

GENERAL TERMS AND CONDITIONS

Last updated: April 1st, 2019

The terms and conditions stated herein (collectively, this "Agreement") constitute a legal agreement between you and **Vimage Media (Pty) Ltd.** (trading as **MomSays**), a South African Company. By using or receiving any services supplied to you by the Company (together with the website located at momsays.co.za, collectively, the "Service"), and downloading, installing or using any associated software supplied by the Company which purpose is to enable you to use the Service (collectively, the "Software"), you hereby expressly acknowledge and agree to be bound by the terms and conditions of this Agreement, and any future amendments and additions to this Agreement as published from time to time at momsays.co.za or through the Service.

The Company reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service or Software at any time, effective upon posting of an updated version of this Agreement on the Service or Software. You are responsible for regularly reviewing this Agreement. Continued use of the Service or Software after any such changes shall constitute your consent to such changes. If you require any more information or have any questions about our Terms and Conditions, please feel free to contact us by email at tribe@momsays.co.za.

1. Definitions

- 1.1. "**Agreement**" means these terms and conditions;
- 1.2. "**Consent**" means any voluntary, specific and informed expression of will in terms of which a user agrees to the processing of personal information relating to him or her;
- 1.3. "**Cookies**" are small files stored on your device (computer or mobile device);
- 1.4. "**Data Controller**" means a natural or legal person who (either alone or jointly or in common with other persons) determines the purpose for which and the manner in which any personal data are, or are to be, processed. For the purpose of this Privacy Policy, we are a Data Controller of your data;
- 1.5. "**Data Processors (or Service Providers)**" means any natural or legal person who processes the data on behalf of the Data Controller. We may use the services of various Service Providers in order to process your data more effectively;
- 1.6. "**Data Subject**" is any living individual who is the subject of Personal Data;
- 1.7. "**Personal Data**" means data about a living individual who can be identified from that data (or from those and other information either in our possession or likely to come into our possession);
- 1.8. "**Privacy Policy**" means the policy within these Terms and Conditions under Clause 7;
- 1.9. "**Product Images**" means any images taken by you and uploaded to the MomSays website in order to, but not limited to, have the product reviewed;
- 1.10. "**Service(s)**" means the <https://momsays.co.za> website operated by MomSays (operating under Vimage Media (Pty) Ltd);
- 1.11. "**Site or Website**" means the official Internet website by which MomSays offers its services from time to time, currently found at <https://www.momsays.co.za>;
- 1.12. "**The User**" is the individual using the Services. The User corresponds to the Data Subject, who is the subject of Personal Data;

2. The MomSays Services

- 2.1. The MomSays Service allows, amongst other things, an active user of MomSays to review and comment on baby related products.
 - 2.1.1. The MomSays Services enable you to:
 - 2.1.1.1. Comment on products;
 - 2.1.1.2. Review Products;
 - 2.1.1.3. Upload Product Images to be reviewed; and
 - 2.1.1.4. Other
- 2.2. We will provide you with the MomSays Services.
 - 2.2.1. We will provide you with a username and password in order to login as required.
 - 2.2.2. We reserve the right to alter or vary your preferred username and password at any time and will notify you of any such alteration (by email where possible).
- 2.3. You agree to provide all necessary equipment, network connections and software to access this Site.
- 2.4. You agree that MomSays may restrict and/or terminate its services to you at any point in time if MomSays, in its sole and absolute discretion, elects to do so and without having to furnish any reason for doing so.

Contacting us

If you have any questions about these terms and conditions or about the privacy statement therein or any questions regarding access to and the protection of your personal information, the practices of this site, or your dealings with us, you can contact us on tribe@momsays.co.za.

3. Amendment of MomSays with These Terms and Conditions

- 3.1. We have an absolute discretion to change the terms of this Agreement at any time. If we do so, we will post details of any changes on this Site that will be effective forthwith.
- 3.2. By accepting this Agreement and any notifications of changes to this Agreement, you also agree to accept and be bound by any changes made by us under this Clause 3. In any event, your continued use of the Services after any changes to the terms of this Agreement have taken effect they will be deemed to have your acceptance of those changes to the terms of this Agreement.

