

# Terms of use

The Utilitarian app for iPhone and Android devices (**App**) is a sustainability app with a key difference: A sustainable world is up to you. By accessing the App, you agree with Utilitarian Pty Ltd (**Utilitarian/we/us**) to the following terms. If you do not agree to these terms, you must not access the App. We may amend these terms from time to time. If we do so, we will notify you. If you do not agree to the changes, you can terminate your use of the app. If you continue to use the App after 30 days of us making a change then you are taken to have accepted that change.

## Agreed terms

### 1 Our contract with you

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- 1.1 These terms apply to the supply of services by us to you. To the extent permitted by law, no other terms are implied by trade, custom, practice or course of dealing.
- 1.2 These terms contain the entire agreement between you and us in relation to their subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in these terms.

### 2 Registration

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- 2.1 Registration of a User Account requires you to enter your name, contact details and any other information requested in the relevant registration form. This may include payment details for certain users or features.
- 2.2 Addition of an Authorised User requires you to enter the name and contact details of that Authorised User. You must ensure that you have the appropriate consents and authorisation to disclose an Authorised User's Personal Information.

#### App licence

- 2.3 Subject to payment of the applicable Fees (if relevant), and from the date the User Account is registered (**Registration Date**), we grant you and your Authorised Users a non-exclusive, non-transferable, licence for the Term to:
  - (a) access and use the App in accordance with these terms;
  - (b) add Authorised Users and set usage permissions; and
  - (c) access and use any other function of the App which we make available to you from time to time.
- 2.4 For clarity, the licence granted under clause 2.3 does not allow you to sublicense the App to third parties.
- 2.5 You must not transfer your User Account to any other person without our written permission.
- 2.6 If you register on behalf of a company, you represent and warrant that you are authorised to bind the company to these terms.

#### Fees

- 2.7 Depending on the type of User Account you register for, and the functions or features you want to access, there may be applicable Fees. These will be displayed in the App or other registration form as part of the registration process for that account, function or feature. You must pay the Fees to access those account, function or feature using a method accepted by us from time to time.

### 3 Features of the App

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- 3.1 We are constantly looking to improve and develop the App. Consequently, the features of the App will change from time to time. We are not obliged to notify you in advance of changes to the features. If any alteration results in a material change to the App which is detrimental to your use of the App in accordance with these terms, you may choose to terminate these terms and we will provide a pro-rata refund of any Fees you have paid in advance.

### 4 Your use of the App

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#### Acknowledgment

- 4.1 You acknowledge and agree that:
  - (a) an internet connection is required to access the App and that charges may apply;
  - (b) you are responsible for controlling the information that is made available by way of the App;
  - (c) you are responsible for your username and password (including unauthorised use of them); and
  - (d) we do not endorse or make any other representation about any user of the App, nor any product that appears in or is otherwise described or discussed in the App;
  - (e) we do not provide back up services and are not designed to be a digital wallet or locker which you can rely on to provide a permanent store of content uploaded into the App. The App is designed to provide the convenience of storing certain content in an easy-to-navigate format during the term of your subscription, but your access to it and the content uploaded to it ends when your subscription ends, and it is your responsibility to ensure that you have appropriate procedures in place to back up all data uploaded to the App and ensure you are able to access it once your subscription ends;

- (f) we make reasonable efforts to maintain the security and confidentiality of the App but we cannot ensure or guarantee its safety. For example, hacking, vandalism, hardware or software failure may affect the security and confidentiality of the App, and we take no responsibility for such events where we have neither caused nor significantly contributed to their occurrence; and
  - (g) you have exercised your own judgement as to the suitability of the App for your purposes
  - (h)
- 4.2 If you become aware of unauthorised use of your username and password (or other security breach) then you agree to inform us immediately.
- 4.3 Subject to clause 10.5, you agree that:
- (a) the App may contain errors and may not be available from time to time;
  - (b) Utilitarian excludes any warranty or representation not expressly set out in these terms, and specifically makes no representation and gives no warranty that use of the App will:
    - (i) not infringe the Intellectual Property Rights or other rights of any third party; and
    - (ii) be free from defects, fit for any particular purpose or function in any specified manner.

