

# Family Terms & Conditions

May 2018

**Between**

**The Customer**

(hereafter "The Customer")

**And**

**Family ApS**

Købmagergade 19, 2tv

1150 Copenhagen K Denmark

VAT no.: 35 41 37 58

(hereafter 'Family')

## 1. Introduction

The following terms and conditions (hereafter "Family Terms") form the foundation for the agreement ("The Family Agreement") between Family and The Customer regarding The Customer's use of Family's solution (hereafter "The Solution") which The Customer will be, upon acceptance of Family's offer ("Family Offer") sent by email to The Customer or accepted electronically, given access to.

## 2. Rights

Family owns all rights, including (without limitation) all copyright, trademarks and all other intellectual property rights, in and connected with The Solution. The Customer shall not obtain any rights to The Solution, except for those specifically stated in The Family Agreement.

Family grants to The Customer a non-transferable, revocable and non-exclusive licence to use The Solution in respect of those schools, daycares or nurseries specified in the Family Offer. The Solution must only be accessed and used with a username and password (hereafter "Access Information"), which Family shall provide to The Customer. The Customer is responsible for keeping the Access Information confidential, and ensuring that it is only used in connection with access to The Solution.

The Customer may grant access to one or more third parties connected with the schools, daycares or nurseries specified in the Family Offer as users of the system, for example staff or parents ("Users") so that such Users can gain access to The Solution. In the same way, an approved User may give other Users access to The Solution.

The licence to use The Solution includes the right to use the features specified in the Family Offer and the potential limitations which have been specified in the Family Offer. The price for the licence to use The Solution depends on the functionality and package chosen by The Customer and is stated in the Family Offer.

Family has the right to offer further services and features in The Solution beyond the agreed standard features for both parents and The Customer. Use of these further features is optional for both parents and The Customer and Family is entitled to charge additional sums for such services (as specified by Family from time to time).

### 3. Security

Family strives to ensure that operation of The Solution is as secure and reliable as possible in accordance with good IT practice. Family does not however warrant that The Solution is flawless.

*Family does not specifically warrant that:*

- The Solution will be secure against hacker attacks or other unauthorized access to The Solution, even though Family shall use reasonable endeavours to design The Solution to resist hacker attacks and other unauthorized access cf. Family's Security Appendix.
- The Solution will at any given time be fully operational or accessible to The Customer; or
- any specific functionalities of The Solution will be available at any given time.

Family's taken security measures are further specified in the [Data Processing Agreement](#).

### 4. Operation

#### ***Uptime and Maintenance***

Family strives to deliver the most possible uptime. All scheduled maintenance will, as far as possible, be carried out with minimal disruption for The Customer and conducted outside ordinary business hours. To the extent possible, maintenance is conducted during weekends or between 10 PM and 6 AM ("The Maintenance Window") on working days.

The Solution might be unavailable due to maintenance work etc. within the period of The Maintenance Window. For safety reasons or when correcting critical errors, Family can be forced to close down parts of or the entirety of The Solution beyond The Maintenance Window in order to protect the system, The Solution or The Customer's data from risks. To the extent possible, Family will notify The Customer by email or inside The Family Solution of unscheduled actions outside of The Maintenance Window.

Family shall use reasonable endeavours to sustain a continuous operation, including ongoing maintenance of The Solution by correcting errors and dysfunctions, as well as developing the system with expansion of existing functionalities and the development of new functionalities. The correction of significant errors will be initiated within ordinary business hours, while other errors are targeted within a reasonable period of time in relation to the nature of the error and the impact on The Solution and The Customer's use thereof.

Relevant surveillance is installed on the system and Family monitors the system on a regular basis. Family will act as quickly as possible on any incidents that could affect The Customer's use of the system.

### **Backup**

Backup of The Solution and of The Customer's data will be carried out as referred to in The [Data Processing Agreement](#).

## **5. Service and support**

Depending on the selected package, Family provides support to The Customer and Users regarding the use of The Solution through the Family Customer Success team. This support covers onboarding and training in the usage of The Solution as well as customer service related questions. It does not include technical consultancy or troubleshooting of The Customer's IT system.

The Family Customer Success team answers concise and precise questions concerning the usage of the program and devices, carries out simple troubleshooting and provides general guidance regarding The Solution.

Reporting of bugs and operational issues can also be addressed to the Family Customer Success team.

Support is available on working days within normal business hours, Monday to Friday from 8 AM to 4 PM UK time on phone +44 20 3808 4386. In addition, the Family Customer Success team can be reached by email on [support@family.co](mailto:support@family.co).

## **6. Personal data processing**

As part of The Customer's usage of The Solution, Family operates and supports The Solution for The Customer. Hereby Family conducts processing of personal data for which The Customer is the data controller ("Customer Data"). Consequently, Family is acting as a data processor in respect of Customer Data. It is the responsibility of The Customer, as the data controller, to submit any necessary notifications to the relevant authorities.

The processing of Customer Data is further specified in the [Data Processing Agreement](#) between Family and The Customer.

