

SMILE PROUD APP TERMS OF USE

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Smile Proud (the “App”) is owned and operated by Smile Train, Inc. (“Smile Train” “we,” “our,” or “us”) and is designed to help users (each, a “User,” “you,” “your,” or “yourself”) cleft with developing and strengthening their self-esteem by simulating scenarios that may be difficult and allowing them to practice psychosocial skills. Your use of the App and the information and services provided by the App (“Services”) are subject to, and governed by, these Terms of Use (“Terms” or “Agreement”). Each time you access and/or use the App (other than to simply read these Terms), you agree to be bound by and comply with these Terms. Additionally, by using the App, you acknowledge and accept the App’s *Privacy Policy* and consent to the collection and use of your data accordingly. Therefore, ***do not use the App if you do not agree.***

1. Eligibility; Limited License

Smile Train grants you a limited, non-exclusive, and nontransferable license to download, install, and use the App as follows, and subject to your compliance with these Terms:

- If you are a provider, the license is for your professional use on two devices owned or otherwise controlled by you (a “Device”), solely for the purpose of assisting patients with practicing psychosocial skills in a professional setting (a “**Provider License**”).
- If you are an individual user, the license is for your personal, non-commercial use on a single mobile device owned or otherwise controlled by you (a “Device”) (a “**Personal License**”).

You acknowledge and agree that the App is provided under license, and not sold, to you. You do not acquire any ownership interest in the App under this Agreement, or any other rights thereto other than to use the App in accordance with the license granted, and subject to all terms, conditions, and restrictions, under this Agreement. By using the App, you acknowledge and agree that Smile Train may change, alter, or modify the settings or configurations on your Device in order to allow for or optimize your use of the App. If at any time you cease to meet these eligibility requirements, you must immediately delete your account. We retain the right to remove your access to the App without warning or notice to you.

2. Use of the App

The App’s practices governing any resulting collection and use of any information you provide is disclosed in our *Privacy Policy*.

A. **License to Smile Train of User Content.** You hereby grant to Smile Train the non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, and cost-free right and license to use, copy, record, distribute, reproduce, disclose, display, transmit, translate, and otherwise use and exploit all or any portion of User Content, for the purpose of providing the Services and for any internal purposes whatsoever, in all formats, on or through any means or medium now known or hereafter developed. You agree that (a) User Content will be used in accordance with our *Privacy Policy*, and (b) Smile Train does not assume any obligation of any kind to you or any third party with respect to User Content.

D. **Representations and Warranties Related to User Content.** You represent and warrant that (a) you have a lawful right to submit User Content and grant Smile Train the rights to it that you are granting by these Terms, all without any Smile Train obligation or need to obtain consent of any third party, including the your Representative, and without creating any obligation or liability of Smile Train; (b) you have provided express permission, or if you are a minor, received express permission from your Representative to allow you to submit the Information as required under these Terms; (c) User Content is true, accurate, and up to date to the best of your knowledge; and (d) User Content does not, and Smile Train’s permitted uses and exploitation set forth in these Terms will not infringe any right of any third party, violate these Terms, or cause injury or harm to any person.

3. Term; App Content

D. **Term and Termination.** The terms and conditions of this Agreement are effective when you download the App and acknowledge your acceptance and will continue in effect until terminated by you or by us. You may terminate this Agreement by deleting the App and all copies thereof from your Device. We may terminate this Agreement at any time without notice. In addition, this Agreement will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement. Upon termination, all rights granted to you under this Agreement will also terminate and you must cease all use of the App and delete all copies of the App from your Device. Termination will not limit any of Smile Train's rights or remedies at law or in equity.

E. **App Content.** The App contains a variety of: (i) materials and other items relating to Smile Train, including all layout, information, text, data, images, scripts, designs, graphics, button icons, instructions, technology, the "look and feel" of the App, and the compilation, assembly, and arrangement of the materials of the App and any and all copyrightable material (including source and object code); (ii) trademarks, logos, trade names, trade dress, App marks, and trade identities of various parties, including those of Smile Train (collectively, "**Trademarks**"); and (iii) other forms of intellectual property (all of the foregoing, collectively "**App Content**"). All right, title, and interest in and to the App Content available via the App is the property of Smile Train or our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent, and/or other intellectual property and unfair competition rights and laws to the fullest extent possible. Smile Train owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the App Content.