#### **Your conduct**

- 4.4 You may only use this App if you are aged 16 years or over, and if you are under 18 years of age (or the age of legal competence in your jurisdiction) only with the involvement and consent of a parent or legal guardian. You must not use the App in any jurisdiction where it is unlawful for you to do so.
- 4.5 You must:
- (a) follow our reasonable directions in connection with the access to and use of the App;
  - (b) use the App in accordance with all applicable laws, including the *Competition and Consumer Act 2010* (Cth) and the Privacy Laws; and
  - (c) only use the App in accordance with this agreement.
- 4.6 You must not use the App:
- (a) to engage in unlawful or fraudulent behaviour;
  - (b) to defame, menace or harass any third party;
  - (c) to circumvent any security measures;
  - (d) to distribute, view or create any material that:
    - (i) is or may be defamatory, offensive, obscene, illegal or unlawful; or
    - (ii) infringes any third party's Intellectual Property Rights;
  - (e) through act or omission, to mislead or deceive others; or
  - (f) in any other manner that we reasonably consider to be unacceptable.
- 4.7 If we make available to you any feature or functionality that allows you to store, distribute, provide, or otherwise transmit information, data or material through the App, you must not use such features or functionality for the purposes of accessing, storing, distributing, providing (including to us) or otherwise transmitting any information, data, material or content that:
- (a) infringes the Intellectual Property Rights of any third party;
  - (b) is unlawful, misleading, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (c) promotes unlawful violence;
  - (d) depicts sexually explicit images; or
  - (e) is discriminatory or promotes discrimination based on race, gender, colour, religious belief, sexual orientation or disability.
- 4.8 We reserve the right to remove from the App any of your information, data or material that we consider to be inappropriate or otherwise in breach of clause 4.6 or 4.7.

#### **Suspension**

- 4.9 Without limiting any other remedy, we may suspend your access to the App if:
- (a) we reasonably believe you are in breach of these terms; or
  - (b) a third party alleges that you have or have threatened to do any of the things described in clause 4.6 or 4.7.

#### **Third party services**

- 4.10 This App may also use social networking, a share functionality or may contain links to other sites that we do not own or control (**third party sites**). We have no control over, and assume no responsibility for, any share functionality or the content, privacy policies, or practices of any social media platform or third party site. Your use of any social media platforms or third party sites is subject to the particular site's terms of use. You should review the terms of use of each social media platform or third party site before using any share functionality or third party site linked to this App. By using this App, you release Utilitarian from any and all liability arising from your use of any share functionality or third

party site accessed from this App. You also understand that any information you communicate via a share functionality or third party site may become publicly available and that Utilitarian is not responsible for the conduct of others who may view, collect and use this information.

#### **No assignment**

- 4.11 Utilitarian Material remains our property.
- 4.12 We own, and do not assign to or create for your benefit, any Intellectual Property Rights (including future Intellectual Property Rights):
- (a) in the App;
  - (b) in Utilitarian Material; or
  - (c) otherwise created by Utilitarian in the delivery of the App.

#### **Licence of Your Material**

- 4.13 You grant to Utilitarian a non-exclusive, revocable, global licence to exercise the Intellectual Property Rights in Your Material in connection with us providing you with the App, including to use and modify Your Material.
- 4.14 The licence granted under clause 4.13 includes the right to sublicense to third parties.

#### **No use of Utilitarian's marks**

- 4.15 You must not use the trade marks or logos of Utilitarian except with our prior written consent.

#### **Infringement**

- 4.16 You agree not to:
- (a) decompile, disassemble or reverse engineer the App (or any part of it);
  - (b) use the App other than as expressly permitted under these terms;
  - (c) modify the App; or
  - (d) merge all or any part of the App with any other App.

