

## TERMS OF USE

For the purpose of these Terms of Use “you”, “your”, “yours” or “user” means you as the Customer and “we”, “us” “our” means Third Man Apps Pty Ltd (ACN 160 725 342) trading as Third Man Apps.

By using the thirdmanapps.com website, the Third Man Apps content management system and website administration software and/or uploading any information, data, code or other input (“Your **Content**”) to the thirdmanapps.com website (“**Service**”) of Third Man Apps Pty Ltd (ACN 160 725 342) trading as Third Man Apps, you agree to be bound by the following terms and conditions (“**Terms of Use**”). If you do not agree to these terms of use, then you may not access or use the Service. Any new features that amend, augment or enhance the Service, (including the release of new tools and resources) shall be subject to these Terms of Use. Continued use of the Service after any such changes shall constitute your consent to such changes. A breach of any of these Terms of Use and in particular a failure by you to make payment to us of any amount due and payable to us pursuant to these Terms of Use will result in the termination of your Service and your contract with us without notice. Notwithstanding such termination we shall be entitled to recover from you by way of liquidated damages all amounts owing by you to us for the unexpired portion of your contract with us. While Third Man Apps prohibits unauthorised and unlawful conduct and content on and in respect of the Service you understand and agree that Third Man Apps cannot be responsible for the content posted on the Service and that despite this you and your own clients and/or members and/or customers may be exposed to such content, materials and information. You agree to use the Service at your own risk.

### 1. **Terms:**

- 1.1 You must provide your full legal name, a valid email address and any other information requested in order to complete the “signup process”;
- 1.2 You are responsible for maintaining the confidentiality and security of your account and password. Third Man Apps cannot and will not be liable for any loss or damage from your failure to comply with this security obligation;
- 1.3 You are responsible for all Your Content posted and activity that occurs under and on your account (even when Your Content is posted by others who have access to your account);
- 1.4 You must provide all Your Content to us as soon as possible and/or when requested by us. Subject to the General Conditions we are not responsible for any loss suffered by you of whatsoever nature and howsoever arising as a result of any delays by us posting and/or uploading Your Content (or any of Your Content which is amended or varied) for any reason.
- 1.5 You must not use the Service for any illegal or unauthorized purpose. You must not, in using the Service, violate any laws in your jurisdiction (including but not limited to copyright laws).

### 2. **Privacy:**

Any personal information you submit and/or is uploaded to the Service or Third Man Apps will be treated by Third Man Apps in the manner described in the Privacy Policy, located at <http://www.thirdmanapps.com/privacy-policy>.

### 3. **Payments and Refund Terms:**

- 3.1 Fees paid for the Service are non-refundable.
- 3.2 All fees are exclusive of all taxes (including GST in Australia) levies or duties imposed by taxing authorities and you shall be responsible for payment of all such taxes, levies, or duties.
- 3.3 These Terms of Use and the commencement of these Terms of Use are subject to the approval by Apple and/or Google of your App and its contents.
- 3.4 Third Man Apps will take reasonable steps to have Apple and/or Google approve your application (“App”) within a reasonable time. However we do not and cannot guarantee approval. If your application is refused by Apple and/or Google you may cancel your account. However there are no refunds under these or any other circumstances and in particular in respect of the Initial Signing Up fee as referred to in the Direct Debit Request. However the monthly payments referred to in the Director Debit Request will only commence when your App is approved and commissioned for use.

### 4. **Cancellation and Termination:**

- 4.1 You are solely responsible for cancelling your account which can only be done at the expiration of your contract period with us subject to the provisions regarding cancellation as set out in the Director Debit Request. Account cancellation requests must be submitted at [info@thirdmanapps.com](mailto:info@thirdmanapps.com). However, notwithstanding any purported or actual cancellation you will remain liable for payment of all amounts owing in respect of the unexpired portion of your contract with us.
- 4.2 All of Your Content will be deleted from the Service upon cancellation. This information cannot be recovered once your account and App is cancelled.
- 4.3 Third Man Apps in its sole discretion has the right for any reason at any time to suspend or terminate your App and to refuse any and all current or future use of the Service or any other Third Man Apps service. Such termination of the Service will result in the deactivation or deletion of your App or your access to your App and the forfeiture and relinquishment of all Your Content in your App.

