

# **App Terms of Use**

## **Fomo App End User License Agreement**

This End User License Agreement (“Agreement”) is between you and Fomo and governs use of this app made available through the Apple App Store. By installing the Fomo App, you agree to be bound by this Agreement and understand that there is no tolerance for objectionable content. If you do not agree with the terms and conditions of this Agreement, you are not entitled to use the Fomo App.

In order to ensure Fomo provides the best experience possible for everyone, we strongly enforce a no tolerance policy for objectionable content. If you see inappropriate content, please use the “Report as offensive” feature found at the bottom of each post, instructing you to swipe left to simultaneously flag offensive posts and block the users creating offensive posts from you. Within 24 hours, Fomo will act on all objectionable content reports, by removing objectionable content and ejecting any user(s) who provided the offending content. Users should also down-vote offensive posts, as posts with 5 more down-votes than up-votes are automatically deleted.

## **Objectionable Content Policy**

Content may not be submitted to Fomo, who will moderate all content and ultimately decide whether or not to post a submission to the extent such content includes, is in conjunction with, or alongside any, Objectionable Content. Objectionable Content includes, but is not limited to: (i) sexually explicit materials; (ii) obscene, defamatory, libelous, slanderous, violent and/or unlawful content or profanity; (iii) content that infringes upon the rights of any third

party, including copyright, trademark, privacy, publicity or other personal or proprietary right, or that is deceptive or fraudulent; (iv) content that promotes the use or sale of illegal or regulated substances, tobacco products, ammunition and/or firearms; and (v) gambling, including without limitation, any online casino, sports books, bingo or poker.

## **Unauthorized Activities**

When using the Services, you agree not to:

Create a handle for the purpose of preventing others from using that handle.

Sell or buy handles.

Impersonate another person in a manner that is intended to or does mislead, confuse or deceive others.

Post or share another individual's private information without their express authorization and permission.

Defame, abuse, bully, harass, stalk, threaten, or otherwise violate the legal rights of others.

Use racially or ethnically offensive language.

Discuss or incite illegal activity.

Post or share Submissions that contain pornography or graphic violence.

Post or share anything that exploits children or minors or that depicts cruelty to animals.

Post or share Submissions that violate any third party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity or any other intellectual property or proprietary right.

Disseminate any unsolicited or unauthorized advertising, promotional materials, 'junk mail', 'spam', 'chain letters', 'pyramid schemes', or any other form of such solicitation.

Use any robot, spider, crawler, scraper or other automated means to access the Services.

Take any action that imposes an unreasonable or disproportionately large load on our infrastructure.

Use or develop any third party applications that interact with the Services or Submissions without our prior written consent.

Alter the opinions or comments posted by others on the Services.

Post or share any image or language that is obscene, vulgar or offensive or that threatens, disparages or demeans any individual or group.

Attempt to circumvent any of our content-filtering techniques.

Post or share anything inappropriate or disruptive to the Services.

Disrupt, negatively affect or inhibit users from having a positive experience with the Services.

Use the Services in violation of these Terms and/or for any unlawful purposes.

Post or share anything contrary to our public image, goodwill or reputation.

This list of prohibitions provides examples and is not exhaustive or exclusive. Fomo reserves the right to (a) suspend or terminate access to your account and your ability to post to the Services (or otherwise use the Services), (b) delete, remove or refuse to distribute any Submissions and/or (c) reclaim handles, all with or without cause and with or without notice, for any reason or no reason without liability to you. If Fomo believes a Submission violates these Terms, it may make that Submission invisible to other users without notifying you. Your Submission will be visible to you, but will not appear for any other user. Fomo may report to law enforcement authorities any actions that may be illegal, and any reports it receives of such conduct. When legally required or at Fomo's discretion, Fomo will cooperate with law enforcement agencies in any investigation of alleged illegal activity on the Services or on the Internet.

Unauthorized use of any Materials or Third-Party Content contained in the Services may violate certain laws and regulations. You agree to indemnify and hold Fomo and its officers, directors, employees, consultants, affiliates, agents, licensors, and business partners (collectively, the "Indemnified Entities") harmless from and against any and all costs, damages, liabilities, and expenses (including attorneys' fees and costs of defense) Fomo or any other Indemnified Entity suffers in relation to, arising from, or for the purpose of avoiding, any claim or demand from a third party that your use of the Services or the use of the Services by any person using your user name and/or password violates any applicable law or regulation, or the copyrights, trademark rights or other rights of any third party.

