

## TERMS AND CONDITIONS

Last updated: October 29, 2021

### ***PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY***

#### **1. AGREEMENT TO TERMS**

- 1.1. These Terms and Conditions (“**Terms**”) constitute a legally binding agreement between you (hereinafter referred to as “**you**”, “**your**” or “**User**”) and **Shlime LLC**, a company incorporated under the laws of the State of Massachusetts and having its registered office located at 82 Wendell Ave 100 Pittsfield MA 01201 (the “**Company**”, “**we**”, “**us**”, or “**our**”) concerning your access to, and use of, the Company’s mobile application namely “**Squish Alert**” (hereinafter referred to as the “**App**”). You agree that by downloading, installing, viewing, accessing or using the App, you have read, understood and agree to be bound by all of these Terms. IF YOU DO NOT AGREE WITH ALL OF THESE TERMS, THEN YOU ARE EXPRESSLY PROHIBITED FROM USING THE APP AND YOU MUST DISCONTINUE YOUR USE IMMEDIATELY.
- 1.2. Supplemental terms and conditions or documents that may be posted on the App from time to time are hereby expressly incorporated herein by reference. We reserve the right, in our sole discretion, to make changes or modifications to these Terms at any time and for any reason. We will alert you about any changes by updating the “Last updated” date of these Terms and you waive any right to receive specific notice of each such change. It is your responsibility to periodically review these Terms to stay informed of updates. You will be subject to, and will be deemed to have been made aware of and to have accepted, the changes in any revised Terms by your continued use of the App after the date such revised Terms are posted.
- 1.3. The information provided on the App is not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject us to any registration requirement within such jurisdiction or country. Accordingly, those persons who choose to access the App from other locations do so on their own initiative and are solely responsible for compliance with local laws, if and to the extent local laws are applicable.
- 1.4. Users below the age of 13 will not be allowed to use the App or the App Services (defined below).

#### **2. APP SERVICES**

The App allows the Users to subscribe, through the App, to various retailers' websites (“**Retailers**”) and stay up-to-date about the restocking of Squishmallows in the stocks of such Retailers. For this, Users can sign up in the App by providing their mobile numbers (with country codes) or email address. The App will send a verification code to verify the mobile number and upon verification the account creation process will be completed. By creating an account with the App, a User may get real-time alerts (through push notifications) as and when a Retailer restocks Squishmallows in its inventory stock. Users can also view and post Squishmallows news which include photos, and Squishmallows questions.

As part of the App and services we provide, a User may (if enabled) receive push notifications or alerts (the “**Alerts**”) directly sent to him/her/it inside the App. The User has control over the Alerts and their respective settings and whether they are turned on or off, and can opt in or out of these Alerts. The User understands and agrees that management of the number of Alerts transmitted through the App are his/her/its own responsibility.

Specifically, the App provides the following services to Users (“**App Services**”):

- The App allows Users to register an account.
- The App allows Users to get real-time alerts as and when a Retailer restocks Squishmallows in its inventory stock.
- The App allows Users to see prices of Squishmallows in different Retailers' websites.
- The App allows Users to view and post new Squishmallows releases.

### **3. SERVICE REGIONS**

The App has a global presence, primarily with focus on Users based in the United States, Canada, Mexico, Australia, New Zealand, United Kingdom, and European Union. Whilst access to the App may be possible from outside of the foregoing regions, such users may not have the access to the App's dedicated Services. Further, primarily the Retailers are country-specific and mainly serve those Users who reside in the same region where the Retailers are located, although sometimes the Retailers may serve international users as well.

You are responsible for compliance with applicable local laws relating to the use of or otherwise connected with the App. To the extent that the App or any activity contemplated by it would infringe any law of a jurisdiction other than the regions mentioned above, then you are prohibited from accessing or using the App or

attempting to carry on any such offending activity and this provision shall override all other provisions of these Terms.

#### **4. USER REGISTRATION**

- 4.1. In order to use the functionalities and the App Services provided through the App, as mentioned above, the Users shall be required to register their accounts with the App.
- 4.2. You will be required to sign up by creating an account with the App by providing information such as Name or Nickname, Mobile Number, Phone Number or Email, and Device (IOS/Android).
- 4.3. You will be required to complete your profile by entering your Phone Number or E-mail before you are allowed to sign-in to your account.
- 4.4. You will be required to use Phone Number or Email for signing-in to your account with the App.
- 4.5. You represent, warrant and covenant that:
  - 4.5.1. you have full power and authority to accept these Terms, to grant any license and authorization and to perform any of your obligations hereunder;
  - 4.5.2. you will undertake to use the App for personal purposes only.
- 4.6. You must not allow any other person to use your account to access the App. You must notify us in writing immediately if you become aware of any unauthorized use of your account.
- 4.7. You must not use any other person's account to access the App, unless you have that person's express written permission to do so.

