

Terms of Use

Last Updated: September 19, 2018

These Terms of Use (“**Terms**”) govern your access to and use of this website (“**Site**”), made available to you by Foster Care Counts, doing business as Foster Nation (“**Foster Nation**,” “**we**,” “**us**,” or “**our**”).

By accessing or using the Site, you agree on behalf of yourself and any organization or company that you represent (together, “you”) that you have read and understand these Terms and our Privacy Policy. If you do not agree with these Terms or our Privacy Policy, do not access or use the Site.

We reserve the right to modify these Terms at any time. All changes will be effective immediately upon posting to the Site and, by accessing or using the Site after changes are posted, you agree to those changes. Material changes will be conspicuously posted on the Site or otherwise communicated to you.

- 1. Privacy Policy.** We may collect certain information about you and from your access to and use of the Site as described in our Privacy Policy, which is incorporated into these Terms and describes our information collection, use, and sharing practices.
- 2. Intellectual Property Rights.** The Site and the products made available on the Site, including their text, audio, video, graphics, charts, photographs, interfaces, icons, software, computer code, data, trademarks, logos, slogans, names of products and services, documentation, other components and content, and the design, selection, and arrangement of content is exclusively the property of Foster Nation or, as applicable, its suppliers and licensors, and are protected by copyright, trademark, and other intellectual property laws. Any unauthorized use of any trademarks, trade dress, copyrighted materials, or any other intellectual property belonging to Foster Nation or any third party is strictly prohibited and may be prosecuted to the fullest extent of the law. The Site may contain references to third-party marks and copies of third-party copyrighted materials, which are the property of their respective owners.

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- 3. Compliance with Laws.** In connection with your access to and use of the Site, you are responsible for complying with all applicable laws, regulations, and policies of all relevant jurisdictions, including all applicable rules regarding online conduct.
- 4. Restrictions on Your Use of the Site.**
 - You may download and print one copy of the Site’s visible content for your own personal noncommercial use as long as you do not modify or delete any copyright, trademark, or other proprietary notices.
 - You will not otherwise copy, reproduce, display, duplicate, sell, publish, post, license, rent, distribute, modify, translate, adapt, reverse-engineer, or create derivative works of the Site or any part of the Site without our prior written consent.
 - You will not use the Site for unlawful purposes.
 - You warrant that all information you provide to us in connection with your access to and use of the Site is true, accurate, and complete to the best of your knowledge and belief.

- You will not submit inaccurate, incomplete, or out-of-date information via the Site, commit fraud or falsify information in connection with your use of the Site, or act maliciously against the business interests or reputation of Foster Nation.
 - You will not engage in data mining or similar data gathering or extraction activities or retrieve data or other content from the Site for purposes of creating or compiling that content for any purpose.
 - You will not access, use, or copy any portion of the Site, including any of its content, through the use of indexing agents, spiders, scrapers, bots, web crawlers, or other automated devices or mechanisms.
 - You will not use the Site to post, transmit, input, upload, or otherwise provide any information or material that contains any viruses, worms, Trojan horses, logic bombs, time bombs, cancelbots, malware, ransomware, adware, or other harmful computer code or programming routines, including those designed to or that reasonably may disable, damage, impair, interfere with, surreptitiously intercept, or expropriate the Site or any computers, hardware, software, system, data, or networks.
 - You will not engage in activities that aim to render the Site or associated services inoperable or to make their use more difficult.
- 5. Purchases & Donations.** Purchases of products and donations made through the Site must be made by credit or debit card or, where the option is available, by PayPal. Information about our collection and use of payment-related information is described in our [Privacy Policy](#). If the credit or debit card information that you submit is incorrect or invalid, your payment will not be processed. We have no responsibility or liability if your credit or debit card is declined by your financial institution. Payments are processed by our PCI-compliant third-party payment processor. Refunds, if available, are the responsibility of Foster Nation and are at our sole discretion.
- 6. Fundraising Portal.** The Site may include links to our fundraising portal, which is provided by Classy, Inc. You will be required to create an account with Classy or to sign in to the Classy portal using your Facebook credentials in order to access or use the fundraising portal. Our fundraising portal allows you to set up fundraising campaigns for Foster Nation and to donate to campaigns set up by others. All access to and use of our fundraising portal is governed by these Terms and by [Classy's Terms of Service](#) and [Classy's Privacy Policy](#).
- 7. Donation Processing Fees.** The following amounts will be deducted from each donation made through the Site (including those made using our fundraising portal): (a) a donation processing fee equal to 1% of the donation amount, which fee is required by and will be remitted to Classy, Inc. (the provider of our online donation portal), plus (b) a payment processing fee that varies depending on the type of payment card used, which fee is required by and will be remitted to our payment processor. Fees imposed by our payment processor are subject to change from time to time without notice or liability. You may have the option of increasing the amount of your donation to cover the above fees.
- 8. Terms of Sale.** All orders of products made available on or ordered using the Site are subject to this section. This section and these Terms constitute the complete and exclusive statement of the terms governing the sale of products via the Site. Your purchase of products using the Site and acceptance of products as stated below manifest your agreement with this complete and exclusive statement of terms.
- A. *Order Acceptance.* Nothing on the Site constitutes an offer, but an invitation to you to make an offer to purchase products through the Site. All orders are subject to acceptance by Foster Nation. In addition, there may be certain orders that we cannot

