

# **echo it – Terms of Use**

The Product (as defined herein), echo it ("EI"), is owned and operated by Endorphins AU ("EAU"). By accessing or using the EI application, website, links (including but not limited to those made available on mobile applications) all of which made available by EAU (together defined as the "Product"), you agree that your use of the Product in the form of graphics, information or otherwise is governed by these Terms of Use ("Terms of Use"). These Terms of Use affect your legal rights and obligations. If you do not agree to be bound by all of these Terms of Use, do not use or access this Product and do not indicate that you agree to this document.

In addition to these Terms of Use, there may also be specific terms governing your use of, and access to, certain sections of the Service. Any such specific terms also form part of these Terms of Use and you will be bound by them.

These Terms of Use should be read in conjunction with the Privacy Policy.

## **Terms**

### **1. Your responsibilities and use:**

- 1.1 You must be at least 17 years of age to use the Product.
- 1.2 EAU reserves the right to refuse access to the Product to anyone for any reason at any time.

- 1.3 You are responsible for keeping any login credentials you use to access the Product secure.
- 1.4 You represent that all information you provide or provided to EAU upon registration and at all other times will be true, accurate, current and complete and you agree to update your information as necessary to maintain its truth and accuracy.
- 1.5 EAU reserves the right to refuse any person use of the Product;
- 1.6 You are solely responsible for your conduct and for any Material you submit or post while using the Product including but not limited to the following:
  - 1.6.1 Images and/or photos and/or graphics;

- 1.6.2 Video clips;
- 1.6.3 Audio including musical work;
- 1.6.4 Usernames;
- 1.6.5 Text;
- 1.6.6 Files;
- 1.6.7 Information;
- 1.6.8 Data;
- 1.6.9 Links;
- 1.6.10 Applications;
- 1.6.11 Profiles; and,
- 1.6.12 Any other content and/or material.
- 1.7 You agree you are responsible for any activity/interaction between your account and other Users of the Product.
- 1.8 You agree not to sell, transfer, license or assign your EI account, your username or any account rights to any other person.

- 1.9 You agree you will not solicit, collect or use the login credentials or Personal Information of other Users.
- 1.10 You agree that you are responsible for all data charges that you incur through use of the Product.
- 1.11 You agree you will not sell or collect or use login credentials of other Users.

## **2. Things you should not do:**

- 2.1 You must not use the Product to post Offensive Material.
- 2.2 For the purposes of clause (2.1) herein, "Offensive Material" includes Material that includes violence, pornography, nudity (or partial nudity), discrimination, hateful, sexually suggestive materials, as well

as any Material that administrative parties of EAU deem to be offensive.

- 2.3 You must not use the Product for illegal or unauthorised purposes.
- 2.4 You agree to comply with all laws and legislation governing your use of the Product including but not limited to copyright laws.
- 2.5 You must not interfere with or cause disruption to the Product including servers of networks connected to the Product or connected to EAU.
- 2.6 For the purpose of clause (2.5) herein, “disruption” includes, but is not limited to:
  - 2.6.1 Transmitting worms;
  - 2.6.2 Viruses;
  - 2.6.3 Spyware;

- 2.6.4 Malware or any other code or item of a destructive nature.
- 2.7 You must not insert or create or inject content or code or otherwise alter or interfere with the way any EI content is rendered or presented.
- 2.8 You must not create or submit unwanted, commercial or harassing communications to any Users.
- 2.9 You must not attempt to restrict other Users from using the Product.
- 2.10 You must not change, modify, adapt or alter the Product.
- 2.11 You must not change, modify or alter another website so as to falsely imply that it is associated with the Product or with EAU.

- 2.12 You must not encourage or facilitate violations of these Terms of Use or any other EAU terms.
- 2.13 EAU may, but has no obligation to, remove, edit, block and/or monitor any Material or accounts that violate these Terms of Use.
- 2.14 You must not use the Product to abuse people or entities and you must not post private or confidential information via the Product.

### **3. Links to other Material (including but not limited to websites):**

- 3.1 The Product may provide links to other locations which are operated by third parties ("**Third Parties**").
- 3.2 EAU is not responsible for Material posted by Third Parties.



- 3.3 EAU does not endorse or approve or recommend, and is not responsible for, the material contained in Third Parties' locations. ("**Third Party Material**").
- 3.4 All Third Party Material including but not limited to offers and statements relating to goods and services made available by Third Parties are the responsibility of and given by the Third Party operator.
- 3.5 For the purposes of clause 3.4 herein:
- 3.5.1 Any offers and statements made on the Product are made by EAU on behalf of the Third Party operator.
- 3.5.2 EAU expressly disclaims acting in any other respect on behalf of any Third Party operators.
- 3.6 Through use of the Product, links may be provided to Third Party locations,

which appear to be framed by the Product and is also considered to be Third Party Material.

3.7 EAU does not:

3.7.1 Authorise the reproduction of Third Party Material;

3.7.2 Accept any liability for a person's actions in using Third Party Material.

3.8 EAU may receive payments from Third Parties in relation to services provided by the Product including but not limited to services provided as a result of links provided to Third Party Material.

#### **4. EAU product information and supply:**

4.1 Information regarding other EAU products may be provided through use

of the Product. Unless otherwise stated, such Material:

- 4.1.1 Is not an offer/inducement to enter into a legally binding contract;
- 4.1.2 Does not form part of these Terms of Use or any terms and conditions for any EAU product; and,
- 4.1.3 Is not intended to be advice.