#### **5. USER PASSWORDS**

- 5.1. If you register for an account with the App, you will be asked to choose a password. You shall be responsible to maintain the confidentiality of your password and shall be responsible for all uses via your registration and/or login, whether authorized or unauthorized by you. You agree to immediately notify us of any unauthorized use or your registration, user account or password.

- 5.2. You must notify by e-mailing us if you have reason to believe that your account is no longer secured for any reason (for example, in the event of a loss, theft or unauthorized disclosure or use of your password).
- 5.3. You shall be responsible for any activity and content on the account arising out of any failure to keep your password confidential and may be held liable for any losses arising out of such a failure.
- 5.4. Registration data and other personally identifiable information that we may collect is subject to the terms of our Privacy Policy.

## **6. ADVERTISERS**

We allow advertisers to display their advertisements and other information in certain areas of the App, such as in-app advertisements or banner advertisements. If you are an advertiser, you shall take full responsibility for any advertisements you place on the App and any services provided on the App or products sold through those advertisements. Further, as an advertiser, you warrant and represent that you possess all rights and authority to place advertisements on the App, including, but not limited to, intellectual property rights, publicity rights, and contractual rights. As an advertiser, you agree that such advertisements are subject to, amongst others, the Digital Millennium Copyright Act (“**DMCA**”) Notice and Policy provisions as described below, and you understand and agree there will be no refund or other compensation for DMCA takedown-related issues. We simply provide the space to place such advertisements, and we have no other relationship with advertisers.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1. Unless otherwise indicated, the App is our proprietary property and except the intellectual property rights (including articles, logos, trademarks and content) of the third party websites, all source code, databases, functionality, software, website designs, audio, video, text, photographs and graphics on the App (collectively, the “**Content**”) and the trademarks, service marks and logos contained therein (the “**Marks**”) are owned or controlled by us or licensed to us, and are protected by copyright and trademark laws and various other intellectual property rights and unfair competition laws and international conventions. The Content and the Marks are provided on the App “**AS IS**” for your information and personal use only. Except as expressly provided in these Terms, no part of the App and no Content or Marks may be copied, reproduced, aggregated, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted, distributed, sold, licensed, or otherwise exploited for any commercial purpose whatsoever, without our express prior written permission.

- 7.2. The third party registered and unregistered trademarks or service marks on the App are the property of their respective owners and, unless stated otherwise herein, we do not endorse and are not affiliated with any of the holders of any such rights and as such we cannot grant any license to exercise such rights.
- 7.3. Provided that you are eligible to use the App, you are granted a limited license to access and use the App. We reserve all rights not expressly granted to you in and to the App, Content and the Marks.
- 7.4. In addition to other aforementioned jurisdictions, we also comply with the Australian Copyright Act and will remove content when properly notified that it violates any copyright.
- 7.5. You will not post content that infringes or violates someone else's rights or otherwise violates the law.
- 7.6. We can remove any content or information you post on the App if we believe that it violates these Terms.
- 7.7. If we remove your content for infringing someone else's copyright, and you believe we removed it by mistake, we will provide you with an opportunity to appeal.
- 7.8. If we receive a valid infringement notification identifying content you have posted in your content.
- 7.9. We reserve the right to remove any infringing content and/or permanently block your access to the App where appropriate.
- 7.10. In addition, copyright owners may choose to sue you for infringement, resulting in damages and in some cases, criminal penalties.

## **8. DIGITAL MILLENNIUM COPYRIGHT ACT (DMCA) NOTICE AND POLICY**

### **8.1. Notifications**

We respect the intellectual property rights of others. If you believe that any material available on or through the App infringes upon any copyright you own or control, please immediately notify our Designated Copyright Agent using the contact information provided below (a "**Notification**"). A copy of your Notification will be sent to the person who posted or stored the material

addressed in the Notification. Please be advised that pursuant to federal law you may be held liable for damages if you make material misrepresentations in a Notification. Thus, if you are not sure that material located on or linked to by the App infringes your copyright, you should consider first contacting an attorney.

All Notifications should meet the requirements of DMCA 17 U.S.C. § 512(c)(3) and include the following information: (1) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (2) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works on the App are covered by the Notification, a representative list of such works on the App; (3) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material; (4) information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an email address at which the complaining party may be contacted; (5) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (6) a statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed upon.

