

FamilyEye Terms

As at 1 July 2018

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1 THE TERMS AND CONDITIONS

1.1 Agreeing to Our FamilyEye Terms & Conditions

- 1.1.1 These FamilyEye Terms ("Terms") form part of Yomojo's Standard Form of Agreement ("Agreement") between Yomojo Pty Ltd (ACN 609 279 245) ("Yomojo", "us", "we") and you ("you", "your"). This document sets out the standard terms and conditions for the supply of the FamilyEye products and services ("FamilyEye", "Service") and the use of FamilyEye by you. You agree to the entire Agreement when you agree to these Terms.
- 1.1.2 FamilyEye provides a parental control solution that allows parent to monitor and manage their child's mobile device usage. The Service:
- (i) Allows you to define parameters, limits or rules around access to Internet and online content by end-user devices;
 - (ii) Monitors, intercepts, records and reports on the use of the internet, device features and cellular mobile services (including calling and messaging and device location) and applies rules for permitting or denying access;
 - (iii) Allows you to access, view and modify your FamilyEye personal details.
- 1.1.3 Any download, installation, access to and use of FamilyEye shall be governed by these Terms which you agree to when you purchase, create and/or activate a FamilyEye subscription, whichever occurs first.
- 1.1.4 You agree that any person you allow to use the Service complies with the Agreement as if they were you. This includes, but is not limited to, actions taken by family members who are granted access to the Service by you.

1.2 Age requirements

- 1.2.1 You must be 18 years of age, or the age of majority in your state, territory, province or country of residence, to acquire FamilyEye products and services from us.
- 1.2.2 Minors may use FamilyEye only with the involvement of a parent or legal guardian, as an End-User under such person's account, and otherwise subject to these Terms. Any references to "you" in these Terms includes all of your End-Users.

2 END USER SOFTWARE LICENCE

2.1 Software

- 2.1.1 In this Item 2, Software means:
- (i) the FamilyEye Software including websites, mobile applications and desktop applications;
 - (ii) any embedded 3rd party software in the FamilyEye products; and
 - (iii) any patches or upgrades that replace and/or supplement the Software.

2.2 Scope of License

- 2.2.1 The Software contains material that is protected by copyright and intellectual property laws. The Software is licensed, not sold. Yomojo and its licensors shall retain all right, title and interest in FamilyEye including without limitation all intellectual property rights embodied therein.
- 2.2.2 We reserve the right, with or without notice to you, to change the terms of this license at our sole and absolute discretion. The most current version of this license will supersede all previous versions. Your use of FamilyEye after changes are made means that you agree to be bound by such changes.
- 2.2.3 We grant you a non-exclusive, limited, personal, royalty-free and non-transferable license, subject to and conditioned on your compliance with the restrictions set herein, to as applicable install and use on a device that you own or control, Software provided to you by us in connection with your use of FamilyEye. You do not acquire any rights, express or implied, in the Software other than those specified in this Agreement. You may not distribute, sublicense, rent or lease the Software or use the Software except as provided under this Agreement. You agree not to cause or permit the reverse engineering, disassembly, de-compilation or other attempt to:
- (i) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in, or
 - (ii) derive the source code of the underlying ideas, algorithms, structure or organization from the Software except to the extent required by law.
- 2.2.4 You shall not license, sell, rent, lease, transfer, assign, export, distribute, host, or otherwise commercially exploit the Service, website or any mobile application.
- 2.2.5 You may not use the Software to upload, transmit, or transfer any data, information, materials, or content to Yomojo or any third party other than transmissions or transfers of information necessary for the intended use of the Software. You also agree not to use the Software for any unlawful or improper purpose. Specifically, you agree that your use of the Software will be in compliance with the local laws which are applicable to you.
- 2.2.6 You warrant:
- (i) Your use of the Software is on devices that you own or control with the express consent of the device end-user where that consent is entitled to be given or assumed under the extent of the law.
 - (ii) You will not use the Software to defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
 - (iii) You will not harvest or otherwise collect information about others, including device usage and location data, without their consent.
 - (iv) That all legal parents or guardians have provided informed consent for the Software to be used by the end-user.

2.3 License Termination

- 2.3.1 This license commences on the date you accept this Agreement as defined in section 1.1.1, and will remain in full force and effect while you use the Service, unless earlier terminated in accordance with this Agreement. We may terminate your rights under this license at any time without notice to you if we in good faith believe that you have violated any of our Terms.
- 2.3.2 We reserve the right, at any time, to modify, suspend, or discontinue the Service or any part thereof with or without notice. In the future we may offer

additional services, features, functionalities and in-app purchases. You agree that Yomojo will not be liable to you or to any third party for any modification, suspension, or discontinuance of the Service or any part thereof.

- 2.3.3 Our failure to exercise any rights in relation to a breach of any provision of our Agreement does not constitute a waiver of our rights to terminate your license.
- 2.3.4 All provisions relating to confidentiality, proprietary rights, and non-disclosure shall survive termination.
- 2.3.5 Upon termination you must cease using and destroy all copies of the Software. You understand that any termination may involve deletion of your user data associated therewith from our databases.

