

1. MOMMYATO TERMS OF USE

Effective Date: March 15, 2021

Welcome to the Mommyato Website!

BY ACCESSING OR USING THE WEBSITE YOU ARE INDICATING THAT YOU HAVE READ AND UNDERSTAND THE TERMS, AND THAT YOU AGREE TO COMPLY WITH AND BE LEGALLY BOUND BY THE TERMS.

IF YOU DO NOT AGREE TO THE TERMS, YOU MAY NOT ACCESS OR USE THE WEBSITE.

1. **ABOUT THE TERMS**
2. **ABOUT THE WEBSITE**
3. **ACCOUNTS**
4. **FEES AND PAYMENT TERMS**
5. **USER CONDUCT GUIDELINES**
6. **INTELLECTUAL PROPERTY OWNERSHIP**
7. **THIRD PARTY TERMS**
8. **WARRANTIES, DISCLAIMERS, LIMITATION OF LIABILITY & INDEMNIFICATION**
9. **DISPUTE RESOLUTION, BINDING INDIVIDUAL ARBITRATION, AND WAIVER OF CLASS ACTIONS AND CLASS ARBITRATIONS**
10. **MISCELLANEOUS**

PLEASE READ THESE TERMS OF USE, OUR PRIVACY POLICY, WEBSITE RULES AND ALL APPLICABLE SUPPLEMENTAL TERMS (COLLECTIVELY, THE “**TERMS**”) CAREFULLY, AS THEY CONTAIN TERMS AND CONDITIONS THAT IMPACT YOUR RIGHTS, OBLIGATIONS AND REMEDIES IN CONNECTION WITH YOUR USE OF THE WEBSITE. FOR EXAMPLE, THE TERMS INCLUDE:

- YOUR OBLIGATION TO COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS;
- LIMITATIONS OF OUR LIABILITY TO YOU;
- CONFIDENTIALITY REQUIREMENTS IMPOSED ON BETA USERS; AND
- A REQUIREMENT THAT YOU PURSUE CLAIMS OR SEEK RELIEF AGAINST US (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS, RATHER THAN AS A PARTICIPANT IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING.

YOUR ACCESS TO AND USE OF THE WEBSITE IS CONDITIONED ON YOUR ACCEPTANCE OF AND COMPLIANCE WITH THESE TERMS.

1. **ABOUT THE TERMS**

1.1 **Key Terms**

As used in these Terms of Use:

- “**Mommyato**,” “**we**,” or “**us**” refer to Fermented Apps, LLC and our officers, directors, employees, contractors and agents.
- “**Users**” means any and all persons that access or use the Website. References to “access” and/or “use” of the Website (and any variations thereof) include the acts of accessing or browsing the Website.

- **“Website”** refers to any website owned or operated by Mommyato (including the website currently located at www.Mommyato.com). References to the “Website” include any and all features, functionality, tools and content available on or through each such website.
- **“Website Content”** refers to any and all videos, text, photos, information and other content included, provided or made available on or through the Website.
- **“Your Content”** refers to any and all videos, text, photos, information and other content captured, recorded, stored, or otherwise made available or caused to be made available by you on or through the Website.

1.2 Website Rules and Supplemental Terms

Your access to and use of the Website is governed by the terms and conditions of these Terms of Use, our Privacy Policy, currently located at www.Mommyato.com/privacy (as described in more detail below), any and all other policies and rules referenced herein, posted on the Website, or otherwise communicated to users (the **“Website Rules”**).

Certain of the features, functionality, tools, content and promotions available on or through the Website may be subject to additional or supplemental terms and conditions (**“Supplemental Terms”**). If you choose to access or use those features, functionality, tools or content or participate in those promotions, the applicable Supplemental Terms are also incorporated and deemed part of these Terms of Use.

If there is a conflict between these Terms of Use and the Supplemental Terms, the Supplemental Terms will govern and control with respect to the applicable features, functionality, tools, content and promotions.

1.3 Amendment of Terms

Mommyato reserves the right, in its sole discretion, to amend the Terms, at any time and without prior notice, including to change, modify, add to, update or remove terms and conditions (collectively “amend” or “update”). If we choose to amend the Terms, we will update the Effective Date at the top of the Terms and post the updated version. We may also, at our option, choose to notify you by e-mail or another means. By continuing to use the Website after we have posted an updated version of the Terms or otherwise notified you of an update, you are affirming that you agree to be bound by the amended Terms. This provision is subject to a few limitations in the **“Dispute Resolution, Binding Individual Arbitration, and Waiver of Class Actions and Class Arbitrations”** section below. If the amended Terms are not acceptable to you, your only recourse is to stop using the Website.