## 8.2. **Counter Notification**

If you believe your own copyrighted material has been removed from the App as a result of a mistake or misidentification, you may submit a written counter notification to us/our Designated Copyright Agent using the contact information provided below (a “**Counter Notification**”). To be an effective Counter Notification under the DMCA, your Counter Notification must include substantially the following: (1) identification of the material that has been removed or disabled and the location at which the material appeared before it was removed or disabled; (2) a statement that you consent to the jurisdiction of the Federal District Court in which your address is located, or if your address is outside the United States, for any judicial district in which we are located; (3) a statement that you will accept service of process from the party that filed the Notification or the party’s agent; (4) your name, address, and telephone number; (5) a statement under penalty of perjury that you have a good faith belief that the material in question was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled; and (6) your physical or electronic signature.

If you send us a valid, written Counter Notification meeting the requirements described above, we will restore your removed or disabled material, unless we first receive notice from the party filing the Notification informing us that such party has filed a court action to restrain you from engaging in infringing activity related to the material in question. Please note that if you materially misrepresent that the disabled or removed content was removed by mistake or misidentification, you may be liable for damages, including costs and attorney's fees. Filing a false Counter Notification constitutes perjury.

Designated Copyright Agent:

**Name:** Ms. Jessica Dao

**Address:** 82 Wendell Ave 100 Pittsfield MA 01201

**Email:** [hello@squishalert.com](mailto:hello@squishalert.com)

**Website:** <https://www.squishalert.com>

## **9. LIMITATION OF LIABILITY**

- 9.1. We, our affiliates, members, managers, officers, employees, agents and representatives will have no liability for any damages, including, without limitation, direct, indirect, consequential, compensatory, special, punitive or incidental damages (even if we have been advised of the possibility of such damages) arising out of or relating to the use of, reliance on or inability to use the App, the Content or services provided on, through or received from the App. We shall not be liable even if it has been advised of the possibility of such damages, including without limitation damages caused by error, omission, interruption, defect, failure of performance, unauthorized use, delay in operation or transmission, line failure, computer virus, worm, Trojan horse or other harm.
- 9.2. In the event that applicable law does not allow the exclusion of certain promises and/or the exclusion of liability for direct, indirect, consequential or other damages, in no event shall our liability arising under or in connection with these Terms and your use of the App exceed the amount spent by you on the App's one month's subscription.

## **10. USER REPRESENTATIONS**

- 10.1. By using the App, you represent and warrant that: (1) all registration information you submit is true, accurate, current and complete; (2) you will maintain the accuracy of such information and promptly update such registration information as necessary; (3) you have the legal capacity and you agree to comply with these Terms; (4) if you are a children over the age of 13, you have permission from the

credit/debit cardholder whose card will be used to make payment of the subscription fee for your account with the App]; (5) you will not access the App through automated or non-human means, whether through a bot, script or otherwise; (6) you will not use the App for any illegal or unauthorized purpose; and (7) your use of the App will not violate any applicable law or regulation.

- 10.2. If you provide any information that is untrue, inaccurate, not current or incomplete, we have the right to suspend or terminate your account and refuse any and all current or future use of the App (or any portion thereof).

## **11. PROHIBITED ACTIVITIES**

- 11.1. You may not access or use the App for any purpose other than that for which we make the App available. The App may not be used in connection with any commercial endeavours except those that are specifically endorsed or approved by us.

- 11.2. As a User of the App, you agree not to use the App:

11.2.1. In any way that breaches any applicable local, national or international law or regulation;

11.2.2. In any way that is unlawful or fraudulent or has any unlawful or fraudulent purpose or effect;

11.2.3. For the purpose of harming or attempting to harm minors in any way;

11.2.4. To send, knowingly receive, upload, download, use or re-use any material which does not comply with our content standards;

11.2.5. To transmit, or procure the sending of, any unsolicited or unauthorized advertising or promotional material or any other form of similar solicitation (**spam**); or

11.2.6. To knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.

- 11.3. As a User of the App, you also agree not to:



- 11.3.1. reproduce, duplicate, copy or re-sell any content of the App in contravention of the provisions of these Terms;
- 11.3.2. access without authority, interfere with, damage or disrupt;
  - any part of the App;
  - any equipment or network on which the App is stored;
  - any software used in the provision of the App; or
  - any equipment or network or software owned or used by any third party.
- 11.3.3. systematically retrieve data or other content from the App to create or compile, directly or indirectly, a collection, compilation, database, or directory without written permission from us;
- 11.3.4. make any unauthorized use of the App, including collecting usernames and/or email addresses of users by electronic or other means for the purpose of sending unsolicited email, or creating user accounts by automated means or under false pretences;
- 11.3.5. use the App to advertise or offer to sell illegal goods and services;
- 11.3.6. circumvent, disable, or otherwise interfere with security-related features of the App, including features that prevent or restrict the use or copying of any Content or enforce limitations on the use of the App and/or the Content contained therein;
- 11.3.7. engage in unauthorized framing of or linking to the App;
- 11.3.8. make improper use of our support services or submit false reports of abuse or misconduct;
- 11.3.9. engage in any automated use of the system, such as using scripts to send comments or messages, or using any data mining, robots, or similar data gathering and extraction tools;
- 11.3.10. interfere with, disrupt, or create an undue burden on the App or the networks or services connected to the App;
- 11.3.11. attempt to impersonate another user or person or use the username of

another user;

11.3.12. sell or otherwise transfer your profile;

11.3.13. use any information obtained from the App in order to harass, abuse, or harm another person or user of the App;

11.3.14. use the App as part of any effort to compete with us or otherwise use the App and/or the Content for any revenue-generating endeavour or commercial enterprise;

11.3.15. decipher, decompile, disassemble, or reverse engineer any of the software comprising or in any way making up a part of the App;

11.3.16. attempt to bypass any measures of the App designed to prevent or restrict access to the App, or any portion of the App;

11.3.17. harass, annoy, intimidate, or threaten any of our employees or agents engaged in providing any portion of the App to you;

11.3.18. delete the copyright or other proprietary rights notice from any Content;

11.3.19. copy or adapt the App's software, including but not limited to HTML, JavaScript, or other code;

11.3.20. upload or transmit (or attempt to upload or to transmit) any material that acts as a passive or active information collection or transmission mechanism, including without limitation web bugs, cookies, or other similar devices (sometimes referred to as "spyware" or "passive collection mechanisms" or "pcms");

11.3.21. except as may be the result of standard search engine or Internet browser usage, use, launch, develop, or distribute any automated system, including without limitation, any spider, robot, cheat utility, scraper, or offline reader that accesses the App, or using or launching any unauthorized script or other software;

11.3.22. disparage, tarnish, or otherwise harm, in our opinion, us and/or the App;  
or

11.3.23. use the App in a manner inconsistent with any applicable laws or regulations.

## **12. SUBMISSIONS**

- 12.1. You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information regarding the App ("**Submissions**") provided by you to us are non-confidential and shall become our sole property. We shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any lawful purpose, commercial or otherwise, without acknowledgment or compensation to you. You hereby waive all moral rights to any such Submissions, and you hereby warrant that any such Submissions are original with you or that you have the right to submit such Submissions. You agree there shall be no recourse against us for any alleged or actual infringement or misappropriation of any proprietary right in your Submissions.

### **13. APP MANAGEMENT**

- 13.1. We reserve the right, but not the obligation, to: (1) monitor the App for violations of these Terms; (2) take appropriate legal action against a User who, in our sole discretion, violates the law or these Terms, including without limitation, reporting such User to law enforcement authorities; and (3) otherwise manage the App in a manner designed to protect our rights and property and to facilitate the proper functioning of the App.

### **14. PRIVACY POLICY**

- 14.1. We care about data privacy and security. Please review our **Privacy Policy**. By using the App, you agree to be bound by our Privacy Policy, which is incorporated into these Terms.

### **15. TERM AND TERMINATION**

- 15.1. These Terms shall remain in full force and effect while you use the App. Without limiting any other provision of these Terms, we reserve the right to, in our sole discretion and without notice or liability, deny access to and use of the App (including blocking certain IP addresses), to any person for any reason or for no reason, including without limitation for breach of any representation, warranty or covenant contained in these Terms or of any applicable law or regulation. We may terminate your use or participation in the App or delete your account and any content or information that you posted at any time, without warning, in our sole discretion.
- 15.2. If we terminate or suspend your account for any reason, you are prohibited from registering and creating a new account under your name, a fake or borrowed

name, or the name of any third party, even if you may be acting on behalf of the third party. In addition to terminating or suspending your account, we reserve the right to take appropriate legal action, including without limitation pursuing civil, criminal, and injunctive redress.

