

Terms & Conditions

1. My Mobile App, in all of its forms, whether it be featured on the MyMobileApp.online website or any of the My Mobile App mobile application (“apps”) services, is a product of Appswiz Pty Ltd (“Appswiz”).
2. By using the MyMobileApp.online website or any of the My Mobile App mobile apps services, you are agreeing to be bound by the following terms and conditions.
3. Appswiz reserves the right to update and change the terms and conditions that apply to all clients without notice. The updated terms and conditions will only be in effect once they are published on the MyMobileApp.online web site. Continued use of the My Mobile App product after any such changes shall constitute your consent to such changes.
4. The definition of “The Client” used in this document pertains at all times to the organization that is the intended party requesting apps from My Mobile App.
5. Any My Mobile App offer made by Appswiz is limited to the duration advertised or in the absence of such time or in the event of any error or omission shall be valid for 24 hours from when it first appeared unless Appswiz in its sole discretion decides to change the extent or duration of any offer.
6. Appswiz ABN 43 142 341 679 is authorised to issue Recipient Created Tax Invoices (RCTIs) in respect to the services outlined in this proposal.
7. Any reference to a sum charged by Appswiz is in American Currency (USD) unless otherwise noted and is subject, where applicable, to the addition of Australia’s Goods & Services Tax (GST).
8. Appswiz acknowledges that it is registered for GST in Australia when it enters this agreement and will notify The Client if it ceases to be registered.
9. The Client acknowledges that if it is required pursuant to Australian Law that it is registered for GST when it enters this agreement and will notify Appswiz if it ceases to be registered.
10. The Client is responsible for maintaining the security of their online account and password.
11. By using My Mobile App, The Client asserts itself to have ownership and license, or some other clear right, to enter the Agreement on behalf of the website submitted to My Mobile App. In the event that the right to enter the Agreement is shown to be non existent, or a competing claim of right is proven to be stronger, Appswiz reserves the right to remove the application from its systems, or alter the Agreement to be with the proper right holder instead. No refund will be issued.
12. Appswiz will use reasonable efforts to have the My Mobile App application approved by the iTunes and Google Play app stores. Although there is generally a high likelihood of approval, we do not and cannot guarantee approval. If the app is continually denied by the app stores because The Client has not accepted My Mobile App’s advice on what changes are required for the approval of the app in the app stores, The Client will not be entitled to a refund of the initial fees or any other charges incurred up to that point.

Indexation

13. Appswiz reserves the right to index all rates to increase at 5% annually on January 1 each year beyond the charges that applied prior to such increase occurring and

the client acknowledges that Appswiz is authorized to apply such increase on further monthly and any other sums payable to Appswiz.

My Mobile App Standard Offering

14. These terms and conditions cover the website conversion model referred to as My Mobile App offered online by Appswiz.
15. It is understood and agreed by The Client that issues can occur and that in the event of any customer complaint or concern The Client shall refer it, or them, to Appswiz, either via My Mobile App support or directly. This will not be a basis for voiding its obligation to pay Appswiz or withholding payment.
16. Unless agreed by both The Client and Appswiz or unless a reseller or white label offering is to occur then Appswiz shall be listed as the app developer in iTunes and Google Play.
17. It is understood by the Client that the apps will operate on iPhone, iPads, Android Phones and Android Tablets (Compatible with Android 2.1 (Eclair) and beyond) if the complete package of these platforms is purchased from My Mobile App.
18. Appswiz warrants that the My Mobile App service shall be performed with reasonable care in a diligent and competent manner. To the fullest extent permitted by law, this clause is Appswiz's only warranty concerning the services and is made expressly in lieu of all other warranties and representations, express or implied, including warranties of merchantability, non-infringement or fitness for a particular purpose, or otherwise.
19. Appswiz may issue an update to the Client's My Mobile App apps which may add, modify and/or remove app features. These updates may be pushed out automatically without notice, although Appswiz intends to notify the Client in advance of an upcoming update with details on what the update includes.
20. Appswiz does not warrant and is not responsible for any products or services, including delivery of messages by carriers, on other networks or on other providers systems or infrastructure which is beyond the best efforts of Appswiz, which it is accepted to have been made by Appswiz on its own systems.
21. Appswiz does not warrant to any client the benefit of any My Mobile App products or services that any client shall acquire from Appswiz.
22. The Client warrants that it has not relied on any representations in writing or otherwise by My Mobile App or Appswiz and that it is bound by these terms and conditions as a precondition of doing business with Appswiz which it accepts by making any payment to Appswiz or requests for its products or services.
23. No additional programming or support charges shall be levied by Appswiz to the client other than the initial development and monthly charges unless required and agreed by the client in writing in advance of such work.
24. Where Appswiz should incur any additional charges Appswiz will notify The Client of any such charges as soon as practicable thereafter and The Client shall have their right to decline same.
25. All service charges are based on My Mobile App standard reporting being provided. Additional reporting requirements may incur additional charges pre-agreed with The Client.
26. Unless otherwise notified, the monthly support charge is to be determined by The Client's selected plan: Free, with required payments of zero dollars per calendar month; or, Premium, with required payments of \$9.99USD per calendar month.