4. Use Restrictions

These Terms include only narrow, limited grants of rights to use and access the App. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. All rights not expressly granted to you are reserved by Smile Train and its licensors and other third parties. ***Any unauthorized use of any App Content or the App for any purpose is prohibited.***

D. **App.** You agree that you will not: (i) engage in any activities through or in connection with the App that seek to attempt to or do harm any individuals or entities or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party, or are otherwise objectionable to Smile Train; (ii) reverse engineer, decompile, disassemble, reverse assemble, or modify any App source or object code or any software or other products, Apps, or processes accessible through any portion of the App; (iii) interfere with or circumvent any security feature of the App or any feature that restricts or enforces limitations on use of or access to the App, the App Content, or User Content; (iv) harvest or otherwise collect or store any information (including personally identifiable information about you or other users of the App, including e-mail addresses, without the express consent of such users); (v) attempt to gain unauthorized access to the App or networks connected to the App, through password mining or any other means; or (vi) otherwise violate these Terms.

E. **App Content.** You also agree that, in using the App: (i) you will not monitor, gather, copy, or distribute App Content (except as may be a result of standard search engine activity or use of a standard browser) by using any robot, rover, "bot", spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) you will not frame or utilize framing techniques to enclose any such App Content (including any images, text, or page layout); (iii) you will keep intact all trademark, copyright, and other intellectual property notices contained in such App Content; (iii) you will not insert any code or product to manipulate such App Content in any way that adversely affects any user experience.

F. **Provider License Restrictions.** If you have a Provider License, you may only use the practitioner view in the App to view a patient view of a Device signed into your Meta account or another Meta account controlled by you. You may not use practitioner view to view a patient view of a Device that is signed into a Meta account other than your Meta account or a Meta account controlled by you. You may not use a Device associated with a Meta account with a Personal License in a professional setting or for purposes of

assisting patients with practicing psychosocial skills. Any Device used by a patient must have eye tracking, Natural Face Expressions, Fit Adjustment, fitness-related experiences, and similar features or functionality disabled.

G. Personal License Restrictions. If you have a Personal License, you may not enable the practitioner view in the App.

5. Updates to Terms

These Terms, in the form posted at the time of your use of the App, shall govern such use. As our App evolves, the terms and conditions under which we make the App available to you may prospectively be modified and we may cease offering the App under the terms for which they were previously offered. ***Accordingly, each time you sign in to or otherwise use the App you are entering into a new agreement with us on the then applicable terms and conditions.*** You agree that we may notify you of other terms by posting them on the App (or in any other reasonable manner of notice which we elect) and that your use of the App after such notice constitutes your agreement from that point on to the other terms for your new use. Therefore, you should review the posted terms of App each time you use the App. You can reject any new, revised, or additional terms by discontinuing use of the App and related services.

6. Notices; Questions

You agree that: (1) we may give you notices of new, revised, or changed terms and other important matters by prominently posting notice on the home page of the App, or in another reasonable manner; and (2) we may contact you by mail or e-mail sent to the address provided by you. You agree to promptly notify us if you change your e-mail or mailing address.

If you have a question regarding using the App, you may contact Smile Train by sending an email to research_innovation@smiletrain.org. You acknowledge that the provision of customer support is at Smile Train's sole discretion and that we have no obligation to provide you with customer support of any kind.

7. Wireless Features; Connectivity

The App is available to you via your wireless Device, including the ability to access the App's features and upload content to the App and download Apps to your wireless Device. You are responsible for obtaining and maintaining all Devices and any other equipment and software needed for your access to and use of the App and you will be responsible for all charges related to them.

8. Applicable Law; Dispute Resolution

These Terms will be governed by and construed in accordance with, and any Dispute (defined below) will be resolved in accordance with, the laws of the State of New York, without regard to its conflicts of law provisions. At our sole discretion, it may require you to submit any controversy, allegation, or claim arising out of or relating to the App, the App Content, User Content or these Terms whether heretofore or hereafter arising (collectively, "**Dispute**") to final and binding arbitration, in English, in accordance with the Arbitration Rules and Procedures ("**Rules**") of JAMS/Endispute LLC ("**JAMS**"). Except to the extent that arbitration is required and except as to the enforcement of any arbitration decision or award, any action or proceeding relating to any Dispute may only be instituted in state or federal court in the County of New York. Accordingly, you and Smile Train consent to the exclusive personal jurisdiction and venue of such courts for such matters. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IF YOU OR WE WANT TO ASSERT A DISPUTE AGAINST THE OTHER, THEN YOU OR WE MUST COMMENCE IT WITHIN ONE (1) YEAR AFTER THE DISPUTE ARISES – OR IT WILL BE FOREVER BARRED.