4. Compliance with These Terms and Conditions

- 4.1. You agree to promptly inform us of any breach by you of the terms of this Agreement and of any conduct of another user that you think may be a breach of this Agreement, whether the conduct has ceased, is continuing, or may occur in the future.
- 4.2. You agree that we may and will monitor your conduct if we believe that you are not complying with the terms of this Agreement. If we do, then we will respect your confidentiality, unless:
 - 4.2.1. doing so would or could implicate us in criminal behaviour, a civil wrong, or any other claim by a person for which we may have to pay compensation;
 - 4.2.2. the law compels, requires, or makes it prudent and desirable for us to divulge or disclose the information we hold or know or any documents we possess; or
 - 4.2.3. we consider it necessary or desirable to make disclosures to preserve or enforce our interests or rights.
- 4.3. If we believe, whether or not we have conducted any monitoring, that you are not, or may be in danger of not, complying with any of the provisions of this Agreement, then we may send you a warning asking you to rectify your conduct (although we will not be obliged to do so).
- 4.4. If you:
 - 4.4.1. infringe or are suspected of infringing the Intellectual Property Rights of any other person;
 - 4.4.2. are suspected of having, or are found by conviction, settlement insurance or escrow investigation or otherwise, to have engaged in any fraudulent or other criminal activity in connection with this Site or any other web site; or
 - 4.4.3. otherwise breach this Agreement, we may, in our absolute discretion:
 - 4.4.3.1. withhold from you, your use of any or all of the Services;
 - 4.4.3.2. delete or remove, without incurring any liability to you, any or all of your information and block in-coming and out-going data or message transfers;
 - 4.4.3.3. restore the Services if and when you can demonstrate clear and complete adherence to the terms of this Agreement on a permanent and consistent basis; and
 - 4.4.3.4. terminate the Agreement that we have entered into with you, and cancel our obligations to provide the Services, if we are not satisfied that you will clearly and completely adhere to the terms of this Agreement, on a permanent and consistent basis, if the Services are restored to you.

5. Use of Site

- 5.1. In using this Site, you must not:
 - 5.1.1. illegally copy, store, use, alter, modify, impair, interfere with or attempt to interfere with, or distribute software or other data;
 - 5.1.2. alter, damage, destroy, erase, interfere with or attempt to interfere with, or infect our files, data and other computer systems and network resources or those of other users or any other person, or access, copy, modify, remove or impair the reliability, security or operation of, any data or files or other information stored in these systems or network resources;
 - 5.1.3. impair the electronic communications to or from, or interfere with or obstruct the lawful use of, or otherwise cause any unauthorised computer functions to our computer systems or those of other users or any other person;
 - 5.1.4. engage in any practice or conduct that is unlawful under any laws applicable to you;
 - 5.1.5. copy, modify, or distribute rights or content from our sites, services or tools or MomSays's copyrights and trademarks;
 - 5.1.6. harvest or otherwise collect information about users (including email addresses), trades listed or sales activities conducted on MomSays without the express permission of MomSays;
- 5.2. Any links or references (direct or indirect) to other web sites on this Site are provided for your convenience only and do not, and are not an express or implied endorsement by us, of those web sites, or the products and services contained on those web sites.

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- 5.3. The information and material contained on this Site has been prepared in accordance with the laws of the Republic of South Africa for use in the Republic of South Africa only. It may not comply with the laws of any other country. We make no representation that the information and material contained on this Site complies with the laws (including any intellectual property laws) of any country other than the Republic of South Africa. If you choose to access this Site from outside the Republic of South Africa, you do so at your own risk and will be responsible for ensuring compliance with the laws of the country in which you are located.
- 5.4. Using information about other MomSays users –
 - 5.4.1. You agree to use user information only in accordance with applicable laws and regulations (including, without limitation, The Protection of Personal Information Act and other data protection laws) and only for:
 - 5.4.1.1. MomSays -transaction-related purposes that are not unsolicited commercial communications;
 - 5.4.1.2. using services offered through MomSays; and
 - 5.4.1.3. other purposes a user expressly agrees to.
 - 5.4.2. You agree to respect other users' privacy and disclose your privacy and security policies to them. By law, you must give other users a chance to remove themselves from your database and a chance to review the information you have collected about them.
- 5.5. Notwithstanding, and in addition to any other provision of this Agreement, you agree to comply with any laws applicable to you when using this Site and the sale or purchases of goods or services that you undertake as a result of using this Site.
- 5.6. You agree not to harass, intimidate or threaten any of the MomSays staff or any users of the MomSays website in any way or form and failure to do so may, in MomSays 's sole discretion, result in the cancellation or restriction of your MomSays account.

