

Healthy families Torbay App terms and conditions

Please read carefully before downloading and using the App. These terms and conditions were last updated on 20th September 2020.

This end-user licence agreement (EULA) is a legal agreement between you (End-user or you) and 0 to 19 Torbay, Torbay and South Devon NHS Foundation Trust, Torbay Hospital, Lowes Bridge, Torquay, TQ2 7AA for:

Healthy Families Torbay mobile application software and the associated media (Healthy Families Torbay App); collectively referred to as App; and associated online or electronic documents (Documents).

We license use of the App and Documents to you on the basis of this EULA and subject to any rules or policies applied by any appstore provider or operator from whose site, located at <https://play.google.com/store/apps> and <https://itunes.apple.com/gb/genre/ios/id36> (Appstore), the End-user downloaded the App (Appstore Rules). We do not sell the App or Documents to you.

We remain the owners of the App and Documents at all times.

Operating system requirements

Certain App may require an Apple or Android Device (as defined in condition 1.4 below) with a camera with auto-focus, internet access and a minimum of 48MB of memory available. The minimum operating systems we support are iOS 10 and Android 5 and above. The App may work on other Operating Systems but the Operating Systems specified above are the minimum Operating Systems we test on and guarantee that the App will run for.

Important notice: By downloading the App or clicking on the "accept" button below you agree to the terms of this EULA which will bind you. The terms of this EULA include, in particular, the privacy policy defined in condition 1.5 and limitations on liability in condition 7.

If you do not agree to the terms of this EULA, we will not license the App and Documents to you, and you must stop the downloading process now. In this case the downloading process will terminate.

You should print a copy of this EULA for future reference.

Agreed terms

1. Acknowledgements

1.1 The terms of this EULA apply to the App or any of the services accessible through the App (Service(s)), including any updates or supplements to the App or any Service(s), unless they come with separate terms, in which case those terms apply. If any open-source software is included in the App or any Service(s), the terms of an open-source licence may override some of the terms of this EULA.

1.2 We may change these terms at any time by sending you an SMS or other message with details of

the change or notifying you of a change when you next start the App. The new terms may be displayed on-screen and you may be required to read and accept them to continue your use of the Service(s).

1.3 From time to time updates to the App may be issued through the Appstore. Depending on the update, you may not be able to use the Services until you have downloaded or streamed the latest version of the App and accepted any new terms.

1.4 You will be assumed to have obtained permission from the owners of the mobile telephone or handheld devices that are controlled, but not owned, by you and described in condition 2.2(a) (Devices) and to download or stream a copy of the App onto the Devices. You and they may be charged by your and their service providers for internet access on the Devices. You should check with your mobile or internet service provider for details of data and internet usage charges. You accept responsibility in accordance with the terms of this EULA for the use of the App or any Service(s) on or in relation to any Device, whether or not it is owned by you.

1.5 The terms of our privacy policy from time to time (Privacy Policy), available at <http://www.0to19Torbay/privacy-policy> for the Healthy Families Torbay App are incorporated into this EULA by reference and apply to those Services that are not specified in condition 1.1 as having separate privacy policies. Additionally, by using the App or any Service(s), you acknowledge and agree that internet transmissions are never completely private or secure. You understand that any message or information you send using the App or any Service(s) may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.

1.6 By using the App or any of the Service(s), you consent to us collecting and using technical information about the Devices and related software, hardware and peripherals for Services that are internet-based or wireless to improve our products and to provide any Service(s) to you.

1.7 Apart from the services to you to improve your own lifestyle, the outcome of any report completed on the data collected (which shall be aggregated and anonymised) may form part of a wider report to 0 t 19 Torbay partners including Torbay Council. You will not be identified in any report or publication.

1.8 The App or any Service(s) may contain links to other independent third-party websites (Third-party Sites). Third-party Sites are not under our control, and we are not responsible for and do not endorse their content or their privacy policies (if any). You will need to make your own independent judgement regarding your interaction with any Third-party Sites, including the purchase and use of any products or services accessible through them.

1.9 Any words following the terms including, include, in particular or for example or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

2. **Grant and scope of licence**

2.1 In consideration of you agreeing to abide by the terms of this EULA, we grant you a non-transferable, non-exclusive licence to use the App on the Devices, subject to these terms, the Privacy Policy and the App store Rules, incorporated into this EULA by reference. We reserve all other rights.

2.2 You may:

- (a) download the App onto an Apple or Android Device, in line with the operating system requirements set out at the beginning of this agreement and view, use and display the App on the Devices for your personal purposes only; and
- (b) use the Documents for your personal purposes only.

