

Mobile App End User License Agreement

Effective as of February 24, 2017

This Mobile Application End User License Agreement (“Agreement”) is a binding agreement between you (“End User” or “you”) and RFHSS LLC (“Company”). This Agreement governs your use of the Nudge application, (including all related documentation, the “App”). The App is licensed, not sold, to you.

BY CLICKING THE “AGREE” BUTTON AND/OR USING THE APP, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE 18 YEARS OF AGE OR OLDER/OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE THE APP AND DELETE IT FROM YOUR MOBILE DEVICE.

1. License Grant. Subject to the terms of this Agreement, Company grants you a limited, non-exclusive, and nontransferable license to:

(a) download, install, and use the App for your personal, non-commercial use on a single mobile device owned or otherwise controlled by you (“Mobile Device”) strictly and solely in accordance with this Agreement; and

(b) access and use on such Mobile Device the Content and Services (as defined in Section 5) made available in or otherwise accessible through the App, strictly and solely in accordance with this Agreement.

2. License Restrictions and Prohibited Uses of the App. You agree that you shall not:

(a) copy the App, except as expressly permitted by this license;

(b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the App;

(c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the App or any part thereof;

(d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the App, including any copy thereof;

(e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the App, or any features or functionality of the App, to any third party for any reason, including by making the App available on a network where it is capable of being accessed by more than one device at any time;

(f) remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the App;

(g) use the App any way that violates any applicable federal, state, local or international law or regulation;

(h) use the App to exploit, harm, harass, or abuse other users of the App;

- (i) use the App in any way to expose other users to inappropriate or objectionable content;
- (j) impersonate or attempt to impersonate the Company, a Company employee, another user, or any other person or entity (including, without limitation, by using screen names associated with any of the foregoing);
- (k) engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the App, or which, as determined by us, may harm the Company or users of the App or expose them to liability;
- (l) use the App in any manner that could disable, overburden, damage, or impair the App or interfere with any other party's use of the App, including their ability to engage in real time activities through the App;
- (m) use any process to monitor or copy any of the material on the App or for any other unauthorized purpose without our prior written consent;
- (n) use any device, software or routine that interferes with the proper working of the App;
- (o) introduce any viruses, trojan horses, worms, logic bombs or other material which is malicious or technologically harmful; or
- (p) attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the App or any server, computer, or database connected to or utilized by the App.

3. Reservation of Rights. 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. Company reserve and shall retain its entire right, title, and interest in and to the App, including all copyrights, trademarks, and other intellectual property rights therein or relating thereto, except as expressly granted to you in this Agreement.

4. Collection and Use of Your Information. You acknowledge and agree that when you download, install, or use the App, Company may use automatic means to collect information about your Mobile Device and about your use of the App, including geolocational information. You also may be required to provide certain information about yourself as a condition to downloading, installing, or using the App or certain of its features or functionality, and the App may provide you with opportunities to share information about yourself with others. All information we collect through or in connection with this App is subject to our Privacy Policy <http://www.simplynudge.com/privacy-policy>. By downloading, installing, using, and/or providing information to or through this App, you affirmatively consent to all actions taken by us with respect to your information in compliance with the Privacy Policy. If you do not so consent, you must decline by not accepting this Agreement and not using the App.

5. Content and Services. The App may provide you with access to content and services, and certain features, functionality, and content accessible on or through the App (collectively, "Content and Services"). Your access to and use of such Content and Services are governed by this Agreement and the Privacy Policy located at <http://www.simplynudge.com/privacy-policy>, which are incorporated herein by this reference. Your access to and use of such Content and Services require you to acknowledge your acceptance of the Agreement and Privacy Policy, and your failure to do so may restrict you from accessing or using certain of the App's features and functionality.

6. Geographic Restrictions. The Content and Services are based in the Commonwealth of Kentucky in the United States and provided for access and use only by persons located in the United States. You acknowledge that you are not permitted to use the App or otherwise access the Content and Services outside of the United States and that access thereto may not be legal by certain persons or in certain countries. If you access the Content and Services from outside the United States in violation of this Agreement, you are responsible for compliance with local laws.

