

## WHAT-ABOUT-NO™ Terms of Use

**THIS IS A CONTRACT. BY PROCEEDING WITH DOWNLOADING, INSTALLING OR ANY OTHER USE OF THE WHAT-ABOUT-NO™ APP, YOU AGREE TO THE FOLLOWING TERMS OF USE AND, BY FURTHER USE, ANY UPDATE OF THE TERMS OF USE POSTED AT THE LINK IN THE NOTIFICATION SUBSECTION 4(b).**

*The WHAT-ABOUT-NO™ app allows you to video record the delivery of a “no” message , but THERE IS NO GUARANTEE THAT WHAT IS RECORDED WILL BE ADMISSIBLE AS EVIDENCE IN A LEGAL OR OTHER PROCEEDING.*

The WHAT-ABOUT-NO™ Privacy Policy explains substantially how the WHAT-ABOUT-NO™ service, which includes the WHAT-ABOUT-NO™ app, is intended to operate, but the following WHAT-ABOUT-NO™ Terms of Use are the legal, controlling terms and conditions for your use of the service.

Your use of the WHAT-ABOUT-NO™ app, which invokes the WHAT-ABOUT-NO™ service, together referred to here as “the App”, is conditioned upon and governed by the following terms and conditions of use (“WHAT-ABOUT-NO™ Terms” and sometimes the “EULA”):

### 1. Parties and Agreement

- a. **“Provider”** means the provider of the WHAT-ABOUT-NO™ service, We-Consent, Inc. , a Florida corporation.
- b. **“You”** means the individual who downloaded and installed the current copy of the WHAT-ABOUT-NO™ app on a device, such as a smart phone.
- c. **Representation and Agreement:** You represent, in proceeding with any use of the App, that (1) You are at least 18 years of age and otherwise capable of entering this contract, (2) You and the person whose consent You use the App to record, at the time of recording, are both of the age of and otherwise capable of consenting to sexual relations; and (3) You agree to be bound by these “WHAT-ABOUT-NO™ Terms. **If any of these representations is incorrect, You may not further use the App.**

2. **License:** The App is licensed under the WHAT-ABOUT-NO™ Terms, not sold. Thus You may not sell or otherwise transfer the copy and may only use it under the conditions set forth here.

- a. **Rights:** The App is protected against unauthorized use by copyright, patent pending, federal trademark registration pending, and other intellectual property law, including this contract. Conditioned on Your compliance with these WHAT-ABOUT-NO™ Terms, You are granted for the TERM (§ 5(a)) a non-exclusive, non-assignable, non-sublicensable license to access, download and use the App and any related documentation available online, solely for the below LICENSED USE and subject to these WHAT-ABOUT-NO™ Terms. You have no other rights in the App and may not keep a copy of any portion of the App after TERMINATION.

- b. **LICENSED USE** by You

You and only You may use the App installed in Your device to solicit, record and archive ONLY through the App the consent of a real person, having the legal and physical capacity to consent, to having a sexual relationship with you imminently.

Following are some examples of how You may NOT use the App:

- You may not modify, copy or reverse-engineer the App.
- You may not “spoof” a real person.
- You may not divert the information collected by the App for any other use.
- You may not use the App for any unlawful purpose.

You may not direct or allow anyone else to do anything with the App that You are not allowed to do.

#### **c. License to the Provider**

By Your use of the App, You irrevocably license to the Provider of the WHAT-ABOUT-NO™ service (and contractors) any rights that You may have in the information uploaded that is (1) reasonably necessary for the uploading, encrypting, archiving, and PERMITTED RETRIEVAL that is part of the WHAT-ABOUT-NO™ service; or (2) used for statistical analysis, provided that such analysis is not personally identifiable to You or any person whose consent that You record using the App.

#### **d. PERMITTED RETRIEVAL**

Following are the only PERMITTED RETRIEVAL, the conditions under which the information uploaded with the App is retrievable to offer as evidence:

- (1) if You are the subject of a Title IX investigation alleging a lack of consent to a sexual encounter;
- (2) if Provider receives a court order directing its release; or
- (3) pursuant to a law enforcement request.

### **3. NO WARRANTY BY OR LIABILITY OF PROVIDER**

THE APP IS PROVIDED “AS IS” AND THE SERVICE “AS AVAILABLE” – THERE ARE NO EXPRESS OR IMPLIED WARRANTIES.

You acknowledge and agree that Your use of the App is at Your own risk. You acknowledge that the App may include errors or malicious code (e.g., viruses) and may not record, encrypt, upload or archive promptly or at all because of device, network or other conditions.

**There is no guarantee that information retrieved from the WHAT-ABOUT-NO™ archive will be admissible in evidence in any court or administrative proceeding.**

TO THE EXTENT ALLOWED BY LAW, THE PROVIDER WILL HAVE NO LIABILITY FOR ANY DEFECT IN THE WHAT-ABOUT-NO™ APP OR FOR ANY UNAVAILABILITY OR FAILURE OF THE WHAT-ABOUT-NO™ SERVICE. IN ANY CASE, THE PROVIDER WILL NOT BE SUBJECT TO SPECIAL, INDIRECT, CONSEQUENTIAL OR ECONOMIC DAMAGES, BUT, BECAUSE OF THE UNCERTAINTY OF DAMAGES AND ALLOCATION OF RISKS AGREED TO HERE, WILL BE AT MOST LIABLE FOR LIQUIDATED DAMAGES EQUAL TO THE FEE PAID FOR THE CURRENT SUBSCRIPTION PERIOD, WHICH SHALL BE YOUR EXCLUSIVE REMEDY UNDER THIS AGREEMENT.