3. **Licence restrictions**

Except as expressly set out in this EULA or as permitted by any local law, you agree:

- (a) not to copy the App or Documents except where such copying is incidental to normal use of the App, or where it is necessary for the purpose of back-up or operational security
- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the App or Documents;
- (c) not to make alterations to, or modifications of, the whole or any part of the App, or permit the App or any part of it to be combined with, or become incorporated in, any other programs;
- (d) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the App or attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the App with another software program, and provided that the information obtained by you during such activities:
 - (i) is used only for the purpose of achieving inter-operability of the App with another software program;
 - (ii) is not unnecessarily disclosed or communicated without our prior written consent to any third party; and
 - (iii) is not used to create any software that is substantially similar to the App;
- (e) to keep all copies of the App secure and to maintain accurate and up-to-date records of the number and locations of all copies of the App;
- (f) to include our copyright notice on all entire and partial copies you make of the App on any medium;
- (g) not to provide or otherwise make available the App in whole or in part (including object and source code), in any form to any person without prior written consent from us; and
- (h) to comply with all technology control or export laws and regulations that apply to the technology used or supported by the App or any Service (Technology), together referred to as Licence Restrictions.

4. **Acceptable use restrictions**

4.1 You must:

- (a) not use the App or any Service(s) in any unlawful manner, for any unlawful purpose, or in any

manner inconsistent with this EULA, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the App, any Service(s) or any operating system;

(b) not infringe our intellectual property rights or those of any third party in relation to your use of the App or any Service(s), including the submission of any material (to the extent that such use is not licensed by this EULA);

(c) not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App or any Service(s);

(d) not use the App or any Service(s) in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and

(e) not collect or harvest any information or data from any Service(s) or our systems or attempt to decipher any transmissions to or from the servers running any Service(s); together referred to as Acceptable Use Restrictions.

4.2 We want our service to be as open and inclusive as possible, but we also want it to be safe, secure and in accordance with the law. So, we need you to commit to a few restrictions in order to use the App.

(a) You must be at least 16 years old

(b) You must be resident in the Torbay postcode area

5. Intellectual property rights

5.1 You acknowledge that all intellectual property rights in the App, the Documents and the Technology anywhere in the world belong to us or our licensors, that rights in the App are licensed (not sold) to you, and that you have no rights in, or to, the App, the Documents or the Technology other than the right to use each of them in accordance with the terms of this EULA.

5.2 You acknowledge that you have no right to have access to the App in source-code form.

6. Copyright

6.1 Copyright, Designs and Patents Act 1988. The Copyright (Computer Programs) Regulations 1992 extended the rules covering literary works to include computer programs. The Copyright Designs and Patents Act (1988) gives creators of digital media the rights to control how their work is used and distributed. Music, books, videos, games and software can all be covered by copyright law.

When you buy or download software, for example, copyright law forbids you from:

(a) Giving a copy to a friend

(b) Making a copy and then selling it

(c) Using the software on a network (unless the licence you signed allows it. For example, you may be allowed to install an app on 3 devices within a family)

(d) Renting the software without the permission of the copyright holder

Unless permitted by law or under these terms of use, you will:

- (a) not modify the App or permit them to be combined with, or become incorporated in, any other programmes or services
- (b) not disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the App
- (c) comply with all technology control or export laws that apply to the technology used by the App.

6.2 We will take down/remove any material that turns out to be copyrighted if the violation is brought to our attention.

Copyright infringement that may be criminal offences under the Copyright, Designs and Patents Act 1988 are the:

- Making copies for the purpose of selling or hiring them to others
- Importing infringing copies (except for personal use)
- Offering for sale or hire, publicly displaying or otherwise distributing infringing copies in the course of a business
- Manufacturing commercially, importing for non-personal use, possessing in the course of a business, or distributing to an extent that has a noticeable effect on the business of the copyright holder, a device primarily designed for circumventing a technological copyright protection measure.

You can report a copyright violation to us by emailing publichealthnursing.torbay@nhs.net

7. **Limitation of liability**

Please read this clause carefully, as it sets out the limits of our liability to you in relation to your use of the App.

7.1 You acknowledge that the App has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the App as described in the Documents meet your requirements.

7.2 You acknowledge that all information provided, whether originating from us or a third party, may have been compiled based on information from the 0 to 19 Torbay or Healthy Lifestyle Torbay team or other relevant information. We do not warrant that any such information is true or accurate and we exclude all liability in respect of the accuracy, completeness, fitness for purpose or legality of that information.

7.3 The content in the App is provided for general information only. Please note that the App shall not be construed as a medical tool of any sort. It is not intended to amount to advice on which you should rely. If you have any questions or concerns about the content within the App we recommend you seek professional or specialist advice before taking, or refraining from, any action on the basis of the content of the App.

Supporting your health and wellbeing

7.4 If you are pregnant or currently breastfeeding then please speak to your GP or health professional before taking on any new health regime especially when it comes to starting physical

activity.

7.5 You acknowledge that when using the App, if appropriate, the App may show the amount of sugar, saturated fat and salt in a product, as specified in 7.2. The weight of a sugar cube is calculated at four grams, a saturated fat lump at one gram and a salt sachet at 0.5 grams and the illustrations in the App are a visual representation only.

