

TERMS OF USE

These Terms of Use ('Terms') apply to all Advertisers and Promoters who promote, advertise or otherwise use our Services. We may modify and update these Terms at any time, without notice. You need to ensure you review the Terms from time to time. In using our website and services, you agree to be bound by these Terms as well as any and all general Terms and Conditions posted on our website from time to time. If you do not accept these Terms, we cannot accept your listing.

DEFINITIONS

"Advertiser" means and includes any promoter, business and member advertiser who has set up an account and lists or offers their Services through the website

"App" means **thenightguru.com**

"Content" means any and all material, links, words, images, videos including but not limited to any goods and services the advertiser or subscriber submits, advertises or links to the website

"Promotions" includes any offer, deal, package, experience, event, party, goods, services or other arrangement provided, promoted or sold by any Advertiser

"Services" means the use of our App, software and other services we may offer from time to time to enable you to advertise and promote your venue, business, directory listing, event and similar promotions

"the App" means our NightGuru App

"the website" means **thenightguru.com**

"We", "our" and "us" means TheNightlifeApp Pty Ltd ABN 43 264 414 938thenightguru.com including their employees, contractors, agents and affiliates

"You" "you" means the Advertiser or promoter using our advertising, promotion and any associated services (Services) and by doing so, agree to these Terms.

ACCOUNTS

You must register and set up your account in order to advertise your business and Services on our website.

By submitting any Content to the website, you represent and warrant that you:

- have the ownership rights and title to this information and material;
- have the right to advertise, promote and sell the Services;
- that any promotion is a genuine event and offer.

You also represent that you are not breaching any regulations, restrictions or third party rights.

You also agree to ensure that your registration details and Content are accurate and up-to-date at all times.

AGREEMENT FOR ADVERTISING AND PROMOTION SERVICES

To be eligible to subscribe to our Services You warrant that:

- The information and Content you post or advertise on the website is genuine, true and accurate;
- You own or have licensing rights to all Content you post and it will not breach any third party rights;
- you will keep your information updated and any Content you include on your advertisement, links or website complies with applicable laws, codes and regulations;
- all material and Content you link to from our App is accurate, reliable, up-to-date, lawful, and not misleading;
- Any Material you post is not corrupt, containing a virus or is otherwise disabling or has the potential to affect our App;
- at all times you and your Services abide by the Australian Consumer Law (ACL) requirements including but not limited to the re-supply or refund of any goods or services you supply or provide which do not meet ACL requirements;
- you will honour all promotional events, advertised products and services that you have posted as Content and Promotions using our Services and agree you are at all times fully responsible for all Content and Services you post;
- you adhere to good practice service standards for the supply of goods and services to customers in a timely and responsive manner; and
- you will make prompt payment of all fees for the Services ('Subscription Fees'). In the event of any late or non-payment, we may, in our sole discretion, suspend your access to our website, App and remove your Content and Services. At no time are we liable to you for any lost Content or Services.

You acknowledge and agree:

- we are a facilitator only for the purposes of permitting businesses and individuals to post their advertisement and Services on our App but we do not guarantee any bookings, business, increase in traffic or otherwise;
- any products or services you provide through your business is done directly with the user of the App and is your contractual relationship with the customer that may find your Promotions by visiting our App. Any disputes, issues, dealings, complaints are to be dealt with directly with the customer and you agree to indemnify us for any customer claim which results directly or indirectly from your action or inaction;
- you will manage all customer disputes in good faith and in accordance with all Australian Consumer and other law requirements. We are not to be involved at any time and are not responsible directly or indirectly for any dispute with any customer regarding your provision of the Promotions;
- You are only permitted to use the Services in accordance with these Terms and for the purposes for which it was intended and designed. You agree to use the Services in good faith and not for any other purpose; and
- You will not share your password or login details with any person that is not authorised in your business to add Content on your behalf. You will at all times keep your contact, payment and other information updated and will immediately notify us if any third party has accessed your password, login or account details.

We make no warranty that the Services will meet your requirements or be available on an uninterrupted, secure or error-free basis. We will do our best endeavors to ensure the Services are always available and virus free but from time-to-time, and in some instances, this may not be the case as it may be out of our immediate control. We will notify you if the Services become unavailable for any lengthy and unusual time period. You agree we are not responsible for any errors or issues, loss or profits, revenue or other damage that may result of such technical basis.

By using our Services, you authorize us to use, reuse and to grant others the right to use and re-use your Content and any reproduction or similar in any form of media or technology for any purpose related to the App and in any marketing of the App.

You agree and acknowledge that the App uses third party vendors and hosting partners to provide the necessary software, hardware, service and storage.

You agree you will not transmit any viruses, malware, worms, etc. of any kind and that you will not upload, post, host or transmit unsolicited material or messages to the website or App.

PAYMENTS

Credit Card Payments: By agreeing to use our Services and providing us with your credit card details, you are authorising payment for the Services for your Subscription. In the event you have chosen a Subscription model where payments are to be made on a recurring basis (such as instalments), you hereby authorise such payments to be deducted until the full payment has been made in accordance with these Terms.

All Subscription Fees must be received in advance to any use of our Services. Any monthly installments must be received prior to the relevant month of Services.

CANCELLATION AND TERMINATION

WE MAY TERMINATE YOUR ACCOUNT AND ADVERTISEMENT AT ANY TIME: We have the right to terminate your membership subscription for any reason, at any time. You agree that we may, in our sole discretion, terminate or suspend your access to the App and website with or without notice and for any reason, including, without limitation, breach of these Terms. Any suspected fraudulent, abusive or illegal activity may be grounds for terminating your relationship and may be referred to the appropriate law enforcement authorities.