6. Entering into this Agreement

- 6.1. You represent and warrant to us:
 - 6.1.1. if you are an individual that you are eighteen (18) years of age or over and of full legal capacity and thus capable of entering into this Agreement and performing your obligations under this Agreement; or
 - 6.1.2. if you are a juristic entity:
 - 6.1.2.1. that you are duly incorporated and have been issued with a certificate of commencement of business and have the power to own/sell property; and
 - 6.1.2.2. entering into this Agreement does not violate your Constitution; and
 - 6.1.2.3. you have the power and have taken all corporate and other action required to enter into this Agreement and to authorise entering into this Agreement and performing your obligations under this Agreement.
- 6.2. Transactions in case of a minor
 - 6.2.1. If you are under 18 years of age or if you are not legally permitted to enter into a binding and enforceable agreement, then you may not register as a user or make use of the services of MomSays unless you are duly supervised by and you have obtained the consent of your parent or legal guardian or spouse.
 - 6.2.2. If your parent or legal guardian supervises you and gives his/her consent, then such person hereby agrees to be bound and to be liable and responsible for you and for all your obligations or duties in terms of the agreement entered into between yourself and MomSays.
 - 6.2.3. We strictly reserve our rights to refuse our service, terminate/suspend your account or cancel orders, should MomSays, in our sole discretion find that you have failed for whatsoever reason to comply with the aforementioned provisions or the remaining provisions of these terms and conditions, without prejudice to any other rights that we may have at law.
 - 6.2.4. To the extent that you utilize our services, we shall deem it that you were / are supervised by and that you have obtained the consent of your parent or legal guardian or curator or trustee. The onus to prove that you were not supervised or did obtain the requisite consent shall rest with you.

7. Licence of, and Use of, your Information

- 7.1. You hereby grant to us a non-exclusive, irrevocable, worldwide, perpetual, royalty-free right to exercise the Intellectual Property Rights you have in your information and/or products and images, in whatever medium.

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- 7.2. You further hereby grant MomSays the right to use your trademark, logo and content, inclusive of any images uploaded (“Your Branding”) in any particular marketing and/or promotional campaign initiated by MomSays in all forms of media both physical and digital.
 - 7.2.1. You agree to:
 - 7.2.1.1. Permit MomSays to utilize Your Branding in marketing materials and on its website; and
 - 7.2.1.2. Permit MomSays to identify you as a customer.
- 7.3. You are not authorised to use the MomSays trademark or logo (the “MomSays Branding”) in any manner without the express written consent of MomSays.
- 7.4. Subject to Clause 7.1, 7.2 and 7.3, we agree to use your information only in accordance with the Privacy Statement below. If you do not agree with the terms of the Privacy Statement, please do not accept these terms and conditions.
- 7.5. We further agree and/or undertake to process your personal information in accordance with the provisions of the Protection of Personal Information Act.
- 7.6. You waive your rights to any Product Images uploaded, and shall hand all right, title, and interest, including all intellectual property rights, in and to any of your content and/or Product Images to MomSays.
- 7.7. MomSays shall retain all right, title, and interest, including all intellectual property rights, in and to any of the MomSays Service, MomSays branding, website and technology provided by MomSays, and any other property, and/or material belonging to MomSays, and nothing in this agreement shall confer any license or right of ownership in such material.

8. Privacy Statement

This privacy statement discloses the privacy practices for the MomSays site.

We have agreed to notify you of the following when collecting your personal information:

The information being collected and the source from which it is collected when collected from another person;

- Our name and address;
- The purpose for which the information is being collected;
- Whether or not the supply of information by yourself is mandatory or voluntary;
- The consequences of a failure to provide the requisite information;
- Any particular law authorising or requiring the collection of the information;
- Whether we intend to transfer the information to a third country or international organisation and the level of protection afforded to the information by the said third country or international organisation;
- Any further information such as:
 - o the recipient of the information or with whom the information may be shared;
 - o the nature and category of the information;
 - o your right of access to and the right to rectify that information;
 - o your right to object to the processing of your personal information; and
 - o the right to lodge a complaint with the Information Regulator and the contact details of the Information Regulator.

If you have questions or concerns regarding this statement, you should please contact Customer Support by email on tribe@momsays.co.za.

8.1. Information Collection And Use

8.1.1. The information we collect from you is collected for a specific, explicitly defined and lawful purpose related to the function and activity of MomSays as established in clause 8.1.2 of this Agreement. You acknowledge and agree that we may collect this information from you in connection with or as a consequence of your use of our site, including, without limitation, the supply of the online services to you.

