

M8CHAT

M8 CHAT PTY LTD **ACN** 602 173 204

TERMS OF SERVICE

PARTICULARS

A PARTIES

- A.1** These Terms of Service form an agreement (**Agreement**) between M8 CHAT PTY LTD ACN 602 173 204 (**m8chat**), an Australian company, and the user (**User** or **you**).

B PRIVACY POLICY

- B.1** In accepting these Terms you also confirm that you have read and accept our Privacy Policy. You can read our Privacy Policy at www.m8chat.com.

C SOLUTION

C.1 Description

- (a) The m8chat app (**App**) is a social networking chat application for mobile that allows personal users (**Personal User**) to find people in their vicinity and chat with them via the app.
- (b) m8chat also operates the website 'www.m8chat.com' (**Site**) to supplement the App.
- (c) The App allows business owners and operators (**Business Users**) to advertise and provide information on their business to Personal Users in the vicinity of their business.
- (d) The App is available:
 - i **Mobile.** The native mobile application "m8chat" available from Apple's AppStore, GooglePlay and any other native or web-based mobile applications made available from time-to-time; and/or
 - ii **Web.** From the application accessed through the URL <http://www.m8chat.com> (or other domain as used by m8chat from time-to-time).
- (e) The App and the Site are together referred to as the **Solution**.
- (f) Any Business User or Personal User is referred to as a **User**.

C.2 Term

Your license to access the Solution shall be ongoing unless terminated by m8chat in accordance with these Terms.

C.3 Limitations on Use

m8chat may limit or restrict access to the Solution from time-to-time on any basis as it sees fit, including (but not limited to):

- (a) **Age & Capacity.** Only persons over the age of 18 may register as a User and all Users must be capable of forming binding legal contracts;
- (b) **Location.** m8chat may restrict access to the Solution from any location;
- (c) **Certification.** m8chat may restrict access to the Solution where it cannot, in its absolute discretion, verify the user's identity.
- (d) **No Advertising by Personal Users.** m8chat may restrict access to the Solution or remove an account if a Personal User's account is used for, or contains any advertising. m8chat may also remove such advertising. Users who wish to advertise their business via the Solution should contact m8chat or visit www.m8chat.com.
- (e) **Explicit Material.** m8chat may restrict access to the Solution or remove an account if a user shares any explicit or sexually suggestive content via the Solution, whether written or visual. m8chat may also remove such explicit or sexually suggestive material.
- (f) **Illegal Substances.** m8chat may restrict access to the Solution or remove an account if a user seeks to either sell or purchase any illegal substances via the Solution.

D REGISTRATION & VERIFICATION

D.1 Registration.

- (a) A user of the Solution must register as a Personal User or Business User; and
- (b) Until registration as a Personal User is confirmed by m8chat you are not granted a license to access the Solution.

D.2 Verification

- (a) The User may be required to verify their identity by (without limitation) email, telephone, residential or business address, social media, referrals, references and/or formal photographic identification. You agree to provide m8chat with all necessary verifications we require to provide you with access to the Services.
- (b) m8chat may restrict access or suspend an account of any User that uses a profile picture of anyone other than himself or herself.

E BUSINESS USERS

You may advertise your business, goods & services via the Solution. All Services using a Business Customer account is subject to the following terms in this item E:

E.1 Fees and Charges.

- (a) The fee is determined by the level of advertising package the Business Customer subscribes to as described on the Site or as otherwise determined by these Terms **(Fee)**.
- (b) You will be charged the relevant Fee for the Service that you have subscribed to as described on the Site.

- (c) m8chat may change any Fee at any time by giving you 1 days' notice. These changes will become effective when you next make a payment through the Site.

E.2 Payments.

All payments must be made through the Site using the Site's designed payment systems. Services may be withheld by m8chat until funds have cleared.

E.3 Currency.

All transactions are processed in Australian dollars by local and international payment providers. You accept that international payment processing fees may apply from your financial institution.

E.4 GST.