27. The first monthly support charge is due on the date this agreement is entered by The Client and covers the upcoming month. Each additional payment will be charged on the monthly anniversary of the initial payment, or the first day of the following month should any issue arise. If any monthly support amount is not paid within seven days of being due, Appswiz is entitled to provide a further 7 days of notice before terminating this agreement.
28. Appswiz reserves the right to terminate the service for any reason on reasonable grounds, including if payment is not received within 14 days of it being due. The decision to terminate shall be communicated to The Client as soon as practicable after making such decision. Further, in the event that the service is discontinued due to failure to pay, Appswiz reserves the right to charge a reactivation fee if The Client requests that the service be reactivated and Appswiz were to agree to reactivate it.
29. Appswiz reserves the right to levy a Wasted Service Call-Out (WSC) charge of \$250 per hour or part thereof, where it has been deemed "reasonable" to expect that The Client could have located the cause of the fault and taken "reasonable" steps to rectify the situation, and this has not occurred or where it Appswiz determines that there was no fault attributed to My Mobile App or Appswiz.
30. By completing the online order or by signing the authorisation to proceed the client is acknowledging on behalf of its organization that it has obtained authorization to enter this agreement upon these Terms and Conditions.
31. Where The Client specifically uses or requests the use of material that may be protected under copyright laws, The Client agrees to indemnify Appswiz for any infringement on such copyright.
32. Unless otherwise agreed, The Client may cancel their mobile app at any time without incurring penalty fees but must provide 7 days of notice. No refunds for payments already made will be issued.
33. Termination must be made by email to cancellation@mymobileapp.online.
34. Nothing in this proposal shall give rise to any action against Appswiz for whatever reason arising out of contract, tort or occurring from the relationship established between the parties herein shall be no more than \$100 as an accumulative total sum up to and including such claim.
35. All ideas and suggestions of My Mobile App shall remain the property of Appswiz whether promoted and used as a result of this Agreement or not.
36. In the event of the termination of any service or services arising from or incidental to this Agreement or introduced by My Mobile App it is agreed that ownership of the Intellectual Property giving rise to such service or services shall remain the property of Appswiz including the name of the application in either or both of the App Store or in Google Play for the service. This excludes any pre-existing Intellectual Property created by The Client such as trademarks, logos or copyright information.
37. My Mobile App's Customer Service and Technical Support can be reached via email at support@mymobileapp.online. My Mobile App or Appswiz gives no warranty to respond to any email or concern other than as soon as it can practicably do so.
38. Cancellation of any service does not expunge the client from any reasonable rights or obligations stipulated in this agreement.
39. Any internet domains, app development, app names or registrations in the App Store, Google Play or otherwise used in conjunction with the client's app or phone

