

**Marilyn's Gift, Inc.**  
Online Gift Selection Subscription  
**MEMBERSHIP AGREEMENT**

This Membership Agreement ("Agreement") constitutes a legal agreement between you, an individual ("you") and Marilyn's Gift, Inc., a Washington State corporation ("Company", "we", "our"), and governs your purchase, participation, and use of our gift selection and packaging services ("Services"), and your purchase, use, and/or participation of/or in our Services is consent to the terms herein.

Company, provides subscription-based and single purchase gift selection and packaging services. You desire to enter into this Agreement for the purpose of accessing our website, using our Services, and/or participating as a member. Our services are only intended for use by adults over the age of 18 who are located within the United States of America.

**IMPORTANT:** IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT IMMEDIATELY STOP USING OUR SERVICES AND WEBSITE, AND DO NOT PURCHASE OUR SUBSCRIPTION OR INDIVIDUAL GIFT BOXES. PLEASE REVIEW THE PROVISIONS SET FORTH BELOW CAREFULLY, AS IT WILL REQUIRE YOU TO RESOLVE DISPUTES WITH THE COMPANY ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. BY VIRTUE OF YOUR ELECTRONIC EXECUTION OF THIS AGREEMENT, YOU WILL BE ACKNOWLEDGING THAT YOU HAVE READ AND UNDERSTOOD ALL OF THE TERMS OF THIS AGREEMENT (INCLUDING THE ARBITRATION PROVISION) AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT BUSINESS DECISION.

**1. Use of the Our Services**

**1.1 Membership.** We offer various membership levels for our members. By selecting a membership level, and joining as a member, you hereby agree that you shall pay us a membership fee ("Membership Fee"). All Membership Fees are listed on our website and payment portals, and are subject to change at any time, in our sole discretion.

**1.2 Your Relationship with Company.** You acknowledge and agree that the provisions of our Services do not create any agency, employment, or contractor relationship with you. To the extent that any relationship is created it is only as an independent contractor. Ultimately, you retain the sole right to determine when and for how long you will utilize our Services, when you select a membership level on our website, or if you decide to cancel as permitted by our cancellation policy.

**2. Product Ratings and Comments.**

**2.1** Company and its Affiliates reserve the right to use, share, distribute, and display your product ratings and comments in any manner in connection with the business of Company and its Affiliates without attribution to you or your approval. We reserve the right to edit or remove comments in the event that such comments include obscenities or other objectionable content, include an individual's name or other personal information, or violate any privacy laws, other applicable laws, or our Terms and Conditions of Use.

### **3. Devices and App.**

**3.1 License and Intellectual Property.** Company hereby grants you a personal, non-exclusive, non-transferable non-sublicensable, non-assignable license to use the Website solely for the purpose of providing you and your loved ones with a subscription-based and single purchase gift selection and packaging services. You agree to not provide, distribute or share, or enable the provision, distribution or sharing of the Website, or its data, with any third party. Subject to the terms and conditions of this Agreement, Company hereby grants you a non-exclusive, non-transferable, non-sublicensable, non-assignable license, during the term of this Agreement, to use our Services solely for that purpose, and gift boxes and their contents are not available for resale. All rights not expressly granted to you are reserved by Company, its Affiliates and their respective licensors.

You shall not, and shall not allow any other party to: (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise provide or make available to any other party the Services, or Website or in any way; (b) modify or make derivative works based upon the Services or Website (c) improperly use the Services or Website, including “scraping” or otherwise improperly obtaining data from the Services or Website, (d) reverse engineer, decompile, modify, or disassemble the Services or Website, (e) send spam or otherwise duplicative or unsolicited messages, or (f) harass, intimidate, discriminate, or otherwise annoy any participants; (g) use our Website to design or develop a competitive or similar products or services; (h) copy or extract any features, functionality, or content therein; (i) launch or cause to be launched on or in connection with the Services an automated program or script, or unduly burden or hinder the operation and/or performance of the Services or the Website; or (j) attempt to gain unauthorized access to our Services or Website, our systems or networks. The Services, Website, and all Company Data, including all intellectual property rights are and shall remain the exclusive property of Company, its Affiliates, third-parties, or their respective licensors. Neither this Agreement nor your use of our Services, Website or Company Data conveys or grants to you any rights in our Services, Software, Website, or Company Data, logos, trademarks, tradenames, services names, or that of our third-parties, or affiliates, except for the limited license granted herein.