8.1.2. The purpose of collection includes, but is not limited to:

- 8.1.2.1. providing and maintain our service;
- 8.1.2.2. To notify you about changes to our Service;
- 8.1.2.3. To allow you to participate in interactive features of our Service when you choose to do so;
- 8.1.2.4. To provide customer support;

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- 8.1.2.5. To gather analysis or valuable information so that we can improve our Service;
- 8.1.2.6. To monitor the usage of our Service;
- 8.1.2.7. To detect, prevent and address technical issues;
- 8.1.2.8. To fulfill any other purpose for which you provide it;
- 8.1.2.9. To carry out our obligations and enforce our rights arising from any contracts entered into between you and us, including for billing and collection;
- 8.1.2.10. To provide you with notices about your account and/or subscription, including expiration and renewal notices, email-instructions, etc.;
- 8.1.2.11. To provide you with news, special offers and general information about other goods, services and events which we offer that are similar to those that you have already purchased or enquired about unless you have opted not to receive such information;
- 8.1.2.12. In any other way we may describe when you provide the information;
- 8.1.2.13. For any other purpose with your consent.
- 8.1.3. We are the sole owner of the information collected on this site. We will not sell, share, or rent this information to others in any way other than as disclosed in this privacy statement.
- 8.1.4. We collect information from our users at several different points on our site. We collect information about your activities if you choose to participate on our site as a result of you engaging in these activities, and also from ratings and comments received from other users regarding you engaging in those activities. We also collect information from any form of correspondence, such as emails and telephone conversations, from you or from a third party about you. We may also collect information from you if you choose to partake in special promotions with third parties on our site. This information will be shared with that third party, but only with your consent and for the purpose of that promotion.
- 8.2. Registration
 - 8.2.1. In order to use our site, you must first complete the registration form. When you register we collect personal information such as your name, address, email address, telephone and fax numbers. This information is used to contact you about the services on our site for which you have expressed interest. We also collect additional information (such as "How did you hear about us?", your interests), and unique identifiers (if applicable). All information that is mandatory is made known on the registration form and is necessary to complete the registration process. You are encouraged to provide the additional, optional information specified on the registration form so we can provide you with a more personalized experience on our site.
 - 8.2.2. We may, at our sole discretion, request additional personal information from you. You may be required to confirm such details as your identity, address and contact information for security and verification reasons.
- 8.3. Personal Data
 - 8.3.1. While using our Services, we ask you to provide us with certain personal identifiable information that can be used to contact or identify you ("Personal Data"). Personally identifiable information may include, but is not limited to:
 - 8.3.1.1. Email address;
 - 8.3.1.2. First and last name;
 - 8.3.1.3. Phone number;
 - 8.3.1.4. Address, Province, ZIP/Postal Code, City;
 - 8.3.1.5. Cookies and Usage Date
- 8.4. Usage Data
 - 8.4.1. We may also collect information that your browser sends whenever you visit our Services or when you access Service by or through a mobile device ("Usage Data").
 - 8.4.2. The Usage Data may include information such as your computer's Internet Protocol address (e.g. IP address), browser type, browser version, the pages of our Service that you visit, the time and date of your visit, the time spent on those pages, unique device identifiers and other diagnostic data.
 - 8.4.3. When accessing our Services with a mobile device, this Usage Data may include information such as the type of mobile device you use, your mobile device unique ID, the IP address of your mobile device, your mobile operating system, the type of mobile internet browser you use, unique device identifiers and other diagnostic data.
- 8.5. Location Data
 - 8.5.1. We may use and store information about your location if you give us permission to do so ("Location Data"). We use this data to provide features of our Service, to improve and customise our Service.
 - 8.5.2. You can enable or disable location services when you use our Service at any time by way of your device settings.
- 8.6. Cookies
 - 8.6.1. A Cookie is a small data file that your browser writes to your own computer's hard drive in order to remember certain information and is linked to some personally identifiable information while on our site. Cookies are used to store your Handle and Password so that you don't need to type these in