## **16. MODIFICATIONS AND INTERRUPTIONS**

- 16.1. We reserve the right to change, modify or remove the contents of the App at any time or for any reason at our sole discretion without notice. However, we have no obligation to update any information on our App. We also reserve the right to modify or discontinue all or part of the App without notice at any time. We will not be liable to you or any third party for any modification, suspension, or discontinuance of the App.
- 16.2. We cannot guarantee the App will be available at all times. We may experience hardware, software, or other problems or need to perform maintenance related to the App, resulting in interruptions, delays, or errors. We reserve the right to change, revise, update, suspend, discontinue, or otherwise modify the App at any time or for any reason without notice to you. You agree that we have no liability whatsoever for any loss, damage, or inconvenience caused by your inability to access or use the App during any downtime or discontinuance of the App. Nothing in these Terms will be construed to obligate us to maintain and support the App or to supply any corrections, updates, or releases in connection therewith.

## **17. GOVERNING LAW**

- 17.1. These Terms are governed by the laws of the Commonwealth of Massachusetts, without regard to its conflicts of laws principles. If, for any reason, a dispute proceeds in court rather than arbitration: (i) except with respect to a qualifying claim over a dispute in a small claims court, which you shall have the right to bring in a court of competent jurisdiction in the county in which you reside, we agree that any dispute may only be instituted in a state or federal court in Worcester County, Massachusetts; and (ii) each of us irrevocably consent and submit to the exclusive personal jurisdiction and venue of such courts for resolution of such disputes.

## **18. DISPUTE RESOLUTION**

We are committed to customer satisfaction, so if you have an issue or dispute, we will try to resolve your concerns. You agree to give us an opportunity to resolve any disputes by contacting us at the Contact Information above. If we are unable to resolve your dispute within 60 days after the date we receive your written

notice, you may seek relief through arbitration or in small claims court, as set forth above.

Notwithstanding anything to the contrary in this section, either party may bring suit in court seeking an injunction or other equitable relief arising out of or relating to the infringement of a party's intellectual property, or any illegal or intentional act affecting the accessibility, functionality, or the security of the App or its services, and/or any illegal or intentional act against your interests or our general business interests.

You agree that regardless of any statute or law to the contrary, any dispute must be filed within one year after such claim arose or it will be forever barred.

## **19. CORRECTIONS**

- 19.1. There may be information on the App that contains typographical errors, inaccuracies, or omissions that may relate to the App, including descriptions, pricing, availability, and various other information. We reserve the right to correct any errors, inaccuracies, or omissions and to change or update the information on the App at any time, without prior notice.

## **20. INDEMNIFICATION**

- 20.1. You agree to defend, indemnify and hold us harmless, including our subsidiaries, affiliates, and all of our respective officers, agents, partners, and employees, from and against any loss, damage, liability, claim, or demand, including reasonable attorneys' fees and expenses, made by any third party due to or arising out of: (1) use or misuse of the App; (2) breach of these Terms; (3) any breach of your representations and warranties set forth in these Terms; (4) your violation of the rights of a third party connected herewith, including but not limited to intellectual property rights; or (5) any overt harmful act toward any other User of the App with whom you connected via the App. You also release us from any and against all claims, demands, losses and damages of every kind and nature, whether known or unknown, arising out of or in any way relating to the App or its services, your use of the App or its services, other Users' use of the App or its services, and any dispute or defense you have or claim to have against us or one or more Users of the App. Notwithstanding the foregoing, we reserve the right, at your expense, to assume the exclusive defence and control of any matter for which you are required to indemnify us, and you agree to cooperate, at your expense, with our defence of such claims. We will use reasonable efforts to notify you of any such claim, action, or proceeding which is subject to this indemnification upon becoming aware of it.

## **21. USER DATA**

21.1. We will maintain certain data that you transmit to the App for the purpose of managing the App, as well as data relating to your use of the App. Although we perform regular routine backups of data, you are solely responsible for all data that you transmit or that relates to any activity you have undertaken using the App. You agree that we shall have no liability to you for any loss or corruption of any such data, and you hereby waive any right of action against us arising from any such loss or corruption of such data.

## **22. ELECTRONIC COMMUNICATIONS, TRANSACTIONS, AND SIGNATURES**

22.1. Using the App, sending us emails and completing online forms constitute electronic communications. You consent to receive electronic communications and you agree that all agreements, notices, disclosures and other communications we provide to you electronically, via email and on the App, satisfy any legal requirement that such communication be in writing. You hereby agree to the use of electronic signatures, contracts, orders, and other records and to electronic delivery of notices, policies and records of transactions initiated or completed by us or via the App. You hereby waive any rights or requirements under any statutes, regulations, rules, ordinances or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records or to payments or the granting of credits by any means other than electronic means.

## **23. CONTACT US**

23.1. In order to resolve a complaint regarding the App or to receive further information regarding use of the App, please contact us at [hello@squishalert.com](mailto:hello@squishalert.com).

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