

MEDIA BLENDER
USER ACCESS AGREEMENT – TERMS OF USE & PRIVACY POLICY

The terms and conditions set out below (the “**Terms of Use**”) apply to accessing, browsing and using the mobile application where the Terms of Use are hosted (“**Application**”), or the website where the Terms of Use are hosted (“**Website**”), by you (the “**User**”, “**you**”, or “**your**”).

The Application and Website (jointly and severally, the “**Services**”) are hosted and/or operated by Media Blender Pty Ltd (ACN 150 042 167) (“**we**”, “**our**”, or “**us**”).

The Services are available for you to use conditional on your acceptance of the Terms of Use. By accessing, browsing or using the Services, or clicking “I accept” in relation to the Terms of Use, you agree to be legally bound by the Terms of Use. If you do not accept the Terms of Use, you must not access or use the Services, or click “I accept” in relation to the Terms of Use.

We may change the Terms of Use at any time. Notice of any changes will be displayed on the Services. Your continued use of the Services following any notification of change to the Terms of Use on the Services will mean that you accept that change and you will be bound by the Terms of Use as varied. You should familiarise yourself with the Terms of Use and check for updates regularly.

Any questions about these Terms of Use can be directed to contact@mediablender.com.au

PLEASE CAREFULLY NOTE BEFORE READING THE TERMS OF USE:

- If you a Consumer, our Services come with consumer guarantees under the Australian Consumer Law.
- Your ability to hold Media Blender responsible for any loss or damage you may suffer from using the Services may be significantly restricted.
- Our liability to you for any loss or damage you may suffer from using the Services may be significantly restricted.
- Subject to any rights which you may have as a Consumer or otherwise at law, your use and access of the Services is on an “as is” basis and is entirely at your own risk.
- You are solely responsible for compliance with all laws and regulations applicable to your use of the Services.
- There are many restrictions that apply to your use of the Services, and there are significant consequences if you do not comply with such restrictions.
- You may be required to compensate us for any loss or damage that we may suffer from your breach of the Terms of Use.

A. DEFINITIONS

Where a definition is used for the first time in the Terms of Use, it will appear in **bold text**.

“**Business**” means the business we operate known as Media Blender, which:

- a. develops software applications and hosts websites for accessing digital publications (such as magazines); and
- b. converts print publications into digitally-readable formats.

“**Consumer**” means a User who views, accesses and uses the Services in Australia and:

- a. the amount payable for the Services does not exceed \$40,000;
- b. the Services provided are of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- c. defined as a “Consumer” under Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

“**Content**” means all content available on the Services, including without limitation Published Content, text, underlying source and object code, photographs, logos, names, designs, Personal Information, financial information, data, drawings, links, video recordings and audio recordings.

“**Intellectual Property**” means all intellectual property and quasi-intellectual property rights (past, present and future) conferred by law (whether registered or unregistered) such as (but not limited to) copyright, trade marks, designs, patents and business names.

“**Media Blender Client**” means a client of the Business.

“**Published Content**” means any materials specifically provided by a Media Blender Client that is shared via, or otherwise submitted or uploaded to, the Services by Media Blender, including without limitation digital magazines and publications.

“**Personal Information**” means any information or opinion, whether true or not, about a person who is identified or whose identity can reasonably be established, and not limited to information in a material form.

B. TERMS OF USE – GENERAL

1. Application of Terms of Use

- 1.1 These **Terms of Use** apply to all **Users**. By visiting, viewing, browsing, accessing or otherwise using the **Services**, or clicking “I accept” in relation to the Terms of Use, you accept and agree to comply with the Terms of Use.
- 1.2 If you are a Consumer, our Services come with consumer guarantees (“**Consumer Guarantees**”) under the Australian Consumer Law, being Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (“**ACL**”). If you are a Consumer, nothing in the Terms of Use (including, without limitation, clauses 5 and 6 of the Terms of Use) is intended to limit or exclude your Consumer Guarantees.

2. Services and Licence

- 2.1 The main purpose of the Services is for us to provide you with access to view certain **Published Content** from a **Media Blender Client**.
- 2.2 Subject to the terms of the Terms of Use, we agree to grant you a limited, personal, non-exclusive, non-transferrable, conditional and revocable licence to view, access and use Published Content and other **Content** expressly made available to you via the Services.
- 2.3 We may terminate the licence provided to you under clause 2.2 when you breach the Terms of Use or for any other reason (in our sole discretion).

