or the law; and
  6. A statement made under penalty of perjury that the information provided is accurate and the notifying party is authorized to make the complaint on behalf of the copyright owner.

Please provide this information to:

Copyright Notices – Colorway

PO Box 206

Vail, CO 81657

Email: [info@colorwayco.com](mailto:info@colorwayco.com)

UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY AND CIVIL PENALTIES, INCLUDING MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS' FEES.

Please note that this procedure is exclusively for notifying Colorway and its affiliates that your copyrighted material has been infringed. The preceding requirements are intended to comply with Colorway's rights and obligations under the DMCA, including 17 U.S.C. §512(c), but do not constitute legal advice. It may be advisable to contact an attorney regarding your rights and obligations under the DMCA and other applicable laws.

In accordance with the DMCA and other applicable law, Colorway has adopted a policy of terminating, in appropriate circumstances and at Colorway's sole discretion, members who are deemed to be repeat infringers. Colorway may also, at its sole discretion, limit access to the Service and/or terminate the accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.



19. **Apple Device and Application Terms.** In the event you are accessing the Services via an application on a device provided by Apple, Inc. ("Apple") or an application obtained through the Apple App Store (in either case, an "Application"), the following shall apply:
- a. Both you and the Company acknowledge that these Terms of Use are concluded between you and the Company only, and not with Apple, and that Apple is not responsible for the Application or the Content;
  - b. The Application is licensed to you on a limited, non-exclusive, non-transferable, non-sublicensable basis, solely to be used in connection with the Services for your private, personal, non-commercial use, subject to all the terms and conditions of these Terms of Use as they are applicable to the Services;
  - c. You will only use the Application in connection with an Apple device that you own or control;
  - d. You acknowledge and agree that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Application;
  - e. In the event of any failure of the Application to conform to any applicable warranty, including those implied by law, you may notify Apple of such failure; upon notification, Apple's sole warranty obligation to you will be to refund to you the purchase price, if any, of the Application;
  - f. You acknowledge and agree that the Company, and not Apple, is responsible for addressing any claims you or any third party may have in relation to the Application;
  - g. You acknowledge and agree that, in the event of any third party claim that the Application or your possession and use of the Application infringes that third party's intellectual property rights, the Company, and not Apple, will be responsible for the investigation, defense, settlement and discharge of any such infringement claim;
  - h. You represent and warrant that you are not located in a country subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and that you are not listed on any U.S. Government list of prohibited or restricted parties;
  - i. Both you and the Company acknowledge and agree that, in your use of the Application, you will comply with any applicable third party terms of Agreement which may affect or be affected by such use; and
  - j. Both you and the Company acknowledge and agree that Apple and Apple's subsidiaries are third party beneficiaries of these terms, and that upon your acceptance of these terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these terms against you as the third-party beneficiary hereof.

20. **Availability and Use Outside of the United States.** The Services are controlled, offered and operated from facilities in the United States. Colorway makes no representations that the Services are appropriate or available for use in other locations. Those who access or use the Services from other jurisdictions do so at their own volition and are entirely responsible for compliance with local law, including but not limited to export and import regulations. Unless otherwise explicitly stated, all materials found on the Services are solely directed to individuals located in the United States. Notwithstanding the foregoing, Colorway retains all rights, including all Intellectual Property Rights, to the Services and the Content therein, throughout the world.
21. **Notification Procedures.** Colorway may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to you via email notice, written or hard copy notice, or through conspicuous posting of such notice on our website, as determined by Colorway in our sole discretion. Colorway reserves the right to determine the form and means of providing notifications to our Users, provided that you may opt out of certain means of notification as described in this Agreement.
22. **Notice to California Users.** Under California Civil Code Section 1789.3, California website users are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210.
23. **Trademarks.** “FSL”, “Fantasy Sneaker League” and other Services graphics, logos, page headers, button icons, scripts, and service names are trademarks, registered trademarks or trade dress of Colorway Inc and/or its licensors and affiliates. Colorway’s trademarks and trade dress may not be used in connection with any product or service that is not Colorway’s, in any manner that is likely to cause confusion among customers, or in any manner that disparages or discredits Colorway. All other trademarks not owned by Colorway that appear on this site are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by Colorway.
24. **Miscellaneous.**
- a. **Entire Agreement and Severability.** These Terms of Use, together with any other legal notices and agreements published by Colorway via the Services, are the entire Agreement between you and us with respect to the Services, including use of the App.
  - b. **Severability.** If any provision of these Terms of Use is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these Terms of Use will otherwise remain in full force and effect and enforceable.
  - c. **Force Majeure.** We shall not be liable for any failure to perform our obligations hereunder where such failure results from any cause beyond our reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation.

- d. **Assignment.** These Terms of Use are personal to you, and are not assignable, transferable or sublicenseable by you except with our prior written consent. We may assign, transfer or delegate any of our rights and obligations hereunder without consent.
- e. **Agency.** No agency, partnership, joint venture, or employment relationship is created as a result of these Terms of Use and neither party has any authority of any kind to bind the other in any respect.
- f. **Notices.** Unless otherwise specified in these Term of Service, all notices under these Terms of Use will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or email; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Electronic notices should be sent to [Info@colorwayco.com](mailto:Info@colorwayco.com).
- g. **No Waiver.** Our failure to enforce any part of these Terms of Use shall not constitute a waiver of our right to later enforce that or any other part of these Terms of Use. Waiver of compliance in any particular instance does not mean that we will waive compliance in the future. In order for any waiver of compliance with these Terms of Use to be binding, we must provide you with written notice of such waiver through one of our authorized representatives.
- g. **Headings.** The section and paragraph headings in these Terms of Use are for convenience only and shall not affect their interpretation.
- h. **Relationships.** The App is not sponsored, endorsed, administered by, or associated with Apple or its subsidiaries or affiliates.

**Contact.**

You may contact us at the following address:  
Colorway Inc  
PO Box 206  
Vail, CO 81657