

TERMS AND CONDITIONS OF USE

of

The KCC Smartphone Application

Version 2

Last Updated 8 April 2020

1. PLEASE READ THESE TERMS AND CONDITIONS OF USE (“THE TERMS”) CAREFULLY BEFORE ACCEPTING OR AGREEING TO THEM. THIS IS A LEGALLY BINDING AGREEMENT.

1.1. YOU MAY ACCEPT OR AGREE TO THE TERMS BY:

1.1.1. CLICKING “ACCEPT” OR “AGREE” TO THESE TERMS WHERE THIS OPTION IS MADE AVAILABLE TO YOU IN THE USER INTERFACE THE KCC SMARTPHONE APPLICATION (“**THE APPLICATION**”); OR

1.1.2. BY ACTUALLY USING OR ACCESSING EITHER:

1.1.2.3 THE APPLICATION; OR

1.1.2.4 THE APPLICATION’S SERVICES (“**THE SERVICES**”). THE SERVICES INCLUDE BUT ARE NOT LIMITED TO TEXT, GRAPHICS, LOGOS, BUTTON ICONS, VIDEO IMAGES, AUDIO CLIPS, SOFTWARE AND OTHER CONTENT (“**CONTENT**”), PRODUCTS, SOFTWARE, OR WEBSITES ON, OR CONNECTED WITH THE APPLICATION.

1.2. YOU UNDERSTAND AND AGREE THAT YOUR USE OF THE APPLICATION OR THE SERVICES (“**USER ACTIVITY**”) AMOUNTS TO ACCEPTANCE OF, AND AGREEMENT TO THE TERMS FROM THAT TIME ONWARD.

2. About the KCC Smartphone Application

2.1. Welcome to the KCC Smartphone Application. The Application is owned by Katoomba Christian Convention Limited (ABN 86 000 153 560) (“KCC”). KCC is an Australian, Not-For-Profit organization. It operates as an interdenominational, Bible-preaching convention ministry, whose vision is to see God’s Word transform the lives of Christians.

2.2. The Application is operated by KCC in conjunction with the Playtime Group Pty Ltd (ABN: 39 159 898 914) (“**Playtime**”) (collectively “**KCC and Playtime**”).

2.3. Access to, and use of the Application, or any of its Services, is provided by KCC and Playtime. Please read these Terms carefully. By using, browsing and/or reading the Application, this signifies that you

have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must immediately cease using the Application and the Services.

- 2.4. KCC and Playtime reserve the right to review and change any of the Terms by updating this page at its sole discretion. When KCC and Playtime update the Terms, they will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.
- 2.5. In order to access the Application's Services, you must first complete the **User Registration Process**. Once you have completed the User Registration Process, you will be a Registered User ("**User**") of the Application and agree to be bound by the Terms. As a User you will be:
 - 2.5.1. Generated an **Application Account**, accessible to you via a unique Username and Password; and
 - 2.5.2. Immediately able to access the Application and the Services via your Application Account.

3. **Governing Jurisdiction**

- 3.1. The Application and the Services offered by KCC and Playtime are intended for consumption by residents of Australia. In the event any Dispute is formally litigated, you agree that the exclusive venues for litigating any Dispute shall be the courts of NSW or Australian Federal courts (collectively "**Governing Jurisdiction**").

4. **Governing Law**

- 4.1. The Application and the Services offered by KCC and Playtime are intended for consumption by residents of Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to New South Wales ("**NSW**") and Australian Federal law (collectively "**Governing Law**"), without reference to conflict of law principles, notwithstanding mandatory rules.
- 4.2. The validity of this Governing Law Clause is not contested. The Terms shall be binding to the benefit of the parties hereto, and their successors and assigns.

5. **Your Privacy**

- 5.1. As part of the User Registration Process, or as part of your continued access to the Application and the Services, you may be required to provide "**Personal Information**" as defined by the *Privacy Act 1988* (Cth): Personal Information includes (but is not limited to) your:
 - 5.1.1. Email address;
 - 5.1.2. Preferred username; and
 - 5.1.3. Password.