No other modification, amendment, supplement of or to the Terms will be binding on Mommyato unless it is in writing and signed by an authorized representative of Mommyato.

1.4 Consequences of Non-Compliance

Your failure to comply with the Terms may result in the suspension or termination of your account and/or access to the Website, and may subject you to civil and criminal penalties.

2. ABOUT THE WEBSITE

2.1 License to Use

Subject to your compliance with the Terms, Mommyato grants you a limited, revocable, non-exclusive, non-transferable, non-assignable and non-sublicensable license to access and use the Website, for your own personal use only, and not for use for any business purpose or commercial activity. This license is granted for the sole purpose of enabling you to use and enjoy the benefit of the Website as provided by Mommyato, in the manner permitted by the Terms.

2.2 Modifications and Updates to the Website

Mommyato reserves the right, in its sole discretion, to modify or discontinue offering the Website, in whole or in part, including any features, functionality, tools or content thereof, at any time, for any reason or no reason, with or without notice to you.

We may from time to time develop and provide updates for the Website, which may include upgrades, bug fixes, patches and other error corrections and/or new features, functionality, tools or content (collectively, “**Updates**”). Updates may also modify or delete features, functionality, tools or content in their entirety. All Updates will be deemed part of the Website and be subject to all terms and conditions of the Terms.

You agree that Mommyato has no obligation to provide any updates or to continue to provide or enable any particular features, functionality, tools or content, and, to the maximum extent permitted by applicable law, will not be liable with respect to any such modifications, discontinuance or deletions.

2.3 International Users

The Website is controlled and operated within the United States and is not intended for use outside of the United States. You are hereby prohibited from accessing or using the Website from any territory where the Website or any of the features, functionality, tools, content thereof, is illegal. If you choose to access the Website from a location outside the United States, you do so at your own risk and you are solely responsible for compliance with applicable laws, rules and regulations, including export laws and any regulations and local laws regarding online conduct and content.

2.4 Beta Users

Mommyato may from time to time allow certain Users (“**Beta Users**”) temporary access to certain beta features or functions of the Website (the “**Beta Test Period**”). If you are a Beta User, you shall maintain in confidence all information obtained in connection with the use of the Website or any feature, function or content thereof during the Beta Test Period, and shall use such information only for the purposes of beta testing and evaluation as solicited by Mommyato, and in accordance with these Terms. The Website may only be used by you, and the beta Website Content and existence of the beta features or functions may not be disclosed by you without the prior written consent of Mommyato.

The obligations of confidentiality shall not apply to information which you can document: (a) is generally available from public sources other than as a result of the breach of the Terms; (b) at the time of disclosure, is already in your possession without an obligation of confidentiality; (c) was rightfully received from a third party not under any obligation to keep such information confidential; or (d) was independently developed by you without use of, reference to, or knowledge of any confidential information of Mommyato.

In addition, the obligations of confidentiality shall not apply to the extent the information is required to be disclosed by you as a matter of law or by order of a court or to prosecute or defend a claim related to the Terms, provided (a) that you provide Mommyato with prior written notice of such obligation to disclose or, in the case of disclosure for prosecution or defense, provide Mommyato with reasonable advance notice of the disclosure, and (b) that you take reasonable and lawful actions requested by Mommyato and cooperate with Mommyato to avoid and/or minimize the extent of such disclosure. In addition, you may disclose the Website Content and existence of the Website to your auditors, attorneys, and/or governmental authorities in order to comply with applicable laws, but only if and to the extent necessary to comply, and in such cases, no prior written notice is required.

3. ACCOUNTS

3.1 Account Registration

While certain Website Content is publicly available, you must register for a user account before you are able to access and use certain portions and functionalities of the Website. You may register to create an account directly via the Website.

You may not register for an account on behalf of any person (other than yourself).

No person or entity may have more than one active account at any given time.

3.2 Account Set-Up

Your account and account profile page will be created based upon the information you provide to us.

You agree to provide complete, accurate and up-to-date information during the registration process and to update such information as necessary to ensure that it remains complete, accurate and up-to-date.

When you create your account, you will be asked to create a username and password, which you will be solely responsible for safeguarding. We encourage you to use “strong” passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with your Mommyato account or any other account that you may connect to your Mommyato account. You agree not to disclose your username or password to any third party, and you agree to immediately notify Mommyato of any unauthorized use of your account. You further acknowledge and agree that you will be solely responsible for any activities or actions on or through your account, whether or not you have authorized such activities or actions. Mommyato cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

3.3 ACCOUNT SUSPENSION AND CANCELLATION

You may cancel your account at any time.