2.4 Consent to Use of Data and Network

- 2.4.1 You acknowledge that the Software may provide us with access to your devices in order for us to provide you with the Service. We will only use this access for the purposes associated with the delivery of the FamilyEye Services.

2.5 Compatibility

- 2.5.1 Your ability to use the Software depends on and is limited by the compatibility of your system or device. Ensuring compatibility is your responsibility.
- 2.5.2 You acknowledge that Yomojo may from time to time issue upgraded versions of the Software and may automatically electronically upgrade the version of the Software that you are using on your mobile device. You consent to such automatic upgrading on your mobile device and agree that these Terms will apply to all such upgrades.

2.6 Where Software is purchased from 3rd parties eg App Stores

- 2.6.1 If you have downloaded any software required for the FamilyEye Services from 3rd parties such the Apple iTunes App Store or Google Play (collectively, "App Stores"), the following additional terms apply:
- 2.6.2 Acknowledgement: Your License is between you and us only.
- 2.6.3 Scope of License: Your License is non-transferable and applies only to a singular device that you own or control. Your license is subject to specific rules provided by the App Stores. These are available from the App Stores.
- 2.6.4 Maintenance and Support: The App Stores are not responsible for providing any maintenance or support services with respect to Software.
- 2.6.5 Warranty: We and not the App Stores are solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed by us. Notwithstanding, in the event of any failure of the Software to conform to any applicable warranty, if you make a claim against the App Stores it will be limited to the maximum extent permitted by applicable law to the purchase price for the Software within the App Stores and the App Stores will have no other warranty obligation whatsoever with respect to the Software.
- 2.6.6 Product Claims: We and not the App Stores are responsible for addressing any claims relating to the Software or your possession and/or use of the Software including, but not limited to: (i) product liability claims; (ii) any claim that the

Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

- 2.6.7 Intellectual Property Rights: You and we acknowledge that, in the event of any third-party claim that the Software or your possession and use of the Software infringes that third party's intellectual property rights, we and not the App Stores will be solely responsible for the investigation, defence, settlement and discharge of any such intellectual property infringement claim.
- 2.6.8 Legal Compliance: You warrant that you are:
- (i) not located in a country that is subject to an Australian Government embargo, or that has been designated by the Australian Government as a "terrorist supporting" country; and
 - (ii) not listed on any Australian Government list of prohibited or restricted parties.
- 2.6.9 Developer Name and Address: Yomojo Pty Ltd a company domiciled in Australia. Our contact numbers are 1300 966 656 (within Australia) and +61 2 8089 1602 otherwise. You can contact us through our website www.yomojo.com.au. All enquiries, complaints or claims with respect to the Software must be directed to us.
- 2.6.10 Third Party Beneficiary: You and we acknowledge and agree that the App Stores and all related parties (including subsidiaries) are third-party beneficiaries of this License and, upon your acceptance of the terms and conditions of this License, the App Stores will have the right (and will be deemed to have accepted the right) to enforce this License against you a third-party beneficiary thereof.

2.7 Acceptable Use

- 2.7.1 You agree not to use the Service to upload, distribute, or otherwise use any content that:
- (i) violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right;
 - (ii) is tortious, trade libellous, defamatory, false, or intentionally misleading;
 - (iii) is harassing, abusive, threatening, harmful, vulgar, obscene, or offensive, or that contains pornography, nudity, or graphic or gratuitous violence, or that promotes violence, racism, discrimination, bigotry, hatred, or physical harm of any kind against any group or individual, or is otherwise objectionable;
 - (iv) is harmful to minors in any way;
 - (v) constitutes unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; or
 - (vi) violates of any law, regulation, or contractual obligations.
- 2.7.2 You agree not to use the Service to:
- (i) upload or distribute any computer viruses, worms, malicious code, or any software intended to damage or alter a computer system or data;

- (ii) collect information or data regarding other users, including e-mail addresses, without their consent (e.g., using harvesting bots, robots, spiders, or scrapers);
- (iii) disable, overly burden, impair, or otherwise interfere with servers or networks connected with the Service (e.g., a denial of service attack);
- (iv) attempt to gain unauthorized access to the Service or servers or networks connected to the Service (e.g., through password mining); or
- (v) otherwise interfere with another user's use and enjoyment of the Service

2.8 Disclaimer & Indemnity

- 2.8.1 You acknowledge that cyber threats, exposures and the various technical, operational, legal and other challenges surrounding these matters are complex and dynamic. Parental control technologies are subject to many limitations and can only ever be a part of a parent's approach to keeping their family cyber safe. Furthermore, family and individual circumstances vary and Yomojo will never be aware of the issues pertaining specifically to you and your family.
- 2.8.2 You may use mobile data in connection with the Service and may incur charges from Yomojo or your mobile service provider for these mobile data services. You agree that you are solely responsible for any such charges under the terms of your mobile service agreement.

