



My Mommy Is App Terms of Use

Last modified: February 14, 2019

These Terms of Use (the "**Agreement**") are a binding agreement between you ("**you**") and My Mommy Is, LLC ("**Company**"). This Agreement governs your use of the My Mommy Is application (the "**Application**"). The Application is licensed, not sold, to you.

BY USING THE APPLICATION, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE/OF LEGAL AGE OR OTHERWISE COMPETENT TO ENTER INTO A BINDING AGREEMENT; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD, INSTALL, or USE THE APPLICATION AND DELETE IT FROM YOUR MOBILE DEVICE.

1. License Grant. Subject to the terms of this Agreement, Company grants you a limited, non-exclusive, and nontransferable license to download, install, and use the Application for your personal, non-commercial use on a single device owned or otherwise controlled by you ("**Mobile Device**").

2. License Restrictions. Licensee shall not:

(a) copy the Application;

(b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Application;

(c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Application or any part thereof;

(d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Application, including any copy thereof; or

(e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Application, or any features or functionality of the Application, to any third party for any reason, including by making the Application available on a network where it is capable of being accessed by more than one device at any time.

3. Reservation of Rights. You acknowledge and agree that the Application is provided under license and not sold to you. You do not acquire any ownership interest in the Application under this Agreement or any other rights thereto, other than to use the Application in accordance with the license granted and subject to all terms, conditions, and restrictions under this Agreement. Company reserves and shall retain its entire right, title, and interest in and to the Application, including all copyrights, trademarks, and other intellectual property rights therein or relating thereto, except as expressly granted to you in this Agreement.

4. Collection and Use of Your Information. You acknowledge that when you download, install, or use the Application,

Company may use automatic means (including, for example, cookies and web beacons) to collect information about your Mobile Device and about your use of the Application. You also may be required to provide certain information about yourself as a condition to downloading, installing, or using the Application or certain of its features or functionality.

5. Geographic Restrictions. The Application is provided for access and use only by persons located in the United States. You acknowledge that you may not be able to access all or some of the Application outside of the United States and that access thereto may not be legal by certain persons or in certain countries. If you access the Application from outside the United States, you are responsible for compliance with local laws.

6. Updates. Company may from time to time in its sole discretion develop and provide Application updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, “**Updates**”). Updates may also modify or delete in their entirety certain features and functionality. You agree that Company has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Mobile Device settings, when your Mobile Device is connected to the internet either:

- (a) the Application will automatically download and install all available Updates; or
- (b) you may receive notice of or be prompted to download and install available Updates.

You shall promptly download and install all Updates and acknowledge and agree that the Application or portions thereof may not properly operate should you fail to do so. You further agree that all Updates will be deemed part of the Application and be subject to all terms and conditions of this Agreement.

7. Term and Termination.

- (a) The term of Agreement commences when you download the Application and will continue in effect until terminated by you or Company as set forth in this 7.
- (b) You may terminate this Agreement by deleting the Application and all copies thereof from your Mobile Device.
- (c) Company may terminate this Agreement at any time without notice if it ceases to support the Application, which Company may do in its sole discretion. In addition, this Agreement will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.
- (d) Upon termination:
 - (i) all rights granted to you under this Agreement will also terminate; and
 - (ii) you must cease all use of the Application and delete all copies of the Application from your Mobile Device and account.
- (e) Termination will not limit any of Company’s rights or remedies at law or in equity.

8. Disclaimer of Warranties. THE APPLICATION IS PROVIDED TO LICENSEE “AS IS” AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, COMPANY, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE APPLICATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE.

WITHOUT LIMITATION TO THE FOREGOING, COMPANY PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE APPLICATION WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

9. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO YOUR USE OF OR INABILITY TO USE THE APPLICATION OR THE CONTENT AND SERVICES FOR:

(a) PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES.

(b) DIRECT DAMAGES IN AMOUNTS THAT IN THE AGGREGATE EXCEED THE AMOUNT ACTUALLY PAID BY YOU FOR THE APPLICATION.

THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

10. Indemnification. You agree to indemnify, defend, and hold harmless Company and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, arising from or relating to your use or misuse of the Application. This indemnification obligation shall survive any termination of this Agreement.

11. Export Regulation. The Application may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Application to, or make the Application accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Application available outside the US.

12. Severability. If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect.

13. Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or related to this Agreement or the Application shall be instituted exclusively in the federal courts of the United States or the courts of the State of Texas in each case located in Dallas and Dallas County. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

14. Entire Agreement. This Agreement and our Privacy Policy constitute the entire agreement between you and Company with respect to the Application and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect to the Application.

15. Waiver. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or

other terms, the terms of this Agreement shall govern.

16. **Changes to this Agreement.** Company may update this Agreement from time to time. If material changes are made to this Agreement, the new version of this Agreement will be published and Company may notify you by an in-App alert the first time you use the App after the change is made.

The date this Agreement was last revised is identified at the top of the page.

17. **Additional Terms for Apple iOS Devices**

The following terms only apply if you install, access, or use the Application on any device that contains the iOS mobile operating system developed by Apple Inc. (“**Apple**”). If you use the Application on an Apple-manufactured device, and if there is any conflict between the terms in this Section and other terms in this Agreement, the terms in this Section will control.

- **Acknowledgement.** You acknowledge that this Agreement is concluded solely between the parties, and not with Apple. Company, not Apple, is solely responsible for the Application and the content thereof. You further acknowledge that the usage rules for the Application are subject to any additional restrictions set forth in the Usage Rules for the Apple Application Store Terms of Service as of the date you download the Application (the “**Usage Rules**”), and in the event of any conflict, the Usage Rules shall govern if they are more restrictive. You acknowledge and agree that you have had the opportunity to review the Usage Rules.
- **Scope of License.** The license granted to you is limited to a non-transferable license to use the Application on any Apple-branded products that you own or control as permitted by the Usage Rules.
- **Maintenance and Support.** You and Company acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Application.
- **Warranty.** You acknowledge that Apple is not responsible for any product warranties, whether express or implied by law, with respect to the Application. In the event of any failure of the Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price, if any, paid to Apple for the Application by you; and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Application. The parties acknowledge that to the extent that there are any applicable warranties, any other claims, losses, liabilities, damages, costs, or expenses attributable to any failure to conform to any such applicable warranty would be the sole responsibility of Company. However, you understand and agree that in accordance with this Agreement, Company has disclaimed all warranties of any kind with respect to the App, and therefore, there are no warranties applicable to the Application.
- **Product Claims.** You and Company acknowledge that as between Apple and Company, Company, not Apple, is responsible for addressing any claims you may have, as limited by this Agreement, or claims of any third party relating to the Application or your possession and/or use of the App, subject to Company’s indemnification rights, including, but not limited to (i) product liability claims, (ii) any claim that the Application fails to conform to any applicable legal or regulatory requirement, and (iii) claims arising under consumer protection or similar legislation.
- **Intellectual Property Rights.** The parties acknowledge that, in the event of any third party claim that the Application or your possession and use of the Application infringe that third party’s intellectual property rights, Company, and not Apple, will be responsible for the investigation, defense, settlement, and discharge of any such intellectual property infringement claim to the extent required under this Agreement.
- **Legal Compliance.** You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country, and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
- **Third-Party Terms of Agreement.** You agree to comply with any applicable third-party terms when using the Application.
- **Third-Party Beneficiary.** The parties acknowledge and agree that Apple and Apple’s subsidiaries are third-party beneficiaries of this Agreement, and that, upon your acceptance of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third-party beneficiary thereof.