3. Restrictions

- 3.1 Your access to, and use of, the Services, is subject to all conditions specified in these Terms of Use.

- 3.2 You must comply with all laws and regulations applicable to the use of the Services and you are solely responsible for your conduct in the course of using the Services.
- 3.3 You agree that you will not:
- a. Use the Services for any purpose that is illegal, unlawful or prohibited by these Terms of Use;
 - b. Interfere or attempt to interfere with, or obtain or attempt to obtain unauthorised access to, the proper working of the Services or any Content, including (without limitation) through hacking or use of automated devices, scripts or bots, destructive transmission of viruses, reverse engineering, circumventing, damaging, disassembling, attempting to discover the source code, or other illegitimate means;
 - c. Contact Users of the Services for the purpose of sending unsolicited offers, advertisements, spam, junk e-mails;
 - d. Contact Users of the Services for the purpose defaming, abusing, threatening or defrauding Users;
 - e. Impersonate any entity or falsely claim an affiliation with any person or entity; or
 - f. Scrape or otherwise obtain any data from this Services for any purpose or use any Content to spam third parties.
- 3.4 We reserve the right to exercise whatever lawful means we deem necessary to prevent unauthorised use of our Services by you in breach of this clause 2, including technological barriers, IP mapping, and directly contacting your internet services provider (ISP) regarding the unauthorised use of our Services.

4. Intellectual Property

- 4.1 The Intellectual Property subsisting in any aspect of the Services and Content other than the Published Content ("**Media Blender IP**") is exclusively owned and controlled by Media Blender and/or its third party affiliates, licensors and/or licensees throughout the world in perpetuity, and is protected by Australian and international law governing intellectual property rights.
- 4.2 You acknowledge that Published Content (including Intellectual Property subsisting therein) is owned or controlled by Media Blender Clients and not Media Blender.
- 4.3 You are not permitted to save, download, reproduce, display, copy, alter, conceal, adapt, perform, transmit, broadcast, sell, license or otherwise exploit any Media Blender IP unless permitted in the Terms of Use. Any unauthorised use of Media Blender IP by you is strictly prohibited.
- 4.4 Media Blender recognises and respects the Intellectual Property rights of others. If you believe that any item of Media Blender Content or User Content appearing on the Services infringes any Intellectual Property rights, please contact contact@mediablender.net for further information about how to address and resolve your concerns. We also respond to notices of alleged copyright infringement that comply with the Digital Millenium Copyright Act.

5. Disclaimers

- 5.1 You acknowledge that we are merely providing you with the Services in order for you to view, access and use certain Published Content, and we do not author or make any intellectual or other contribution to the Published Content, made available to you.
- 5.2 We do not provide any guarantee or warranty that you may view, access or use the Published Content via the Services without infringing the Intellectual Property rights of a third party.

- 5.3 We are not responsible for:
- a. Published Content available via the Services. We do not endorse, support, represent or guarantee the accuracy, completeness or reliability of Published Content available via the Services; and
 - b. Hyperlinks to third-party web services or host third-party information or content on the Services. All third-party content is the responsibility of its author, and we do not endorse or represent the views or opinions contained therein.

6. Liability

- 6.1 Except for liability in relation to breach of any obligation, condition, warranty or guarantee (including the Consumer Guarantees or otherwise under the ACL), the exclusion of which from a contract would contravene any statute or cause any part of these Terms of Use to be void ("**Non-Excludable Conditions**"), your use of, and reliance on, this Services (including all Content) is entirely at your own risk, and to the extent permitted by law, we exclude our liability to you for all types of loss resulting from your use of or reliance on this Services (including all Content), however incurred (whether based in negligence or any other tort, contract, statutory liability or otherwise), including (without limitation) for any lost profit, lost opportunity, lost revenue, lost data, losses resulting from security failure or computer viruses, or any indirect or consequential loss.
- 6.2 Subject to the application of any Non-Excludable Conditions, you hereby release us from all claims, responsibility and liability for any injury, illness, direct or indirect damage, loss (financial, reputational or otherwise) or consequential, exemplary or aggravated damages arising from any of the following matters ("**Services Matters**"):
- a. The use of, or inability to use, the Services by Users;
 - b. Any Content that appears via the Services;
 - c. Any failure by Users or other third parties to provide any information, service, feature or functionality via the Services; and
 - d. Use of third-party services (including any sharing to third-party Services or websites) in conjunction with the Services by Users.