## **5 Warranties:**

- 5.1 EAU and associated parties do not guarantee the accuracy, suitability or completeness of the Material provided by the Product whether it be:
  - 5.1.1 Content or Material presented through use of the Product;
  - 5.1.2 Material provided by Users; or

5.1.3 Security associated with transmission of Material between a User and the Product.

5.2 Use of the Product is at the risk of the User.

5.3 EAU does not make any guarantees including but not limited to the following:

5.3.1 That the Product will not harm your mobile device;

5.3.2 That the Product will be available;

5.3.3 That Access to the Product will be uninterrupted.

5.4 EAU does not accept responsibility for protecting the:

5.4.1 User; and/or,

5.4.2 Data on the User's device/s.

## **6 Time limitation and limitation of liability:**

- 6.1 You agree that any claim you have arising out of your relationship to EAU must be filed within one year after such claim arises;
- 6.2 For the purposes of clause 6.1 herein, you agree that if you do not file a claim within one year after any claim arises then your claim is permanently barred.
- 6.3 Subject to any rights implied by law, EAU is not liable to you or any third party for whom you operate the Product for any losses, damages, liabilities, claims or expenses whatsoever arising out of or referable to any of the following:
  - 6.3.1 Your access or use of the Product;

- 6.3.2 Material accessed using the Product;
  - 6.3.3 User Material;
  - 6.3.4 Any change/termination of services;
  - 6.3.5 Your inability to use the Product;
  - 6.3.6 Any action taken by law enforcement parties regarding your use of the Product;
  - 6.3.7 Any errors in the Product operation;
  - 6.3.8 Any damage to your devices, directly or indirectly caused by use of the Product;
  - 6.3.9 Third Party Material.
- 6.4 The liability placed on EAU for breach of a condition implied by law or otherwise (which cannot be excluded), is limited to the extent possible (at the option of EAU) to:
- 6.4.1 Supply the Product again;

6.4.2 The cost of having the Product supplied again.

## **7 Copyright and trademarks:**

7.1 Copyright for the relevant Material for the Product is owned by EAU.

7.2 EAU does not own, nor is responsible for, any Material posted using the Product.

7.3 By using the Product to post Material, you allow EAU a non-exclusive, fully paid, royalty free, transferable, sub-licensable, worldwide license to use the posted Material.

7.4 Except where necessary to view the Material on the Product and as permitted by the *Copyright Act 1968* (Cth) and in accordance with these Terms of Use, no Material on this

Product may be adapted, reproduced, uploaded to a third party, distributed, framed, linked to, displayed or transmitted in any form by any process without the specific written consent of EAU.

7.5 You must not use any trade mark displayed on the Product in any way without EAU's express written consent.

7.6 You acknowledge that:

7.6.1 You own the Material posted by you using the Product;

7.6.2 EAU may distribute the Material posted using the Product subject to the terms in EAU's Privacy Policy.

The Privacy Policy is located at

<https://endorphins.online/EchoIt/EchoIt-PrivacyPolicy.pdf>, and is subject to change without warning.



- 7.6.3 The use of the Material posted by you using the Product does not breach any of the rights of Third Parties;
- 7.6.4 You agree to pay any royalties/fees owed as a result of you posting the Material using the Product; and
- 7.6.5 You have the legal right and capacity to enter into these Terms of Use in your jurisdiction.

## **8 Privacy and use of the service:**

- 8.1 You should review the Privacy Policy associated with the Product in order to understand how EAU handles personal information. The Privacy Policy is located at

<https://endorphins.online/EchoIt/EchoIt-PrivacyPolicy.pdf>

## **9 Change of Terms of Use:**

- 9.1 These are the current Terms of Use.
- 9.2 Any previously agreed upon terms of use are voided.
- 9.3 Upon change of the Terms of Use, EAU will provide you the opportunity to read and accept the new Terms of Use.
- 9.4 Your subsequent use of the Service constitutes acceptance of the new Terms of Use.
- 9.5 EAU reserves any rights not expressly granted in these Terms of Use.

## **10 Miscellaneous:**

- 10.1 If you agree to these Terms of Use on behalf of another person or entity, you represent that you are authorised to

do so on behalf of that person or entity.

10.2 If any part or parts of these Terms of Use is determined be unlawful, or invalid for any reason, the following shall apply:

10.2.1 That part or parts of these Terms of Use are considered removed from this document; and,

10.2.2 The remainder of the Terms of Use remains unaffected.

10.3 EAU's failure to insist upon or enforce strict performance of any part of, or clause within, these Terms of Use will not be construed as a waiver of any part or clause or right.

10.4 No waiver of any of these Terms will be deemed a further or continuing waiver of such term or any other term.

10.5 EAU may assign these Terms of Use or any rights hereunder without your consent.

10.6 Any previous Terms of Use or terms and conditions regarding the use of the Product is voided by agreeing to this document.

## **11 Termination**

11.1 EAU may terminate your use of the Product without notice.

11.2 EAU is not responsible for any Material posted by you using the Product.

11.3 You are able to de-activate your account with the Product.

11.4 EAU does not commit nor promise to dispose of the Material posted by a User upon termination of their account.

## **12 Jurisdiction:**

12.1 Unless otherwise set out in these Terms of Use, the information contained in or on the Product is provided in compliance with Australian law without giving effect to any principles of conflicts of law and will specifically not be governed by the United Nations Conventions on Contracts for the International Sale of Goods, if otherwise applicable.

12.2 For any action at law or in equity relating to the provision of these Terms of Use, you agree to resolve any dispute you have with EAU exclusively in a court in New South Wales, or the federal court located in Australia, and to submit to the

personal jurisdiction of these courts for the purpose of litigating all such disputes.

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**Document Version: 1.0 (04 May 2018)**