

Familia

FAMILIA APP PTY LTD **ABN 82 657 673 624**

TERMS OF SERVICE

INTRODUCTION

The Company provides the “Familia” mobile application for storytelling between family members. Use of Familia is subject to these Terms of Service.

DEFINITIONS

The following terms are used regularly throughout these Terms of Service and have a particular meaning:

- (a) **ABN** means Australian Business Number.
- (b) **Account** means a registered account with the Platform.
- (c) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Western Australia, Australia.
- (d) **Company** means Familia App Pty Ltd ABN 82 657 673 624.
- (e) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (f) **Custom Relative Profile** means a profile that is created by a User for a third-party family member who is not a User because they are incapable or unwilling to do so.
- (g) **Deletion Window** means the window of time in which a User must delete a Post before the Post can be permanently saved by another connected User, as notified to the User from time-to-time.
- (h) **End of Life Fee** means the Fee payable by the User to obtain access to certain “End of Life” features of the Platform, as made available by the Company from time-to-time.
- (i) **Family Tree** means the family tree diagram that is created via the Platform when a group of Users (or a Custom Relative Profile) connect as family members.
- (j) **Fee** means a fee charged by the Company for use of the Platform, as advertised on the Site and/or within the Platform from time-to-time.
- (k) **Free Account** means an Account with no Fees subject to the Free Account Storage Limit.
- (l) **Free Account Storage Limit** means the total amount of Media that can be stored under a Free Account before the User is required to upgrade to a Paid Plan to continue using the Platform, as notified to the User from time-to-time.
- (m) **GDPR** means the European Union’s General Data Protection Regulations.
- (n) **Goodbye Video** means specific Media that only becomes available once the User who created the Media dies.
- (o) **GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (p) **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or

unregistered trademarks, brand names, business names, domain names and other forms of intellectual property.

- (q) **Media** means media content in audio, visual and/or text format that is uploaded onto the Platform by a User.
- (r) **Memento** means a Post that is favourited and saved under a User's Account, whether the Post is created by the User themselves or another User.
- (s) **Mobile Application Marketplace** means an online marketplace for access to the Platform and other applications for mobile devices, such as the App Store.
- (t) **Paid Plan** means an Account subject to Fees and exceeds the Free Account Storage Limits, as advertised on the Site and/or within the Platform.
- (u) **Platform** means the "Familia" storytelling mobile application accessible from a Mobile Application Marketplace.
- (v) **Post** means an individual post comprising Media that is created by a User and shared with other select Users via the Platform.
- (w) **Privacy Act** means the *Privacy Act 1988* (Cth).
- (x) **Privacy Policy** means the Company's privacy policy as updated from time-to-time, which can be found at the Site.
- (y) **Question** means a question asked by one User to another User as a prompt to create a new Post on a particular topic.
- (z) **Site** means the Company's website found at <https://www.getfamilia.app>.
- (aa) **Subscription Fee** means a Fee charged by the Company for Paid Plans on a periodical basis, as notified to the User from time-to-time.
- (bb) **Tax Invoice** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (cc) **Terms of Service** means the terms and conditions of using the Platform, as updated from time-to-time, which can be found at the Site.
- (dd) **Theatre Mode** means the display of various Media from multiple Users in a single video loop with the use of meta tags.
- (ee) **Time Capsule** means limiting when a Post becomes fully visible by other Users to a certain future time and date set by the User who created the Post at their discretion.
- (ff) **User** means a registered user of the Platform that holds an Account.
- (gg) **User Content** means images, videos, information, or other data that is uploaded or input into the Platform by the User or that forms part of the User's Intellectual Property and includes Media.
- (hh) **Will** means a legal document that expresses a person's wishes as to how they wish for their estate to be distributed upon their death.

1 AGREEMENT

- 1.1** The licence granted under these Terms of Service shall be ongoing until terminated in accordance with these Terms of Service.
- 1.2** The User agrees that all use of the Platform is subject to these Terms of Service and must immediately cease to use the Platform if the User can no longer agree or adhere to these Terms of Service.
- 1.3** The Company may suspend the Account or restrict the access of any User that breaches the terms of these Terms of Service.

2 USING PLATFORM

2.1 Account

- (a) To use the Platform, the User must have set up their Account.
- (b) To create an Account, the User must enter their full name and email address, and any other information reasonably requested by the Company as part of the Account sign up process from time-to-time.
- (c) The User must provide accurate and complete information when setting up an Account and, if necessary, update their Account to ensure that such information is maintained as current for the duration of these Terms of Service.
- (d) The User shall manage their personal profile within their Account, which may include a profile photo, biography, medical history, and other information they choose to share with connected Users in their discretion, as may be updated from time-to-time.
- (e) Users under the age of 18 years must not use the Platform without their parent or legal guardian's consent. By creating an Account, the User represents and warrants to the Company that the User's parent or legal guardian has given consent to do so.

2.2 Features

The Company shall provide the User with access to and use of the features as agreed between the parties and provided within the Platform from time-to-time.

2.3 Posts

- (a) The primary function of the Platform is to allow Users to create and view Posts.
- (b) The User shall have complete discretion when creating their Posts, including what is said, what is shown, and in what format it is created.
- (c) The User must upload any visual User Content to the Platform directly from their mobile device.
- (d) Posts may be created by the User's own volition or in response to a Question.
- (e) Whether a User accepts an invitation from another User to create a Post to answer a specific Question, or in what format they respond to a Question, is in

their complete discretion and outside of the requesting User's or the Company's control.

- (f) The User shall have the opportunity to review and retake Posts as many times as they need until they are satisfied to finish and save the Post and delete a Post in accordance with clause 2.5.
- (g) The User is exclusively responsible for each Post they create.
- (h) The User acknowledges and accepts that the Company does not review or pre-approve any Posts and/or the User Content contained therein.

2.4 Sharing Posts

- (a) Posts can be shared by a User via their Account at any time.
- (b) Unless otherwise allowed for within the Platform, Posts may only be shared with and viewable by other Users who are connected to the User creating the Post, who may also leave comments on the Post.
- (c) The User is exclusively responsible for who they choose to share their Posts with.
- (d) The User may place a Time Capsule on a specific Post whereby they set the relevant date on which the Post will become fully accessible by other Users at their discretion. To clarify, a cover image of a Post may be viewable by other Users even if subject to a Time Capsule but just not the entire Post (until such time as the relevant date passes).
- (e) The Company is in no way responsible and cannot be made liable in any way for how a User's Post is dealt with by other Users.
- (f) While a User cannot download, export or share a Post outside of the Platform, the User acknowledges that the Company cannot prevent a User from recording the Post on another device and sharing this with third parties at their own volition and shall not be responsible to the affected User in any way should this occur.
- (g) Where available to the User, the User may share a Post using the Theatre Mode whereby their Post is combined with Posts created by other Users in a continuous video loop. The User must individually select those desired Posts to be displayed via Theatre Mode with the use of meta tags via the Platform.

2.5 Deleting Posts

- (a) A User may delete a Post they created at any time via their Account.
- (b) Where the User deletes a Post within their Account, then the Post will no longer be accessible by other connected Users unless:
 - i The recipient User saves the Post as a Memento; and
 - ii The creating User only deletes the Post after the Deletion Window has passed.
- (c) To confirm, a Post may still be accessible by other connected Users once deleted if it is only deleted by the creating User after the Deletion Window has expired (provided it has been saved within the Memento of the recipient User). Where deleted during the Deletion Window, then the relevant Post will be removed from

the Platform completely and not accessible by any Users (even if saved as a Memento prior).

- (d) The User acknowledges the importance of the Deletion Window as per paragraph (c) above and agrees that the Company is no way responsible for any loss suffered by a User who fails to delete a Post within the Deletion Window. It is the User's exclusive responsibility to ensure that a Post is deleted within the Deletion Window to ensure it is no longer accessible via the Platform.

2.6 Family Tree

- (a) Users may connect with each other as family members to create a Family Tree.
- (b) Invitations to connect as a family member will be sent by email to the recipient where they are not already a registered User, in which case they will be required to set up a new Account to do so. If already a registered User, then the recipient User will also receive the invitation to connect via the Platform (subject to push notifications being enabled), in addition to an email invitation.
- (c) Whether an individual accepts an invitation from another User to connect via the Platform is in their complete discretion and outside of the requesting User's or the Company's control.
- (d) The User acknowledges that to continue to grow out the Family Tree requires no gaps in the family tree path and the creation of Custom Relative Profiles may be required to achieve this (such as in the case of a deceased family member).

2.7 End of Life

- (a) To clarify, access to the "End of Life" features described under this clause 2.7 is subject to payment of the End of Life Fee in accordance with clause 4.4.
- (b) **Wills**
 - i Users may create a Will within the Platform, to the extent this feature is available within their Account.
 - ii The Company will provide templates and questions for the User to fill in to create a Will via the Platform.
 - iii The User acknowledges that they may only create a draft Will within the Platform and must take steps outside of the Platform to validly execute the Will to make it legally enforceable.
 - iv The User must obtain independent professional legal advice outside of the Platform in respect of the creation and operation of a Will.
 - v The Company shall be in no way liable for the validity, enforceability or operation of a Will created via the Platform.
- (c) **Goodbye Videos**
 - i Users may create Goodbye Videos within the Platform, to the extent this feature is available within their Account.

- ii As part of creating Goodbye Videos, the User must carefully select those individual Users who will be granted access to view the Goodbye Video when it becomes available, which may be updated from time-to-time.
- iii Users acknowledge that the Company must be provided with sufficient evidence of death in respect of the User who created the Goodbye Video before it is made available to selected Users. The User agrees to cooperate with the Company's reasonable request for information in this regard.

(d) **Funeral Wishes**

- i Users may create a wish list in respect of their funeral following their death, to the extent this feature is available within their Account.
- ii Funeral wish lists may be managed and updated at any time by the User within their Account.
- iii Funeral wish lists will only be shared with certain Users that are selected by the User who created the list, as may be updated from time-to-time.

3 USER CONTENT AND COMPLAINTS

3.1 The User acknowledges and agrees that:

- (a) User Content is the sole responsibility of the User that uploaded the User Content to the Platform;
- (b) The User indemnifies the Company for any User Content that is illegal, offensive, discriminatory, defamatory, rude, indecent or objectionable that the User makes available using the Platform;
- (c) Without limiting the Company's rights, the Company may remove or suspend accessibility to User Content via the Platform that the Company determines is illegal, offensive, discriminatory, indecent or objectionable in its sole discretion;
- (d) To the extent permitted by law, under no circumstances will the Company be liable in any way for User Content and the User is responsible for the accuracy, quality and legality of any data uploaded to the Platform;
- (e) The Platform may enable the User to create User Content, but that by doing so the User shall not acquire an interest to any Intellectual Property owned by the Company which may exist in the Platform; and
- (f) The User warrants that it has all necessary Intellectual Property rights to use User Content and shall indemnify the Company for any infringement the User commits of third-party Intellectual Property rights by using User Content on the Platform.

3.2 The User may lodge a complaint and notify the Company of any User Content that is illegal, offensive, or otherwise in breach of these Terms of Service by email to complaints@getfamilia.app.

3.3 The Company agrees to review and assess each complaint within 7 days of receipt and, if deemed necessary and appropriate by the Company, take steps to resolve the issue which may include the removal of the User Content the subject of the complaint.

- 3.4** To avoid doubt, the Company is in no way responsible to a User for another User's Posts and any User Content shared therein.

4 FEES, PAYMENTS & REFUNDS

4.1 Free Account

- (a) The User may create an Account and start using the Platform without any Fees under a Free Account.
- (b) A Free Account is subject to the Free Account Storage Limits and where this is exceeded the User will be required to upgrade to a Paid Plan.

4.2 Subscription Fee

- (a) Subscription Fees shall only apply to Paid Plans.
- (b) Subscription Fees are payable in advance on the payment cycle elected by the User, as per the payment options made available by the Company from time-to-time.
- (c) The User agrees to make payment in advance for the Subscription Fee due at such frequency, or on such dates, as the User has subscribed for.
- (d) Fees shall be paid via the payment gateway made available within the relevant Mobile Application Marketplace, or in such other manner as the Company may direct from time-to-time.

4.3 Subscription Renewals

- (a) All Subscription Fees are payable and charged at the beginning of the subscription period and, because each such subscription renews automatically for an additional period equal in length to the expiring subscription term unless and until cancelled, at the time of each renewal period commencing.
- (b) The User must cancel their subscription before it automatically renews to avoid the billing of the Subscription Fees for the next subscription period. The User may cancel their subscription at any time via the relevant Mobile Application Marketplace or within their mobile device settings itself.
- (c) The User will not receive a refund for the Subscription Fees already paid for their current subscription period and will continue to receive access to the Platform consistent with their subscription until the end of the current subscription period.

4.4 End of Life Fee

- (a) The User must pay the End of Life Fee to obtain access to the "End of Life" features, which shall be paid at their complete discretion.
- (b) The End of Life Fee shall be a once-off fixed fee to be paid by the User via the payment gateway made available within the relevant Mobile Application Marketplace, or in such other manner as the Company may direct from time-to-time.

4.5 Fee Variations

- (a) The Company reserves the right to introduce or change any Fees from time-to-time by giving the User no less than 14 days' written notice. Any new or changed Fees will apply at the next billing period after the User has been given such notice.
- (b) If a User does not accept a change to any Fees, then they can simply terminate their Account.

4.6 Currency

Fees may be processed in Australian dollars or an equivalent foreign currency (such as United States dollars or British pounds), as notified to the User within the relevant Mobile Application Marketplace.

4.7 GST

For Users in Australia, GST is applicable to any Fees charged by the Company to the User. Unless expressed otherwise, all Fees shall be deemed inclusive of GST. The Company will provide the User with a Tax Invoice for any payments.

4.8 Refunds

No refunds of Fees are offered other than as required by law or at the absolute discretion of the Company.

4.9 Late Payment

- (a) If the User does not pay the full Fees as required, the Company may suspend the User's access to their Account.
- (b) If Fees are not brought out of arrears within 28 days of becoming overdue, the Company may without notice delete at random Media stored within the User's Account so as to fall under the Free Account Storage Limit.
- (c) The User agrees that the Company shall not be liable in any way for any valid termination or suspension of the User's Account, or deletion of User Content therein, where Fees are outstanding in accordance with this clause 4.9.

5 GENERAL CONDITIONS

5.1 Licence

- (a) By accepting the terms and conditions of these Terms of Service, the User is granted a limited, non-exclusive and revocable licence to access and use the Platform for the duration of these Terms of Service, in accordance with the terms and conditions of these Terms of Service.
- (b) The Company may revoke or suspend the User's licence(s) in its absolute discretion for any reason that it sees fit, including for breach of the terms and conditions in these Terms of Service by the User.

5.2 Modification of Terms

- (a) The terms of these Terms of Service may be updated by the Company from time-to-time.

- (b) Where the Company modifies the terms, it will provide the User with written notice, and the User will be required to accept the modified terms to continue using the Platform.
- (c) The modified terms shall come into effect the next time the User accesses the Platform following notice of the updated Terms of Service.
- (d) If the User does not accept any changes to the terms of these Terms of Service, the User may terminate these Terms of Service and must immediately cease using the Platform.

5.3 Software-as-a-Service

- (a) The User agrees and accepts that the Platform is:
 - i Hosted by the Company and shall only be installed, accessed and maintained by the Company, accessed using the internet or other connection to the Company servers and is not available 'locally' from the User's systems; and
 - ii Managed and supported exclusively by the Company from the Company servers and that no 'back-end' access to the Platform is available to the User unless expressly agreed in writing.
- (b) As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter the Platform.

5.4 Support

- (a) The Company provides user support for the Platform via the email address support@getfamilia.app, or as otherwise notified by the Company.
- (b) The Company shall endeavour to respond to all support requests within 5 Business Days.
- (c) The User should notify the Company of any difficulties or problems they may experience with the Platform as soon as practicable.

5.5 Use & Availability

- (a) The User agrees that it shall only use the Platform for legal purposes and shall not use it to engage any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.
- (b) The User is solely responsible for the security of their Account. The User shall notify the Company as soon as it becomes aware of any unauthorised access of their Account.
- (c) The User agrees that the Company shall provide access to the Platform to the best of its abilities, however:
 - i Access to the Platform may be prevented by issues outside of its control; and
 - ii It accepts no responsibility for ongoing access to the Platform.

5.6 Privacy

- (a) The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Act for data that it collects about the User and other individuals.
- (b) The Privacy Policy does not apply to how the User handles personal information. If necessary under the Privacy Act and/or GDPR, it is the User's responsibility to meet the obligations of the Privacy Act and/or GDPR by implementing a privacy policy in accordance with law.
- (c) The Platform may use event tracking (a small electronic tracking code) to improve a User's experience while browsing, while also sending browsing information back to the Company. The User may manage how it handles event tracking in its own browser settings.

5.7 Data

- (a) **Security.** The Company takes the security of the Platform and the privacy of its Users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them, including the uploading User Content that contain viruses, corrupted files, or the like that prejudice the security or privacy of the Platform or the systems of any Users.
- (b) **Transmission.** The Company shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards. It is up to the User to ensure that any transmission standards meet the User's operating and legal requirements.