9. MEDICAL DISCLAIMER

SMILE TRAIN DOES NOT PROVIDE MEDICAL SERVICES OR ADVICE AND DOES NOT GUARANTEE FINANCIAL SUPPORT FOR ANY REQUIRED MEDICAL SERVICES. YOU

ACKNOWLEDGE THAT THE INFORMATION ON THE APP AND ANY INFORMATION PROVIDED BY SMILE TRAIN IS PROVIDED "AS IS" AND "AS AVAILABLE" FOR GENERAL INFORMATION AND EDUCATIONAL PURPOSES ONLY. NO INFORMATION ON THE APP OR IN OTHER MATERIALS IS INTENDED AS MEDICAL ADVICE, AND SHOULD NOT BE RELIED UPON AS A SUBSTITUTE FOR CONSULTATIONS WITH QUALIFIED HEALTH PROFESSIONALS WHO ARE FAMILIAR WITH YOUR INDIVIDUAL MEDICAL NEEDS. ALWAYS SEEK THE ADVICE OF YOUR PHYSICIAN OR OTHER QUALIFIED HEALTH PROFESSIONAL WITH ANY QUESTIONS YOU MAY HAVE REGARDING YOUR MEDICAL CONDITION.

10. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

Neither Smile Train nor its licensors makes any representations or warranties concerning the App or any content contained in or accessed through the App (including App Content or User Content), and we will not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in or accessed through the App. THE APP AND APP CONTENT ARE PROVIDED BY SMILE TRAIN AND ITS LICENSORS ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE APP WILL BE UNINTERRUPTED OR ERROR-FREE. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

11. LIMITATIONS OF OUR LIABILITY

TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL SMILE TRAIN, ITS AFFILIATES, AND EACH OF ITS AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND PARTNERS (INDIVIDUALLY, AND COLLECTIVELY, THE "SMILE TRAIN PARTIES") BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR FAILURE TO ACT OR PROVIDE INFORMATION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

12. Indemnification

You agree to indemnify, defend (if Smile Train requests) and hold harmless Smile Train, its vendors, licensees, licensors, agents, employees, officers, directors, partners, and volunteers (the "Indemnitees") from and against any and all losses, damages, liabilities, fees and costs, including attorneys' fees and court costs, which may be incurred by any Indemnatee in connection with your breach or alleged breach of these Terms or your use of the App. You may not settle or compromise any claim that would affect any Indemnatee's rights or legally obligate any Indemnatee without the Indemnatee's prior written approval in each case. Smile Train reserves the right to control the defense (with its own counsel) of any indemnified claim.

13. Export Controls

Software related to or made available by the App may be subject to export controls of the U.S.A. No software from the App may be downloaded, exported, or re-exported (i) into (or to a national or resident of) any country or other jurisdiction to which the U.S.A. has embargoed goods, software, technology or services (which, as of the effective date of these Terms, includes Cuba, North Korea, Iran, Sudan, and Syria), or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders, or (iii) to anyone on the U.S. Department of Commerce's Bureau of Industry and Security Entities List as published in the Export Administration Regulations (including entities engaged in weapons of mass destruction proliferation in various countries and persons and entities that are suspected of diverting U.S. origin

items to embargoed countries or terrorist end-uses). You are responsible for complying with all trade regulations and laws both foreign and domestic. Except as authorized by law, you agree and warrant not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls, including as set forth in subsections (i) – (iii) above.

14. **Miscellaneous**

If any provision of these Terms is for any reason deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms (which will remain in full force and effect). To the extent permitted by applicable law, you agree to waive, and you hereby waive, any applicable statutory and common law that may permit a contract to be construed against its drafter. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. Except as expressly set forth in these Terms, (i) no failure or delay by you or Smile Train in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced. In the event of a conflict between these Terms and other applicable agreements or terms, these Terms shall govern.

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