### **Audit Rights**

Should The Customer wish, Family can assist The Customer with ensuring that Family has, to a reasonable extent, implemented and maintained the agreed security precautions by providing The Customer access to relevant documents and materials (for an hourly fee of GBP 75). If The Customer requires such an audit, Family must receive a written notice no later than 30 days in advance.

## **7. The Famly data policy**

The data submitted into The Solution by The Customer or the Users is the property of The Customer.

## **8. Terms of pricing and payment**

The Customer must pay an annual subscription fee, which is based on The Customer's desired functionalities, package and the number of daycares, nurseries or schools using the The Solution, and which is set out in the Famly Offer. Payment terms are specified separately in the Famly Offer.

The Customer and The Customer's users must pay a fee for any purchased add-ons added to The Solution.

Famly may change the annual or monthly subscription pricing with effect from a new subscription period, provided a written notification (including e-mails) is sent to The Customer no later than three months prior to the start of the new subscription period. If The Customer rejects the new pricing, The Customer may terminate the agreement cf. Section 12 below.

Invoiced amounts are due within 14 days from the invoice date. For late payment, Famly is entitled to charge a 2% arrears per commenced month, starting from the due date. If the invoice is not paid by the due date, Famly is, until the overdue payment is received, entitled to prevent The Customer accessing The Solution until all arrears have been received (notwithstanding Famly's right to terminate The Famly Agreement, cf. Section 12).

## **9. Errors and omissions**

Provided The Customer wishes to complain about errors or omissions within The Solution, this must be done promptly, since The Customer otherwise will be deprived of the right to complain for breach of contract.

## **10. Responsibilities**

Famly renounces any responsibility for error and omissions within The Solution, including The Solution's effect on The Customer's hardware or software, and in regards to compatibility with new versions, updates etc.

Notwithstanding any other provision of this Section 9, nothing in the Famly Agreement shall exclude either party's liability for death, personal injury or fraud.

Famly shall not be held liable for any indirect loss, including but not restricted to, loss from consequential damage, operating loss and profit loss, demands raised by third parties, data loss or expenses regarding reestablishment of data, which may occur in respect of the Famly Agreement.

Loss of data is considered as indirect loss, except if the data can not be recovered from the latest backup or Famly has not backed up in accordance with Section 4. In those cases, the loss is considered a direct loss.

Famly shall not be liable for The Customer's loss of data where such data has been submitted by The Customer after the time of the latest backup.

Should Famly, despite the abovementioned disclaimer, be held liable for damages, Famly's liability is always restricted to the sum that The Customer has paid in connection with the usage of The Solution within a year prior to the compensation claim.

## **11. Force majeure**

Famly cannot be held liable for breach of The Famly Agreement caused by circumstances beyond Famly's control, including (for example), strikes, lockouts, public regulations, war, terrorism, water damage, trade restrictions, virus or hacker attacks, illness or deaths of key employees, IT failures, telecommunications malfunctions, fire, electricity breach, power failure, flooding, lightning strike or abnormal weather conditions.

## **12. Termination and breach of contract**

The subscription period for this contract is 12 months.

Until The Famly Agreement is terminated or discontinued by one of the parties, the subscription period will be renewed automatically, and The Famly Agreement will continue. The Customer may terminate The Famly Agreement by giving at least a 1-month notice before the end of a subscription period. Such termination will take effect at the end of the relevant subscription period.

Famly can terminate the Famly Agreement by written notification with a three-month's notice, unless other arrangements have been made between the parties. Such termination will take effect at the end of the relevant subscription period.

Famly may terminate The Famly Agreement: (i) in respect of a breach of the payment obligations set out in Section 8, by providing The Customer with 14 days' written notice and the opportunity to remedy the breach in such period; or (ii) in respect of any other material breach of any term of The Famly Agreement, by providing The Customer with 30 days' written notice and (where such breach is capable of remedy) the opportunity to remedy the breach in such period. In each case termination will take effect on the expiry of the relevant notice period.

## **13. Assignment**

Famly may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under The Famly Agreement and may subcontract or delegate in any manner any or all of its obligations under The Famly Agreement to any third party or agent.

The Customer shall not, without the prior written consent of Family, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under The Family Agreement.

#### **14. Third party rights**

No one other than a party to The Family Agreement shall have any right to enforce any of its terms.

#### **15. Severability**

If any provision or part-provision of The Family Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Section 15 shall not affect the validity and enforceability of the rest of The Family Agreement.

#### **16. Entire agreement**

The Family Agreement together with the Family [Data Processing Agreement](#) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in The Family Agreement.

#### **17. Waiver**

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not: (a) waive that or any other right or remedy; or (b) prevent or restrict the further exercise of that or any other right or remedy.

#### **18. Applicable law and legal venue**

The Family Agreement is governed by Danish law. Any dispute between the parties (whether contractual or non-contractual) arising under or in connection with The Family Agreement that cannot be solved amicably shall be submitted to the exclusive jurisdiction of the Danish courts.

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