- numbers or other addresses that My Mobile App establishes and maintains in the operation of the services remain the property of Appswiz.
40. Any app designs or app functions or recommendations or other intellectual property arising from this Agreement and/or the Services outlined herein continue to be held by Appswiz or its nominee.
 41. In the event of service termination The Client agrees that Appswiz has the right to destroy any customer data unless payment for transfer of it is agreed by the Client with Appswiz within 7 days of service cancellation.
 42. In the event that the service provided by My Mobile App to The Client is terminated Appswiz shall not be required to facilitate the data, unless on mutually agreed terms, to The Client or any third party and shall within 7 days of such termination becoming effective destroy all of The Clients data.
 43. Both parties to this Agreement are entitled to promote the other party on their web site as well as links to the other party's web site, mobile app or social media pages unless specifically excluded pursuant to these terms and conditions.
 44. Appswiz will have the right to represent to clients and prospects that The Client is a client of My Mobile App and to describe the services provided in any format of public relations and on its web sites at the discretion of Appswiz providing that it does not cause any provable damage to the reputation of The Client and providing it is not specifically excluded under these terms and conditions. In the event of any provable claim of damage caused to a client this shall be reviewed in the entire discretion of Appswiz and its management acting reasonably but be not more than \$100 in total for such damage regardless as to the number of apps that the client may have with My Mobile App.
 45. Any request to progress service provision by The Client to My Mobile App is deemed to continue until and unless it is terminated at the discretion of either The Client or Appswiz.
 46. All industrial and intellectual property rights in and relating to any inventions, patents, applications for patents, design applications, designs (whether registered or unregistered) all copyrights, (including copyright conferred by the Copyright Act 1968 (Cth)), all trade or service marks (whether registered or unregistered), Confidential Information, integrated circuits, any rights that presently exist or may arise in the future anywhere in the world in respect of the services that The Client shall use belong to Appswiz. The Client obtains no rights to this intellectual property though using the services of My Mobile App.
 47. Neither party represents any guarantee of success in any way for any initiative or developed application.
Where The Client specifically uses or requests the use of material that may be protected under copyright laws, The Client agrees to indemnify Appswiz for any infringement on such copyright.
 48. The Client indemnifies Appswiz from and against any claim, demand, action, suit or proceeding that may be brought by any person against them or their employees or agents or any of them in respect of personal injury to or the death of any person whatsoever or loss of or damage to any property or any other loss or damage whatsoever arising out of or as a consequence of an unlawful act or negligent act or omission by The Client in the execution of the work under this Agreement, or by their use of their account, and also from any costs and expenses that may be incurred with any such claim, demand, action suit or proceeding.
 49. The Client agrees to comply with all applicable federal and state laws and regulations when using Appswiz's products and systems.

50. The Client agrees to comply with the SPAM Act 2003 of Australia.
51. Appswiz reserves the right to suspend or terminate a user's account if, in its opinion a user has breached any laws or guidelines or if payment has not been made to Appswiz for the My Mobile App product or any additional or associated product or services.
52. The Client is to provide its own hardware and internet connections required to use the service and are solely responsible for all costs and fees associated with that usage.
53. Appswiz is permitted to assign or license its associated services to any third party without the prior consent or notification to The Client.
54. The Client does not have an exclusive right to use or distribute the service in any industry or territory and nothing in this agreement or relationship shall give rise to access to the source code or intellectual property of My Mobile App which is agreed to be a valuable asset of Appswiz and is protected under Copyright Law and all rights are reserved in it.
55. In the event of any dispute between the client and Appswiz it shall be determined by a Mediator and it is agreed between both parties that the maximum claim allowed against Appswiz shall be not more than the standard monthly cost levied by Appswiz to that client.
56. Appswiz will not accept responsibility for any server down time, server delayed response time, network issues, or any other issues caused by interruption or intermittent issues of the underlying hosting service provider.
57. The Client must not hack the My Mobile App service or modify another website so as to falsely imply that it is associated with My Mobile App or Appswiz.
58. Appswiz will not process any payment transactions directly as such will be processed through the Clients own Merchant or Pay Pal account.
59. Appswiz expressly makes NO claim or representation that:
 - a. will be relied upon or warranty that the My Mobile App service is or will be error free or that the information or the apps it supplies will be timely, uninterrupted or secure in part or whole during service provision;
 - b. oral or written advice afforded by My Mobile App or Appswiz or its representatives or those holding out or perceived to be its representatives or in some relationship with My Mobile App of any type may be relied upon in any way or create any warranty or representation under any circumstance.
60. No Client may rely on any information received by Appswiz in relation to service provision or the benefits perceived or otherwise may derive for any Client or relationship of any Client.
61. Appswiz or any related entity or party of Appswiz will not under any circumstances accept liability for any damages or losses occurring be they direct, indirect, incidental, identifiable, special or consequential arising from not being able to use or fully use the My Mobile App servers or apps or arising from any mistake, omission, interruption, deletion to data or loss of data or virus or howsoever occurring which affects the performance or availability of the app or being able to transact via the app.
62. Appswiz will not accept liability for any damages for loss of business or loss of profits arising from breach of this agreement or breach of any stated or perceived warranty and such exclusion of liability is to be read and understood as applying directly or indirectly with any party obtaining services of the My Mobile App