We may, in our discretion, without liability to you and without limiting our other remedies, with or without prior notice and at any time, decide to limit, suspend, deactivate or cancel your account and take technical and legal steps to prevent you from using our Website at any time for any reason.

Mommyato reserves the right to suspend or terminate your account or your access to the Website if you create more than one account, or if any information provided during the registration process or thereafter is determined to be incomplete, inaccurate, outdated, deceptive or fraudulent.

We reserve the right to cancel unconfirmed accounts or accounts that have been inactive for a prolonged period of time. We also reserve the right to cancel accounts of Users who fail to comply with the Terms as set forth in the “**User Conduct Guidelines**” section above and elsewhere in the Terms.

If your account is deactivated or cancelled, Mommyato will have the right, but not the obligation, to delete Your Content.

If Mommyato has suspended your account due to your actual or suspected breach of the Terms, such suspension will continue until the suspected breach is cured or otherwise resolved to Mommyato’s reasonable satisfaction.

3.4 Policy Enforcement

When an issue arises, we reserve the right to consider such User’s performance history and the specific circumstances in applying our policies, and to determine how strictly to enforce such policies in an effort to achieve a fair outcome for all parties involved.

4. FEES AND PAYMENT TERMS

4.1 Subscriptions

You have the choice of subscribing to Mommyato on a monthly or an annual basis. You agree to pay the applicable subscription fee for your subscription at the rates in effect when the charges are incurred, including any applicable taxes. Any change in the subscription fee will go into effect for the next billing period after we provide notice of the change.

You can cancel your account at any time by clicking “Cancel Account” at www.Mommyato.com/support.

4.2 Payment/Credit Cards

YOU ARE RESPONSIBLE FOR PROVIDING MOMMYATO WITH VALID CREDIT CARD OR PAYMENT ACCOUNT DETAILS AND FOR THE TIMELY PAYMENT OF ALL FEES. Please note that the payment information, including name and contact information, that you submit when you register may be used and shared with our payment processing services provider and otherwise used in accordance with our Privacy Policy.

Mommyato will automatically charge the credit card or payment account associated with your account at the beginning of the billing period, and billing will recur automatically at in either monthly or annual intervals (depending on whether you chose to subscribe monthly or annually, respectively) until you change or terminate

your account. If Mommyato is unable to successfully charge your credit card or payment account for fees due, we reserve the right to restrict or suspend access to your account, or terminate your account (including, any employee accounts associated with your account). If you terminate your account for any reason or if we terminate your account due to your breach, such termination will be effective immediately, and you will not receive a refund for any amounts you already paid for that billing period. Further, you agree to reimburse us for any collection costs and interest for any overdue amounts.

We may contact you via email regarding your account, for example, in connection with a problem with your credit card or payment account.

4.3 Beta Users

Beta Users will not be charged during the Beta Test Period. Beta Users may be prompted to provide payment or credit card information which will be associated with the Beta User's account. In the event that a Beta User wishes to continue to use the Website following the Beta Test Period, the Beta User will be prompted to provide payment or credit card information which will be associated with the Beta User's account and will be automatically charged in accordance with the "Subscriptions" terms stated above; thereafter, the Beta User will be charged at monthly or annual intervals (depending on whether the Beta User chose to subscribe monthly or annually, respectively) until cancellation.

4.4 Free Trial Offers

If you receive a free trial offer for a specific time period, you will not be charged during the period of the free trial, but the subscription fee will be automatically charged to the credit card associated with your account for the subsequent period the day after your free trial period has ended, in advance, in accordance with the "Subscriptions" terms stated above. Thereafter, you will be charged at monthly/annual intervals (as applicable) until you decide to cancel. Please make a note of when your free trial will expire as you may not receive additional notice prior to the automatic charge if you do not cancel before the free trial period expires. Free trials are limited to one per person. If you attempt to register for a second free trial offer, Mommyato will automatically charge your credit card in accordance with the "Subscriptions" terms stated above. If you do not wish to pay the applicable fees for a subscription, you should cancel your account before the free trial period ends and not complete any subsequent registration for a subscription.

4.5 No Refunds

Unless Mommyato agrees or states otherwise in writing, all fees and charges are nonrefundable.

5. USER CONDUCT GUIDELINES

Any time you access or use the Website, you are required to comply with our User conduct guidelines, as set forth below.

You agree that you will access and use the Website for your personal use only.