## **5 Types of users and content**

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- 5.1 From time to time, we may establish different types or classes of users within the App ecosystem. You must only act in accordance with the rights and permissions granted to your type or class of user, as communicated to you through the App or as otherwise set out in these terms from time to time.
- 5.2 Presently, the three types of user we allow in the App are:
- (a) Consumers – individuals who use the App to manage their devices and interactions with Product Owners;
  - (b) Product Owners – brands or manufacturers who provide information about their devices and interact with Consumers; and
  - (c) Sustainability Service Providers – groups, associations or users who operate or are interested in the circular economy and establish a profile in the App.
- We may add or change the user types from time to time.
- 5.3 If you are (or represent) a Product Owner, you:
- (a) must not post content about another manufacturer, its products, practices or personnel;
  - (b) may claim products which are yours, and in relation to such products, post official content about them subject to paying applicable Fees.
- 5.4 We have different classes or types of content:
- (a) official content – this has been posted by the Product Owner of a device and is verified by them;
  - (b) unofficial content – this has been posted by a Consumer or Sustainability Service Provider and has not been verified by the Product Owner.
- 5.5 You should treat content accordingly. If you have complaints or comments about the content posted by others, you can contact us, but we do not guarantee to monitor or take down content unless required to do so by applicable law.

## **6 Your warranties**

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- 6.1 You warrant that you will act in good faith in your dealings with other users of the App.
- 6.2 By adding or uploading any Personal Information to the App, or otherwise providing to us Your Material or Third Party Material, you warrant that, and it is a condition of these terms that:
- (a) you own or are the lawful licensee of the Intellectual Property Rights in Your Material; and
  - (b) you have all necessary consents, permissions, licences, regulatory approval or other authorities needed:
    - (i) to add or upload any Personal Information to the App;
    - (ii) to provide to us Your Material or Third Party Material;

(iii) for us to use Your Materials and any Third Party Material as set out in these terms,

and that our use of the Personal Information, Your Materials and any Third Party Material as set out in these terms and our Privacy Policy will not infringe the Intellectual Property Rights, privacy rights, or other rights of any third party or cause us to be in breach of any applicable law.

6.3 You acknowledge that you are responsible for your use of material that is made available by the App.

## **7 Term and termination**

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### **Term**

7.1 These terms commence when you first use the App and continue until terminated under this clause 7.

### **Termination on notice of new terms**

7.2 If we change these terms, you may give us notice that you want to immediately terminate these terms, within 30 days after the date we change these terms.

### **Termination for convenience**

7.3 Either party may terminate these terms by ten days' written notice given to the other.

### **Termination for breach**

7.4 We can terminate these terms (and your access to the App) immediately on notice to you if we reasonably consider that you are in breach of these terms.

### **After termination**

7.5 On termination of these terms:

- (a) the licence granted under clause 2.3 is immediately revoked;
- (b) we may immediately delete your User Account from the App;
- (c) we may issue an invoice for any amounts due, or which have accrued under these terms and not previously invoiced; and
- (d) we may delete or destroy Your Material (and so you should retrieve any of Your Material that you need before the expiration of the notice period).

### **Survival**

7.6 Termination of these terms will not affect clauses 4.3, 4.13 to 4.16, 5, 7.5, 8, 9, 10 or any provision of these terms which is expressly or by implication intended to come into force or continue on or after the termination.

## **8 De-identified data**

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8.1 Despite any other clause in these terms, Utilitarian and its suppliers may use any data which is de-identified for any purpose.

## **9 Privacy**

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### **Use of Personal Information**

9.1 We will collect and use your Personal Information and any Personal Information you upload or add to the App in accordance with our Privacy Policy ([www.utilitarian.world/privacy](http://www.utilitarian.world/privacy)).

### **Treatment of Personal Information**

- 9.2 You must obtain consent from, and make any necessary disclosures to, all relevant individuals before disclosing their Personal Information to us under these terms, and otherwise comply in all respects with your obligations under the Privacy Act.
- 9.3 You must give all assistance we require and comply with all directions we give from time to time in relation to our compliance with the Privacy Act, or any investigation, request or enquiry (formal or otherwise) from the Privacy Commissioner regarding the Personal Information disclosed to Utilitarian these terms.
- 9.4 You must notify us immediately if you become aware of any breach of clause 9.