accept or must cancel. We reserve the right, in our sole discretion and without liability, to reject or cancel any order not yet shipped for any reason, including the following: limitations on quantities available for purchase; inaccuracies or errors in product descriptions, images, or pricing information; and problems identified by credit and fraud avoidance services. We may also require verifications, approvals, or other information before considering acceptance of any order. We will contact you if all or any portion of your order is rejected or canceled or if additional information is required to accept your order. An order is deemed accepted when Foster Nation ships the products ordered, and Foster Nation will charge your credit or debit card upon such shipment.

- B. *Shopify Terms.* All orders placed through the Site are subject to the applicable terms and policies of Shopify Inc., our online storefront software provider and payment processor.
- C. *Shipping and Handling; Taxes.* Unless otherwise noted, shipping and handling fees will be charged separately and are your responsibility. Foster Nation charges you for sales, use, and other taxes for products ordered through the Site to the extent required by law.
- D. *Availability.* The prices and availability of products made available on the Site may change at any time without notice to you. Prices remain valid while they are listed and offered on the Site. Prices will be as posted on the Site as of the date and time of your order, as applicable. Product colors and measurements are approximate and may vary from the representation in the Site. These differences will not constitute a defect in or noncompliance of any product. Availability of products may be limited and products may not be available for immediate delivery. Some products may not be available in certain areas. Foster Nation is not liable for any damages you may suffer as a result of any shipment delays.
- E. *Pricing.* Pricing errors may occur on the Site from time to time. Foster Nation attempts to correct all pricing errors as soon as they are discovered, or as soon as Foster Nation receives notice of an error, but Foster Nation is not responsible for any pricing or typographical errors on the Site. Foster Nation reserves the right to cancel any orders containing pricing errors, with no further obligations or liability to you, even after your receipt of an order confirmation or shipping notice from Foster Nation. Any payments you make to Foster Nation for orders that are cancelled due to pricing errors will be refunded.
- F. *Title and Risk of Loss.* Title to products will pass to you when you receive the products. Foster Nation will bear the risk of loss or damage to the products during shipment to you.
- G. *Order Cancellations.* Order cancellations are at Foster Nation's sole discretion. Our goal is to ship orders promptly, so it is often not possible to cancel an order once it is processed. If you wish to cancel an order, please contact our customer service department at team@fosternation.org to see if we can change, cancel or correct the order before it ships.
- H. *Return Policy.* We do not allow for the return of products once shipped unless a product is damaged. If you wish to ask about returning a product, an undamaged Product, please contact our customer service department at team@fosternation.org. Any product returns are solely within Foster Nation's discretion.

I. **DISCLAIMER OF WARRANTIES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL PRODUCTS ARE PROVIDED “AS IS” AND WITHOUT ANY WARRANTY OF ANY KIND. FOSTER NATION EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION THOSE REGARDING AVAILABILITY, QUALITY, ACCURACY, MERCHANTABILITY, FITNESS FOR ANY USE OR PURPOSE, COMPATIBILITY WITH ANY STANDARDS OR USER REQUIREMENTS, TITLE, AND NONINFRINGEMENT, AS WELL AS ANY ARISING BY OPERATION OF LAW OR FROM A COURSE OF DEALING OR USAGE IN TRADE. NO ADVICE OR INFORMATION, ORAL OR WRITTEN, OBTAINED BY YOU FROM FOSTER NATION OR IN ANY MANNER FROM THE ONLINE STOREFRONT CREATES ANY WARRANTY.

9. **Program and Service Availability.** Any programs, materials, or services that may be mentioned on or made available through the Site are subject to availability. Foster Nation may change the programs, materials, and services mentioned on the Site at any time without notice.