### **4. Payments and Pricing**

**4.1 Price Calculation and Your Payment.** We may charge a monthly, quarterly, annual, or one-time fee for your participation in our Services, as selected by you on our payment portal. Company reserves the right to change the Membership Fees at any time in Company’s sole discretion. By using our Website or Services you consent to any such change.

**4.2 Cancellation Charges.** You acknowledge and agree that you may elect to cancel your participation in our Services at any time. However, because we allocate resources in advance, and ship your products directly to your loved ones, your prepaid Membership Fee is non-refundable.

## 5. Privacy

**5.1 Disclosure of Your Information.** We reserve the right to disclose your personally identifying information if: (a) there is a complaint, dispute or conflict, between you and a third party; (b) it is necessary to enforce the terms of this Agreement; (c) it is required, in Company's or any third-party, or Affiliate's, sole discretion, (d) it is necessary, in Company's sole discretion, to protect the safety, rights, property or security of us, any other entity, or our participants, or (e) as otherwise permitted in our Privacy Policy.

## 6. Representations and Warranties; Disclaimers

**6.1 By You.** You hereby represent and warrant that: (a) you are an adult over the age of 18 and are located within the United States of America, and have full power and authority to enter into this Agreement and perform your obligations hereunder; (b) during the term of this agreement, you have, and will not, enter into any agreement that would prevent you from complying with this Agreement; and (c) you will comply with all applicable laws in your performance of this Agreement, including holding and complying with all permits, licenses, registrations and other authorizations necessary to provide our Services.

**6.2 Disclaimer of Warranties.** OUR SERVICES ARE PROVIDED "AS IS", "AS AVAILABLE" AND "WITH ALL FAULTS". WE DO NOT REPRESENT, WARRANT OR GUARANTEE THAT YOUR ACCESS TO OR USE OF OUR WEBSITE OR SERVICES WILL BE UNINTERRUPTED. WE CANNOT PROMISE THAT YOUR LOVED ONES WILL RECEIVE ANY SPECIFIC GIFTS, AS THEY ARE ALL FIRST COME FIRST SERVE, AND HAND SELECTED BASED ON AVAILABILITY AND INTEREST. WE DISCLAIM ALL WARRANTIES INCLUDING FITNESS FOR A PARTICULAR PURPOSES AND MERCHANTABILITY. COMPANY AND ITS AFFILIATES SHALL NOT BE LIABLE UNDER OR RELATED TO THIS AGREEMENT FOR ANY INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR OTHER DIRECT DAMAGES OF ANY KIND, OR FOR ANY PROPERTY DAMAGE, LOSS OF DATA, LOSS OF BUSINESS REVENUE, PROFITS, OR USE. IN NO EVENT SHALL THE LIABILITY OF COMPANY OR ITS AFFILIATES UNDER THIS AGREEMENT EXCEED THE AMOUNT OF SERVICE FEES ACTUALLY PAID TO OR DUE TO COMPANY HEREUNDER IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

**6.3 Indemnification.** You shall indemnify, defend and hold us, our respective officers, directors, employees, agents, successors, affiliates, and assigns harmless from and against any and all claims, liabilities, expenses (including legal fees), damages, penalties, fines, social contributions and taxes arising out of or related to your use of, or participation in, our Services.

## 7. Term and Termination

**7.1 Term.** This Agreement shall commence on the date accepted by you and shall continue until terminated as set forth herein.