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- each time you log in, thereby saving time whilst on our site. If you reject cookies, you may still browse our site.
- 8.6.2. There are two sorts of cookies used on our site: session cookies and persistent cookies. Once you close your browser, the session cookie simply terminates, whereas the persistent cookie remains to enable us to track and target your interests to enhance your experience on our site.
 - 8.6.3. We use the above mentioned cookies and similar tracking technologies to track the activity on our site and hold certain information.
 - 8.6.4. You can instruct your browser to refuse all cookies or to indicate when a cookie is being sent. However, if you do not accept cookies, you may not be able to use some portions of our Service.
 - 8.6.5. Examples of Cookies we use:
 - 8.6.5.1. Session Cookies: We use Session Cookies to operate our Service.
 - 8.6.5.2. Preference Cookies: We use Preference Cookies to remember your preferences and various settings.
 - 8.6.5.3. Security Cookies: We use Security Cookies for security purposes.
 - 8.6.5.4. Advertising Cookies: Advertising Cookies are used to serve you with advertisements that may be relevant to you and your interests.
 - 8.7. Log Files
 - 8.7.1. We collect statistical information about you from page hits. Every page, image or cgi program requested by your browser from our servers is logged in a log file, which also collects the following information: your remote IP address, the referring HTML page and the type of browser and computer that you are using. We use IP addresses to analyse trends, administer our site, track your movements, and gather broad demographic information for aggregate use. The statistical information we gather is used internally for marketing analysis. This information and IP addresses are not linked to personally identifiable information.
 - 8.8. External Links
 - 8.8.1. This web site contains links to other sites. Please be aware that we are not responsible for the privacy practices or content of such other sites. We encourage you to be aware when you leave our site and to read the privacy statements of each and every web site that collects personally identifiable information. This privacy statement applies solely to information collected by this site.
 - 8.9. Newsletter
 - 8.9.1. If you wish to subscribe to our newsletter, we ask for contact information such as email addresses. However, it is completely at your discretion to be removed from such a list as set out in our choice and opt-out section below.
 - 8.10. Site And Services Updates
 - 8.10.1. We also send you site and services announcement updates. You are not able to un-subscribe from these because they contain important information about our site and our services.
 - 8.11. Surveys And Contests
 - 8.11.1. From time-to-time we request information from you via surveys or contests. Participation in these surveys or contests is completely voluntary and you therefore have a choice whether or not to disclose any information to us. Information requested may include contact information (such as email addresses) and demographic information. We partner with third parties for supplying prizes for our contests, but no information is shared with these third parties.
 - 8.11.2. Contact information will be used by us to notify the winners and award prizes in relation to our competitions, and also for promotional mailings. Survey information will be used for the purposes of monitoring or improving the use and satisfaction of this site.
 - 8.12. Public Forums
 - 8.12.1. If we make chat rooms and message boards available to our users, please remember that any information that is disclosed in these areas becomes public information. You should therefore exercise caution when deciding to disclose your personal information.
 - 8.13. Tell-A-Friend
 - 8.13.1. If you elect to use our referral service for informing a friend about our site, we ask you for your friend's name and email address. We will automatically send your friend a one-time email inviting them to visit our site. We store this information for the sole purpose of sending this one-time email. Your friend may at any time contact us at tribe@momsays.co.za to request the removal of this information from our database.
 - 8.14. Security
 - 8.14.1. We take every precaution to prevent the loss, misuse and alteration of all information under our control. When you submit sensitive information via our site, your information is protected both online and offline.
 - 8.14.2. While we use encryption to protect sensitive information online, we also do everything in our power to protect user-information off-line. The servers that we store personally identifiable information on are kept in a secure environment.
 - 8.14.3. If you have any questions about the security at our site, you can send an email to tribe@momsays.co.za.