You are not authorized to access or use the Website:

- to impersonate any person or entity, or falsify or otherwise misrepresent your identity, credentials, affiliations or intentions;
- to collect, store or use any information from or about another User;
- to "stalk" or harass any other User;
- to distribute unsolicited commercial or bulk electronic communications (or, "spam"), chain letters or "pyramid" schemes;
- for political campaigning, recruiting votes or soliciting donations or other support for legislative or other initiatives;

- to systematically retrieve information or content to create or compile, directly or indirectly, in single or multiple downloads, a collection, compilation, database, directory or the like, whether by manual methods, through the use of bots, crawlers, or spiders, or otherwise;
- if you are not able to form legally binding contracts (for example, if you are under 18);
- if you are a person barred from receiving services under the laws of the United States or other applicable jurisdiction; or
- for any other purposes that are not expressly permitted by the Terms or which violates applicable law.

Further, you may not:

- access, copy, distribute, share, publish, use or store any Website Content, including any information from or about any other User, for purposes that are inconsistent with our Privacy Policy, or otherwise violate the privacy rights or any other rights of other Users or any other third party, including by disclosing, selling, renting, distributing or exposing any Website Content to a third party, using it for marketing purposes, or otherwise using it for any purposes unrelated to the Website;
- access, copy, distribute, share, publish, use or store, or prepare derivative works from any Website Content that belongs to Mommyato, another User or to a third party, including works covered by any copyrights, trademark, patent, or other intellectual property right, except with prior express permission of the person or entity party holding the rights to license such use;
- share your password or transfer your account to another party without our consent;
- circumvent our systems, policies, determinations as to your account status, including by attempting to access or use the Website if your account has been suspended or cancelled or you have otherwise been temporarily or permanently prohibited or blocked from using the Website;
- access, search, collect information from, or otherwise interact with the Website by “scraping,” “crawling” or “spidering” the Website, by the use of any software, device, script or robot, or by any other means (automated or otherwise) other than through the currently available, published interfaces that are provided by Mommyato, unless you have been specifically authorized to do so in a separate agreement with Mommyato (except that crawling is permissible without further authorization if done in accordance with the provisions of the robots.txt file only);
- use, display, mirror or frame the Website, or any feature, functionality, tool or content of the Website, Mommyato’s name, any Mommyato trademark, logo or other proprietary information, without Mommyato’s express written consent;
- interfere with, disrupt, damage or compromise the Website or our systems or the access of any User, host or network in any way, including through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial-of-service attacks, backdoors, packet or IP spoofing, forged routing or electronic mail address information or similar methods or technology or by overloading, flooding, spamming, mail-bombing the Website or otherwise imposing an unreasonable or disproportionately large load on the Website;
- access, tamper with or use non-public areas of any of the Website, Mommyato’s computer systems, or the technical delivery systems of Mommyato’s providers;
- probe, scan, or test the vulnerability of any system or network of Mommyato or its providers, or breach or circumvent any security or authentication measures of such system or network;
- avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by Mommyato or any of Mommyato’s providers or any other third party to protect the Website;
- forge any TCP/IP packet header or any part of the header information in any e-mail or posting, or in any way use the Website to send altered, deceptive or false source-identifying information;

- attempt to decipher, decompile, disassemble or reverse engineer any of the code or software used to provide the Website;
- export or re-export the Website, except in compliance with the export control laws and regulations of any relevant jurisdictions;
- otherwise abuse the Website or breach the Terms; or
- attempt to do any of the foregoing, or advocate, encourage or assist any third party in doing any of the foregoing.

6. INTELLECTUAL PROPERTY OWNERSHIP

6.1 The Website

The Website, and all features, functionality, tools and content thereof, is protected by copyright, trademark, patent and other laws of the applicable jurisdiction and throughout the world. You acknowledge and agree that the Website, and all intellectual property rights therein are the exclusive property of Mommyato and its licensors. You will not remove, alter or obscure any copyright, trademark, service mark, patent marking, or other proprietary rights notices incorporated in or accompanying the Website.

Without limiting the foregoing, you acknowledge and agree that the trade names, logos, and other trademarks and service marks associated with Mommyato (the “**Mommyato Marks**”) are the property of Mommyato, and that you are not permitted to use the Mommyato Marks without our prior written consent.

You may not use, copy, reproduce, distribute, license, sell, transfer, publish, post, publicly display, publicly perform, transmit, broadcast, adapt, modify, prepare derivative works based upon, or otherwise exploit any features, functionality, tools or content of the Website in any form or by any means, or sublicense the rights granted in the Terms, except as expressly permitted herein, without the prior written permission of Mommyato or the intellectual property owner, as applicable, which may be withheld, conditioned, or delayed in its or their sole discretion.

This foregoing license is subject to modification or revocation at any time at Mommyato’s sole discretion.