## **5. Upgrades to the Service and Prices:**

- 5.1 Third Man Apps reserves the right at any time and from time to time to modify, discontinue, (temporarily or permanently), the Service (or any part thereof) with or without notice. Any upgrades, additional features or functions ("the Upgrade") to the Service or your App will be provided to you for a fee and on terms to be agreed prior to such Upgrade being implemented.
- 5.2 The prices of all Services, including but not limited to any monthly subscription plan fees for the Service, are subject to change at any time with or without notice. Notice may be provided at any time by posting the changes to the Third Man Apps website ([www.thirdmanapps.com](http://www.thirdmanapps.com)).
- 5.3 Third Man Apps shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.
- 5.4 Third Man Apps may from time to time issue an update to the Service which may add, modify and/or remove features from the Service. These updates may be implemented automatically with minimal or no notice although Third Man Apps will do everything in its power to notify you in advance of an upcoming update including details of the update.

## **6. Copyright and Content Ownership:**

- 6.1 We have no intellectual property rights over the material you provide to the Service. Your profile and materials uploaded remain yours. However, by using [thirdmanapps.com](http://thirdmanapps.com) to create your iPhone Application and/or your Android Application you agree to allow others to view and share Your Content.
- 6.2 Third Man Apps does not review Your Content. However Third Man Apps and its designers have the right (but not the obligation) in their sole discretion to refuse to allow uploading of your profile and material or to remove any of Your Content that is available through the Service.
- 6.3 The "design" and content of the Service is copyright Third Man Apps. All rights reserved. You may not duplicate, copy or re-use any portion of the Third Man Apps' HTML/CSS website content management system and website administration software or visual design elements of the Service without the express written permission from Third Man Apps.
- 6.4 By using the Service you warrant that you have full rights and ownership of any and all material and/or copyrighted material you upload to or distribute through the Service.
- 6.5 You shall be solely responsible for securing and paying for all digital delivery licenses, mechanical licenses, any public performance licenses, synchronization licenses and any other licenses from all copyright owners (or their agents) required in connection with all Your Content selected by you for use in connection with the Service and/or the Third Man Apps application.
- 6.6 If you believe that your product or work has been misrepresented or used in a way that constitutes copyright infringement or your intellectual property rights have been otherwise violated, please provide Third Man Apps at [info@thirdmanapps.com](mailto:info@thirdmanapps.com) with the following information:
  - 6.6.1 a description of the product, work or other intellectual property that you claim has been misrepresented or infringed;
  - 6.6.2 a description of where the material that you claim is misrepresenting or infringing your product, work or other intellectual property is located;
  - 6.6.3 a statement by you that you have a good faith belief that the disputed use is not authorized by the owner of the product, work, copyright or intellectual property or its agents or applicable law;
  - 6.6.4 a statement by you, under penalty of perjury, that the above information in your notice is accurate and that you are the owner of the product, work, copyright or intellectual property or authorized to act on such owner's behalf;
  - 6.6.5 your name, physical address, telephone number and email address; and
  - 6.6.6 any other relevant information and documents.
- 6.7 Third Man Apps shall be entitled to display its product and services in the banner advertising on your App and shall be entitled to display information regarding Third Man Apps on the static tab of your App. Third Man Apps is entitled to facilitate that third parties who provide goods and services related to your activities are included as sponsors on your App.

## **7. General Conditions:**

- 7.1 Your use of the Service is at your sole risk. The Service is provided on an "as is" and "as available" from time to time basis;
- 7.2 Technical support is only available through [info@thirdmanapps.com](mailto:info@thirdmanapps.com) and enquiries will be responded to within a reasonable time;