5.8 Intellectual Property

- (a) **Trade marks.** The Company has moral & registered rights in its trade marks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.
- (b) **Proprietary Information.** The Company may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trade marks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of the Platform.
- (c) **The Platform.** The User agrees and accepts that the Platform is the Intellectual Property of the Company and the User further warrants that by using the Platform the User will not:
 - i Copy the Platform or the services that it provides for the User's own commercial purposes; and
 - ii Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in the Platform or any documentation associated with it.
- (d) **Content.** All content (excluding User Content) submitted to the Company, whether via the Platform or directly by other means, becomes and remains the Intellectual Property of the Company, including (without limitation) any source

code, analytics, insights, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to the Platform.

5.9 Third Party Dependencies.

The User agrees and acknowledges that the Platform has third party dependencies which may affect its availability and that the Company has no means of controlling the availability of such dependencies and shall not be liable for any interruptions to such.

5.10 Liability & Indemnity

- (a) The User agrees that it uses the Platform at its own risk.
- (b) The User acknowledges that the Company is not responsible for the conduct or activities of any User and that the Company is not liable for such under any circumstances.
- (c) The User agrees to indemnify the Company for any loss, damage, cost, or expense that the Company may suffer or incur as a result of or in connection with the User's use of or conduct in connection with the Platform, including any breach by the User of these Terms of Service.
- (d) In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, damage to property, loss of property, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the User's access to, or use of, or inability to use the Platform, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not the Company knew or should have known of the possibility of such damage, or business interruption of any type, whether in tort, contract or otherwise.
- (e) Certain rights and remedies may be available under the *Competition and Consumer Act 2010* (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company and the Company's related entities exclude all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:
 - i The re-supply of services or payment of the cost of re-supply of services; or
 - ii The replacement or repair of goods or payment of the cost of replacement or repair.

5.11 Termination

- (a) Either party may terminate these Terms of Service by giving the other party written notice or simply by cancelling an Account, and access to the Platform shall terminate at the end of the User's subscription period active at the expiry of that notice period.
- (b) Termination of these Terms of Service is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of these Terms of Service up to the date of expiry or termination.

5.12 Dispute Resolution

- (a) If any dispute arises between the parties in connection with these Terms of Service (**Dispute**), then either party may notify the other of the Dispute with a notice (**Dispute Notice**) which:
 - i Includes or is accompanied by full and detailed particulars of the Dispute; and
 - ii Is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.
- (b) Within 10 Business Days after a Dispute Notice is given, a representative (with the authority to resolve the dispute) parties must meet (virtually or otherwise) and seek to resolve the Dispute.
- (c) Subject to clause (d), a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.
- (d) Nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.
- (e) Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this document and any related agreements.

5.13 Electronic Communication & Notices

- (a) The parties agree to be bound by these Terms of Service where these Terms of Service are accepted by the User electronically.
- (b) The User can direct notices, enquiries, complaints and so forth to the Company as set out in these Terms of Service. The Company will notify the User of a change of details from time-to-time.
- (c) The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the Company of from time-to-time. It is the User responsibility to update its contact details as they change.
- (d) A consent, notice or communication under these Terms of Service is effective if it is sent as an electronic communication unless required to be physically delivered under law.
- (e) Notices must be sent to the parties' most recent known contact details.

5.14 General

- (a) **Special Conditions.** The parties may agree to any Special Conditions to these Terms of Service in writing.
- (b) **Assignment.**
 - i The User may not assign or otherwise create an interest in these Terms of Service.

- ii The Company may assign or otherwise create an interest in its rights under these Terms of Service by giving written notice to the User.
- (c) **Prevalence.** To the extent these Terms of Service is in conflict with, or inconsistent with any Special Conditions made under these Terms of Service, the terms of those Special Conditions shall prevail.
- (d) **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in these Terms of Service.
- (e) **Relationship.** The relationship of the parties to these Terms of Service does not form a joint venture or partnership.
- (f) **Waiver.** No clause of these Terms of Service will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- (g) **Further Assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to these Terms of Service and the transaction facilitated by it.
- (h) **Governing Law.** These Terms of Service is governed by the laws of Western Australia, Australia. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.
- (i) **Severability.** Any clause of these Terms of Service, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of these Terms of Service.

END TERMS OF SERVICE