#### 4. CONSTRUCTION AND MODIFICATION

- a. **Entire Agreement.** These WHAT-ABOUT-NO™ Terms together with the APPLE STORE SUPPLEMENT set forth the entire agreement between the parties. They supersede all prior or contemporaneous representations, understandings, agreements, or communications between You and the Provider, whether written or verbal, regarding the subject matter of this agreement.
- b. **No Modification Except by Web Notification.** No modification of these WHAT-ABOUT-NO™ Terms may be made except by posting by the Provider to the web page at [www.we-consent.com](http://www.we-consent.com), which may be made at Provider's discretion without other notice.

#### 5. TERMINATION

- a. **TERM.** The TERM of the license to You (§ 1(a)) is the subscription period for which you paid in advance (according to the schedule at the web page provided in subsection 4(b)) unless canceled under this section.
- b. **Cancellation.** The Provider may cancel all licenses by three (3) months notice on the web page provided in subsection 4(b). Your license under subsection 2(a) is canceled automatically upon breach of subsection 1(c) (representations) or subsection 2(b) (exceeding Licensed Use or engaging in prohibited uses).
- c. **Effect of Termination.** Upon termination under subsection 5(a) or cancellation under subsection 5(b), You shall delete the App from the device(s) on which it was installed and delete any copy of any portion of the App from any storage that You own or control.
- d. **Survival.** Sections 1, 2(c), 2(d) (subject to subsection 5(e)) and 3-6 survive termination.
- e. **Archived Information.** Subject to discontinuation notified three (3) months in advance on the web page provided in subsection 4(b), archived information will be maintained for seven (7) years and one (1) day from the time it is uploaded unless a fee is paid according to the schedule at the web page provided in subsection 4(b).

#### 6. DISPUTE RESOLUTION

- a. **Choice of Law.** These WHAT-ABOUT-NO™ Terms shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of law principles. They shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
- b. **Choice of Forum.** Any litigation over the subject matter of these WHAT-ABOUT-NO™ Terms shall be conducted exclusively in a competent court in the Commonwealth of Massachusetts.
- c. **Waiver of Jury.** Any litigation over the subject matter of these WHAT-ABOUT-NO™ Terms shall be decided without a jury.
- d. **Irreparable Harm.** You acknowledge and agree that a breach of subsection 2(b) (Licensed Use) will result in irreparable harm to the integrity of the WHAT-ABOUT-NO™ service and that an injunction would be appropriate to limit such harm.
- e. **Severability.** If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this agreement shall continue in full force and effect.

[CLICK TO AGREE]

## APPLE STORE SUPPLEMENT

- 1. Acknowledgement:** We-Consent, Inc. and You acknowledge that the EULA is concluded between We-Consent, Inc. and You only, and not with Apple, and We-Consent, Inc, not Apple, is solely responsible for the Licensed Application and the content thereof.
- 2. Scope of License:** The license granted to You for the Licensed Application is limited to a non-transferable license to use the Licensed Application on any iOS Products that You own or control and as permitted by the Usage Rules set forth in the Apple App Store Terms of Service.
- 3. Maintenance and Support:** We-Consent, Inc. is solely responsible for providing any maintenance and support services with respect to the Licensed Application, as specified in the EULA, or as required under applicable law. We-Consent, Inc. and You hereby acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application.
- 4. Warranty:** We-Consent, Inc. is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. In the event of any failure of the Licensed Application to conform to any applicable warranty, You may notify Apple, and Apple will refund the purchase price for the Licensed Application to You; and that, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Licensed Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be We-Consent LLC's sole responsibility.
- 5. Product Claims:** We-Consent, Inc. and You hereby acknowledge that We-Consent LLC, not Apple, is responsible for addressing any claims of You or any third party relating to the Licensed Application or your possession and/or use of that Licensed Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection, privacy, or similar legislation.
- 6. Intellectual Property Rights:** We-Consent, Inc. and You hereby acknowledge that, in the event of any third party claim that the Licensed Application or your possession and use of that Licensed Application infringes that third party's intellectual property rights, We-Consent LLC, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.
- 7. Legal Compliance:** You must 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 listed on any U.S. Government list of prohibited or restricted parties.

**8. Developer Name and Address:** Questions, complaints or claims with respect to the Licensed Application should be directed to We-Consent, LLC, 14 Stratford Rd, Marblehead, MA 01945, email: [michael.lissack@gmail.com](mailto:michael.lissack@gmail.com), phone 617-710-9565

**9. Third Party Terms of Agreement:** You must comply with applicable third party terms of agreement when using any We-Consent, Inc. Application.

**10. Third Party Beneficiary:** We-Consent, Inc. and You hereby acknowledge and agree that Apple, and Apple’s subsidiaries, are third party beneficiaries of the EULA, and that, upon your acceptance of the terms and conditions of the EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce the EULA against You as a third party beneficiary thereof.