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- 8.15. Supplementation of Information
- 8.15.1. In order for this site to properly fulfil its obligation to our customers, it is necessary for us to supplement the information we receive with information from third party sources.
- 8.16. Special Offers
- 8.16.1. We send all new members a welcoming email to verify password and username. Established members will occasionally receive information on products, services, special deals, and a newsletter. Out of respect for the privacy of our users, our users have the option not to receive these types of communications (refer to our choice and opt-out section below).
- 8.17. Correction/Updating Personal Information:
- 8.17.1. If your personally identifiable information changes (such as your email address), or if you no longer desire to use our services, you may correct, update or remove your personal data provided to us. This can be done at the member information page or by emailing our Customer Support at tribe@momsays.co.za.
- 8.17.2. Should you wish us to remove your personal data provided to us, we will delete your account. However, records of your personal information will be retained for a period of 5 years as required for lawful purposes related to our functions and activities and for statistical purposes in accordance with the Protection of Personal Information Act. This information will merely be retained and not used, shared or sold. We will further retain Usage Data for internal analysis
- 8.18. Choice/Opt-out
- 8.18.1. If you no longer wish to receive our newsletter, information about products and services and special deals, surveys, or promotional materials from us or our partners you may opt-out of receiving these communications by following the unsubscribe instructions in the relevant email or by emailing us at tribe@momsays.co.za.
- 8.19. Anti-Spam Policy
- 8.19.1. MomSays is committed to permission-based email marketing practices, and have established this no-tolerance Anti-Spam Policy. MomSays may update this policy and provide notice of any changes on its home page. Your use of this website constitutes your acceptance of the terms and conditions of our Anti-Spam Policy.
- 8.19.2. Spam is commercial email or unsolicited bulk email, including junk mail, which has not been requested by the recipient. Spam is the opposite of permission-based email
- 8.19.3. If you believe that you have received Spam connected to MomSays in any way, send a complaint including the unsolicited email, to tribe@momsays.co.za. You may also provide any other information that you believe may help a MomSays investigation. MomSays does not investigate or take any action based on anonymous Spam complaints.
- 8.19.4. Individuals who register on MomSays, and provide their email address, give MomSays permission to send information on MomSays related information, products and services to said email address. In order to protect your privacy, MomSays does not sell, share or trade our subscriber list with anyone for any reason and you may unsubscribe at any time.
- 8.20. Notification of Changes
- 8.20.1. If we decide to change our privacy statement, we will post those changes on our Homepage and in our newsletter so you are always aware of what information we collect, how we use it, and under what circumstances, if any, we disclose it.
- 8.20.2. If we change the way we use your Personally Identifiable Information we will notify you by email in our newsletter. If you would like to opt out of having your information used in this new manner, we will ask you to contact us within a month and your information will not be used. If you do not contact us within that month, we will assume that you consent to have your information used in this new manner.

9. User Traffic and its Content

- 9.1. While we will always endeavour to maintain ongoing access, and, prevent and correct disruptions and failures on this Site, we cannot and do not exercise control over the data, files and other information passing through our computer systems and network resources. Therefore you agree that you:
- 9.1.1. are responsible for the flow and storage of your information through our computer systems and network resources;
- 9.1.2. take full responsibility for data, files and other information you own, send, or receive and ensure that at all times you maintain adequate backup copies as appropriate;
- 9.1.3. must not engage in mass postings of messages, either through e-mail or onto newsgroups, or engage in any harassment, 'electronic stalking' or 'spam';
- 9.1.4. must respect and abide by the conventions and rules governing the use of newsgroups, lists, discussion forums (such as ICQ and internet relay chat or similar channels), and networks, and

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must not post messages or otherwise communicate inappropriately, or send unsolicited messages (commercial or otherwise); and

- 9.1.5. accept that certain content on this Site, despite any steps we may take may contain material that you may find inappropriate, offensive, inflammatory, or adult in nature and further accept that we do not endorse such materials and disclaim any and all liability for their contents.
- 9.2. We cannot and do not know whether you have given access to your MomSays account to other people. You are therefore totally responsible for:
 - 9.2.1. when and how your account with us is used; and
 - 9.2.2. the actions of the people (if any) you allow to access, or transmit information through this Site, our computer systems and network resources or otherwise utilise the Services (whether or not you have given them your login and password details or not).

10. Competitions and Contests

- 10.1. From time to time MomSays will engage in securing competitions for you to enter into.
- 10.2. The prizes shall, amongst other things, be provided by third parties and have the following terms and conditions aligned to same:
 - 10.2.1. Prizes cannot be exchanged for cash;
 - 10.2.2. Prizes in form of products are delivered as is and shall not be claimable late or if the product is damaged;
 - 10.2.3. Prizes are subject to change;
- 10.3. Once a winner has been announced, the decision is final and no further negotiations in this regard shall be accepted or entered into;
- 10.4. Logistical elements together with the delivery of the prize are managed by third parties and no liability in any form whatsoever shall be held by MomSays once the prize has been handed to said third party.

11. Relying Upon MomSays's Services

- 11.1. Whether you are using the Services for private or commercial purposes, or both, the quality and continuity of our Services depends on many factors over which we have no control and cannot seek to control. While we will always endeavour to maintain ongoing access, disruptions and failures of this Site, any or all computer systems, network resources and the Services, are probable in such an operating environment. Recognising this, you agree that:
 - 11.1.1. we cannot and do not guarantee, warrant or otherwise imply that:
 - 11.1.1.1. you will receive constant and uninterrupted access to this Site or the Services; or
 - 11.1.1.2. you will receive unlimited access to all of the content available on the Site at any given time;
 - 11.1.2. we cannot always ensure that this Site, its computer systems and network resources will be fully or continually protected from unlawful access by others, including the infection of data or other information by viruses, or the alteration, misuse, or stealing of data or other information or that any of these activities will be detected.