No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Mommyato or its licensors, except for the licenses and rights expressly granted in the Terms. All rights not expressly granted to you by the Terms are hereby reserved.

6.2 Your Content

By capturing, recording, uploading, or storing Your Content, you hereby grant Mommyato a worldwide, non-exclusive, transferable, sublicensable, royalty-free right and license to use, copy, reproduce, process, adapt, modify, distribute, post, broadcast, publicly perform, publish and display Your Content in any and all media as necessary to operate the Website, including but not limited to, providing you with customer support services and product development and de-bugging purposes.

You agree that this license includes the right for Mommyato to provide, promote, and improve the Website and to make Your Content available to other companies, organizations or individuals who have a business relationship with Mommyato (“**partner**”) for such purposes, subject to our terms and conditions for such use.

Such additional uses by Mommyato, or other companies, organizations or individuals who partner with us, may be made with no compensation paid to you with respect to Your Content.

We may modify or adapt Your Content in order to transmit, display or distribute it over computer networks and in various media and/or make changes to Your Content as are necessary to conform and adapt that content to any requirements or limitations of any networks, devices, services or media.

Mommyato does not claim any ownership rights in Your Content and nothing in the Terms will be deemed to restrict any rights that you may have to use and exploit any such content, subject only to the licenses granted to Mommyato under these Terms.

You acknowledge and agree that you are solely responsible for Your Content, and for any consequences thereof, including the use of your Content by other users and our third-party partners.

You represent and warrant that you have all the rights, power and authority necessary to grant the rights granted herein to Your Content, and that neither Your Content, nor Mommyato's use of Your Content (or any portion thereof) on or through the Website will infringe, misappropriate or violate the rights of any person or entity, including patent, copyright, trademark, trade secret, moral rights, industrial rights, database rights or other proprietary or intellectual property rights, rights of publicity or privacy or data protection or contractual rights, or result in the violation of any applicable law or regulation.

Mommyato will not be responsible or liable for any use of Your Content by Mommyato or any third party in accordance with the Terms.

6.3 Feedback

We welcome and encourage you to provide feedback, comments, ideas and suggestions for improvements, enhancements and modifications to the Website ("**Feedback**"). You may submit Feedback by e-mailing us, at Support@Mommyato.com. You acknowledge and agree that all Feedback you give us (i) will be treated as non-confidential, and (ii) will be the sole and exclusive property of Mommyato. Without limiting the foregoing, you acknowledge that your Feedback may be disseminated or used by Mommyato or its affiliates for any purpose whatsoever, including developing, improving and marketing products. You hereby irrevocably transfer and assign to Mommyato all of your right, title, and interest in and to all Feedback, including all worldwide patent, copyright, trade secret, moral and other proprietary or intellectual property rights therein, and waive any moral rights you may have in such Feedback.

You agree to sign and deliver such documents, and otherwise provide such assistance, as may reasonably be required from time to time to perfect Mommyato's rights in such improvements, enhancements and modifications.

7. THIRD PARTY TERMS

The Website may also provide links to third-party websites, resources or services. You acknowledge and agree that Mommyato is not responsible or liable for (i) the availability, terms or practices of such websites, resources or services, or (ii) the content, products or services available on or through such websites, resources or services, including that any information provided is complete, accurate or up-to-date. Links to such websites, resources or services do not imply any endorsement by Mommyato of such websites, resources or services or the content, products or services available on or through such websites, resources or services. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites, resources or services or the content, products or services available on or through such websites or services.

We will not be responsible or liable for any damage or harm resulting from your interactions with such websites or services, or the content, products or services available on or through such websites or services.

8. WARRANTIES, DISCLAIMERS, LIMITATION OF LIABILITY & INDEMNIFICATION

8.1 Warranties by Users

You represent and warrant to Mommyato that:

- (i) you have the power and authority to accept and agree to the Terms;
- (ii) you own or control all of the rights necessary to grant the rights and licenses granted herein;
- (iii) you will not violate any international, national, federal, state or local laws, rules or regulations or infringe the rights of Mommyato or any third party, including, any intellectual property, privacy or publicity-related rights, in connection with Your Content or otherwise in connection with your access to or use of the Website;
- (iv) the exercise by Mommyato of the rights granted by you hereunder will not cause Mommyato to violate any applicable laws, rules or regulations, to infringe the rights of any third party; and

- (v) all information provided by you will be complete, accurate and up-to-date when provided, and updated as necessary to ensure that it remains complete, accurate and up-to-date.