7. Updates. Company may from time to time in its sole discretion develop and provide App updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "Updates"). Updates may also modify or delete in their entirety certain features and functionality. You agree that Company has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Mobile Device settings, when your Mobile Device is connected to the internet either:

- (a) the App will automatically download and install all available Updates; or
- (b) you may receive notice of or be prompted to download and install available Updates.

You shall promptly download and install all Updates and acknowledge and agree that the App or portions thereof may not properly operate should you fail to do so. You further agree that all Updates will be deemed part of the App and be subject to all terms and conditions of this Agreement.

8. Third-Party Materials. The App may display, include, or make available third-party content (including data, information, applications, and other products, services, and/or materials) or provide links to third-party websites or services, including through third-party advertising ("Third-Party Materials"). You acknowledge and agree that Company is not responsible for Third-Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect thereof. Company does not assume and will not have any liability or responsibility to you or any other person or entity for any Third-Party Materials. Third-Party Materials and links thereto are provided solely as a convenience to you, and you access and use them entirely at your own risk and subject to such third parties' terms and conditions.

9. Term and Termination.

(a) The term of Agreement commences when you use the App or acknowledge your acceptance, whichever takes place first, and will continue in effect until terminated by you or Company as set forth in this Section 9.

(b) You may terminate this Agreement by deleting the App and all copies thereof from your Mobile Device.

(c) Company may terminate this Agreement at any time without notice if it ceases to support the App, which Company may do in its sole discretion. In addition, this Agreement will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.

(d) Upon termination:

- (i) all rights granted to you under this Agreement will also terminate; and

(ii) you must cease all use of the App and delete all copies of the App from your Mobile Device and account.

(e) Termination will not limit any of Company's rights or remedies at law or in equity.

10. Disclaimer of Warranties. THE APP IS PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, COMPANY, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE APP, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, COMPANY PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE APP WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

11. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO YOUR USE OF OR INABILITY TO USE THE APP OR THE CONTENT AND SERVICES FOR:

(a) PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES; OR

(b) DIRECT DAMAGES IN AMOUNTS THAT IN THE AGGREGATE EXCEED THE AMOUNT ACTUALLY PAID BY YOU FOR THE APP OR THE AMOUNT OF \$500.00, WHICHEVER IS GREATER.

THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

12. Indemnification. You agree to indemnify, defend, and hold harmless Company and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, arising from or relating to your use or misuse of the App or your breach of this Agreement.

13. Export Regulation. The App may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the App to, or make the App accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the App available outside the US.

14. US Government Rights. The App is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if you are an agency of the US Government or any contractor therefor, you receive only those rights with respect to the App as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

15. Severability. If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect.

16. Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the Commonwealth of Kentucky without giving effect to any choice or conflict of law provision or rule.

17. Arbitration; Waiver of Class Action and Consolidation of Claims.

(a) Any dispute, controversy, or claim arising out of or relating to this Agreement (including without limitation the suspension, termination, material breach, and/or validity hereof), the Privacy Policy, or any person's use of the App (a "Dispute") shall be submitted to mandatory final and binding arbitration ("Arbitration") before the American Arbitration Association in accordance with its commercial arbitration rules, before a tribunal of three (3) arbitrators (the "Tribunal").

(b) Notwithstanding the foregoing, (i) class arbitration (including the presiding over any form of a representative or class proceeding); and (ii) the consolidation of claims made by more than one plaintiff, are both expressly prohibited (individually and collectively referred to as the "Class Action Prohibition"). The parties hereby agree to arbitrate any Dispute solely on an individual basis.

(c) In the event the Class Action Prohibition is deemed invalid or unenforceable, the entire Arbitration clause shall be deemed null and void. If the Arbitration clause is so deemed null and void or if any Dispute is otherwise not subject to mandatory arbitration, any such Dispute shall be resolved exclusively in the federal courts of the United States or the courts of the Commonwealth of Kentucky, in each case located in Lexington, Fayette County. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

18. Limitation of Time to File Claims. ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE APP MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES OTHERWISE SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

19. Entire Agreement. This Agreement, and our Privacy Policy constitute the entire agreement between you and Company with respect to the App and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect to the App.

20. Waiver. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.