12. Disclaimer and Limitation of Liability

- 12.1. Notwithstanding, and in addition to any other provision in this Agreement, you agree that we will not be liable to you or any other person for any loss, damage, expense, or other amounts incurred, savings foregone, or hardship suffered, by any person however arising (including where the cause cannot be determined), or whether it arose directly or indirectly from any authorised or unauthorised use of, access to, reliance on, or any inability to use or access this Site, the Services, or as a consequence of such use, access, reliance, or inability to access, including, but not limited to any loss relating to one or more, or a combination, of the following:
 - 12.1.1. a failure, or error in the operation, of all or any part of this Site, our computer systems, network resources, the Services, or any other computer systems or network resources to which they may be connected or upon which they may rely, or the taking offline of any of those computer systems or network resources for any reason;
 - 12.1.2. any circumstances which produce or have the consequence of producing a degradation, fall-off, or complete severance of access to this Site or network resources or any other computer systems or network resources to which they may be connected by any person;

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- 12.1.3. whether we or another person could have foreseen such a loss or type of loss, or were negligent or reckless, whether or not the loss was suffered in connection with a business or commercial enterprise, including, but not limited to, any economic or consequential loss or damage, any and all damage to, or loss of, any equipment, property, data, or other information possessed by you or any other person, any loss of profits, and any losses relating to contracts, business, revenue, goodwill, or any anticipated savings;
- 12.1.4. any personal losses or hardship, stress and anxiety, nervous shock, or other personal suffering or condition;
- 12.1.5. any errors or omissions in any documentation or other literature provided by us, any errors or omissions in any data, on this Site, or any breach of contract or negligence on the part of us, our employees, agents or authorised representatives;
- 12.1.6. any reliance on, the information and material contained on this Site about any goods and services or any other information or material whatsoever, or any information and material contained on, and the privacy of, web sites linked to this Site;
- 12.1.7. any feedback, comments or rating scores made by you;
- 12.1.8. any action taken by us under this Agreement;
- 12.1.9. any conduct, act or omission, whether negligent, reckless, or otherwise, whether within any actual, ostensible, or apparent authority or not, at all on the part of our employees, agents, or authorised representatives;
- 12.1.10. any decision to hold an inquiry or not hold an inquiry into an alleged breach on the part of one of the users.
- 12.2. To the extent permitted by law, all terms, conditions and warranties or representations, or representation whether express, implied, statutory, common law or otherwise relating to the Services or anything in these terms and conditions, are excluded unless expressly included in this Agreement.
- 12.3. If any legislation or law implies in this Agreement any term or warranty and also prohibits provisions in a contract excluding the application of or exercise of that term or warranty then, to the maximum extent permitted by law, our liability for a breach of such a term or warranty will be limited, at our option to any one or more of the following:
 - 12.3.1. if the breach relates to services:
 - 12.3.1.1. the supplying of the services again; or
 - 12.3.1.2. the payment of the cost of having the services supplied again.
- 12.4. Notwithstanding anything else in this Agreement if an Indemnified Party is liable to you, whether in respect of negligence or other delict, breach of contract or warranty, breach of statute or statutory duty, equity or otherwise directly or indirectly in relation to the performance of or any delay or failure in the performance of its obligations under this Agreement, the maximum aggregate liability of an Indemnified Party, in respect of all claims made by you for every 12 month period commencing on the execution of this Agreement or the anniversary thereof shall be R100.

13. Release and Indemnity

- 13.1. Notwithstanding, and in addition to any other provision in this Agreement, to the maximum extent permitted by law, you agree to release from, and indemnify, each Indemnified Party, against, any claims, losses, liabilities, suits, demands, proceedings, costs or expenses (including legal costs on a full indemnity basis) directly or indirectly related to, or, arising out of:
 - 13.1.1. your use of the Services;
 - 13.1.2. the reproduction, broadcast, transmission communication or making available of any information or material (including credit card details) by us or any users (other than you) made available by use of the Services;
 - 13.1.3. any one or more of the circumstances described in Clause 12.1;
 - 13.1.4. any alleged breach of a person's rights (including, but not limited to, defamation or misleading or deceptive conduct) by a communication, broadcast or transmission made available by means of the Services; or
 - 13.1.5. any claim by any person arising out of, or in connection with any cessation (temporary or permanent) of the supply of the Services in accordance with this Agreement.
- 13.2. The indemnity under Clause 13.1 does not extend to:
 - 13.2.1. expenses incurred by us that are unreasonable; or
 - 13.2.2. losses occasioned by us as a result of this Agreement proving not to be profitable to us.