10. **NO WARRANTY.** THE SITE IS PROVIDED “AS IS,” “AS AVAILABLE,” AND WITHOUT ANY WARRANTY OF ANY KIND. FOSTER NATION MAKES COMMERCIALY REASONABLE EFFORTS TO ENSURE THAT MATERIAL, DATA, AND OTHER INFORMATION ON THE SITE (EXCLUDING ANY USER-GENERATED CONTENT) IS ACCURATE AND RELIABLE, BUT NEITHER ACCURACY NOR RELIABILITY CAN BE GUARANTEED. FOSTER NATION DOES NOT WARRANT OR GUARANTEE THE QUALITY, COMPLETENESS, TIMELINESS, OR AVAILABILITY OF THE SITE. FOSTER NATION DOES NOT WARRANT OR GUARANTEE THAT THE SITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ANY DEFECTS IN THE SITE WILL BE CORRECTED, OR THAT THE SITE OR THE SERVERS THAT MAKE THE SITE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL CONDITIONS OR COMPONENTS. FOSTER NATION IS NOT RESPONSIBLE FOR ANY TYPOGRAPHICAL ERRORS ON THE SITE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FOSTER NATION EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND WITH RESPECT TO THE SITE, INCLUDING WITHOUT LIMITATION THOSE REGARDING AVAILABILITY, QUALITY, ACCURACY, MERCHANTABILITY, FITNESS FOR ANY USE OR PURPOSE, COMPATIBILITY WITH ANY STANDARDS OR USER REQUIREMENTS, TITLE, AND NONINFRINGEMENT, AS WELL AS ANY ARISING FROM A COURSE OF DEALING OR USAGE IN TRADE. FOSTER NATION HAS NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MISDELIVERY, OR FAILURE TO STORE ANY USER COMMUNICATION.

WE DO NOT WARRANT OR ENDORSE ANY USER-GENERATED CONTENT. ALL USER-GENERATED CONTENT IS SOLELY THE REponsIBILITY OF THE PERSON WHO PROVIDED THAT USER-GENERATED CONTENT.

WE MAKE NO REPRESENTATION THAT THE SITE IS APPROPRIATE OR AVAILABLE FOR USE IN LOCATIONS OTHER THAN THE UNITED STATES. IF YOU CHOOSE TO ACCESS OR USE THE SITE FROM LOCATIONS OTHER THAN THE UNITED STATES, YOU DO SO AT YOUR OWN RISK AND YOU ARE RESPONSIBLE FOR COMPLYING WITH APPLICABLE LAWS AND REGULATIONS.

YOUR USE OF THE SITE IS AT YOUR OWN RISK AND YOU, ALONE, ARE RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER HARDWARE, SOFTWARE, SYSTEMS, AND NETWORKS, ANY LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY INFORMATION FROM THE SITE, AND ANY OTHER DAMAGE THAT MAY BE INCURRED.

NO ADVICE OR INFORMATION, ORAL OR WRITTEN, OBTAINED BY YOU FROM FOSTER NATION OR IN ANY MANNER FROM THE SITE CREATES ANY WARRANTY.

- 11. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL FOSTER NATION, ITS AFFILIATES, OR ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, OWNERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, CONSULTANTS, AGENTS, SUPPLIERS, OR LICENSORS (TOGETHER, "**FOSTER NATION PARTIES**") BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGE, OR ANY OTHER LOSS OR DAMAGE OF ANY KIND, ARISING OUT OF OR IN CONNECTION WITH THE SITE, THE PRODUCTS MADE AVAILABLE THROUGH THE SITE, OR YOUR ACCESS TO OR USE OF, OR INABILITY TO ACCESS OR USE, THE SITE OR THE PRODUCTS (INCLUDING WITHOUT LIMITATION THE INPUT OF PERSONAL AND OTHER INFORMATION INTO THE SITE), WHETHER THE CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY, OR OTHERWISE, AND EVEN IF A FOSTER NATION PARTY HAS EXPRESS KNOWLEDGE OF THE POSSIBILITY OF THE LOSS OR DAMAGE. YOUR SOLE AND EXCLUSIVE REMEDY IS TO STOP ACCESSING AND USING THE SITE AND THE PRODUCTS.

