

TERMS OF USE AGREEMENT

1 Legally Binding Agreement

- 1.1 This Terms of Use Agreement ("**Terms**") constitutes a legally binding agreement ("**Agreement**") between Photo Connect Pty Ltd (ACN 612 653 326), ("**We**", "**Us**" or "**Our**") and you ("**You**" or "**Your**") regarding your use of and interaction with the *What Jelly* app ("**App**"). We give you a limited licence to use this App subject to the following Terms.
- 1.2 By using the App, you agree to be the following Terms. If you do not agree to the Terms of this Agreement, please do not use the App.
- 1.3 Use of the App is governed by these Terms and the Privacy Policy. Any other negotiations, representations, or agreements, whether written or oral, made before this agreement is deemed to be superseded.
- 1.4 This Agreement is effective from the time you use the App and applies until:
 - (a) it is terminated by either party in accordance with clause 10 below; or
 - (b) it is expressly revoked by us in writing.

2 Use of the App

- 2.1 You must be over 14 years of age to use this App. If you are between 14 and 17 years of age, you must first obtain permission from a parent or a responsible adult guardian.
- 2.2 If you are between 14 and 17 years of age, you must also get a parent or a responsible adult guardian to read and agree to these Terms.
- 2.3 You agree to adhere to generally accepted rules of etiquette and standards of behaviour in your use of the App, posting of content ("**User Content**") and interactions with other users via the App.
- 2.4 You may use this App to post your own pictures, captions and comments. This means that only pictures taken by you can be posted here. If you did not take the picture, you must get the photographer's or copyright owner's written consent before you post it here.
- 2.5 The pictures that you post on this App or in any direct messages ("**DM**") to another user must not show:
 - (a) violence or depictions of violence (including graphical or animated violence);
 - (b) threatening or bullying, or pictures that have the effect of teasing or bullying someone else;
 - (c) sexual violence, depictions of sexual violence, or graphical or animated sexual violence;
 - (d) nudity or partial nudity, whether or not you have permission from the person or persons pictured;
 - (e) signs, gestures or actions (including signs, gestures or actions which are depicted through emoticons, videos, sounds, or animated GIFs) that are discriminatory, racially vilifying, intimidating, inciteful, hateful, vulgar, obscene, pornographic or sexually suggestive;

- (f) profanity, abusive or aggressive language, whether in English or in any other language;
- (g) personal details, including full names, addresses, phone numbers or email addresses, whether they are your personal details or somebody else's;
- (h) confidential information, such as credit card details or account information, whether your own or somebody else's;
- (i) any form of advertising, including, but not limited to, advertising that is unsuitable for persons under the age of 18, such as tobacco or alcohol advertising;
- (j) misleading or deceptive content, or content which is likely to mislead or deceive; or
- (k) any website links or URLs, especially those that show content which would contravene these Terms if posted on this App.

2.6 The captions and comments that you post on this App or in any DMs to any other user; and the username that you use to register your Profile must not contain:

- (a) violence or depictions of violence (including graphical or animated violence);
- (b) threats, bullying, or words that have the effect of teasing, threatening or bullying someone else;
- (c) sexual violence, depictions of sexual violence, or graphical or animated sexual violence;
- (d) language (including language that is conveyed through emoticons) that is discriminatory, racially vilifying, intimidating, inciteful, hateful, vulgar, obscene, pornographic or sexually suggestive;
- (e) profanity, abusive or aggressive language, whether in English or in any other language;
- (f) personal details, including full names, addresses, phone numbers or email addresses, whether they are your personal details or somebody else's;
- (g) confidential information, such as credit card details or account information, whether your own or somebody else's;
- (h) any form of advertising, including, but not limited to, any form of advertising that is unsuitable for persons under the age of 18, such as tobacco or alcohol advertising;
- (i) misleading or deceptive content, or content which is likely to mislead or deceive; or
- (j) any website links or URLs, especially those that show content which would contravene these Terms if posted on this App.

2.7 You must not post any User Content that infringes upon the intellectual property rights of anyone else. You must not post any User Content (for example, any photographs, videos or music), that is not created by you. If you post any User Content that is not created by you, you must have the written consent of the copyright owner before doing so. We may ask you to provide such proof at any time, and if you fail to do so, we may, at our discretion, remove any User Content which we reasonably believe infringes upon the intellectual property rights of others.