If GST is applicable to any payment by a Customer to m8chat then:

- (a) The fee is inclusive of GST; and
- (b) m8chat will provide the Member with a Tax Invoice for its payment.

E.5 Refunds.

No refunds are offered other than as required by law, except:

- (a) A pro-rata amount may be refunded for the remainder of the monthly billing period to a Customer that changes their advertising package.

F ACCOUNT ACCESS USING THIRD-PARTY SERVICES

F.1 Registration & Login.

- (a) You may be able to register for the Solution, and access the Services, by using your account with certain third party services ("TPS") (including, but not limited to, Facebook);
- (b) As part of the functionality of the Solution you may connect your profile with a TPS by:
 - i Providing your TPS login information to m8chat through the Solution; or
 - ii Allowing m8chat to access your TPS in accordance with its terms & conditions of service; and
- (c) When connecting to the Solution using a TPS you warrant that you are not in breach any of its terms & conditions of service.

F.2 Ongoing Availability.

- (a) You agree that access to the Solution may be unavailable if the TPS becomes unavailable, and that you may lose functionality or content that is shared between the TPS and the Solution;

- (b) You may disconnect the connection between the Solution and the TPS at any time.
- (c) M8chat has no relationship with any TPS and cannot guarantee the efficacy of any TPS connection.

F.3 Data from TPS.

Where you connect and or register your profile using a TPS, you authorise us to use data from that TPS to create your profile on the Solution.

G TERMINATION

- G.1** Either party may end this Agreement at any time by written notice in accordance with these Terms.

H GENERAL

H.1 Governing Law. New South Wales, Australia.

H.2 Reference City. Sydney, New South Wales.

SPECIAL CONDITIONS

2 EFFECT OF SPECIAL CONDITIONS

- 2.1** The parties may agree to any Special Conditions to this Agreement in writing. Where the parties make such Special Conditions those Special Conditions shall prevail over any inconsistency with any other provisions of this Agreement.

GENERAL CONDITIONS

3 INTERPRETATION

- 3.1** The following definitions apply in this document:

- (a) **App** means the product described in the Solution in the Particulars.
- (b) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the Reference City of the Legal Location.
- (c) **User Content** means content that is entered into or created within the Solution by the User.
- (d) **Fees & Charges** means the fees and charges as set out in the Particulars.
- (e) **General Conditions** means the terms and conditions set out in the section of this agreement entitled "General Conditions".

- (f) **Intellectual Property** means all rights (present and future) conferred by common law, equity or statute (and all moral rights) connected with business names, computer software, confidential information, copyright, designs, domain names, formulas, inventions, knowhow, patents, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.
- (g) **Particulars** means this agreement's details and variables set out in the section of this agreement entitled "Particulars".
- (h) **Pricing** means the pricing set out in this agreement or as notified to the User in writing by m8chat from time-to-time.
- (i) **Privacy Policy** means the Privacy Policy found at the address in item B of the Particulars.
- (j) **Special Conditions** means the terms and conditions set out in the section of this agreement entitled "Special Conditions".

3.2 Headings are only for convenience and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) The singular includes the plural and the opposite also applies.
- (a) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (b) A reference to a clause refers to clauses in this agreement.
- (c) A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- (d) Mentioning anything after *includes*, *including*, or similar expressions, does not limit anything else that might be included.
- (e) A reference to a *party* to this agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
- (f) A reference to a *person, corporation, trust, partnership, unincorporated body* or other entity includes any of them.
- (g) A reference to *information* is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (h) A reference to *dollars* or *\$* is to an amount in Australian currency.

4 APPLICATION

4.1 This agreement applies to use of and access to the Solution.

4.2 Where the User does not accept the terms and conditions of this agreement, the User must immediately cease using the Solution.

- 4.3** The terms & conditions of this Agreement may be updated by m8chat in its absolute discretion from time-to-time, and unless stated otherwise by M8chat in writing, such updates shall come into effect for use of the Solution at the time the User is sent notice of the update(s).