- 5.2. KCC and Playtime take your privacy seriously. Any Personal Information provided by you through the Application or the Services is managed in compliance with:
- 5.2.1. NSW and Australian Federal Privacy Law;
 - 5.2.2. **KCC's Privacy Policy**, available on both the Application and KCC's website; and
 - 5.2.3. **Playtime's Privacy Policy**.
- 5.3. As a User, you agree that you have sole responsibility for protecting the confidentiality of records made or kept by you of your Personal Information. You agree to immediately notify KCC and Playtime of any unauthorised use of your password or email address, or of any breach of security of which you have become aware by emailing privacy@kcc.org.au.

6. User Obligations

- 6.1. As a User, you agree to abide by **User Obligations** set out in the Terms (including but not limited to those set out in this Clause) and the Governing Law. You agree you will only use the Application and the Services for purposes that are permitted by the Terms and the Governing Law.
- 6.2. You accept your User Obligations include refraining from using the Application and the Services for any illegal and/or unauthorised use. This includes, but is not limited to the following:
- 6.3.1 Access and use of the Application is limited, non-transferable and allows for the sole use of the Application by you for the purposes of KCC and Playtime providing the Services. Any use of your Personal Information to access the Application or the Services by any other person, or third-parties, is strictly prohibited;
 - 6.3.2 Any automated use of the Application or Services is prohibited, including but not limited to:
 - 6.3.2.1 The collection of information about other Users in an automated fashion ("**Scraping**");.
 - 6.3.2.2 The collection of email addresses of Users by electronic or other means for the purpose of sending unsolicited email ("**Spam**");
 - 6.3.2.3 Unauthorised framing, or unauthorised linking with the Application's Services, and the Application's Content, Commercial advertisements, affiliate links, and other forms of solicitation may be removed from the Application without notice; or
 - 6.3.2.4 Create User Accounts by automated means.
 - 6.3.3 Harassment or perceived harassment of another person is prohibited;
 - 6.3.4 Harmful, offensive, and abusive language, including but not limited to: hate speech, expletives, harassment, obscenities, vulgarities, sexually explicit language or images, video, or other objectionable content (e.g. nudity, bestiality, pornography) is prohibited;
 - 6.3.5 The Application and the Services may allow Users to post their own Content ("**User Content**"). Users must not post **Prohibited User Content**, which includes (but is not limited to) Content that is:
 - 6.3.5.1 Inappropriate based on the subject matter and the audience;

- 6.3.5.2 Encrypted or that contains viruses or any other computer programming routines that are intended to damage, interfere with, intercept, or appropriate any system or information;
 - 6.3.5.3 violates intellectual property rights of any person;
 - 6.3.5.4 Publishes private or confidential information of any third party without their express consent, including, without limitation, personally identifiable information, addresses, phone numbers, email addresses, Social Security numbers, and credit card numbers;
 - 6.3.5.5 In the sole judgment of KCC and Playtime violates or may violate the Terms or the Governing Law;
 - 6.3.5.6 In the sole judgment of KCC and Playtime, may expose KCC and Playtime to any harm or liability of any type.
- 6.3.6 Impersonating any person or entity or otherwise misrepresenting your affiliation with a person or entity is prohibited. You agree that you will only publish User Content that you believe to be true and you will not:
 - 6.3.6.1 Purposefully provide false or misleading information;
 - 6.3.6.2 Use the Application or the Services to violate the security of any computer network, crack passwords or security encryption codes; transfer or store illegal material including anything deemed threatening or obscene;
 - 6.3.6.3 Create User Accounts under false or fraudulent pretenses.
- 6.4 You agree that KCC and Playtime reserve the right to investigate and take appropriate action (including legal action) at their sole discretion against User who breaches, or is reasonably suspected of breaching their User Obligations.
- 6.5 You agree that breach or reasonable suspicion of breach of User Obligations may result in one or more of the following:
 - 6.5.1 The immediate removal of offensive or unauthorised User Content or User Activity, without notice;
 - 6.5.2 The immediate termination of your Application Account, use of, and access to the Application and the Services, without notice; or
 - 6.5.3 Appropriate legal action being taken by KCC and/or Playtime for any illegal or unauthorised use of the Application or the Services.