## **Services**

Fomo provides content through the Services that is copyrighted and/or trademarked work of Fomo or Fomo's third-party licensors and suppliers or other users of the Services (collectively, the "Materials"). Materials may include logos, text graphics, video, images, photos, software and other content.

Subject to these Terms, Fomo hereby grants you a limited, non-exclusive, non-sublicensable, non-transferable and revocable license to use and to display the Materials and to use the Services solely for your personal, non-commercial use. Except for the foregoing license, you have no other rights in the Services or any Materials and you may not modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, enhance or in any way exploit any of the Services or Materials in any manner.

You may use the App for one registered account on one mobile device owned or leased solely by you, for your personal, non-commercial use. You may not: (i) modify, disassemble, decompile or reverse engineer the App, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the App to any third-party or use the App to provide time sharing or similar services for any third-party; (iii) make any copies of the App; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the App, features that prevent or restrict use or copying of any content accessible through the App, or features that enforce limitations on use of the App; or (v) delete the copyright and other proprietary rights notices on the App. You acknowledge that Fomo may from time to time issue upgraded versions of the App, and may automatically electronically upgrade the version of the App that you are using on your mobile device. You consent to such automatic upgrading on your mobile device, and agree that

these Terms will apply to all such upgrades. Standard carrier data charges may apply to your use of the App.

Except for the limited rights expressly licensed in these Terms, Fomo and its third-party licensors or suppliers retain all right, title, and interest in and to the Services.

The following additional terms and conditions apply with respect to any App that Fomo provides to you designed for use on an Apple iOS-powered mobile device (an “iOS App”):

You acknowledge that these Terms are between you and Fomo only, and not with Apple, Inc. (“Apple”).

Your use of Fomo’s iOS App must comply with Apple’s then-current App Store Terms of Service.

Fomo, and not Apple, are solely responsible for our iOS App and the Services and Content available thereon. You acknowledge that Apple has no obligation to provide maintenance and support services with respect to our iOS App. To the maximum extent permitted by applicable law, Apple will have no warranty obligation whatsoever with respect to our iOS App.

You agree that Fomo, and not Apple, are responsible for addressing any claims by you or any third-party relating to our iOS App or your possession and/or use of our iOS App.

You agree that Fomo, and not Apple, shall be responsible, to the extent required by these Terms, for the investigation, defense, settlement and discharge of any third-party intellectual property infringement claim related to our iOS App or your possession and use of our iOS App.

You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) You are not listed on any U.S. Government list of prohibited or restricted parties.

You agree to comply with all applicable third-party terms of agreement when using our iOS App (e.g., you must not be in violation of your wireless data service terms of agreement when using the iOS App).

The parties agree that Apple and Apple’s subsidiaries are third-party beneficiaries to these Terms as they relate to your license of Fomo’s iOS App. Upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as they relate to your license of the iOS App as a third-party beneficiary thereof.

If you breach any of these Terms, the above license will terminate automatically and you must immediately stop using the Services and destroy any downloaded or printed Materials.

### **Agreement between user and Fomo**

Welcome to Fomo. The Fomo application (the "app") is comprised of various web pages operated by ViperQ LLC ("ViperQ"). Fomo is offered to you conditioned on your acceptance without modification of the terms, conditions, and notices contained herein (the "Terms"). Your use of Fomo constitutes your agreement to all such Terms.

Please read these terms carefully, and keep a copy of them for your reference.

Fomo is a Bar, Club and Nightlife Information Provider; Host of User Generated Content App The Fomo app provides users with the best drink and food specials in participating bars located in select cities. Users use the Fomo app to make public posts to socialize with other users or exchange information. Users may opt to pay a fee for access to drinking clubs at participating bars, which offer special deals available only to drinking club members. Participating bar owners have special Fomo app accounts giving them control over their bar's information. Bar owners may pay a fee to advertise to other users on the Fomo app.

## **Privacy**

Your use of Fomo is subject to ViperQ's Privacy Policy. Please review our Privacy Policy, which also governs the App and informs users of our data collection practices.

## **Electronic Communications**

Visiting Fomo or sending emails to ViperQ constitutes electronic communications. You consent to receive electronic communications and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically, via email and on the App, satisfy any legal requirement that such communications be in writing.