5 AGREEMENT

- 5.1** By using the Solution, the user acknowledges and agrees to:

- (a)** These Terms of Service; and
- (b)** The Privacy Policy.

6 SOLUTION

- 6.1** The Solution is only accessible to the User for the term set out the Particulars.
- 6.2** The User agrees and accepts that the functional elements of the Solution may be:
- (a)** hosted by m8chat and shall only be installed, accessed and maintained by m8chat, accessed using the internet or other connection to m8chat servers and is not available 'locally' from the User's systems; and
 - (b)** managed and supported exclusively by m8chat from m8chat servers and that no 'back-end' access to the Solution is available to the User unless expressly agreed in writing.
- 6.3** m8chat reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter the Solution.

7 LICENSE

- 7.1** By accepting the terms and conditions of this agreement, the User is granted a limited, non-exclusive and revocable license to access the Solution for the duration of this agreement, in accordance with the terms and conditions of this agreement.
- 7.2** M8chat may issue the license to the User on the further terms or limitations set out in item the Particulars as it sees fit.
- 7.3** m8chat may revoke or suspend the User's license(s) in its absolute discretion for any reason that it sees fit, including for breach of the terms and conditions in this agreement by the User or any of it's users. m8chat will ordinarily advise the User of any suspension or revocation however it is under no obligation to do so.

8 USE

- 8.1** The User agrees that it shall only use the Solution for legal purposes and shall not use it to engage any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by m8chat in its discretion.

9 AUTHORISED USERS

- 9.1** The User shall authorise users to access the Solution in its absolute discretion. m8chat accepts no liability for access to User Content by users authorised by the User or using login details of users authorised by the User.
- 9.2** The User is solely responsible for the security of its username and password for access to the Solution.
- 9.3** The User is responsible for ensuring that users authorised to use the Solution comply with this agreement in full and are liable for any breach of them.

10 USER INFORMATION

- 10.1** m8chat accepts no liability for the content of User Content.
- 10.2** The User is responsible for the accuracy, quality and legality of User Content and the User's acquisition of it, and the users that create, access and/or use User Content.
- 10.3** Despite clause 10.1 m8chat shall be authorised to permanently delete User Content where:
- (a) The User deletes the Solution or no longer wishes to use it; or
 - (b) This Agreement is terminated.

11 INVOICING & PAYMENTS

- 11.1** m8chat shall issue the User an invoice for all payments made by the User to m8chat.
- 11.2** The terms of payment set out in the Particulars shall apply.
- 11.3** Refunds are provided for in accordance with the Particulars or as required by law.

12 DATA

- 12.1 Security.** m8chat takes the security of the Solution and the privacy of its users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of m8chat's systems or the information on them.
- 12.2 Transmission.** m8chat shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards.

13 ACCESS

- 13.1** By accepting the terms of this agreement the User agrees that m8chat shall provide access to the solution to the best of its abilities, however it accepts no responsibility for ongoing access to the Solution.

14 INTELLECTUAL PROPERTY

- 14.1 Trademarks**

- (a) m8chat has moral & registered rights in its trademarks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of m8chat.
- (b) Apple® AppStore®, Google®, GooglePlay® and other trademarks are the Intellectual Property of their respective owners.

14.2 Proprietary Information. The Solution may use software and other proprietary systems and Intellectual Property for which m8chat has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of the Solution.

14.3 Solution. The User agrees and accepts that the Solution is the Intellectual Property of m8chat and the User further warrants that by using the Solution the User will not:

- (a) copy the Solution or the services that it provides for the User's own commercial purposes; and
- (b) directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in the Solution or any documentation associated with it.

14.4 Content. All content remains the Intellectual Property, including (without limitation) any source code, usage data, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to the Solution.

15 LIABILITY & INDEMNITY

15.1 The User agrees that it uses the Solution at its own risk.

15.2 The User acknowledges that m8chat is not responsible for the conduct or activities of any user and that m8chat is not liable for such under any circumstances.