- 7.3 You understand that Third Man Apps uses third party vendors and hosting partners to provide the necessary hardware, software, networking, storage and related technology required to run the Service;
- 7.4 You must not modify, adapt or "hack" the Service or modify another website in order to falsely imply that it is associated with any other Third Man Apps service;
- 7.5 You agree not to reproduce, duplicate, copy, sell, resell or exploit any portion of the Service, use of the Service or access to the Service without the express written permission of Third Man Apps;
- 7.6 If your bandwidth usage exceeds the average bandwidth usage (as determined solely by Third Man Apps) of other Third Man Apps customers, we reserve the right to immediately disable your App until you can reduce your bandwidth consumption to such average;
- 7.7 We may, (but have no obligation to), remove Your Content in whole or in part which we determine in our sole discretion to be unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or otherwise objectionable or which violates any party's intellectual property or these Terms of Use;
- 7.8 Verbal, physical, written or other abuse (including threats of abuse or retribution) of any Third Man Apps' customers, employees, members or officers will result in immediate termination of your App and these Terms of Use which will be without prejudice to our rights to recover all amounts payable by you for the balance of the period of your Contract with us;
- 7.9 You understand that the technical processing and transmission of the Service including Your Content may be transferred unencrypted and involve:
  - 7.9.1 Transmission over various networks; and
  - 7.9.2 Changes to conform and adapt to technical requirements of connecting networks or devices.
- 7.10 By using the Service you expressly consent to us building your App on multiple platforms and multiple phone operating systems even if those platforms and telephone operating systems are not currently available today.
- 7.11 If your App is built using the Third Man Apps provisioning file or published under the Third Man Apps or Third Man Apps brand, you agree that Third Man Apps has the right to the following, with or without notice, at any time and for any reason:
  - 7.11.1 Removal of your App from publication;
  - 7.11.2 Modifying the description or other characteristics or features of your App;
  - 7.11.3 Publicising your App and your brand.
- 7.12 You must not upload, post, host, or transmit unsolicited emails, "push notifications", SMSs, or "spam" messages.
- 7.13 You must not transmit any worms or viruses or any codes of a destructive nature.
- 7.14 Third Man Apps disclaims any express or implied warranties and does not warrant that:
  - 7.14.1 The Service will meet your specific requirements;
  - 7.14.2 The Service will not be uninterrupted, timely, secure or error-free;
  - 7.14.3 The results that may be obtained from the use of the Service will be accurate or reliable;
  - 7.14.4 The quality of any products, services, information or other material purchased or obtained by you through the Service will meet your expectations; and
  - 7.14.5 Any errors in the Service will be corrected timeously or at all.
- 7.15 You expressly understand and agree that Third Man Apps shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages including but not limited to damages for loss of profits, goodwill, use, data or other intangible losses (even if Third Man Apps has been advised of the possibility of such damages) resulting from:
  - 7.15.1 The use or the inability to use the Service;
  - 7.15.2 The cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from the Service;
  - 7.15.3 Unauthorized access to or alteration of your transmissions or data;
  - 7.15.4 Statements or conduct of any third party on the Service; and
  - 7.15.5 Any other matters of whatsoever nature and howsoever arising relating to the Service.
- 7.16 Notwithstanding anything to the contrary in these Terms of Use and the provisions of 7.15 our total cumulative liability arising out of or related to these Terms of Use will not exceed the

amount of fees paid by you to us and received by Third Man Apps from you for the use of the Service for a period not exceeding 12 months prior to any such claim arising. The existence of multiple claims shall not expand or increase the foregoing limitation. You and we acknowledge that this clause reflects the agreed upon allocation of risk between you and us and that Third Man Apps would not enter into these terms of use or make the Service available to you without these limitations on liability. This limitation of liability will apply notwithstanding the failure of essential purpose of any limited remedy set forth herein or the failure of consideration.

- 7.17 You understand that any Apps created in the Service are created of your own volition and you therefore indemnify and hold harmless Third Man Apps and all its subsidiaries, employees and any agent acting on their behalf from any and all liabilities, claims, demands or personal injury including death that may be sustained due to or relating in any way but not limited to copyright infringement, fraud, trademark violation by way of creating and/or use of any apps created by the Service or for claims related to or arising from your misuse or breach of these Terms of Use.
- 7.18 If any provision of these Terms of Use is found for any reason to be unenforceable then that provision shall be deemed severable from the other provisions herein and shall not affect the validity and enforceability of any remaining provisions. Third Man Apps shall have no liability under these Terms of Use to the extent arising from any failure of Third Man Apps to perform any of its obligations due to any fire, flood, earthquakes, other acts of God, war, civil unrest, terrorism, Internet failures, governmental act or court order, national emergency, strikes or labor disputes or any other event not within Third Man Apps' reasonable control or for any other reason.
- 7.19 The failure of Third Man Apps to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision. This is the whole agreement between you and us and you and we acknowledge that we have not been induced to enter into these Terms of Use by an representations or warranties other than those set out or contained herein. No representations or warranties other than those set out or contained herein shall be of any force or effect. No alteration, amendment, variation or consensual termination of these Terms of Use shall be of any force or effect unless reduce to writing and signed by you and us.
- 7.20 These Terms of Use are governed by the laws of the State of Victoria, Australia and you and us submit to the non-exclusive jurisdiction of the Courts of that State.
- 7.21 This Direct Debit request detailing the terms of payment by you to us is deemed to form part of and is to be read as if specifically incorporated in these Terms of Use.

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(Signed)  
For Third Man Apps Pty Ltd  
(ACN 160 725 342)  
trading as Third Man Apps

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(Signed)  
The Customer  
If an individual name of Customer:  
ABN:  
Capacity: owner/partner  
(delete which is not applicable)

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(Signed)  
If a Company  
Name of Company:  
ABN:  
ACN:  
Name of Director:

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(Signed)  
If an Incorporated Association  
Name of Association:  
ABN:  
ACN:  
Name of Public Officer: