

## **Familify User Terms & Conditions** (‘User Agreement’).

### **Background**

Familify is an IOS app for mobile devices developed, owned and operated by Sailor Bear Pty. Ltd. (“Company”). Familify operates on a membership subscription model which allows members to upload, store, edit and share digital content including photographs and videos.

These terms and conditions represent the agreement between Sailor Bear Pty. Ltd. and any person who accesses or uses the Familify app (‘Familify’).

By downloading Familify to a mobile device (‘Device’) and/or creating an account to use Familify (‘User Account’), the user (referred to in this User Agreement as Member, You or Your) agrees to be bound by this User Agreement.

### **Definitions**

**‘App’** means the Familify mobile application downloaded and installed for use on mobile devices;

**‘Content’** means any and all data, posts, text, software, images, audio, materials or video material and other content, in any medium, provided by Us to You, or provided by You to Us for Processing via the App;

**‘Fees’** are the fees charged for the Service/s as detailed in these terms

**‘Membership’** is granted to registered users of Familify (“Members”) who provide required information and pay the Fees

**‘Process/es/ing’** means the uploading, storing, editing and sharing of Content

**‘Prohibited Content’** means User Content that Familify in its sole discretion deems

- abusive, deceptive, pornographic, obscene, defamatory, slanderous, offensive, or otherwise inappropriate;
- consists of copyrighted material used without the express permission of the owner or material that has been altered so that the copyright, trademark or other proprietary notice is removed;
- violates or otherwise encroaches on the rights, including the intellectual property, publicity or personal rights, of others;
- contains viruses, worms, corrupt files, Trojan horses or other forms of corruptive code, or any other content which may compromise the Service (collectively “Corruptive Code”);
- advocates illegal activity;
- violates any law or regulation;
- harms anyone, including minors; or,
- provides a link to any of the above.

**‘Service’** means the mobile App service provided by Familify which allows members to upload, store, edit and share digital photographs and includes services that may be fulfilled by affiliates, partners or agents

**'Terms'** includes these terms and conditions, and any privacy policy, spam policy or other legal notices that may be provided to You by Us from time to time;

**'Us', 'We' or 'Our'** means Company, Familify, including its directors, employees and contractors;

**'User'** means a person who has downloaded and installed the App and registered an account in accordance with this User Agreement;

**'You', 'Your' or 'Yourself'** means the person using or accessing the Application, the Site or Apps, and includes all Users.

### **Conditions of Membership**

In order to use Familify, You must register and provide certain information via the App in order to be granted Membership. By registering and providing the required information, You warrant that:

- You are at least 18 years of age OR you have the consent of an adult guardian;
- You will be solely responsible for the activity that occurs on Your User Account and for any User Content that you upload, download, share, or otherwise access using our Service;
- You understand that it is Your responsibility to ensure that Your Device is compatible with Familify and is correctly configured;
- You are the person responsible for the Device registered to Your User Account or have the express permission of the Device owner;
- The information that You provide to Familify to register your Membership is information which You are lawfully entitled to provide and is not false, misleading, fraudulent or defamatory and does not infringe the intellectual property rights or other rights of any third party, and You will only provide current, accurate and up-to-date Customer Information and will continually update this information as required;
- You will keep Your registration username and password secure; and
- You will not use the App to Process Prohibited Content.

You acknowledge that Company may amend or modify Familify (including changing, deleting, discontinuing or imposing conditions on any of its functionality or features), this User Agreement or any Company policy at any time. This User Agreement also governs any updates to, or supplements or replacements for Familify unless separate terms accompany such updates, supplements or replacements, in which case the separate terms will apply. By using Familify You agree to be bound by these terms and conditions as well as any and all general terms and conditions posted on this site. If You do not accept these terms and conditions, You must refrain from using Familify.

We, at all times, respect Your privacy. We collect personal information in order to provide You with access to Familify, to continuously update and improve Familify and to customise Your user experience. We collect and use personal information as detailed in this User Agreement and in accordance with the terms of our full Privacy Policy which You can access at [www.familifyapp.com/privacy](http://www.familifyapp.com/privacy). We have implemented technical and organisational measures designed to secure Your personal information from accidental loss and from unauthorised access,

use, alteration, or disclosure. However, we cannot guarantee that unauthorised third parties will never be able to defeat those measures or use Your personal information for improper purposes. You acknowledge that You provide Your personal information at Your own risk.