7.6 Devices may vary in their ability to track and measure information therefore the App may not provide consistent and accurate information at all times. The level of accuracy of the measurements is dependent on the information you put in.

7.7 You acknowledge that measurements of your activity may be rounded up or down and as such, we make no guarantee that the App provide precise measurements.

7.8 We reserve the right to use broad definitions when defining time and distance and therefore, measurements may not correspond exactly to titles used.

7.9 The App is designed to support health and wellbeing generally and it is intended to provide you with information and services to help you manage you and your family's health and wellbeing.

7.10 It is not a substitute for seeking medical advice from a doctor or other healthcare professional.

7.11 The App does not provide medical or clinical diagnostic services.

7.12 The App is not intended to be prescriptive or authoritative on their own in respect of a diagnosis, condition or treatment, and is not intended to provide information on which you should solely rely.

7.13 Although we make reasonable efforts to update the information in the App, we make no representations, warranties or guarantees, whether express or implied that the content of the App is accurate, complete or up-to-date.

7.14 You acknowledge that the information may be updated, altered or removed, from time to time, at any time, without notice to you.

7.15 We are not responsible for any data usage, roaming or other charges you incur when accessing the internet through your mobile or other Device, as specified in condition 1.4.

7.16 We only supply the App and Documents for domestic and private use. You agree not to use the App and Documents for any commercial, business or resale purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

7.17 We are only responsible for loss or damage you suffer that is a foreseeable result of our breach of this EULA or our negligence up to the limit specified in condition 7.18, but we are not responsible

for any unforeseeable loss or damage. Loss or damage is foreseeable if it is an obvious consequence of our breach or if they were contemplated by you and us at the time we granted you the EULA.

7.18 Our maximum aggregate liability under or in connection with this EULA (including your use of any Services) whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to allowing you to download another copy of the App. This does not apply to the types of loss set out in condition 7.16

7.19 Nothing in this EULA shall limit or exclude our liability for:

- (a) death or personal injury resulting from our negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) any other liability that cannot be excluded or limited by English law.

7.20 The activities within these Apps are designed for beginners to gradually build up their physical activity ability. In particular, you should note the following:

(a) if you have any health concerns about beginning a new exercise regime, please make sure you consult your GP or health professional before starting.

(b) listening to your body is important; if you feel you have an injury, make sure you give yourself enough recovery time or see your GP for more advice.

(c) your safety is important to us. If you are under the age of 16 please get parental permission before you go out and exercise by yourself.

8. Termination

8.1 We may terminate this EULA immediately by written notice to you:

- (a) if you commit a material or persistent breach of this EULA which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so; and
- (b) if you breach any of the Licence Restrictions or the Acceptable Use Restrictions.

8.2 On termination for any reason:

- (a) all rights granted to you under this EULA shall cease;
- (b) you must immediately cease all activities authorised by this EULA, including your use of any Service(s); and
- (c) you must immediately delete or remove the App from all Devices, and immediately destroy all copies of the App and Documents then in your possession, custody or control and certify to us that you have done so.

9. Communication between us

9.1 If you wish to contact us in writing, or if any condition in this EULA requires you to give us notice in writing, you can send this to us by e-mail or by post to Public Health Nursing, St. Edmunds, Victoria Park Road, Torquay, TQ1 3QH or email publichealthnursing.torbay@nhs.net. We will confirm receipt of this by contacting you in writing, normally by e-mail.

9.2 If we have to contact you or give you notice in writing, we will do so by e-mail or by post to the address you provide to us in your request for the App.

9.3 We may also use App messaging to send general communications relating to the App and services available within it (but not personalised messages).

10. Events outside our control

10.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this EULA that is caused by any act or event beyond our reasonable control, including failure of public or private telecommunications networks (Event Outside Our Control).

10.2 If an Event Outside Our Control takes place that affects the performance of our obligations under this EULA:

- (a) our obligations under this EULA will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and
- (b) we will use our reasonable endeavours to find a solution by which our obligations under this EULA may be performed despite the Event Outside Our Control.

Other important terms

11.1 We may transfer our rights and obligations under this EULA to another organisation, but this will not affect your rights or our obligations under this EULA.

11.2 You may only transfer your rights or obligations under this EULA to another person if we agree in writing.

11.3 If we fail to insist that you perform any of your obligations under this EULA, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

11.4 Each of the conditions of this EULA operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.

11.5 Please note that this EULA, its subject matter and its formation, are governed by English law. The laws of England shall apply exclusively to these terms of use and to all matters relating to use of the Healthy Families Torbay App. Any cause of action arising under these terms of use or the use of the Healthy Families Torbay App shall be subject to the exclusive jurisdiction of the courts of England.

11.6 This agreement has been entered into on the date of your first download of the App.