8.2 Disclaimers

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE WEBSITE IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, MOMMYATO EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE OR RIGHTFUL CLAIM, WARRANTIES AS TO THE RELIABILITY OR AVAILABILITY OF THE WEBSITE, OR THAT USE OF THE WEBSITE WILL BE UNINTERRUPTED OR ERROR FREE, WARRANTIES AS TO THE COMPLETENESS, ACCURACY OR TIMELINESS OF ANY WEBSITE CONTENT.

8.3 Limitation of Liability

YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW:

- THE ENTIRE RISK ARISING OUT OF OR RELATING TO YOUR USE OF THE WEBSITE IS AND REMAINS WITH YOU.
- WITHOUT LIMITING THE FOREGOING, MOMMYATO DISCLAIMS ANY AND ALL LIABILITY RELATED TO (I) YOUR USE OF OR INABILITY TO USE THE WEBSITE, (II) THE ACTS OR OMISSIONS OF ANY OTHER USER OR ANY OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE WEBSITE, AND (III) ANY USER OR WEBSITE CONTENT ACCESSED, VIEWED OR DOWNLOADED IN CONNECTION WITH THE USE OF THE WEBSITE; AND YOU HEREBY RELEASE MOMMYATO AND WAIVE ANY AND ALL CLAIMS AND CAUSES OF ACTION WITH RESPECT TO ANY DAMAGES CAUSED BY ANY OF THE FOREGOING.
- YOU ACKNOWLEDGE AND AGREE THAT ACCESSING AND USING THE WEBSITE AND SUBMITTING AND TRANSMITTING YOUR CONTENT ARE DONE AT YOUR OWN DISCRETION AND RISK, AND YOU HEREBY RELEASE MOMMYATO AND WAIVE ANY AND ALL CLAIMS AND CAUSES OF ACTION WITH RESPECT TO ANY DAMAGES CAUSED BY ANY OF THE FOREGOING.
- IN NO EVENT WILL MOMMYATO BE LIABLE FOR ANY (A) INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR (B) DAMAGES FOR LOST REVENUES OR PROFITS, LOSS OF OPPORTUNITY, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED IN WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT MOMMYATO HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
- CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSIVE OR LIMITATION OF CERTAIN DAMAGES AS SET FORTH IN THIS SECTION, SO THESE LIMITATIONS AND EXCLUSIONS APPLY TO YOU ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW. IN THE EVENT THAT THE FOREGOING LIMITATION OF LIABILITY IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE UNENFORCEABLE, MOMMYATO'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO ONE HUNDRED U.S. DOLLARS (US\$100).

8.4 Basis of the Bargain

YOU ACKNOWLEDGE AND AGREE THAT THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH ABOVE ARE ESSENTIAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN MOMMYATO AND YOU, AND WILL SURVIVE AND APPLY EVEN IF YOUR REMEDIES ARE FOUND OR ALLEGED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

8.5 Exclusions

NOTHING IN THE TERMS IS INTENDED TO EXCLUDE OR LIMIT ANY CONDITION, WARRANTY, RIGHT OR LIABILITY WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE FROM DEATH OR PERSONAL INJURY. ACCORDINGLY, ONLY THE ABOVE LIMITATIONS IN THIS SECTION THAT ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU, AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

8.6 Indemnification

To the maximum extent not prohibited by applicable law, you agree to release, defend, indemnify, and hold Mommyato, its parent, subsidiaries, affiliates, licensors and service providers, and its and their officers, directors, shareholders, agents, employees and representatives, harmless from and against any claims, liabilities, damages, losses, costs and expenses, including, any bodily injury, illness, death or damage to any real or personal property, or any other injuries, losses, or damages (whether compensatory, direct, incidental, consequential or otherwise) of any kind, and including reasonable legal fees and litigation expenses and costs, arising out of or relating to or in any way connected with (i) your access to or use of the Website, including any and all features, functionality, tools, content and promotions available on and through the Website, (ii) Your Content, (iii) your breach of the Terms, including any violation of international, national, federal, state or local or other applicable laws, rules or regulations or any infringement or misappropriation of the rights of any third party, and (iv) your gross negligence or willful misconduct. No person or entity shall be entitled to any form of equitable or implied indemnification at any time, except as provided by the Terms.

8.7 Obligation to Defend.

You agree that, at Mommyato's option, you will conduct the defense of any such claim or action; provided that, notwithstanding our election that you conduct the defense, (i) Mommyato may nevertheless participate in such defense or settlement negotiations and pay its own costs associated therewith, and (ii) you will not enter into any settlement or other compromise without the prior written approval of Mommyato (which approval shall not be unreasonably withheld), unless such settlement or other compromise includes a full and unconditional release of the relevant parties from all liabilities and other obligations in respect of such claim or action.