You will not impersonate any other person or use another person's User Account without their permission, nor will You harass or interfere with another User's use and enjoyment of Familify.

You will not use Familify, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the operation of Familify (including the transmission of viruses, worms or any software intended to damage or alter computer systems or data);

Your use of Familify will be in compliance with this User Agreement.

Company is not responsible for any activity that may occur as a result of the disclosure by You of Your registration details and/or password to third parties, or through unauthorised access to or use of Your personal information.

You are solely responsible for all activity that occurs via Your User Account and/or the use of Familify on Your Device including the payment of any Fees.

We reserve the right to modify or terminate Familify or your access to it for any reason, without notice, at any time, and without liability to you. If we terminate Your User Account to or You deactivate your account, Your Content and all other data will no longer be accessible through your account but that User Content may persist and appear within the App.

Upon termination, all licenses and other rights granted to you in these Terms of Use will immediately cease.

Although it is Familify's intention for the App to be available as much as possible, there will be occasions when the App may be interrupted, including, without limitation, for scheduled maintenance or upgrades, for emergency repairs, or due to failure of telecommunications links and/or equipment. Also, Familify reserves the right to remove any User Content from the App for any reason, without prior notice. User Content removed from the App may continue to be stored by Familify, including, without limitation, in order to comply with certain legal obligations, but may not be retrievable without a valid court order. Consequently, Familify encourages you to maintain your own backup of your User Content. In other words, Familify is not a backup service and you agree that you will not rely on the App for the purposes of Content backup or storage. Familify will not be liable to you for any modification, suspension, or discontinuation of the Apps, or the loss of any Content. You also acknowledge that the Internet may be subject to breaches of security and that the submission of Content or other information may not be secure.

You agree that Familify is not responsible for, and does not endorse User Content posted within the App. Familify does not have any obligation to prescreen, monitor, edit, or remove any User Content. You bear full legal responsibility for Your Content.

Except as otherwise described in our Privacy Policy, available at [www.familifyapp.com/privacy](http://www.familifyapp.com/privacy) as between you and Familify, User Content will be non-confidential and non-proprietary and we will not be liable for any use or disclosure of User Content. None of Your Content will be subject to any obligation of confidence on the part of Familify, and Familify will not be liable for any use or disclosure of any Content you provide.

As a convenience to Members, Familify may make third-party software available through the Service, including by downloading. To use such software, you will agree to the terms and conditions imposed by the third party provider. The agreement to use such software will be solely between you and the third party provider. Familify makes no representations or warranties concerning, and is not liable or responsible in any manner for, any performance, effectiveness or other aspect of such software.

## **Rights**

Subject to these terms, Company grants to You a non-transferable, nonexclusive, royalty-free, fully paid, worldwide license to install one copy of Familify, in executable object code format only, on Your Device.

You represent and warrant that:

- (i) you own the Content posted by you on or through the App or otherwise have the right to grant the rights and licenses set forth in this User Agreement;
- (ii) the posting and use of your User Content on or through the App does not violate, misappropriate or infringe on the rights of any third party, including, without limitation, privacy rights, publicity rights, copyrights, trademark and/or other intellectual property rights; and
- (iii) you agree to pay for all royalties, fees, and any other monies owed by reason of Content you post on or through the App.

You will retain ownership of your Content and any rights granted to Familify herein are granted as a license. While you retain ownership of your Content, any material, tools, features, template or layout provided to you by Familify in which you use to process, upload, download and access such Content are not proprietary to you, and the rights to such template or layout will remain with Familify.

In order for Familify to provide our Services to you and your invitees, as a condition to Membership you hereby grant to Familify and its agents, the right to copy, display, modify, distribute, transmit, and make derivative works of your Content solely for the following purposes: (a) providing the Service to you or your invitees, (b) showing you how your Content would appear in a product or service offered by Familify or one of its agents or (c) improving the Service (e.g., customer support, technical support and/or vendor fulfillment).

You represent and warrant to Familify that you either own your Content or have written permission from the copyright owner to make such Content available to the Service and that the Content does not and will not infringe, misappropriate, use or disclose without authorization or otherwise violate any personal, copyright, trade secret right or other intellectual property or other property right of any third party.