Contacting us

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14. Disputes

- 14.1. You and MomSays must follow the procedure for resolving any dispute in connection with or arising out of this Agreement, in accordance with this Clause 14 before starting any proceedings (except proceedings seeking urgent interlocutory relief).
- 14.2. The procedure for resolving a dispute is as follows:
 - 14.2.1. first, either you or MomSays may give notice to the other about the nature of the dispute ("Notice") and you and MomSays will seek to negotiate a settlement within 14 working days of receipt of the Notice;
 - 14.2.2. second, to the extent those negotiations fail, you and MomSays will seek, within a further 2 days, to reach agreement on the appointment of a mediator for resolving the dispute, and failing any such agreement, the mediator shall be appointed by AFSA Secretariate and, the mediation shall be conducted in accordance with the AFSA Administered Mediation Rules; and
 - 14.2.3. failing such a resolution, the dispute, if arbitrable in law, shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator(s) appointed by the Foundation.
- 14.3. You shall be liable for all costs incurred by us in the enforcement of any rights which we have in terms of this Agreement or in the recovery of any monies due to us, including collection charges and costs on an attorney and own client scale and costs of counsel as on brief whether incurred prior to or during the institution of legal proceedings or if judgement has been granted in connection with the satisfaction or enforcement of such judgement against you.

15. Entire Agreement

- 15.1. This Agreement constitutes the entire Agreement between you and MomSays.
- 15.2. Unless the context indicates otherwise, this Agreement incorporates all other Agreements between the parties. Should there be any conflict between any other agreement and this Agreement, the provisions of this Agreement shall prevail.

16. Remedies Cumulative

- 16.1. All rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law. A notice dealing with amendments or variations or updates of this Agreement will be posted on our website .It is your duty and responsibility to familiarize and understand the amendments or variations or updates. By continuing to use our services, you are deemed to have accepted the amendment, variation or update as binding on you.

17. Relationship Of Parties

- 17.1. Nothing in this Agreement shall be deemed to constitute any party as the agent, partner or joint venture of another party.

18. Further Assurances

- 18.1. A party shall take all such steps, execute all such documents and do all such acts and things as may be reasonably required by another party to give effect to any of the transactions contemplated by this Agreement.

19. Non-Waiver

- 19.1. Other than as otherwise specified in this Agreement, neither the failure of a party to enforce at any time any of the provisions of this Agreement nor the granting of any time or other indulgence shall be construed as a waiver of that provision or of the right of that party thereafter to enforce that or any other provision.

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20. Governing Law

- 20.1. This Agreement will be governed by the laws in force in the Republic of South Africa and each party unconditionally submits to the non-exclusive jurisdiction of the court of the Republic of South Africa in relation to any legal action, suit or proceedings arising out of or with respect to this Agreement.
- 20.2. With reference to Clause 20.1, the parties submit to the jurisdiction of the High Court of South Africa, South Gauteng High Court and the parties submit to the jurisdiction of the Magistrate's Court or the Regional Court irrespective of whether the amount claimed by us exceeds the applicable monetary limit allowed to institute a claim in the Magistrate's Court or Regional Court.

21. Notices

- 21.1. You choose your domicilium citandi et executandi ("domicilium") for the purposes of giving any notice serving any legal process and for any other purpose arising from this Agreement at your addresses, e-mail and telefax numbers as set out in your application for registration on this site.
- 21.2. Any notice to be served by either party to the other must be in writing and will be sent by hand delivery, post or facsimile, or email to the relevant party to this agreement at its respective address as specified on the application for registration on this Site and, in the case of MomSays, ADDRESS, South Africa and in the case of mail will be deemed to have been served three (3) business days after posting.
- 21.3. In the case of a facsimile it will be deemed to have been served on receipt of a successful transmission notice and in the case of email it will be deemed to have been served if no return email stating that the email cannot be delivered is received. If a notice is served by hand and proof thereof is made available, the notice will then be deemed to be delivered on the actual date and time of delivery.

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