7. Consent to Receive Emails and Notifications

- 7.1. By using the Application and the Services, you consent to receive emails from KCC and Playtime. You consent to KCC and Playtime using Personal Information provided by you for the purposes of communicating with you by email.
- 7.2. As long as you maintain an Application Account, you may not "opt out" of receiving account-related emails. You may "opt out" of receiving marketing or promotional email from KCC or Playtime by following "unsubscribe" instructions or using "unsubscribe" links within communications we send.

- 7.3. The parties hereto may give legal notice by means of electronic mail, which shall be considered delivered when sent to a party's **Notice Address**. The Notice Address of KCC and Playtime shall be info@kcc.org.au (or such other address as provided by KCC or Playtime to you). Your Notice Address shall be the current email address listed by you in your Application Account.

8. **Third Party Content, Advertisements & Promotions, Goods & Services**

- 8.1. KCC and Playtime may
- 8.1.1. Provide links to webpages and Content of third parties ("**Third Party Content**") as a Service to those interested in such links and Content;
 - 8.1.2. Post Third-Party Content; or
 - 8.1.3. Allow Users to post their own content ("**User Content**").
- 8.2. KCC and Playtime does not monitor or have any control over any Third-Party Content, third-party websites, User Content, or websites recommended by Users. KCC and Playtime do not endorse or adopt any such Content or websites, and can make no guarantee as to their accuracy or completeness. KCC and Playtime do not represent or warrant the accuracy of any information contained therein and undertake no responsibility to update or review Third-Party Content, third-party websites, User Content, or websites recommended by Users.
- 8.3. You understand that by using the Services you may be exposed to Content that you may find offensive, indecent or objectionable and you use links, Third-Party Content, third-party websites, User Content, or websites recommended by Users at your own risk.
- 8.4. KCC and Playtime are not the publishers or authors of Third-Party Content, third-party websites, User Content, or websites recommended by Users. The Application a passive service for the storage and dissemination of the ideas and opinions that KCC and Playtime users and vendors may choose to post. KCC and Playtime do not screen works before they are posted, and no prior approval is required for posting.
- 8.5. KCC and Playtime may run advertisements and promotions from third parties as part of the Services. Your business dealings or correspondence with, or participation in promotions of, advertisers other than KCC and Playtime, and any terms, conditions, warranties or representations associated with such dealings, are solely between you and such third party. KCC and Playtime is not responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such third-party advertisers on the Services.
- 8.6. The Services may also provide information regarding or link to certain applications, goods, and/or services provided or offered by third parties ("**Third-Party Goods and Services**"). KCC and Playtime is merely an information provider and is not a referral service, and it does not recommend or endorse any such Third-Party Goods and Services or monitor or have any control over such Third-Party Goods and Services. Therefore, KCC and Playtime makes no guarantee, representation, or warranty of any kind as to the quality, competency, value, reliability, responsiveness, accuracy, or completeness of any such Third-Party Goods and Services or the results obtained therefrom, and KCC and Playtime assumes no responsibility or liability for any Third-Party Goods and Services or

for the actions or failure to act of those providing such Third-Party Goods and Services. You assume full responsibility for your use of any such Third-Party Goods and Services. In the event of a dispute between any consumer and vendor, the parties will work out the dispute themselves.