If we have reasonable grounds to suspect the information you provide on your profile, account, Content, advertisement or Promotions on our App or on your website is untrue, inaccurate or incomplete, or that you have breached any Terms (including late or non-payment of Subscription Fees), if your Content is offensive, or for any other reason including if, in our opinion, you have breached the purpose of our website, at our sole discretion we have the right to immediately withdraw your Services and Content as well as all information links and terminate your account. We may also deny the use of our App, website and Services to you in the future and are not obligated to return any Subscription Fees or other payments in the event of any breach.

Upon such termination, regardless of the reasons, your right to use the Services immediately ceases and you acknowledge and agree we may immediately deactivate or delete your account and all related information, Content and files. We may also bar you from any further access to our website, App and Services. We shall not be liable to you or any third party for

any claims or damages arising out of any termination or suspension or any other actions taken by us in connection with such termination or suspension.

We may, but are not obligated to, remove any Content that we determine in our sole discretion may be unlawful, offensive, defamatory, obscene, or otherwise objectionable or violates a third party's intellectual property or these Terms. We reserve the right at any time and from time to time to remove, delete, alter or amend any Content on the App. We shall not be liable to you or any third party for any modification to the App or removal of Content when it is required.

We reserve the right to disclose your name and any other personal details of any Advertiser to any law enforcement authority or other competent authority or to any person for the purpose of legal proceedings, prosecution, investigation or any breach, alleged breach of the law or these Terms.

We are not required to provide any refund or part thereof to you for such termination of your account.

LIABILITY

You agree and acknowledge that we are not liable for any direct, indirect, consequential or incidental loss or damage which may result from your Content or Promotions on our App or use of our Services. You acknowledge, agree and undertake that you shall be the legally responsible party for any Content placed by you in respect of any legal proceedings of any competent jurisdiction worldwide and you agree and undertake to indemnify us and keep us at all times fully indemnified from and against any claims, demands, costs, damages or awards whatsoever arising directly or indirectly as a result of any Content and Promotions placed by you on the App or **thenightguru.com**.

In addition, you agree to fully indemnify us for any and all claims by customers, members, users, visitors or any third party which may result from your advertisement, Content, Promotions or link on the App or any business you conduct with any third party. We are not responsible for your Content, Promotions nor for your breach of any third party rights. We are also not responsible for any claim by any third party which may be a result of your links, material or Content on your website, business or otherwise. You agree you will fully indemnify us and, wherever possible, take over and manage any claim, which may result directly or indirectly from any one of your customers, our members, users or visitors of the App.

In any event, our liability to you will not exceed the amount actually paid by you to us in the preceding 1 month period for your Subscription Fees.

Our failure to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision.

No agency, partnership, joint venture, or employment is created as a result of these Terms, and you do not have any authority of any kind to bind us in any respect whatsoever.

INTELLECTUAL PROPERTY

All custom graphics, icons, logos and service names are registered trademarks, copyright, trade or service marks TheNightlifeApp Pty Ltd ABN 43 264 414 938.

All other trademarks or service marks within this website are the property of their respective owners. Nothing in these Terms grants you any right to use any trademark, service mark, logo, and/or our name or any of our Advertisers.

You are solely responsible for obtaining written permission before re-using any copyrighted material that is available on this website. Any unauthorized use of the materials appearing on this website may violate copyright, trademark and other applicable laws and could result in criminal or civil penalties.

USE OF INFORMATION

1. We require certain information to allow us to operate our app. TheNightlifeApp Pty. Ltd. collects the details provided by you, together with information we learn about you from your use of our service and your visits to our web site and other sites accessible from them.

We may collect additional information in connection with your participation in any promotions or competitions offered by us and information you provide when giving us feedback.

We will use your information to provide and personalise our service. We will also use your contact details to communicate with you. We may use your information to send you offers and news about our products and services or those of other carefully selected companies which we think may be of interest to you. We may contact you by post, email, telephone (including SMS) or fax for these purposes.

Your data may be used for the following purposes: accounting, billing and audit, credit or other payment card verification and screening, immigration and customs control, safety, security, health, administrative and legal purposes, statistical and marketing analysis, systems testing, maintenance and development, customer surveys, analytic generation, analytic disclosure to third parties, customer relations and to help us in any future dealings with you, for example by identifying your requirements and preferences.

The information that you provide to us will be held in our systems, which are located on our premises or those of an appointed third party. We may also

allow access to your information by other third parties who act for us for the purposes set out in this policy or for other purposes approved by you. It is possible that your data may be processed outside of Australia.

We will retain your information for a reasonable period or as long as the law requires.

2. Your information may be passed to and used by TheNightlifeApp Pty. Ltd. We may pass on your information to third party licensed venues, beverage companies, marketing analysis companies, or any other third party related to the operation of our business.

From time to time, we make certain third party offers available through our app and website. If you choose to accept such an offer, we will disclose your contact and billing information to the third party who made the offer available to you.

3. In using our service, you consent to the collection and use of this information by TheNightlifeApp Pty. Ltd. in the ways described above.

GOVERNING LAW

These Terms are governed by the laws of New South Wales which are in force from time to time and both you and we agree to submit to the non-exclusive jurisdiction of the Courts of New South Wales for determining any dispute concerning these Terms.