7. Indemnity

- 7.1 As a further condition of using the Services, you must indemnify us against all quantifiable and reasonable loss and/or damage suffered by us (whether based in negligence or any other tort, contract, statutory liability or otherwise) as a direct result of you breaching a term of these Terms of Use.

8. Jurisdiction & Choice of Law

- 8.1 These Terms of Use are governed by and construed in accordance with the laws of the State of Victoria, Australia without giving effect to any conflict of laws principles. Any claim, cause of action or dispute arising out of these Terms of Use will be resolved exclusively in the the courts of Victoria, Australia, and you agree to submit to the personal jurisdiction of such courts for the purpose of litigating such claims.

9. Miscellaneous

- 9.1 In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provisions of the Terms of Use and the Terms of Use shall be construed as if such provisions had never been contained herein.

C. PRIVACY STATEMENT

- 7.1 In order to provide access to the Services, we may need to handle your **Personal Information**.
- 7.2 The kinds of Personal Information we may collect through the Services about you include your name, email address, physical address, phone number and business/company name.
- 7.3 We may also collect information relating to the geographical location of the device you are using to access the Services, your IP address and your browsing activity on the Services. We may collect this information through the use of browser cookies and Google Analytics, which may also result in the collection of non-personal statistical information. We may use browser cookies and similar techniques to assist us to deliver targeted advertising to you, which may be through third-party websites. You may 'opt out' of cookie technology by adjusting the settings on your browser, although this may affect the way you experience the Services. We endeavour to collect this information in a way that will avoid aggregation that might identify you individually, but we cannot guarantee that any of the information we collect under this clause will not include your Personal Information.
- 7.4 It is your responsibility to ensure that you do not provide us with any Personal Information that we did not request. If you would like us to destroy or de-identify any Personal Information which we have collected from you and did not request, please contact us at contact@mediablender.net.
- 7.5 The Terms of Use do not exhaustively list the ways in which we may collect Personal Information or the kinds of Personal Information we may collect.
- 7.6 We collect, use and share Personal Information where reasonably necessary for the proper function of the Services and to help us run our Business effectively, including for the following purposes:
- a. To understand usage trends and patterns and improve Users' overall experience of the Services;
 - b. To fix problems and respond to feedback, enquiries and complaints;
 - c. To enforce any agreements between a User and us, such as the Terms of Use;
 - d. To allow us to run our Business and perform administrative and operational tasks.
- 7.7 Privacy legislation caters for particular situations called "permitted general situations" where we may be required to disclose your Personal Information outside of the purposes listed above, such as to lessen or prevent a serious threat to public health or safety, or to assist in locating missing people. Other laws, or a court, might also legally compel us to disclose Personal Information.
- 7.8 We may store Personal Information in a variety of ways, including in the cloud or other types of networked or electronic storage. We may store and make back-up copies of Personal Information to ensure that we are able to recover information if our systems experience a fault or outage.
- 7.9 We may also use Personal Information to directly respond to your enquiries about the Services, and where you 'opt-in', notify you of new developments to the Services, and/or offer you new products and services. In delivering any marketing communications, we may contact you via e-mail or any other means nominated by you. If you do not wish to receive marketing communications from us, you may opt-out by contacting contact@mediablender.net.
- 7.10 We take no responsibility for the privacy practices of any third parties that we may link to on the Services. All third parties will handle your Personal Information in accordance with their own privacy practices and policies.

- 7.11 We take the security and safety of Personal Information seriously. Unfortunately, no data transmission over the internet can be guaranteed to be completely secure and we cannot guarantee that your use of the Services will be free from viruses, surveillance or interception.
- 7.12 If we change our business structure (for example by incorporating, or by bringing on board new partners), then, in our sole discretion, we may transfer, sell, license or assign Personal Information collected to one or more relevant third parties. This may make Personal Information subject to a different privacy policy and if that is the case, we will post notice of this on the Services.
- 7.13 If you have any questions about how we handle Personal Information or if you would like to access or correct any Personal Information we hold about you, please contact us at any time by emailing contact@mediablender.net. For further information on online privacy rights, please contact the Office of the Australian Information Commission at www.oaic.gov.au/privacy.