- 2.8 If you see anyone else posting User Content that was created by you, and you did not give permission to that user to post such User Content on the App, please report it to us.
- 2.9 You must not solicit or ask for any user to post nude or pornographic pictures. If you receive any requests of such nature, you should report it to the police and to us immediately. We will delete the offending post and undertake to co-operate with authorities to conduct proper investigations.
- 2.10 You must not use this App for any illegal purpose. You agree to comply with all laws, by-laws, regulations and other statutory instruments which may be applicable to the use of this App, including, without limitation, copyright laws.
- 2.11 By using this App and posting your User Content on this App, you warrant that:
- (a) you own copyright in the User Content that you post, or have the written permission from the copyright owner to post the User Content on our App; and
 - (b) the User Content that you are posting does not violate these Terms or the Privacy Policy, and further, that it is in accordance with generally accepted rules of etiquette and standards of behaviour applicable to an online community such as What Jelly.
- 2.12 If you see any content posted by any user that is in breach of any of these Terms, please report it to us immediately.
- 2.13 You agree that we reserve the right, but not the obligation, to monitor the App and your use of it, including any User Content posted by you. We may, at our discretion, choose to modify or delete any material that you post on this App, or delete your Profile and remove your access to the App if, in our opinion, your User Content breaches any of these Terms, or is otherwise in bad taste, even if it does not specifically breach any of these Terms.
- 2.14 If you see any content that you feel threatened or bullied by, you can report it to us, and to the Office of the eSafety Commissioner. The website for the Office of the eSafety Commissioner is located at <https://www.esafety.gov.au/>. This website also contains important information about the help and support that is available, and educational cyber safety resources for you and your parent or responsible adult guardian to review.

3 Your Profile

- 3.1 You must register a profile ("**Profile**") in order to use this App. In order to register for a profile, we will ask for information such as your email address, date of birth, full name, username and address, ("**Personal Information**"). Such Personal Information may be required in order to use this App.
- 3.2 If you choose to do so, you may also register for the App using the details in your Facebook profile. If you choose to do so, you agree to allow the App access to your Facebook profile, including, without limitation, your contacts on Facebook and any other personal information which may be available therein.
- 3.3 We will never ask for your Personal Information via email. We will only ask for it once during the registration process. If you receive an email purporting to be from us asking you to enter your Personal Information, please report it to us immediately and delete the email.
- 3.4 The types of Personal Information that we collect, the purposes for which we collect your Personal Information and the way such Personal Information is stored or disclosed is covered by our Privacy Policy.

- 3.5 You agree that you will keep your Profile up to date. If any of your Personal Information changes after you have registered your Profile, you must update your Personal Information in your Profile as soon as possible after any changes which affect your Personal Information.
- 3.6 Upon registering a Profile, you may choose a username and password ("**Authorisation Details**") which will allow you to access the full functionality of the App relevant to your user Profile. It is your responsibility to keep your Authorisation Details secure, and you must immediately notify us of any unauthorised use of your Authorisation details or Profile, or any other breach of security. Once notified, we will reset your password and send a new password to the email address that you registered with us.
- 3.7 You agree, however, that we will not be liable to compensate you for any loss, cost, expense, damage or liability which may be incurred as a result of, in relation to, or in connection with any use of your Authorisation Details without your consent.
- 3.8 You are responsible for all use of the App that is attributed to your Profile. For the purposes of these Terms, any use of the App which can be attributed to your Profile will be considered to be use of the App by you, unless you have previously notified us in writing of an unauthorised use of your Authorisation Details or Profile, or any other breach of security according to clause 3.6 above.
- 3.9 You may change your Authorisation Details at any time by updating your Profile.
- 3.10 You may not sell, transfer or assign your Profile to anyone else unless you have obtained prior written consent from us. You may not allow anyone else to use your Profile.
- 3.11 You may not use another user's Profile without their express written consent. We may require proof of their consent at any time.
- 3.12 If you wish to deactivate your Profile, please contact us by email to info@whatjelly.com and we will delete it as soon as practicable. Please note, however, that any User Content that you have posted previously may still be accessible to others, whether or not your Profile is still active on the App.

4 Intellectual Property

User Content

- 4.1 Any User Content that you post on the App may be subject to Australian and international copyright laws. Photos or videos not taken by you, or music that is not composed or written by you, or text that is not written by you may be owned by somebody else, and they may have copyright over such photo, video, music or text. Accordingly, you may not post any User Content that is not taken, written or otherwise created by you.
- 4.2 You warrant that you own, or otherwise have all necessary licences to the User Content that you post on the App, including, without limitation, any pictures, videos, sound recordings, musical works and all other copyrightable works (or subject matter other than works) posted on your profile. If such User Content is a work of joint authorship, you must obtain the written consent from all joint author(s) of the work to post it on the App.
- 4.3 In order to allow us to display your User Content on the App, you agree to grant us a worldwide, perpetual, non-exclusive, sub-licensable, irrevocable, transferrable, licence-free and royalty free licence to use and reproduce the User Content on any sub-page within our App or otherwise at our entire discretion, and warrant that there are no legal or equitable impediments to your granting us this licence.

- 4.4 Where there are moral rights (in accordance with Part IX of the *Copyright Act 1968* (Cth) and includes the right of attribution of authorship, the right to prevent false attribution of authorship, and the right to integrity of authorship and prevent derogatory treatment of works) subsisting in your User Content, you grant your consent, and obtain that from all other joint author(s) to us in order that we may exploit all intellectual property rights in the User Content at our entire discretion, even where such use may amount to an infringement of the author's (or authors') moral rights.
- 4.5 You acknowledge that even if you delete your User Content or delete your Profile, any User Content posted by you may still be accessible through the App, or a cached version of the App at any time.

Our Content

- 4.6 All content on the App, including, without limitation, to the text, graphics, and photos created by and for us, and our name, logo and trade marks (whether registered or unregistered), as well as the 'look and feel' of the App, including its structure, sequence and organisation ("**Our Content**") are owned by or licensed to us, and is subject to copyright and other intellectual property rights under Australian and foreign laws and international conventions. The content on the App is provided to you 'as is' for your information and personal use only and may not be used for any other purpose whatsoever without our prior written consent or as expressly permitted herein.
- 4.7 We reserve all our rights at law and in equity. This App, whether in whole or in part, may not be reproduced, copied, stored or downloaded, and you may not publish, sell, let, hire, or offer to sell, let or hire any part of the App and any content posted therein.
- 4.8 You may not do or participate or assist in, or cause, authorise or allow any third party to participate or assist in anything designed to:
- (a) discover, or has the effect of discovering the design, composition, construction methods, structure, source code, object code or otherwise reverse engineering any part of the App; or
 - (b) infringe, or has the effect of infringing any of our intellectual property rights.
- 4.9 You may not, at any time, challenge or oppose, or cause, authorise, allow or assist any third party to challenge or oppose our exclusive ownership of all intellectual property rights in the App.
- 4.10 From time to time, you may contact us with any suggestion, comment, feedback or request that you may have in relation to the App. By doing so, you acknowledge that the intellectual property rights in any alteration or modification to the App made as a result of a suggestion, comment, feedback or request that you have made, will immediately belong to us.
- 4.11 You agree not to use any of Our Content other than as expressly permitted under these Terms. If you download or print a copy of Our Content for your personal use, or use which is expressly permitted by law, you must retain all copyright and other proprietary legal notices contained in Our Content.

Open Source Content

- 4.12 The App may include or rely upon open source software, codes, modules or languages ("**Open Source Content**"). Any and all Open Source Content used by us is governed by the relevant open source licences (including, without limitation, to GPL, Creative Commons or

equivalent open-source licensing regimes). Our use of such material, if any, in developing the App does not infringe any third party intellectual property or other rights.

- 4.13 However, if you use the App in a manner that is not permitted under these Terms, we cannot warrant that such use by you in a manner that is not permitted under these Terms will be permitted under the relevant open source licensing regimes. You agree that if we incur any loss, cost, expense, damage or liability as a result of your use of the App in a manner not permitted under these Terms, you will indemnify and hold us harmless from and against any loss, cost, expense, damage or liability incurred thereby.

5 Privacy

- 5.1 In order for this App to function as intended, it will be necessary for us to collect certain Personal Information from you, including, without limitation, your full name, address, email address and contact telephone number. Where you provide us with your Personal Information, we will take reasonable steps to keep your Personal Information secure and not disclose it to a third party except as permitted by these Terms or the Privacy Policy these Terms, or otherwise as required by law.
- 5.2 However, by using the App, you agree to our Privacy Policy which allows us to collect certain information about you and your use of the App, including, without limitation, your internet protocol address, visitation history and other details as outlined in our Privacy Policy. Such information does not identify you, but is used for statistical purposes as outlined in our Privacy Policy.
- 5.3 You agree that we may access, preserve and share your Personal Information in response to a lawful request or where there is a legal requirement to do so. This may include legal requests from a jurisdiction outside of Western Australia and Australia where we believe in good faith that the access, preservation and sharing of information is required by the laws of that jurisdiction.
- 5.4 You agree that we may access, preserve and/or share your Personal Information in circumstances where We believe in good faith that it is necessary to detect, prevent or deal with fraud, unauthorised transactions or other illegal activity.
- 5.5 The Privacy Policy forms part of these Terms. By agreeing to these Terms, you acknowledge that you have read and understood our Privacy Policy, which allows us to collect Personal Information about you and your use of our App, and statistical information such as your visitation history and internet protocol address, to the extent permissible by the laws of Western Australia and Australia. Please refer to our Privacy Policy for full details.

6 No Tampering

- 6.1 Neither you nor anyone having access to your Profile may do, or attempt to do, any of the following:
- (a) use the App in a way which is, in our opinion, contrary in any way to these Terms or the Privacy Policy;
 - (b) access areas of the App which you are not authorised to access;
 - (c) alter or tamper with any part of the App except as expressly authorised;
 - (d) send unsolicited advertising, email or chain letters to other users;

- (e) use any automated means or interface, including, without limitation, tracking software, robots, spiders or similar technological devices or programs not provided by us to access the App or to track other users' usage of the App;
- (f) reverse engineer any aspect of the App or do anything to discover the source code, or to circumvent measures put in place by us to prevent or limit access to any area of the App; or
- (g) send viruses, or any computer code, file or program to the App which is designed to, or has the effect of, destroying, interrupting or limiting the functionality of any computer software or hardware, or other telecommunications equipment.

6.2 We reserve the right to take any action we deem necessary to detect, identify, prevent, or stop any conduct which, in our opinion, constitutes a prohibited use under this clause 6, even if it does not specifically violate any of these Terms. This includes, without limitation, the right to immediately and without notice delete or remove any User Content, and the right to immediately and without notice terminate your Profile.

7 Our responsibilities

7.1 We will use all reasonable efforts to ensure that the App is functional at all times.

7.2 However, we make no warranties whatsoever that the App will be fully functional and free of errors, bugs or viruses. Accordingly, you agree that we will not be held liable for any delay, disruption or interruption in your access to the App. You further agree that we will not be liable for any loss, cost, expense, damage or liability which may be incurred as a result of, or in connection with, or in relation to any loss of functionality of the App, or any errors, bugs or viruses, whether or not it results in any destruction, interruption or damage to your electronic device from which the App is accessed.

8 Indemnities

8.1 You agree to indemnify and keep us harmless at all times (including after the deletion of your Profile), and agree to defend us from and against any loss, cost, expense, damage or liability, which may be incurred as a result of, or in connection with, or in relation to your use of the App and any User Content that you post on this App, including, without limitation, any claims of:

- (a) intellectual property infringement,
- (b) breach of confidentiality;
- (c) breach of privacy;
- (d) breach of these Terms; or
- (e) any violation of any law, by-law, regulation or other statutory instrument.

9 Modification or Variation of Terms

9.1 We may change any of these Terms at any time by posting a notice on our App, and/or by email to you. You agree that you will be deemed to have notice of any modifications once we post them on our App or notify you by email. You agree that your continued use of this App after such notice will be taken as your acceptance of the modified Terms. It is your responsibility to check this App periodically for any such modifications. If you do not agree

with the modified Terms, you must close your Profile and immediately stop using this App.

9.2 Notwithstanding clause 9.1 above, where you notify us of a dispute ("**Dispute**") in accordance with clause 11 below, any changes made to the Terms after you have notified us of the Dispute will not apply to you until the Dispute has been resolved.

9.3 We reserve the right to discontinue the App or to change the content of the App in any way and at any time, with or without notice to you, without liability.

10 Suspension and Deactivation

10.1 We reserve the right to suspend your Profile at any time and for any breach of these Terms or any potential breach of these Terms pending investigation. At conclusion of the investigation we may in our entire discretion reactivate your account; temporarily suspend your account; or permanently deactivate your Profile in accordance with the remainder of this clause 10.

10.2 We reserve the right to deactivate your Profile at any time and for any breach of these Terms by deactivating your Profile. If we deactivate your Profile, you may not, under any circumstances, register a new Profile without prior written consent and approval from us.

10.3 You have the right to terminate this Agreement at any time for any reason whatsoever by deactivating your Profile.

10.4 If we terminate your Profile in accordance with clause 10.1 above, you will no longer have access to your Profile, and you will no longer be authorised to use this App.

11 Dispute Resolution

11.1 If you have any dispute with us in relation to this Agreement or our enforcement of these Terms ("**Dispute**"), you must:

(a) notify us of the Dispute by all reasonable means, including by email to info@whatjelly.com ("**Notification of Dispute**");

(b) co-operate with us or our authorised representative to resolve the Dispute.

11.2 Within sixty (60) days of us receiving your Notification of Dispute, each Party agrees to use their best endeavours to attempt to resolve the Dispute by negotiation.

11.3 If the Dispute is not satisfactorily resolved by negotiation between the Parties after the sixty (60) day period referred to in 11.2 above (or, where the Parties agree to a longer period, that longer period), the Dispute will be referred to mediation in accordance with the ADC Guidelines for Commercial Mediation of the Australian Disputes Centre ("**ADC**") in force at the time to:

(a) a mediator we both agree upon, or if we cannot agree on a mediator, a mediator appointed by the ADC; and

(b) each party must use their best efforts to make use of the mediation process to resolve the Dispute; and

(c) mediation shall continue until:

(i) the resolution of the Dispute; or

- (ii) a determination by the mediator that the Dispute is unlikely to be resolved through mediation.

11.4 Each Party shall bear its own costs in relation to the resolution of the Dispute. The costs of the mediation in accordance with clause 11.2 above will be borne equally between both parties.

11.5 During the Dispute, this Agreement will remain in full force and effect.

11.6 Neither party may commence any arbitration or court proceedings without first complying with this clause 11. However, nothing in this clause 11 denies either of us the right to seek urgent interlocutory relief (including an injunction) from an appropriate court in relation to any Dispute arising under this Agreement.

12 Jurisdiction and Governing Law

12.1 This Agreement is governed by the law of Western Australia, excluding its choice of law rules. You agree to submit to the exclusive jurisdiction of the courts of Western Australia and any court in Australia having competent jurisdiction to hear appeals from such courts.

13 General

13.1 Headings in these Terms are provided for convenience only, and shall not be used to construe meaning or intent.

13.2 To the extent that there is any inconsistency between these Terms and other terms posted on the App, these Terms will prevail.

13.3 If any part of these Terms is deemed invalid or unenforceable by a court, that part shall be modified or severed as appropriate to reflect the parties' intention, and the rest shall remain in full force and effect as if the invalid or unenforceable term had never been included.

13.4 You agree that we will not be held liable for any delay or failure in its performance of its obligations cause by force majeure, including without limitation act of government or state, natural disaster, fire, flood, civil commotion, epidemic, industrial action or organised protests by third parties, war, failure of payment systems, or any event beyond our reasonable control.

13.5 Any failure or delay in or by us in enforcing any part of these Terms is not to be construed as a waiver of our rights. Any waiver of our rights must be given in writing.

13.6 Each of these Terms which expressly or by its nature survives termination of this Agreement shall remain fully enforceable notwithstanding such termination.

13.7 Our rights and obligations under this Agreement may be transferred or assigned at any time at our sole discretion.