2.9 General Disclaimer

- 2.9.1 YOMOJO PRODUCTS AND SERVICES, WEBSITE AND MOBILE APPS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.
- 2.9.2 THE FAMILYEYE SERVICES INCLUDING ANY FEATURES AND FUNCTIONALITIES ASSOCIATED ARE PROVIDED WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT.
- 2.9.3 WE DO NOT GUARANTEE, REPRESENT OR WARRANT THAT FAMILYEYE SERVICES, INCLUDING SOFTWARE WILL BE FREE FROM ERROR, OUTAGE, FAULT, LOSS, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR ANY SECURITY INTRUSION, AND WE DISCLAIM ANY LIABILITY RELATING THERETO.
- 2.9.4 YOU ARE PROVIDED WITH NO GUARANTEE, REPRESENTATION OR WARRANTY THAT THE FAMILYEYE SERVICES WILL BE TAILORED FOR YOUR PERSONAL CIRCUMSTANCES.
- 2.9.5 WE DO NOT GUARANTEE, REPRESENT OR WARRANT THAT OUR CUSTOMER SUPPORT SERVICES WILL BE FREE FROM ERROR OR FAULT OR WILL NOT RESULT IN A LOSS FOR YOU AND WE DISCLAIM ANY LIABILITY RELATING THERETO.
- 2.9.6 ANY INFORMATION YOU SUBMIT TO US IS AT YOUR SOLE RISK, AND WE HEREBY DISCLAIM ANY AND ALL LIABILITY TO YOU FOR ANY LOSS OR LIABILITY RELATING TO SUCH INFORMATION IN ANY WAY.
- 2.9.7 TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, IN NO EVENT SHALL WE, OUR SUBSIDIARIES OR ANY OF OUR SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS OR PARTNERS, AFFILIATES OR CONTRACTORS BE LIABLE (JOINTLY OR SEVERALLY) TO YOU FOR

PERSONAL INJURY OR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER. BILLING AND PAYMENTS

3 LIABILITY

3.1 Limitation

- 3.1.1 You agree that your use of the Service shall be at your sole risk and responsibility. To the maximum extent permitted by mandatory applicable law, in no case is Yomojo, its directors, employees, shareholders, or affiliates responsible or liable for any indirect or consequential loss, including without limitation, damages, loss of reputation, equipment failures or other damage or loss, arising out of or relating in any way to (a) the use or the inability to use the Services; (b) reliance placed by you on the completeness, accuracy or existence of any of the Services (c) any changes which we may make to the Services, or for any permanent or temporary cessation in the provision of the Services (d) unauthorized access to or alteration of your data or failure to keep your password or account details secure and confidential; (e) the deletion of, corruption of, or failure to store, any of your content and other communications data maintained or transmitted by or through your use of the Services; (f) any errors in any content or for any loss or damage of any kind incurred as a result of your use of any content posted, emailed, transmitted, or otherwise made available via the Services; or (g) statements or conduct of any third party on the Service.
- 3.1.2 To the extent applicable under law, our aggregate liability arising out of this statement will not exceed either the greater of one hundred dollars (\$100) or the total fees paid by you to Yomojo until the date, whichever amount is the lowest.

4 SUBSCRIPTION PLANS AND PAYMENTS

4.1 Subscription Plans

- 4.1.1 We may offer a number of subscription plans, including plans with differing conditions and limitations, or membership rates, including special promotional rates or free trials. We reserve the right to modify, terminate, or otherwise amend our subscription plans at any time. We do not guarantee that a specific subscription plan or rate will always be available. We will provide you reasonable notice upon the modification of a membership plan or rate. Unless otherwise stated, month, year, monthly, yearly or annual refers to your subscription cycle.

4.2 Fees

- 4.2.1 Fees for FamilyEye subscription plans are set out in the Yomojo Pricing Table. Where a fee is applicable, you agree to pay the fees set out in the subscription plan selected by you.
- 4.2.2 Unless your Service is cancelled subject to section 5, your subscription will automatically renew at the end of each subscription term. On periodic

renewal, you will be charged at the then current price, unless otherwise agreed in writing with us.

- 4.2.3 Fees are non-cancellable and non-refundable. Fees for additional end-users added during the subscription term are charged at the same price as for the pre-existing subscriptions, and the overall subscription fees will increase accordingly.

4.3 Billing and Payments

- 4.3.1 Billing and payment of FamilyEye subscriptions is set out in our General Terms under the section BILLING AND PAYMENTS with particular reference to Monthly Billing Services.

5 CANCELLING YOUR SERVICE

5.1 How to Cancel

- 5.1.1 You may cancel your Service subscription at any time. To cancel, you must contact us by emailing support@yomojo.com.au, contacting us via online chat or calling 1300 YOMOJO (1300 966656). As detailed in section **Error! Reference source not found.**, we do not provide refunds or credit for an unused subscription period.
- 5.1.2 When using email, there may be a delay between your initial cancellation request and our receipt of your confirmation which then allows us to cancel. Throughout this period, we are not responsible when acting in good faith for any charges incurred as a result of a new subscription period being charged.
- 5.1.3 A service is not considered cancelled until we confirm with you via email that the service has been successfully cancelled.