## **Your account**

If you use this app, you are responsible for maintaining the confidentiality of your account and password and for restricting



access to your computer, and you agree to accept responsibility for all activities that occur under your account or password. You may not assign or otherwise transfer your account to any other person or entity. You acknowledge that ViperQ is not responsible for third party access to your account that results from theft or misappropriation of your account. ViperQ and its associates reserve the right to refuse or cancel service, terminate accounts, or remove or edit content in our sole discretion.

ViperQ does not knowingly collect, either online or offline, personal information from persons under the age of thirteen. If you are under 18, you may use Fomo only with permission of a parent or guardian.

### **Cancellation/Refund Policy**

You can cancel at any time from any paid service on the Fomo app. If the fee is for a monthly service, the cancellation is effective at the end of the current month which has been paid for. There are no refunds or prorated refunds for cancelling in the middle of a monthly service period. Any

prepaid one-time service can be cancelled for refund if the service has not yet been rendered by the Fomo app. There are no refunds on services already rendered by the Fomo app.

### **Links to third party apps/sites/Third party services**

Fomo may contain links to other apps ("Linked Apps") or websites ("Linked Sites"). The Linked Sites are not under the control of ViperQ and ViperQ is not responsible for the contents of any Linked App or Linked Site, including without limitation any link contained in a Linked App or Linked Site, or any changes or updates to a Linked App or Linked Site. ViperQ is providing these links to you

only as a convenience, and the inclusion of any link does not imply endorsement by ViperQ of the site or any association with its operators.

Certain services made available via Fomo are delivered by third party apps, sites and organizations. By using any product, service or functionality originating from the Fomo app, you hereby acknowledge and consent that ViperQ may share such information and data with any third party with whom ViperQ has a contractual relationship to provide the requested product, service or functionality on behalf of Fomo users and customers.

### **No unlawful or prohibited use/Intellectual Property**

You are granted a non-exclusive, non-transferable, revocable license to access and use Fomo strictly in accordance with these terms of use. As a condition of your use of the App, you warrant to ViperQ that you will not use the App for any purpose that is unlawful or prohibited by these Terms. You may not use the App in any manner which could damage, disable, overburden, or impair the App or interfere with any other party's use and enjoyment of the App. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the App.

All content included as part of the Service, such as text, graphics, logos, images, as well as the compilation thereof, and any software used on the App, is the property of ViperQ or its suppliers and protected by copyright and other laws that protect intellectual property and proprietary rights. You agree to observe and abide by all copyright and other proprietary notices, legends or other restrictions contained in any such content and will not make any changes thereto.

You will not modify, publish, transmit, reverse engineer, participate in the transfer or sale, create derivative works, or in any way exploit any of the content, in whole or in part, found on the App. ViperQ content is not for resale. Your use of the App does not entitle you to make any unauthorized use of any protected content, and in particular you will not delete or alter any proprietary rights or attribution notices in any content. You will use protected content solely for your personal use, and will make no other use of the content without the express written permission of ViperQ and the copyright owner. You agree that you do not acquire any ownership rights in any protected content. We do not grant you any licenses, express or implied, to the intellectual property of ViperQ or our licensors except as expressly authorized by these Terms.

### **Use of communication services**

The App may contain bulletin board services, chat areas, news groups, forums, communities, personal web pages, calendars, and/or other message or communication facilities designed to

enable you to communicate with the public at large or with a group (collectively, "Communication Services"), you agree to use the Communication Services only to post, send and receive messages and material that are proper and related to the particular Communication Service.

By way of example, and not as a limitation, you agree that when using a Communication Service, you will not: defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others; publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful topic, name, material or

information; upload files that contain software or other material protected by intellectual property laws (or by rights of privacy of publicity) unless you own or control the rights thereto or have received all necessary consents; upload files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of another's computer; advertise or offer to sell or buy any goods or services for any business purpose, unless such Communication Service specifically allows such messages; conduct or forward surveys, contests, pyramid schemes or chain letters; download any file posted by another user of a Communication Service that you know, or reasonably should know, cannot be legally distributed in such manner; falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded, restrict or inhibit any other user from using and enjoying the Communication Services; violate any code of conduct or other guidelines which may be applicable for any particular Communication Service; harvest or otherwise collect information about others, including e-mail addresses, without their consent; violate any applicable laws or regulations.

ViperQ has no obligation to monitor the Communication Services. However, ViperQ reserves the right to review materials posted to a Communication Service and to remove any materials in its sole discretion. ViperQ reserves the right to terminate your access to any or all of the Communication Services at any time without notice for any reason whatsoever.