WITHOUT LIMITING THE FOREGOING, IN NO EVENT WILL FOSTER NATION PARTIES' LIABILITY TO YOU EXCEED \$100, EVEN IF THIS REMEDY FAILS OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO SOME OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

- 12. Indemnification.** You will indemnify, defend, and hold harmless Foster Nation Parties from and against all losses, claims, liabilities, demands, complaints, actions, damages, judgments, settlements, fines, penalties, expenses, and costs (including without limitation reasonable attorneys' fees) that arise out of or in connection with your access to or use of the Site or any products made available through the Site, your misuse of any material, data, or other information downloaded or otherwise obtained from the Site, donations you make using the Site, your purchase of products through the Site, your submission of User-Generated Content, or your breach of these Terms. We reserve, and you grant to us, the exclusive right to assume the defense and control of any matter subject to indemnification by you.

13. User-Generated Content.

- A. The Site may allow you to create, post, transmit, upload, publish, distribute, broadcast, submit, and otherwise provide comments, data, text, images, video, audio, and other content and material via the Site (including by telling us about your experiences in the foster care system, uploading a photograph of yourself, or setting up a campaign on the fundraising portal), and to respond to content provided by others (together, "**User-Generated Content**"). User-Generated Content is neither generated nor controlled by Foster Nation. Foster Nation is not responsible for any User-Generated Content. You are responsible for all User-Generated Content that you provide and for the legality, originality, and appropriateness thereof.

- B. By providing User-Generated Content you warrant that you are the creator or owner of that User-Generated Content or that you otherwise have the rights, permissions, and consents necessary to provide that User-Generated Content to us and to allow us to use that User-Generated Content as permitted by these Terms. By providing User-Generated Content, you agree not to claim that any use of that User-Generated Content by us or any third party infringes or violates your or any other person's intellectual property rights, rights of privacy, rights of publicity, or other rights. You retain any copyright or other intellectual property right you may have in User-Generated Content that you provide, subject to the license granted to Foster Nation below.
- C. YOU HEREBY WAIVE ANY CLAIMS YOU HAVE TO YOUR LIKENESS AND IMAGE CONTAINED IN ANY USER-GENERATED CONTENT YOU PROVIDE. YOU HEREBY RELEASE FOSTER NATION PARTIES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS FROM ANY AND ALL CLAIMS FOR DAMAGES FOR LIBEL, SLANDER, INVASION OF PRIVACY, RIGHT OF PUBLICITY, AND ANY OTHER CLAIM BASED ON THE USE OF USER-GENERATED CONTENT.
- D. Please keep in mind that any User-Generated Content that you provide may be publicly available via the Site. You must maintain a polite, pleasant, and respectful environment. User-Generated Content that harasses, abuses, stalks, threatens, or otherwise violates the legal rights of others is prohibited. User-Generated Content must be relevant to the applicable topic. User-Generated Content that is defamatory, indecent, pornographic, obscene, or otherwise objectionable or harmful is prohibited. You may not create a false identity, hide your true identity, or impersonate or represent any person other than yourself. You may not provide any other person's private or confidential information without that person's permission.
- E. Foster Nation reserves the right, but does not have the obligation, to review User-Generated Content and its submission. Foster Nation reserves the right, but does not have the obligation, to, at any time and for any reason, modify and reorganize User-Generated Content. Foster Nation also reserves the right, but does not have the obligation, to, at any time and for any reason, delete User-Generated Content from the Site. Foster Nation has no obligation to archive or otherwise store any User-Generated Content. Foster Nation reserves the right to impose limits on Site features (e.g., the ability to provide User-Generated Content) and to restrict your access to all or parts of the Site at any time for any reason, including breach of these Terms.
- F. If you provide User-Generated Content, you grant Foster Nation a perpetual, irrevocable, transferable, assignable, sublicensable, royalty-free, fully paid-up, worldwide license to copy, reproduce, implement, modify, adapt, reformat, translate, excerpt, prepare derivative works of, store, publish, perform, display, license, sell, exploit, and otherwise use and distribute (in all media and distribution methods now known or later developed) that User-Generated Content, including developing, manufacturing, and marketing products, programs, and services. You understand that this license allows us to make User-Generated Content you provide to other persons and entities, including other users of the Site. You understand that this license allows us to use User-Generated Content to develop and market products and services. You understand that this license allows us to make User-Generated Content available to other persons and entities through the Site. You understand that we may modify User-Generated Content that you provide.

- G. If you believe that anything on the Site infringes any copyright that you own or control, please follow the process described below. If you believe that anything on the Site violates a law or regulation or breaches any provision of these Terms, please notify us at team@fosternation.org.