9. DISPUTE RESOLUTION, BINDING INDIVIDUAL ARBITRATION, AND WAIVER OF CLASS ACTIONS AND CLASS ARBITRATIONS.

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS AND WILL HAVE A SUBSTANTIAL IMPACT ON HOW CLAIMS YOU AND MOMMYATO HAVE AGAINST EACH OTHER ARE RESOLVED.

9.1 Disputes

The terms of this Section shall apply to all Disputes between you and Mommyato. "Dispute" shall mean any dispute, claim, or action between you and Mommyato, other than for statutory or common law claims related to intellectual property or those that qualify for small claims court, arising under or relating to the Website, these Terms, or any other transaction involving you and Mommyato, whether in contract, warranty misrepresentation, fraud, tort, intentional tort, statute, regulation, ordinance, or any other legal or equitable basis, and shall be interpreted to be given the broadest meaning allowable under law. You and Mommyato agree that "Dispute" as defined in these terms shall not include (i) any claim or cause of action by you or Mommyato for statutory or common law claims related to intellectual property, including but not limited to (a) trade secret misappropriation, (b) patent infringement, (c) copyright infringement or misuse, or (d) trademark infringement or dilution, or (ii) matters that qualify for small claims court. Moreover, notwithstanding anything else in these Terms, you agree that a court, not the arbitrator, shall decide if a claim falls within one of those two exceptions.

9.2 Binding Arbitration

You and Mommyato agree to arbitrate all Disputes pursuant to binding individual arbitration. You and Mommyato further agree that the Federal Arbitration Act (9 U.S.C. §1, et seq.) governs the interpretation and

enforcement of this Section, and that this Section shall survive termination of these Terms and your relationship with Mommyato.

9.3 Arbitration Proceedings

The arbitration will be administered by the American Arbitration Association under its Commercial Arbitration Rules (“AAA Rules”), which are available at www.adr.org or by calling 1-800-778-7879, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Unless you and we agree otherwise, the arbitration shall take place in New York City, New York before a single neutral arbitrator appointed in accordance with the AAA Rules and shall be conducted in the English language. The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the existence, interpretation, applicability, enforceability or formation of these Terms and its arbitration provision, including, but not limited to, the arbitrator’s own jurisdiction, and any claim that all or any part of these Terms is void or voidable. Notwithstanding this broad grant of authority to the arbitrator, a court shall determine the limited question of whether a claim or cause of action is for intellectual property or is a small claim, which are excluded from the definition of “Disputes” above. All arbitrations shall be conducted and resolved on an individual basis and not a class-wide, multiple plaintiff or similar basis. No arbitration shall be consolidated with any other arbitration proceeding involving any other person or entity.

9.4 Jurisdiction and Venue for Other Controversies

1. Any controversy excluded from the arbitration procedure and class action waiver provisions of this Section shall be filed only in in the federal or state courts located in State of New York and you and we agree that such courts shall have exclusive jurisdiction and venue for any such actions. You consent to the exclusive jurisdiction of and venue in such courts and waive any objection as to inconvenient forum. The prevailing party in any suit, action or proceeding, including any arbitration proceeding, will be entitled to recover its reasonable legal fees and costs and expenses from the other party.

9.5 Prohibition of Class and Representative Actions and Non-Individualized Relief

YOU AND WE EACH AGREE THAT YOU AND MOMMYATO MAY BRING CLAIMS AGAINST EACH OTHER ONLY ON AN INDIVIDUAL BASIS AND HEREBY WAIVE THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING, TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW. FURTHER, UNLESS BOTH YOU AND MOMMYATO OTHERWISE AGREE IN WRITING, THE COURT MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON’S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING.

9.6 Future Amendments to this Section

Any amendment to this “**Dispute Resolution, Binding Individual Arbitration, and Waiver of Class Actions and Class Arbitrations**” section (other than an amendment to any notice address or site link provided herein) in the future, will not apply to any claim that was filed in a legal proceeding against either party prior to the effective date of the amendment. However, the amendment will apply to all other disputes or claims governed by this section that have arisen or may arise between you and Mommyato. We will notify you of amendments to this section by posting the amended Terms on www.Mommyato.com. If you do not agree to the amended terms, you may close your account within 30 days and you will not be bound by the amended dispute resolution terms. If you do not have an account (or once you have closed your account, if applicable), you must cease using the Website immediately. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Mommyato in accordance with the provisions of this “**Dispute Resolution, Binding Individual Arbitration, and Waiver of Class Actions and Class Arbitrations**” section as of the date you first accepted the Terms (or accepted any subsequent changes to the Terms).