9. Intellectual Property

- 9.1. Content on the Application is protected by copyright under the laws of Australia and through international treaties. KCC, Playtime and their contributors retain all other intellectual property rights, title and interests arising out of the Application and the Services, including their Content and compilation.
- 9.2. Nothing you do on, or in relation to the Application or the Services will transfer to you:
- 9.2.1. The business names, trading names, domain names, trademarks, industrial designs, patents, registered designs or copyright of KCC, Playtime or their contributors; or
 - 9.2.2. The right to use or exploit a business name, trading name, domain name, trade mark or industrial design of KCC, Playtime or their contributors; or
 - 9.2.3. The right to replicate a system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a system or process) of KCC, Playtime or their contributors.
- 9.3. You may not, without the prior written permission of KCC and/or Playtime and any other relevant rights owners, deal with the Application's content (including third-party content) in any way that:
- 9.3.1. Broadcasts, republishes, or uploads content to an unauthorised platform;
 - 9.3.2. Transmits, posts, distributes, shows or plays content in public; or
 - 9.3.3. Adapts or changes content.
- This prohibition does not apply to content that is freely available for reuse, or that is already in the public domain.
- 9.4. You agree that by accepting these Terms, or by posting User Content, you:
- 9.4.1. Grant KCC and its affiliates the perpetual, irrevocable, worldwide, royalty-free, freely transferable, non-exclusive right to create derivative works of, use, reproduce, modify, transmit, publish, publicly display and distribute, and advertise on and around, and search for purposes of providing relevant advertisements, and creating derivative work; and
 - 9.4.2. You waive any moral or intellectual property rights you may have in posted User Content under the laws of any relevant jurisdiction.
- 9.5. You agree that by accepting these Terms, or by posting User Content, you represent and warrant that:
- 9.5.1. You own and control all of the rights to the User Content that you post, or otherwise have the right to post such User Content and to grant the rights set out in this clause of the Terms;
 - 9.5.2. The User Content is accurate and not misleading; and
 - 9.5.3. The substance of the User Content posted by you does not violate the Terms, or the laws of any relevant jurisdiction.

10. General Disclaimer

- 10.1. Nothing in these Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by NSW and Federal Australian Consumer Law (or any liability under them) which by law, may not be limited or excluded. Subject to this clause, and to the extent permitted by law:
- 10.1.1. All terms, guarantees, warranties, representations or conditions which are not expressly stated in these Terms are excluded; and
 - 10.1.2. KCC and Playtime will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Application, the Services or the Terms (including as a result of not being able to use the Application or the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- 10.2. You acknowledge that your use of the Application and the Services is at your own risk, and that while KCC and Playtime will make every effort to ensure Services are accurately depicted on the Application, Services may differ from what is depicted.
- 10.3. You agree that the Application and the Services are provided to you on an "as is" and "as available" basis, and that KCC and Playtime do not make any terms, guarantees, warranties, representations or conditions whatsoever – whether express or implied - regarding the Application and the Services, other than those provided for by these Terms, NSW Consumer Law, and Federal Australian Consumer Law. In particular, you agree that KCC and Playtime make no guarantees, warranties, representations or conditions in relation to the following, and are not responsible for any loss or damage you might suffer as a result:
- 10.3.1. Failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third-party conduct, or theft, destruction, alteration or unauthorised access to records;
 - 10.3.2. The accuracy, suitability or currency of any information on the Application and the Services, including third party-material and advertisements on the Application;
 - 10.3.3. Costs incurred as a result of your use of the Application or the Services;
 - 10.3.4. The content or operation of any links provided for the User's convenience (including links provided by Users or Third-Party Contributors);
 - 10.3.5. Any failure to complete a transaction, or any loss arising from e-commerce transacted on the Application or the Services; or
 - 10.3.6. Any defamatory, threatening, offensive or unlawful conduct of third-parties, or publication of any materials relating to, or constituting such conduct.

11. Limitation of Liability

- 11.1. KCC and Playtime's total liability arising out of or in connection with the Application and the Services, however arising, including under contract, tort (including negligence), in equity, under

statute or otherwise, will not exceed the most recent Purchase Price paid by you, or where you have not paid a Purchase Price, then the total liability of KCC and Playtime is resupply of Services.

- 11.2. You expressly understand and agree that KCC and Playtime, their affiliates, employees, agents, contributors, third party content providers and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.
- 11.3. KCC and Playtime are not responsible or liable in any manner for any site content (including Third-Party Content) posted on the Application or in connection with Services, whether posted or caused by users of the Application, by third parties, or by any of the Products, Services or Content offered by KCC and Playtime.

12. Indemnity

- 12.1. You agree to indemnify KCC and Playtime, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:
- 12.1.1. All actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with any Content you post through the Application;
- 12.1.2. Any direct or indirect consequences of you accessing, using or transacting on the Application or attempts to do so and any breach by you or your agents of these Terms; and/or
- 12.1.3. Any breach of the Terms.