You consent to the use of your likeness, and you have obtained the written consent, release, and/or permission of every identifiable individual who appears in Your Content. This written release includes the right to use such individual's likeness in the manner contemplated in this User Agreement. If any such identifiable individual is under the age of eighteen (18), you have obtained such written consent, release and/or permission from such individual's parent or guardian (and you agree to provide to us a copy of any such consents, releases and/or permissions upon our request). If you do not have this release, please do not use the App or our Service to process, add or use images containing the likenesses.

## **Fees**

The App has an upfront price (\$5.99 USD) which includes 1 year of 1GB storage. Members can purchase additional storage via in-app purchases.

Familify also offers editing tools such as layouts, filters and other embellishments via in-app purchases.

Finally, Familify allows members to purchase physical goods featuring Member Content (e.g. photo albums & gift items. Such items will also be available for in-app purchase, but will be supplied by our affiliates and will be subject to any additional terms and conditions imposed by those affiliates.

## **Liability**

To the full extent permitted by law and subject to any implied condition, warranty or right, or any statutory consumer guarantee contained in, any law (including the Competition and Consumer Act 2010 (Cth)) which cannot be excluded by law: 1. we exclude all representations, warranties or terms (whether express or implied) other than those expressly set out in this User Agreement; 2. we exclude all liability in respect of loss of data, interruption of business or any consequential or incidental damages; and 3. all implied conditions, warranties, rights and terms are excluded. Where any condition, warranty or right is implied by law, or statutory consumer guarantee cannot be excluded, we limit our liability for breach of, or other act contrary to, that implied condition, warranty or right or statutory consumer guarantee, either as provided under section 64A of the Australian Consumer Law in Schedule 2 to the Competition and Consumer Act 2010 or, otherwise to the extent permitted by law. In particular, to the extent possible, we limit our liability in respect of any claim to, at our option: (a) in the case of goods: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (iv) the payment of having the goods repaired, and (b) in the case of services: (i) the supply of the services again; or (ii) the payment of the cost of having the services supplied again.

Subject to the above and to the extent permitted by law, You acknowledge that we will not be, liable to You in contract, in tort (including negligence), under any statute (to the extent permitted by law) or otherwise for, or in respect of, any direct or indirect loss, costs or damages that You incur or are liable for in connection with Your use of Familify, including but not limited to loss or damage caused by any computer virus including a virus passed from Familify to Your Device or any third party device, or loss of online connection to Familify, the App or the Content, or interruption to access to Familify.

## **Indemnity**

You are liable for and agree to indemnify, defend and hold Us harmless for and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from: (i) any information or Content that We provide that is not accurate, up to date or complete or is misleading or a misrepresentation; (ii) any breach by You of this User Agreement.

YOU WILL INDEMNIFY, DEFEND AND HOLD HARMLESS FAMILIFY, INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, LICENSORS, SUPPLIERS, INFORMATION PROVIDERS, AND AGENTS) FROM AND AGAINST ALL LOSSES, CLAIMS, LIABILITIES, EXPENSES, DAMAGES AND COSTS INCLUDING REASONABLE LEGAL FEES, RESULTING FROM YOUR VIOLATION OF THESE TERMS OR ANY

ACTIVITY RELATED TO THE SERVICE (INCLUDING NEGLIGENT OR WRONGFUL CONDUCT), INCLUDING ANY CLAIMS RELATED TO (i) ANY CONTENT SUBMITTED BY YOU, (ii) YOUR ACTIVITIES ON THE FAMILIFY, OR ANY ACTIVITIES MADE IN CONNECTION WITH YOU OBTAINING ANY PRODUCTS OR SERVICES FROM FAMILIFY OR (iii) ANY ACTIVITY RELATED TO ACCESS OR USE OF YOUR ACCOUNT BY YOU OR BY ANY OTHER PERSON ACCESSING THE SERVICE AS YOUR INVITEE, SUCH AS BY USING YOUR ACCOUNT.

You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

The obligations under this clause will survive termination of your User Agreement.

### **Governing Law and Jurisdiction**

These Terms are governed by the laws of Victoria. The User irrevocably consents to the exclusive jurisdiction of the courts of Victoria for purposes of any legal action arising out of or related to the use of Familify or this User Agreement