## **10 Limitation of liability**

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### **Limitation**

10.1 Subject to clauses 10.2 and 10.4 and to the extent permitted by law, Utilitarian excludes any liability for any loss or damage, however caused (including by our negligence), you suffer in connection with these terms.

### **Consequential Loss**

10.2 Subject to clause 10.5, we are not liable for any Consequential Loss however caused (including by our negligence), suffered or incurred by you in connection with these terms.

### Seriousness or nature

- 10.3 For clarity and without limiting clauses 10.1 and 10.2 the parties agree that clauses 10.1 and 10.2 are to apply in connection with a breach of these terms, anticipated breach of these terms and other conduct regardless of the seriousness or nature of that breach, anticipated breach or other conduct.

### Australian consumer law

- 10.4 Except as contemplated by clause 10.5, nothing in these terms is intended to limit any of your rights under the *Competition and Consumer Act 2010* (Cth).
- 10.5 If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee in relation to any goods or services we supply in connection with these terms and our liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 10.1 and 10.2 do not apply to that liability. Instead our liability for that failure is (at our election) limited to:
- (a) in the case of a supply of goods, us replacing the goods or supplying equivalent goods, repairing the goods, paying the cost of replacing the goods or of acquiring equivalent goods, or paying the cost of having the goods repaired; or
  - (b) in the case of a supply of services, us supplying the services again or paying the cost of having the services supplied again.

## 11 General

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- 11.1 The laws of New South Wales, Australia govern these terms.
- 11.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and courts competent to hear appeals from those courts.
- 11.3 You must not assign, in whole or in part, or novate your rights and obligations under these terms without the prior written consent of Utilitarian.
- 11.4 Utilitarian may assign its interest under these terms.
- 11.5 If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from these terms in the relevant jurisdiction, but the rest of these terms will not be affected.
- 11.6 Utilitarian may subcontract the performance of all or any part of Utilitarian's obligations under these terms.

## 12 Definitions and interpretation

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### Definitions

- 12.1 In these terms:

**App** means the App made available by Utilitarian to which these terms relate.

**Authorised User** means an authorised user of a User Account which is registered to access the functionality described in clause 2.3.

**Consequential Loss** means:

- (a) loss of bargain;
- (b) loss of revenues;
- (c) loss of reputation;
- (d) indirect loss;
- (e) loss of profits;
- (f) consequential loss;
- (g) loss of actual or anticipated savings;
- (h) lost opportunities, including opportunities to enter into arrangements with third parties;
- (i) loss or damage in connection with claims against you by third parties; and
- (j) loss or corruption of data.

**Fees** means any fees payable by you to us, as communicated through the App, a registration form or otherwise by us from time to time

**Intellectual Property Rights** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, trade secret, knowhow, trade or business or company name, or right of registration of those rights.

**Personal Information** has the meaning given to that term by the Privacy Act.

**Privacy Act** means the *Privacy Act 1988* (Cth) and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under it, as amended from time to time.

**Privacy Laws** means:

- (a) the Privacy Act;

- (b) the Australian Privacy Principles (or APPs) in schedule 1 Privacy Act; and
- (c) all other applicable laws, regulations, registered privacy codes, privacy policies and contractual terms in respect of the processing of Personal Information.

**Registration Date** means the date defined in clause 2.3.

**Term** means the term contemplated by clause 7.

**Third Party Material** means any material that is owned by a third party including data stored by any means.

**User Account** means an account registered to access the functionality of the App.

**Utilitarian Material** means any material provided by or to which access is given by Utilitarian to you for the purposes of these terms including data stored by any means and includes the App.

**Your Data** means any data you provide to Utilitarian or use in connection with the App or Services.

**Your Material** means Your Data and any material (including Third Party Material) you provide or give access to Utilitarian for the purposes of these terms including data stored by any means.