14. Copyright Policy. We respect the intellectual property rights of others and we ask that our users do the same. In accordance with the Digital Millennium Copyright Act (“**DMCA**”), located at 17 U.S.C. § 512, and other applicable laws, we strive to expeditiously remove any infringing material from the Site if we become aware of the same. If you believe that anything on the Site infringes any copyright that you own or control, please provide our designated agent with a notice that contains the following information:

- A description of the copyrighted work(s) that you claim have been infringed;
- A description of the allegedly infringing material, including its location on the Site;
- 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;
- Your email address, telephone number, and mailing address;
- 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 are authorized to act on the copyright owner’s behalf; and
- An electronic or physical signature of a person authorized to act on behalf of the copyright owner.

Your notice must meet the then-current requirements implemented by the DMCA. Contact information for our designated agent for notice of claims of copyright infringement is:

Winifred Wechsler
11150 Santa Monica Blvd., Suite 1500
Los Angeles, CA 90025
Phone: 310-575-9400
Email: team@fosternation.org

15. Third-Party Websites. The Site may link to, or be linked to, websites not maintained or controlled by Foster Nation. Those links are provided as a convenience and Foster Nation is not responsible for examining or evaluating the content or accuracy of, and does not warrant or endorse, any third-party website or any products or services made available through those websites. Please take care when leaving the Site to visit a third-party website. You should read the terms of use and privacy policy for each website that you visit.

16. Linking to the Site. If you operate a website and are interested in linking to the Site: (a) the link must be a text-only link unless you request a graphic badge from Foster Nation, in which case you may use any graphic badge provided by Foster Nation to link to the Site, and, in any case, the link must be and clearly marked; (b) the link must point to “<https://www.fosternation.org>” and not to any other page; (c) the link and its use must be in connection with a website of appropriate subject matter that furthers the mission of Foster Nation; (d) the link and its use must not, nor have the potential to, damage or dilute the goodwill associated with the names and trademarks of Foster Nation; (e) the link and its use must not create the false appearance that any program, person, or entity is associated with or sponsored by Foster Nation; and (f) the link, when activated by a user, must display the Site full-screen and not within a frame. Foster Nation reserves the right to revoke consent to link to

the Site at any time in its sole discretion, either by amending these Terms or through other notice.

- 17. Feedback.** Foster Nation welcomes comments regarding the Site. If you submit comments or feedback to us regarding the Site, they will not be considered or treated as confidential. We may use any comments and feedback that you send us in our discretion and without attribution or compensation to you.
- 18. Disputes.** These Terms are governed by the laws of the state of California, without regards for its conflict of law principles. Venue is exclusively in the state or federal courts, as applicable, located in Los Angeles County, California, with respect to any dispute arising under these Terms unless otherwise determined by Foster Nation in its sole discretion. The parties expressly agree to the exclusive jurisdiction of those courts. If there is a dispute, the prevailing party will be entitled to recovery of its costs and expenses, including reasonable attorneys' fees. Any cause of action or other claim with respect to the Site must be commenced within one year after the cause of action or claim arises.
- 19. Assignment.** We may assign our rights and delegate our duties under these Terms at any time to any party without notice to you. You may not assign your rights or delegate your duties under these Terms without our prior written consent.
- 20. Third-Party Beneficiaries.** These Terms do not confer any rights, remedies, or benefits upon any person other than you and Foster Nation, except that our affiliates and Squarespace, Inc., our website hosting services provider, are third-party beneficiaries of these Terms.
- 21. Interpretation.** These Terms, including our [Privacy Policy](#), are the entire agreement between you and Foster Nation with respect to your access to and use of the Site (including your purchase of products using the Site). Our failure to enforce any provision of these Terms will not constitute a waiver of that provision or any other provision. Any waiver of any provision of these Terms will be effective only if in writing and signed by Foster Nation. If any provision of these Terms is held invalid, void, or unenforceable, that provision will be severed from the remaining provisions and the remaining provisions will remain in full force and effect. The headings in these Terms are for convenience only and do not affect the interpretation of these Terms. These Terms inure to the benefit of our successors and assigns.
- 22. Survival.** Any provisions of these Terms that are intended to survive termination (including any provisions regarding indemnification, limitation of our liability, or dispute resolution) will continue in effect beyond any termination of these Terms or of your access to or use of the Site.
- 23. Electronic Communications.** These Terms and any other documentation, agreements, notices, or communications between you and Foster Nation may be provided to you electronically to the extent permissible by law. Please print or otherwise save a copy of all documentation, agreements, notices, and other communications for your reference.
- 24. Contact Us.** Please direct any questions and concerns regarding these Terms to us at:

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