10. MISCELLANEOUS

10.1 Governing Law

The Terms and any Dispute between you and Mommyato shall be exclusively governed by the laws of the State of New York without regard to conflict of law principles.

10.2 Privacy

Our collection and use of information about Users is governed by our Privacy Policy. By accessing and using the Website, you acknowledge that you have read and understood our Privacy Policy (in particular its parts about the collection and use of this information, including the transfer of this information outside the United States and/or other countries, for storage, processing and use by Mommyato). As part of providing you the Website, we may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Website, which you may not be able to opt-out from receiving.

10.3 Entire Agreement

These Terms, including these Terms of Use, our Privacy Policy, the applicable Supplemental Terms and any and all Website Rules, constitute the entire and exclusive understanding and agreement between you and Mommyato regarding your access to and use of the Website, and supersede and replace any and all prior or contemporaneous oral or written understandings or agreements between you and Mommyato and regarding the subject matter hereof.

10.4 Assignment

You may not assign, transfer, delegate, subcontract or sublicense any of your rights or obligations under the Terms, including by operation of law or merger or consolidation, without our express prior written consent, which may be granted or withheld in our sole discretion. Any attempted assignment, transfer, delegation, subcontracting or sublicense without the foregoing consent will be null and void. Mommyato may assign, transfer, delegate, subcontract and/or sublicense our rights and obligations under the Terms, in whole or in part, in its sole discretion, without restriction.

Subject to the foregoing, the Terms will bind and inure to the benefit of the parties, their successors and assigns.

10.5 No Agency

Except as otherwise expressly set forth herein, no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by the Terms.

10.6 Survival of Terms

Any provisions of the Terms that contemplate performance or observance subsequent to the expiration or termination of these Terms of Use shall survive such expiration or termination.

10.7 Notices

Any notices or other communications permitted or required hereunder, including those regarding modifications to the Terms, will be in writing and given by Mommyato (i) via e-mail (in each case to the address that you provide), or (ii) by posting to the Website. For notices made by e-mail, the date on which such notice is transmitted will be deemed the date of receipt.

10.8 Waiver

Our failure to exercise any right or enforce any obligation under these Terms of Use or to take action with respect to a breach by you or others will not constitute a waiver of such right, obligation or breach. The waiver of any right, obligation or breach will be effective only if in writing and signed by a duly authorized representative of Mommyato. In addition, no waiver granted in any instance shall constitute a waiver in any other instance.

10.9 Remedies

Except as expressly set forth in the Terms, the exercise by either party of any of its remedies under the Terms will be without prejudice to its other remedies available under contract, at law, in equity or otherwise.

10.10 Severability

Except as otherwise provided in the Terms, if an arbitrator or a court of competent jurisdiction finds any provision of the Terms to be invalid, void or unenforceable, in whole or in part, for any reason, the offending provision will be enforced to the maximum extent permissible and will not affect the validity or enforceability of the remaining provisions, which will remain in full force and effect. The foregoing shall not apply to the prohibition against class or representative actions in Section 10.5; if the prohibition against class or representative actions is found to be unenforceable, the entire Section 10 shall be null and void.

10.11 Headings

The headings in the Terms are for reference purposes only and do not limit or otherwise affect the meaning or interpretation of any of the provisions hereof.

10.12 Third-Party Beneficiaries

Except as otherwise expressly set forth herein, the Terms do not and are not intended to confer any rights or remedies upon any person other than the parties hereto.

10.13 Construction

In the Terms, unless the context requires otherwise: (i) "herein," "hereof," "hereunder," "hereto," and similar terms refer to the Terms collectively and as a whole, and not merely to the specific section, paragraph or clause in which the term appears; (ii) "or" connotes any combination of all or any of the items listed; and (iii) "including" (and any of its derivative forms) means "including but not limited to."

10.14 Contact Us

If you have any questions or concerns, please contact Mommyato at Support@Mommyato.com.

You can also write to us at:

Mommyato
1 Blue Slip, apt 11J
Brooklyn, NY 11222

10.15 California Residents

Pursuant to California Civil Code §1789.3, California residents are also entitled to the following specific consumer rights notice:

Complaints regarding the Website or requests to receive further information regarding use of the Website may be sent to the above address or to Support@Mommyato.com.

The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Boulevard, Suite N112, Sacramento, CA 95834 or by telephone at (916) 445-1245 or (800) 952-5210. Hearing impaired persons may call TDD (800)-326-2297 or TDD (916)-928-1227, see www.dca.ca.gov for additional information.

Copyright ©2021 Fermented Apps, LLC. All rights reserved.