13. Termination

- 13.1. The Terms will continue to apply until terminated by either you, or by KCC and/or Playtime as set out by this clause.
- 13.2. If you want to terminate the Terms, you may do so by notifying KCC and Playtime by:
- 13.2.1. Closing your accounts for the Application or Services online via the Application;
- 13.2.2. Emailing a written notice of termination to appsupport@kcc.org.au or
- 13.2.3. Mailing a written notice of termination to KCC, PO Box 156, Burwood NSW 1805.
- 13.3. Subject to local applicable laws, KCC and Playtime reserve the right to discontinue or cancel your Application Account, and or may suspend or deny, in its sole discretion, your access to all or any portion of the Application or the Services if:
- 13.3.1. The manner of your use, or conduct breaches any provision of the Terms, breaches any applicable law, impacts upon KCC and Playtime's name or reputation, or violates the rights of any other person or organisation;

- 13.3.2. A party upon whom KCC or Playtime relies to provide the Application or the Services has terminated its relationship with KCC or Playtime, or ceased to offer the Services made available to you on, or in connection with the Application;
 - 13.3.3. KCC and Playtime is transitioning to no longer providing the Application or the Services to Users in the country in which you are resident, or from which you use the service; or
 - 13.3.4. The provision of the Application or the Services to you by KCC and Playtime are, in the opinion of KCC and Playtime, no longer commercially viable.
- 13.4. When the Terms are terminated, all of the legal rights, obligations and liabilities that you and KCC and Playtime have benefited from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to continue indefinitely, shall be unaffected, and the provisions of the Terms shall continue to apply to such rights, obligations and liabilities indefinitely.

14. Dispute Resolution

- 14.1. If a dispute arises out of, or relates to the Terms (“**a Dispute**”), and arises between:
- 14.1.1. KCC and/or Playtime; and
 - 14.1.2. User(s) and/or parties to these Terms (**collectively “the Parties”**);
- neither Party may commence any Tribunal or Court proceedings in relation to the Dispute unless the following sub-clauses have been complied with (except where urgent interlocutory relief is sought).
- 14.2. A Party claiming a Dispute has arisen (“**the Complainant Party**”) must provide the other Party (“**the Respondent Party**”) with a **Written Notice**, detailing all of the following:
- 14.2.1. The nature of the Dispute;
 - 14.2.2. The desired outcome; and
 - 14.2.3. The action proposed with a view to settling the Dispute.
- 14.3. Within 60 days of the Respondent Party receiving the Written Notice (“**the Negotiation Period**”), the Parties must each endeavor in good faith to resolve the Dispute expeditiously by **Negotiation**, or by other means upon which the Parties mutually agree. All communications made by the Parties in the course of Negotiation are confidential and to the extent possible, must be treated as "without prejudice" for the purpose of applicable laws of evidence.
- 14.4. If for any reason the Dispute remains unresolved when the Negotiation Period expires, the Parties agree to participate in a **Mediation** and:
- 14.4.1. Appoint a **Mediator** by agreement within 14 days; and failing agreement within 14 days, jointly request that an appropriate Mediator be appointed by the Director of the Australian Mediation Register or their nominee; and
 - 14.4.2. Endeavor in good faith to resolve the Dispute expeditiously via Mediation;
 - 14.4.3. That Parties are equally liable for the reasonable costs and fees of the Mediator, and the Mediation’s venue;
 - 14.4.4. That Parties are otherwise each responsible for, must each pay their own costs associated with participating in Mediation;

- 14.4.5. That any Mediation in person will be conducted in Sydney, NSW, Australia;
- 14.4.6. That all communications made by the Parties in the course of Mediation are confidential and to the extent possible, must be treated as "without prejudice" for the purpose of applicable laws of evidence.

15. Independent Legal Advice

- 15.1. You confirm and declare that:
 - 15.1.1. The provisions of the Terms are fair and reasonable;
 - 15.1.2. The Terms are not against public policy on the grounds of inequality, bargaining power, or on general grounds of restraint of trade; and
 - 15.1.3. You have had reasonable opportunity to obtain independent legal advice.

16. Severance

- 16.1. If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.