**7.2 Termination.** You may terminate this Agreement at any time.

**7.3 Effect of Termination.** Upon termination of the Agreement, your payment obligations, and our gift packaging will end, but all other terms and conditions of this agreement shall remain in full force and effect.

## **8. Relationship of the Parties**

**8.1** Nothing in this Agreement shall be construed as creating a joint venture, partnership, agency, employer/employee, or similar relationship between the Parties, or as authorizing either Party to act as the agent of the other. Your relationship to the us is that of an independent contractor. You shall have no authority to bind the Company to any contractual terms. Nothing in this Agreement shall create any obligation between either Party and a third-party.

## **9. Respect and Courtesy.**

By using our Website or Service, you hereby promise to obey our Website Terms and Conditions of Use, and Privacy Policy, which are posted on are website, as well as all applicable laws and regulations.

## **10. Miscellaneous Terms**

**Entire Agreement.** This Agreement, and its Supplemental Terms, embodies the entire understanding between the Parties and supersedes any and all prior and contemporaneous agreements, representations, warranties, or understandings, oral or written between the Parties with respect to the subject matter herein. This Agreement may be modified by the Company at any time, in the Company's sole discretion. Company shall make any changes to this Agreement available through its website.

**10.1 Supplemental Terms.** Supplemental terms may apply to your use of our Services, such as our Website Terms and Conditions of Use, and Privacy Policy, and those policies related to certain gifts, which may be modified from time to time at our sole discretion.

**10.2 Severability.** If any provision in this Agreement is held to be invalid, illegal, or unenforceable, this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein, provided that the provision held to be invalid, illegal, or unenforceable is not central to the purpose of this Agreement.

**10.3 Assignment.** You shall not assign or transfer this Agreement or any of its rights or obligations hereunder, in whole or in part, without our prior written consent. We may assign or transfer this Agreement or any or all of its rights or obligations under this Agreement from time to time without consent.

**10.4 Notices.** Any notice delivered by us under this Agreement will be delivered to your email address associated with your account. Any notice delivered by you to Company under this Agreement will be delivered by contacting Company at [info@marilyns.gift](mailto:info@marilyns.gift).

**10.5 Interpretation and Organization.** A reference in the singular will be deemed to include the plural and the plural will be deemed to include the singular. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The Parties agree that

any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not be applied in the construction and interpretation of this Agreement. Except as specifically provided, a reference to a Section, or any Exhibit is a reference to a Section of this Agreement or Exhibits attached hereto. The terms “hereof,” “herein,” and other like terms refer to this Agreement as a whole, including the schedules and exhibits to this Agreement. The division of this Agreement into sections and the insertion of headings are for convenience of reference only and this has no effect on the construction or interpretation of this Agreement.

**10.6 Attorney Fees.** In any action necessary to enforce this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs, and expenses in addition to the other damages to which that Party may be entitled.

## **11. Governing Law; Arbitration**

**11.1** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington, without effect to the State’s choice or conflicts of law provisions. In the event any dispute arises out of or relating to this Agreement results in litigation, the Parties agree that the same shall be heard in a state or federal court having subject matter jurisdiction seated in King County, Washington, and the Parties submit to personal jurisdiction of such court and agree that venue shall properly lie therein.

**11.2** Other than disputes regarding the intellectual property rights of the parties, any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Services may be subject to arbitration pursuant to the below provisions.

### **11.3 Arbitration Provision**

**YOU AND THE COMPANY AGREE TO RESOLVE ANY DISPUTE IN BINDING ARBITRATION ON AN INDIVIDUAL BASIS ONLY, AND NOT ON A CLASS, COLLECTIVE, OR PRIVATE ATTORNEY GENERAL REPRESENTATIVE ACTION BASIS. THE ARBITRATOR SHALL HAVE NO AUTHORITY TO CONSIDER OR RESOLVE ANY CLAIM OR ISSUE ANY RELIEF ON ANY BASIS OTHER THAN AN INDIVIDUAL BASIS. Except as it otherwise provides, this Arbitration Provision is intended to apply to the resolution of disputes that otherwise would be resolved in a court of law or before a forum other than arbitration. This Arbitration Provision requires all such disputes to be resolved only by an arbitrator through final and binding arbitration on an individual basis only and not by way of court or jury trial, or by way of class, collective, or representative action. YOU HEREBY WAIVE THE RIGHT TO A JURY TRIAL, TO THE EXTENT PERMISSIBLE UNDER LAW.**