ViperQ reserves the right at all times to disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in ViperQ's sole

discretion.

Always use caution when giving out any personally identifying information about yourself or your children in any Communication Service. ViperQ does not control or endorse the content, messages or information found in any Communication Service and, therefore, ViperQ specifically disclaims any liability with regard to the Communication Services and any actions resulting from your participation in any Communication Service. Managers and hosts are not authorized ViperQ spokespersons, and their views do not necessarily reflect those of ViperQ.

Materials uploaded to a Communication Service may be subject to posted limitations on usage, reproduction and/or dissemination. You are responsible for adhering to such limitations if you upload the materials.

### **Materials provided to Fomo or posted on any ViperQ web page**

ViperQ does not claim ownership of the materials you provide to Fomo (including feedback and

suggestions) or post, upload, input or submit to any ViperQ App or our associated services (collectively "Submissions"). However, by posting, uploading, inputting, providing or submitting your Submission you are granting ViperQ, our affiliated companies and necessary sublicensees permission to use your Submission in connection with the operation of their Internet businesses including, without limitation, the rights to: copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate and reformat your Submission; and to publish your name in connection with your Submission.

No compensation will be paid with respect to the use of your Submission, as provided herein. ViperQ is under no obligation to post or use any Submission you may provide and may remove any Submission at any time in ViperQ's sole discretion.

By posting, uploading, inputting, providing or submitting your Submission you warrant and represent that you own or otherwise control all of the rights to your Submission as described in this section including, without limitation, all the rights necessary for you to provide, post, upload, input or submit the Submissions.

### **International Users**

The Service is controlled, operated and administered by ViperQ from our offices within the USA. If you access the Service from a location outside the USA, you are responsible for compliance with all local laws. You agree that you will not use the ViperQ Content accessed through Fomo in any country or in any manner prohibited by any applicable laws, restrictions or regulations.

### **Indemnification**

You agree to indemnify, defend and hold harmless ViperQ, its officers, directors, employees, agents and third parties, for any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of your use of or inability to use the App or services, any user postings made by you, your violation of any terms of this Agreement or your violation of any rights of a third party, or your violation of any applicable laws, rules or regulations. ViperQ reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with ViperQ in asserting any available defenses.

## **Liability disclaimer**

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TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL VIPERQ LLC AND/OR ITS SUPPLIERS BE LIABLE FOR ANY DIRECT, INDIRECT,

PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR PERFORMANCE OF THE APP, WITH THE DELAY OR INABILITY TO USE THE APP OR RELATED SERVICES, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GRAPHICS OBTAINED THROUGH THE APP, OR OTHERWISE ARISING OUT OF THE USE OF THE APP, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF VIPERQ LLC OR ANY OF ITS SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE APP, OR WITH ANY OF THESE TERMS OF USE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE APP.

### **Termination/access restriction**

ViperQ reserves the right, in its sole discretion, to terminate your access to the App and the related services or any portion thereof at any time, without notice. To the maximum extent permitted by law, this agreement is governed by the laws of the State of Florida and you hereby consent to the exclusive jurisdiction and venue of courts in Florida in all disputes arising out of or relating to the use of the App. Use of the App is unauthorized in any jurisdiction that does not give effect to all provisions of these Terms, including, without



limitation, this section.

You agree that no joint venture, partnership, employment, or agency relationship exists between you and ViperQ as a result of this agreement or use of the App. ViperQ's performance of this agreement is subject to existing laws and legal process, and nothing contained in this agreement is in derogation of ViperQ's right to comply with governmental, court and law enforcement requests or requirements relating to your use of the App or information provided to or gathered by ViperQ with respect to such use. If any part of this agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the agreement shall continue in effect.

Unless otherwise specified herein, this agreement constitutes the entire agreement between the user and ViperQ with respect to the App and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between the user and ViperQ with respect to the App. A printed version of this agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. It is the express wish to the parties that this agreement and all related documents be written in English.

## **Changes to Terms**

ViperQ reserves the right, in its sole discretion, to change the Terms under which Fomo is offered. The most current version of the Terms will supersede all previous versions. ViperQ encourages you to periodically review the Terms to stay informed of our updates.

## **Contact Us**

ViperQ welcomes your questions or comments regarding the Terms:  
ViperQ LLC Florida

Email Address: [contact.us@havefomo.com](mailto:contact.us@havefomo.com)

Effective as of February 20, 2017