15.3 The User agrees to indemnify m8chat for any loss, damage, cost or expense that m8chat may suffer or incur as a result of or in connection with the User's use of or conduct in connection with the Solution, including any breach by the User of these Terms.

15.4 In no circumstances will m8chat be liable for any direct, incidental, consequential or indirect damages, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the User's access to, or use of, or inability to use the Solution or any content, or in any way relating to an experience itself (or the provision or non-provision of an experience), whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not m8chat knew or should have known of the possibility of such damage, to business interruption of any type, whether in tort, contract or otherwise.

15.5 Termination

15.6 Expiry or termination of this agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of this agreement up to the date of expiry or termination.

16 DISPUTES

16.1 For any dispute between m8chat and the User, the following process shall apply:

- (a) **Negotiation.** If there is a dispute between the parties relating to or arising out of this agreement, then within 5 Business Days of a party notifying the other party of a dispute, senior representatives from each party must meet (or if discuss directly via the telephone or internet) and use all reasonable endeavours acting in good faith to resolve the dispute by joint discussions;
- (b) **Mediation.** If the dispute between the parties relating to or arising out of this agreement is not resolved within five Business Days of notification of the dispute under Clause 16.1, the parties must agree to submit the dispute to mediation, administered by lawyers engaged in alternative dispute resolution;
- (c) **Arbitration.** If the dispute between the parties relating to or arising out of this agreement is not settled by mediation under Clause (b), either party may by written notice to the other refer the dispute to arbitration administered by the Institute of Arbitrators Australia. The arbitrator will be agreed between the parties from a panel suggested by the President of the Institute of Arbitrators Australia or failing agreement, an arbitrator will be appointed by the President of the Institute of Arbitrators Australia; and
- (d) **Court proceedings.** A party may not commence court proceedings in relation to a dispute relating to or arising out of this agreement until it has exhausted the procedures in this clause (d) unless the party seeks appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that damages would otherwise be inadequate to compensate.

17 NOTICES

- 17.1 The User can direct notices, enquiries, complaints and so forth to m8chat as set out in this agreement. m8chat will notify the User of a change of details from time-to-time.
- 17.2 m8chat will send the User notices and other correspondence to the details that the User submits to m8chat, or that the User notifies m8chat of from time-to-time. It is the User's responsibility to update its contact details as they change.
- 17.3 A consent, notice or communication under this agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.
- 17.4 Notices must be sent to the parties' contact details as specified in item A of the Particulars.

18 ASSIGNMENT

- 18.1 The User may only assign or otherwise create an interest in their rights under this document with the written consent of m8chat.
- 18.2 m8chat may assign or otherwise create and interest in their rights under this Agreement by giving the User written notice.

19 GENERAL

- 19.1 Formation.** This Agreement is formed when the User acknowledges their consent to this Agreement, whether done electronically or physically.
- 19.2 Prevalence.** Each party to this agreement agrees to the clauses in the Particulars, the Special Conditions (if any) and the General Conditions. The Particulars, Special Conditions and the General Conditions form a single legal agreement. To the extent that the Particulars or the Special Conditions are inconsistent with the General Conditions, the terms of the Particulars will prevail. To the extent that the Special Conditions are inconsistent with the Particulars, the Special Conditions will prevail.
- 19.3 Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this agreement.
- 19.4 Relationship.** The relationship of the parties to this agreement does not form a joint venture or partnership.
- 19.5 Waiver.** No clause of this agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- 19.6 Further Assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to this agreement and the transaction facilitated by it.
- 19.7 Governing Law.** This agreement is governed by the laws of the state set out in item H of the Particulars. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.
- 19.8 Liability for Expenses.** Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this agreement.
- 19.9 Inconsistency.** If this agreement is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.
- 19.10 Counterparts.** This agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.
- 19.11 Time.** Time is of the essence in this agreement.
- 19.12 Severability.** Any clause of this agreement, which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this agreement.

END GENERAL CONDITIONS