This Agreement requires you to resolve any claim that you may have against the Company on an individual basis only, and prohibits any class, collective, or representative action against the Company. It also prohibits you from participating in, or recovering from, any current or future class, collective, or representative action brought by a third party against us. This Arbitration Provision is governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the “FAA”) and evidences a transaction involving commerce. This Arbitration Provision applies to any dispute arising out of or related to this Agreement or termination of the Agreement and survives after the Agreement terminates.

Such disputes include disputes arising out of or relating to interpretation or application of this Arbitration Provision, the enforceability, revocability or validity of the Arbitration Provision or any portion of this Agreement, except for matters of Intellectual Property as discussed above. This Arbitration Provision also applies, without limitation, to disputes regarding any city, county, state or federal wage---hour law, trade secrets, unfair competition, compensation, breaks and rest periods, expense reimbursement, termination, harassment and claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act, Genetic Information Non---Discrimination Act, and state statutes, if any, addressing the same or similar subject matters, and all other similar federal and state statutory and common law claims.

The Arbitrator shall be selected by mutual agreement of the Company and you. Unless you and the Company mutually agree otherwise, the Arbitrator shall be an attorney licensed to practice in the location where the arbitration proceeding will be conducted or a retired federal or state judicial officer who presided in the jurisdiction where the arbitration will be conducted. If the Parties cannot agree on an Arbitrator, then an arbitrator will be selected using the alternate strike method from a list of five (5) neutral arbitrators provided by JAMS (Judicial Arbitration & Mediation Services). You will have the option of making the first strike. If a JAMS arbitrator is used, then the JAMS Streamlined Arbitration Rules & Procedures rules will apply. Those rules are available here: <https://www.jamsadr.com/rules---streamlined---arbitration/>. The location of the arbitration proceeding shall be no more than 45 miles from our office.

All claims in arbitration are subject to the same statutes of limitation that would apply in court. The party bringing the claim must demand arbitration in writing via postal mail other party within the applicable statute of limitations period. The demand for arbitration shall include identification of the Parties, a statement of the legal and factual basis of the claim(s), and a specification of the remedy sought.

Any demand for arbitration made to the Company shall be provided to us at S 3213 W. Wheeler St. #82 Seattle, WA 98199. The arbitrator shall resolve all disputes regarding the timeliness or propriety of the demand for arbitration. A party may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief in connection with an arbitrable controversy, but only upon the ground that the award to which that party may be entitled may be rendered ineffectual without such provisional relief.

If at any point this provision is determined to be unenforceable, the parties agree that this provision shall not be severable, unless it is determined that the Arbitration may still proceed on an individual basis only.

Each party will pay the fees for his, her or its own attorneys, subject to any remedies to which that party may later be entitled under applicable law (i.e., a party prevails on a claim that provides for the award of reasonable attorney fees to the prevailing party). In all cases where required by law, the Company will pay the Arbitrator's and arbitration fees.

This Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes arising out of this Agreement. Except as stated in subsection above, in the event any portion

of this Arbitration Provision is deemed unenforceable, the remainder of this Arbitration Provision will be enforceable.

## **12. Acknowledgement**

YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND TAKEN STEPS TO THOUGHTFULLY CONSIDER THE CONSEQUENCES OF THIS AGREEMENT, AND THAT YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND THAT YOU ARE LEGALLY COMPETENT TO ENTER INTO THIS AGREEMENT WITH COMPANY.