platform. Such exclusion of liability by Appswiz shall apply whether it otherwise would arise pursuant to contract or tort or construed as arising from this agreement. The exclusion of liability by Appswiz shall survive any termination of this Agreement for any reason.

63. Any client of My Mobile App acknowledges that they may be in receipt of information that it or they would not otherwise receive and such information is to remain the proprietary right of Appswiz and deemed confidential and protected accordingly pursuant to the laws of the State of Victoria, Australia.
64. Force Majeur shall apply to this relationship between Appswiz and the party receiving or seeking to receive My Mobile App services. Accordingly, it is agreed that if by reason of failures of servers, telecommunications or internet service providers, failures of mobile operating systems, labor disputes, riots, inability to obtain labor or materials, earthquake, fire or other action of the elements, accidents, governmental restrictions or other causes beyond the control of Appswiz it is unable to perform in whole or in part its obligations as set forth in this Agreement, then Appswiz shall be relieved of those obligations to the extent it is so unable to perform its services and shall not make Appswiz liable to any affected party.
65. This Agreement shall be subject to the jurisdiction of the laws of the State of Victoria in Australia and the parties shall to the extent that any claim could occur, agree to be bound and subject to a mediation occurring within the State of Victoria, Australia.
66. In the event of Appswiz incurring legal costs it shall have the right to recover same should it succeed in any litigation but shall not be liable to pay any other party or parties legal costs in any proceedings.
67. In the event that any provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision will be deemed to be written, construed and enforced as so limited.
68. It is agreed between the parties that the terms of this Agreement apply to those obligations that survive any cancellation, termination, or rescission which shall include all rights and obligations following termination and or assignment, terms pursuant to liability and limits as stated, indemnification and warranty as well as the right of not facilitating services at the discretion of Appswiz without being required to give reason for same.
69. It is accepted as fundamental to any relationship with My Mobile App that any party receiving its services will indemnify, defend and not seek any claim from Appswiz regardless as to any other party/ies actions, claims or liability, costs, losses and expenses claimed to arise from use or attempted or sought use of My Mobile App services and such protection and indemnity shall occur without limit or exception.
70. The terms and conditions and the relationship with Appswiz shall continue regardless of any assignment of interest by or in My Mobile App to a related or non related entity.
71. It is agreed that the obligations between the parties are entirely contained within the terms and conditions of this agreement, which are subject to change at the discretion of Appswiz, and the laws of the State of Victoria and of Australia. No oral communication at any time shall place obligations on the parties.

72. In the event that Appswiz were to delay any right of action arising pursuant to these terms and conditions, any updated changes to these terms and conditions or arising from its contractual rights or in tort it shall not give rise to any waiver by Appswiz to seek protection and enforcement of such rights.

Purchase and use of SMS

73. Nothing in this Agreement requires any party transacting with Appswiz through My Mobile App to purchase SMS credits from Appswiz. In the event that The Client purchases credits in advance for the number of SMSs to be used in conjunction with The Client's Mobile Application acquired from My Mobile App then they shall be used within 12 months of purchase or those credits or otherwise they will cease to be effective.
74. Any reference to Short Message Services (SMS) in these Terms and Conditions is only applicable in the event of provision of SMS being supplied to The Client by Appswiz.
75. The Client will be responsible for all costs incurred from the use of any SMS account established for The Client which will be charged as one credit for every 160 characters (or part thereof) used in a message up to a maximum of 6 credits for 960 characters.
76. In the event that the client utilizes SMS to promote availability of its apps to other parties it shall ensure that the message and phone numbers they are to broadcast with a link to The Clients Mobile Application are accurate.