

Terms of Use

These Terms of Use (“TOU”) together with any policies or legal notices that we may publish from time to time (such as our Privacy Policy) govern your use of ZAPWORKS, both free trial and paid, and your relationship with ZAPPAR LIMITED. Please read them carefully as they affect your rights and liabilities under the law. If you do not agree to these TOU, please do not register for or use ZAPWORKS. If you have any questions on the TOU, please contact legal@zappar.com.

Persons under the age of 13 are not permitted to use the Services except with the prior written consent of their Parent or School. If you are under 18 years of age and registering to use the Services we recommend that you read this document together with your Parent or teacher.

1. NATURE OF THE SERVICES

1.1

Zapcodes connect your mobile device to the objects around you and provide a new means to discover and unlock digital content. Using our ZAPWORKS service you can build and share your own zapcodes to bring your stuff to life: personalise gifts, add an extra dimension to products and print or make your marketing say more – all through our easy to use tools and online system. The Services are only compatible with our ZAPPAR mobile application (or a third party application containing our App Embed Component) and content connected to zapcodes can only be accessed and viewed by using such applications. The ZapWorks Studio downloadable SDK is currently only compatible with OS X and Windows operating systems. Further information about ZAPWORKS can be found on our documents site: <https://docs.zap.works/>

1.2

For Personal Users the supply of a zapcode constitutes a supply of “digital content” for the purposes of the right to cancel provided for in The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (referred to below as the “Contract Regulations”).

2. WHAT MEANS WHAT?

2.1

In these TOU certain words with a Capital letter have a particular meaning. These are listed

below:

“Account Holder”	means the person in whose name an account is registered.
“Authorised User”	means, in relation to business and education accounts, an employee, contractor, pupil or student of the Account Holder who is for the time being authorised by the Account Holder to access and use the Services via a Seat.
“Business User”	means a person who has a business account for the Services.
“Education User”	means a person who has an education account for the Services.
“Permitted Purpose”	means (1) For Business Users: any lawful commercial, trade or professional use within any user guidelines published by us. (2) For Education Users: solely for the use and benefit of the School and its pupils or students within the educational context and for no other commercial purpose; (3) For Personal Users: solely for your own personal entertainment use and not for any commercial, trade or professional purposes whatsoever.
“Parent”	includes a legal guardian.
“Personal User”	means a person who has a personal account for the Services.
“School”	includes schools, school districts and other educational institutions.
Seat”	means, in relation to business and education accounts, a single-seat licence permitting one individual to use the applicable version of ZAPWORKS, i.e. Basic or Pro.
“Services”	means our ZAPWORKS service and technology (or the version that you are registered to use) together with its related databases, features,

	functionality, plug-ins, software, templates, tools, zapcodes, documentation and web pages including any modifications or updates thereto.
“Upload Feature”	means a feature of ZapWorks Designer that can be added to a zapcode to enable users of the ZAPPAR App to upload content to that zapcode's Account Holder.
“User”	means the Account Holder, or any person who uses the Services via a Seat regardless of whether or not they are the Account Holder.
“User Agreement”	means the legal contract between ZAPPAR and the Account Holder for the provision of the Services which shall incorporate and be subject to these TOU.
“User Content”	means any animation, documents, images, links, sound files, videos, data, text, or any other content or materials that a User creates, enters, imports, uploads or connects to a zapcode using the Services and/or distributes, transmits or makes available to the public via a zapcode and includes any content that a User requests, prompts, encourages or enables others to upload to their zapcode using the Upload Feature.
“Virus”	means any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
“you”	means you, the person using the Services, or registering as an Account Holder.
“your zapcodes”	means the zapcodes that you (or your Authorised Users) have generated with your ZapWorks

	Account.
“ZAPPAR” or “we”	means ZAPPAR LIMITED a limited liability company incorporated and registered in Scotland with company number SC394617.
“Zap”	means a single interaction between a person’s device and a zapcode whereby the device captures and decodes a zapcode and the expressions “Zapped” and “Zap-able” shall be construed accordingly.
“ZapWorks Account”	means the business, education or personal account registered with ZAPPAR by which the Account Holder and (where applicable) their Authorised Users access the Services.
“Zappar Technology”	means Zappar's proprietary image recognition platform and technology on which the Services are based which can be used with images and objects located in the real world to create augmented reality experiences displayed on smartphones and handheld devices and unlocked using zapcodes.
“ZAPPAR App”	means either (1) our augmented reality interactive entertainment application for smartphones and tablets entitled ZAPPAR; or (2) our App Embed Component where it is included within a third party application that is being used to access and unlock content published on our platform.
“ZapWorks Website”	means our website for the Services located at URL http://zap.works/

2.2

In these TOU:

- (1) The words “includes” and “including” are not limited in any way and mean “includes or including without limitation”.
- (2) The word “person” includes individuals, companies, corporations, partnerships, limited liability partnerships, co-operatives, associations and other natural and legal persons.
- (3) The clause and paragraph headings are for convenience only and shall not affect their interpretation.
- (4) Unless stated otherwise, references to a Clause is to a clause of these TOU.

2.3

Where a conflict, ambiguity or difference exists in the interpretation, wording or meaning of a provision or term in any of our published policy documents, or in any written communication to you, the provision or term contained in the most recent policy document or communication shall apply.

2.4

These TOU were originally written in the English language (UK). To the extent any translated version of these TOU conflicts with the English version, the English version controls.

3. ACCEPTANCE OF TERMS

Your use of the Services is subject to the following Terms of Use. Creating a ZapWorks Account and/or using the Services is an acknowledgement of, and agreement to be legally bound by the provisions of the TOU. If you do not agree to the TOU, you are not permitted to use the Services.

4. CHANGES TO THESE TERMS

We may, at our sole discretion, revise, modify or replace these TOU by updating the posting on the ZapWorks Website at any time with or without notice to you. You should visit the ZapWorks Website from time to time to review the current version of the TOU because they are binding upon you. If you do not wish to accept the new TOU you should not continue to use the Services. If you continue to use the Services after the date on which any changes come into effect, your use of the Services indicates your agreement to be bound by the new TOU.

5. OPENING AN ACCOUNT WITH US

5.1 Who is allowed to use the Services?

You are only allowed to use the Services if you meet the following criteria and represent and warrant that you:

- (1) Are 13 years of age or older, or are under the age of 13 and your Parent has given permission for you to participate in the Services;
- (2) Are not currently restricted or prohibited from using the Services;
- (3) Will only maintain one personal ZapWorks Account at any given time;
- (4) Will comply with these TOU at all times; and
- (5) Agree to provide at your cost all equipment, resources, software and internet access necessary to use the Services.

The person opening the ZapWorks Account on behalf of a Business User or Education User also represents and warrants that:

- (1) He/she has full power and authority to enter into and accept these TOU on behalf of the Business User or Education User;
- (2) The Business User or Education User is a legal entity capable of entering into contractual relations; and
- (3) Using the Services will not violate any other agreement to which the Business User or Education User is a party.

If you do not meet all eligibility requirements outlined in these TOU, or cease to meet them, you are not allowed to use the Services. ZAPPAR also reserves the right, at our sole discretion, to refuse to accept any request to open a ZapWorks Account or create a login for the Services.

5.2 Registration

To use the Services each User will need to register with us by creating a ZapWorks Account, or log-in credentials. During registration you will be asked to provide your name, a valid email address and your date of birth. You must ensure that the details provided by you on registration or at any time are correct and complete. Alternatively you can sign-in using your FACEBOOK or GOOGLE account.

You must inform us immediately of any changes to the information that you provided when registering by updating your personal details; so that we can communicate with you effectively.

If you provide any information that is untrue, inaccurate, not current or incomplete, or if we have reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, we may suspend or terminate your ZapWorks Account and/or your right to use the Services with or without notice to you.

5.3 Password and security

When you register to use the Services you will be asked to create a user name and password. The Account Holder is solely responsible for the activity that occurs on their ZapWorks Account and for keeping their account secure. The Account Holder therefore agrees to:

- (1) Keep (and procure that their Authorised Users keep) their user name and password secure and confidential;
- (2) Not permit others to use their ZapWorks Account unless they are an Authorised User;
- (3) Be responsible for all activity under their ZapWorks Account;
- (4) Refrain from selling, trading or otherwise transferring their ZapWorks Account or Seat(s) to another party except as permitted by the User Agreement;

- (5) Refrain from charging anyone for access to any portion of their ZapWorks Account.

If you know or suspect that someone else knows your password or has gained unauthorised access to your ZapWorks Account you should notify us immediately by contacting contact@zappar.com. If ZAPPAR has reason to believe that there is likely to be a breach of security or misuse of the Services, we may require you to change your user name and/or password or we may suspend your ZapWorks Account or log-in credentials. ZAPPAR WILL NOT BE LIABLE FOR ANY LOSS THAT A USER INCURS AS RESULT OF ANY OTHER PERSON'S USE OF THEIR ZAPWORKS ACCOUNT OR LOGIN CREDENTIALS, WHETHER AUTHORISED OR UNAUTHORISED.

5.4 Inactivity

ZAPPAR reserves the right to remove and/or clear out inactive zapcodes and inactive ZapWorks Accounts as part of the general housekeeping procedures we periodically carry out to improve the efficiency and performance of the Services. This housekeeping may result in a temporary or permanent removal or deactivation of the inactive zapcode or account and erasure or disabling of all content and data connected or related to it, including User Content.

For the purposes of this **Clause 5.4** each of the following are considered to be inactive:

- (1) Zapcodes generated by the Services that have not been Zapped for more than 12 months;
- (2) ZapWorks Accounts that have had no activity on them for 12 months or more, AND no payment has been received during that period, AND no Zaps have been recorded against any zapcode associated with that Account Holder during that period;
- (3) Business or education accounts that have no active Seats; and
- (4) Business or education accounts that continue beyond their free trial period and have no active Seats.

6. LICENCE TO USE THE SERVICES

6.1 Grant of licences

Subject to compliance with these TOU, including the restrictions set out in **Clause 6.2** and payment of our fees (as set out in **Clause 7**) and any directions or guidelines published by us from time to time, ZAPPAR grants the User a personal, worldwide, non-exclusive, non-transferable and limited licence (the "Licence") unless and until terminated under **Clause 15** to do the following solely via your ZapWorks Account or Seat (as the case may be) and for the Permitted Purpose: (1) access and use the Services for the development, publishing and distribution of your User Content; and (2) use any instructional material expressly authorised by ZAPPAR for use with your zapcodes.

6.2 Licence restrictions

(1) The User must not at any time (directly or indirectly) do any of the following: (i) use zapcodes or the Services for any activity or purpose which is illegal, immoral or improper whether in the United Kingdom or elsewhere in the world; (ii) modify, adapt, translate or create derivative works based on the Services, the Zappar Technology or zapcodes; (iii) reverse engineer, decipher, decompile, disassemble, or otherwise attempt to derive any source code for, or any other trade secrets embedded in, the Services, the Zappar Technology or zapcodes; (iv) copy (in whole or in part) the Services or the Zappar Technology; (v) charge any person for access to or use of the Services; (vi) frame, rent, lease, loan, distribute, resell, sublicense or transfer the Services; or (vii) access all or any part of the Services in order to build a product or service which competes with the Services. For clarity, these restrictions do not prohibit Business Users from using the Services and their zapcodes in connection with the development, creation, marketing, distribution and sale of their own products and services subject to compliance with these TOU and our Fair Use Policy (see Clause 13).

(2) The User must not use in any manner zapcodes belonging to another User without their express consent and the User must not use zapcodes within any media or on any materials (whether physical or digital) which do not belong to them unless authorised to do so by the owner.

(3) Business Users must not represent ZAPPAR as having approved or endorsed any products or services, or use ZAPPAR's name on or in connection with any products or services without ZAPPAR's prior written consent.

6.3 Proprietary notices

The User must not remove, alter or obscure any copyright, trademark or other proprietary rights notice contained in the Services.

6.4 Reservation of rights

ZAPPAR retains all right, title and interest in and to the Services, zapcodes, Zappar Technology and all related data and intellectual property rights, except those limited rights expressly included in the Licence. Any content (including software) we provide to you as part of the Services is licensed under these TOU, and not sold to you.

7. FEES AND PAYMENT

7.1

Unless expressly stated on the ZapWorks Website, use of the Services will require payment by the Account Holder of a fee either on a monthly or annual subscription basis or per zapcode. When signing up for the Services as a consumer you agree to our supplying you with access to your zapcodes and any other digital content provided with the Services before the end of the cancellation period provided for in regulation 30(1) of the Contract Regulations. You acknowledge that as a consequence the right to cancel the User Agreement under regulation 29(1) of the Contract Regulations will be lost. Each zapcode

generated by the Services is unique and once allocated to a User cannot be re-utilised. As a consequence, ZAPPAR operates a “NO RETURNS” policy across all our accounts and all fees charged for the use of the Services (including any VAT and other taxes charged on the fees) are **NON-REFUNDABLE** except as required by law. In the case of Personal Users, this policy does not affect your statutory rights as a consumer.

7.2

You must pay all fees applicable to your use of the Services in accordance with our current published pricing. You must pay the fees by the date and in the manner described in the invoice or billing agreement. All fees charged for using the Services are exclusive of taxes, levies or duties (e.g. VAT or other sales taxes) imposed by taxation authorities, and you shall be responsible for payment thereof in addition to the fees. Charges are payable in the currency reflected in the relevant invoice or billing agreement.

7.3

Any fees not paid in full as and when due shall incur interest which shall accrue on such unpaid amounts at an annual rate of 6% commencing on the due date and continuing until fully paid, whether before or after any judgment.

7.4

ZAPPAR reserves the right to change the payment terms and fees at our sole discretion by giving notice to you. The amended fees and/or terms will (unless stated otherwise) be effective from the date of that notice and will apply to any fees incurred by you following the effective date of that price change.

7.5

All payments for fees made on the ZapWorks Website are processed on our behalf by third party payment providers. You accept that ZAPPAR is not responsible for these third party payment providers and their operation or availability. By agreeing to these TOU, you authorise ZAPPAR or our nominated payment provider to make any reasonable and necessary enquiries to validate your ZapWorks Account and financial information.

7.6

ZAPPAR reserves the right to monitor your use of the Services (including the number of persons using your Seats, the number of views of your zapcodes, and the content associated with your ZapWorks Account) for the purposes of ensuring that you are using the Services in compliance with the User Agreement and are paying the correct fees for your use of the Services. If our monitoring reveals a discrepancy between the fees you have paid for the Services and the fees actually due then you will pay the difference to ZAPPAR.

8. USER WARRANTIES AND INDEMNITY

8.1

Without prejudice to any representations or warranties given by you elsewhere in these TOU, you represent, warrant and undertake that:

- (1) Any ZapWorks Account created by or on your behalf is for your own personal, business or education use and the account has not, without express permission, been created with the intention to impersonate, falsely represent or create a false association with another person;
- (2) Your use of the Services will be in strict accordance with these TOU, our Privacy Policy and with all applicable laws and regulations including any local laws or regulations in your country, state, city or other governmental area regarding online conduct and acceptable content, and including all applicable laws regarding the transmission of personal data outside the European Economic Area (EEA) or the country in which you reside;
- (3) You will comply with the rules and regulations of your mobile device service providers, internet service providers and other third party service providers;
- (4) (If you are a Business User or Education User) you will comply with the prudent practices, methods, specifications and standards of safety and performance commonly used in operations similar to those of your business or profession, including any advertising standards, professional standards or codes of practice; and
- (5) All information provided by you to ZAPPAR is and will remain throughout your use of the Services true, accurate and complete. You will promptly notify ZAPPAR of any material change in that information.

8.2

You acknowledge that any breach of these TOU may cause ZAPPAR damage or loss and you agree to indemnify and hold harmless ZAPPAR and its employees, directors and shareholders against any and all liabilities, claims, actions, proceedings, losses, damages, expenses and costs (including court costs and legal fees) whether direct, indirect or consequential and including any economic loss or other loss of profits, business or goodwill which ZAPPAR or any of its employees, directors or shareholders may suffer or incur as a result of any of the following matters:

- (1) Your use of the Services;
- (2) Your use of zapcodes;
- (3) Your User Content;
- (4) Any breach by you or anyone acting on your behalf of these TOU.

9. USER CONTENT: GENERAL RULES

9.1

Strict compliance with the following provisions of Clauses 9, 10 and 11 are a condition of the User Agreement. If you make use of the Upload Feature on any of your zapcodes you are responsible for managing your legal relationship with the end-users of your zapcodes and for putting in place any necessary terms of use and privacy policies. You will ensure that persons uploading content to your zapcodes via the Upload Feature do so in compliance with Clauses 9, 10 and 11 of these TOU.

9.2

Users acknowledge that the Services are designed to be an open information system and ZAPPAR does not guarantee any confidentiality or privacy with respect to published User Content. Any User Content that you publish may potentially become visible to anyone using the ZAPPAR App who scans the associated zapcode. Furthermore, due to the nature of the internet and search engines in particular, User Content may remain on devices or websites not operated or controlled by ZAPPAR even after such User Content has been removed or deleted from our systems. You acknowledge and agree that any User Content published to the Services may become openly available across the internet.

9.3

You acknowledge and agree that you and not ZAPPAR are solely responsible for all User Content that you make available through the Services including the content that is uploaded to your zapcodes via the Upload Feature. User Content will not be vetted or edited in advance by ZAPPAR and ZAPPAR exercises no editorial control over User Content. Notwithstanding this, ZAPPAR reserves the right at our sole discretion (but shall have no obligation) to refuse, suspend access to or remove any User Content available through the Services at any time. We do not need a reason to exercise this right (or to give you prior notice), but we would normally only refuse, suspend access to or remove content if: (1) we deem it to be unlawful or in breach of these TOU; or (2) we receive a complaint about your User Content; or (3) we receive a Court Order requiring its removal from our systems; or (4) the content violates our terms of service with our server provider.

9.4

Please note that User Content that has been removed may continue to be stored by us in order to comply with certain legal obligations. For details on how we handle complaints about User Content please click on the following link:

<https://zap.works/unlawful-content-policy/>

9.5

While ZAPPAR makes reasonable efforts to ensure that zapcodes correctly point to the User Content that Users and their end-users have assigned to them, you acknowledge that it is your sole responsibility to test and check the correct functionality of all zapcodes before putting them into use. ZAPPAR ACCEPTS NO LIABILITY WHATSOEVER FOR ANY LOSSES INCURRED AS A CONSEQUENCE OF ANY INCORRECTLY CONFIGURED LINKS.

10. USER CONTENT: OWNERSHIP

10.1

Subject to the provisions of this **Clause 10**, you or your licensor retain any and all rights as you currently have under applicable law in your User Content. You or your end-user retain any and all rights as you currently have under applicable law in the User Content uploaded to your zapcodes via the Upload Feature.

10.2

You grant ZAPPAR and its group companies a perpetual, irrevocable, worldwide, royalty-free and non-exclusive licence to store, reproduce, adapt, modify, translate, publish, display, perform, transmit, distribute and allow others to use your User Content on or through the Services and zapcodes. This licence is restricted to the goal of enabling ZAPPAR or its group companies to perform, display, distribute and promote the Services, including but not limited to providing persons who Zap your zapcode with access to your User Content. Your licence includes a right for ZAPPAR or its group companies to make the content available and sub-licence it to suppliers, licensors, other companies, organisations and individuals with whom ZAPPAR co-operates with in providing or developing the Services. You represent and warrant to ZAPPAR that you have (and will continue to have during your use of the Services) all necessary rights, permissions, power and authority to grant the licence contained in this clause.

11. USER CONTENT: PROHIBITED CONTENT

11.1

You must not during the course of your use of the Services (and shall ensure that end-users of your zapcodes do not) create, enter, import, upload, store, link to, share, publish, make available to the public, distribute or transmit any content or data that:

- (1) Is or contains a Virus;
- (2) Is unlawful, harmful, offensive, abusive, threatening, defamatory, libellous, vulgar, obscene, infringing, menacing, harassing or racially or ethnically offensive or otherwise objectionable or otherwise breaching any laws;
- (3) Facilitates or encourages conduct that constitutes a criminal offence, or otherwise breaches any applicable laws, regulations or code of practice;
- (4) Depicts indecent, pornographic or sexually explicit images;
- (5) Compromises the rights of, brings harm to, or in any way unfairly deals with children and minors;
- (6) Incites, promotes or encourages violent, exploitative, racist, discriminatory, socially unacceptable or irresponsible behaviour;

- (7) Is discriminatory based on age, race, gender, gender re-assignment, colour, religious belief, sexual orientation, disability or any other protected characteristic of an individual;
- (8) Reveals any confidential or sensitive information unless you are authorised to make such disclosure;
- (9) Impersonates any living person, misrepresents your affiliation with a person, or contains forged or manipulated headers intended to disguise the origin of the content;
- (10) Violates the privacy rights of any living person or harvests or collects data about others without their knowledge and consent;
- (11) Is a breach of the copyright, patent, trademark, trade secret, database right or any other intellectual property right of any person unless you have the permission of the controller or owner of such right;
- (12) Streams, distributes, links to or accesses any material that you know, or ought reasonably to know, cannot be legally streamed, distributed, linked to or accessed;
- (13) Causes damages or injury to any person or property;
- (14) Interferes with the use or enjoyment of the Services by another person.

2. PRIVACY AND DATA PROTECTION

12.1

You should carefully read our full Privacy Policy before deciding to become a User. The Privacy Policy forms part of these TOU and governs our treatment of any information, including personally identifiable information, you submit to us via the Services. By using the Services you agree to and consent to our processing your information in accordance with our Privacy Policy. Please note that certain information, statements, data and content which you may submit to us as part of your use of the Services may reveal your gender, ethnic origin, nationality, age and/or other personal information about you. You acknowledge that your submission of any information, statements, data and content to us is entirely voluntary. Our Privacy Policy is available at <https://zap.works/privacy/>.

12.2

Your use of the Services may also result in cookies being placed on your computer equipment or mobile device. This is explained in our Cookie Notice available at <https://zap.works/cookie-policy/>.

12.3

Except as expressly stated otherwise in our Privacy Policy, the User is responsible for any collection, storage, disclosure and use of, and access to, personal information of any person that relates to the User's use of the Services and zapcodes including any personal information comprised in the User's User Content. In particular, it is understood that the

Privacy Policy mentioned in Clause 12.1 does not apply to any personal information that the User collects from end-users of their zapcodes in their capacity as a data controller (including personal information collected from persons using the Upload Feature). The User must ensure that they inform their end-users of what personal information the User collects from end-users of their zapcodes and how the User will use the information. Use of the Upload Feature is conditional on the User taking responsibility for complying with all applicable data protection and privacy legislation.

12.4

If ZAPPAR processes any personal data on a User's behalf when providing the Services, the parties record their intention that the User shall be the data controller and ZAPPAR shall be a data processor and in any such case:

- (1) The User acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the User is located in order to carry out the Services and ZAPPAR's other obligations under these TOU;
- (2) The User shall ensure that the User is entitled to transfer the relevant personal data to ZAPPAR so that ZAPPAR may lawfully use, process and transfer the personal data in accordance with these TOU on the User's behalf;
- (3) The User shall ensure that the relevant third parties (including end-users of the User's zapcodes) have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- (4) ZAPPAR shall process the personal data only in accordance with the terms of these TOU and any lawful instructions reasonably given by the User from time to time; and
- (5) Each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

12.5

In this **Clause 12** the expressions "personal data", "data controller", "data processor" and "process" or "processing" have the meaning given to them by Section 1 of the UK Data Protection Act 1998.

3. FAIR USE POLICY

13.1

A policy of fair and acceptable usage applies to the Services. This Fair Use Policy applies to everyone who uses the Services. As part of our Fair Use Policy you must not do any of the following:

- (1) Use the Services in any way which breaches **Clauses 9 to 12** (inclusive);

- (2) Use the Services, or your zapcodes, for commercial, trade or professional use where you are a Personal User. If we observe that a zapcode obtained for personal use is receiving more than 250 unique views per month we will contact the Account Holder as it is likely that the zapcode is being used for commercial, trade or professional use;
- (3) Use the Services in any way that disrupts or interferes with, or has the potential to disrupt or interfere with, the Services;
- (4) Use the Services (either individually or collectively with other Users) in any manner that is excessive, abnormal, or places a significant burden on our platform, website, online services or network, whereby such use does, will or could negatively impact or adversely affect optimal platform performance benchmarks (as set at our sole discretion from time to time) to the detriment of other Users;

IMPORTANT NOTE

If you are a Business User and propose to print your zapcodes on products which are intended for distribution or sale to the public you must contact us first where you are intending to distribute or sell in excess of 10,000 units to make sure that such use can be accommodated by our technology platform. We reserve the right to impose additional charges for such use.

- (5) Interfere or attempt to interfere with the proper working of the Services or any activities conducted on the Services, or bypass any measures we may use to prevent or restrict access to the Services (or other ZapWorks Accounts, computer systems or networks connected to the Services);
- (6) Use the Services in a way which infringes or misappropriates the intellectual property or privacy rights of any person;
- (7) Harvest or scrape any content, data, code, scripting, or images from the Services;
- (8) Upload or introduce Viruses onto the Services;
- (9) Connect or attempt to connect Viruses or content or materials to a zapcode that belongs to another User;

And you must comply with all directions or specifications we publish concerning the media files that can be imported into the Services e.g. format, type, size, duration.

13.2

As part of our Fair Use Policy, we have placed an upper limit on the number of zapcodes that Users may allocate per month. This upper limit is currently 1,000 zapcodes, but we reserve the right to revise this limit (up or down). Users who wish to allocate more than 1,000 zapcodes in any month may request an increase to this upper limit, but this is entirely at ZAPPAR's discretion and may incur an additional fee.

13.3

If you breach the Fair Use Policy set out in this **Clause 13**, or we consider that you are otherwise using the Services in an unfair or disruptive manner, or otherwise at our sole discretion, we may (in addition to our rights set out elsewhere in these TOU) place limitations or restrictions on service features otherwise described as “free” or “unlimited” e.g. we may place additional limits on the number of zapcodes allocated to you; limit the number of interactions with your zapcode or limit the type / size of file you or others can import into the Services. We may also place upper limits on hosting of data and data transfer from our content delivery network to end users.

13.4

If you breach our Fair Use Policy, we will normally ask you to correct your behaviour first before taking any action under this **Clause 13**, but reserve the right not to give notice in the case of deliberate, serious or persistent breaches or misuse of the Services.

4. DELIVERY, AVAILABILITY AND MODIFICATION OF THE SERVICES

14.1

ZAPPAR will begin to make the Services available to the Account Holder and its Authorised Users at the moment of activating the ZapWorks Account. Where an Account Holder opts to use the Services on a free to use basis ZAPPAR only provides those features of the Services that are available on a free to use basis. When the Account Holder starts paid use of the Services ZAPPAR will provide those features of the Services that are available for the type of use paid for, at the moment of receiving payment.

14.2

ZAPPAR warrants to the Account Holder that (1) we will perform the Services with reasonable care and skill and (where applicable) within a reasonable time; and (2) the Services will conform substantially to the technical documentation published at docs.zap.works. We make no promise that the Services will meet your requirements; nor do we guarantee the level of activity that your zapcodes will generate, such as the number of Zaps you will get. We do not guarantee that the Services will be fault-free or offer constant, uninterrupted access. If a fault occurs with the Services you should report it to support@zappar.com and we will attempt to correct the fault as soon as we reasonably can.

14.3

Your access to the Services may occasionally be suspended or restricted to allow for repairs, maintenance, updates or the introduction of new facilities or services. If this happens, we will attempt to restore the service as soon as we reasonably can.

14.4

The Services will change over time and we may require you to accept updates to the Services. From time to time we may require you to update your software to continue to use the Services. ZAPPAR may perform these updates remotely including to any ZapWorks software residing on your device. We also reserve the general right to modify, update or discontinue (temporarily, or permanently) the Services (or any aspect thereof); impose limits on certain aspects of the Services; and/or restrict your access to parts or all of the Services. This right may be exercised at any time and with or without notice to Users.

5. DURATION OF THE USER AGREEMENT

15.1

ZAPPAR may, in our sole discretion, immediately suspend or terminate the User Agreement and your access to and use of all or any aspect of the Services with or without notice and for any reason, including (1) if you breach any of your obligations under these TOU; (2) if ZAPPAR is required to do so by law or through an order of any competent authority; or (3) ZAPPAR permanently discontinues the Services. Suspension of the Services does not affect your obligations to us under these TOU. Any suspected fraudulent, abusive or illegal activity may be grounds for terminating the User Agreement and may be referred to the appropriate law enforcement authorities.

15.2

There is no minimum duration of the User Agreement. The Account Holder may cancel the User Agreement and their ZapWorks Account for any reason at any time by giving us written notice which shall take effect upon the date we receive your notice at our address given below. If you do cancel your ZapWorks Account, and you are a Business User, you will be charged for the remainder of the billing cycle (annual or monthly) that you are currently in and your ZapWorks Account and your Seats and content will be disabled at the end of the current billing cycle.

15.3

Upon cancellation or termination of the User Agreement by ZAPPAR or the Account Holder, regardless of the reasons therefor:

- (1) Your right to use the Services and the Licence immediately ceases, and you acknowledge and agree that ZAPPAR may delete your ZapWorks Account and at any time thereafter remove, archive or permanently erase all content and information (including User Content) associated with you and/or your ZapWorks Account;
- (2) ZAPPAR may deny you any further access to and use of the Services. (This may include banning the IP address of Users to prevent their access to the Services);
- (3) ZAPPAR shall have the right, but not the obligation, to disable all of your existing zapcodes so that they are no longer Zap-able;
- (4) ZAPPAR shall not be liable to you or any third party for any claim or damages

arising out of said cancellation or termination or for the consequent loss of any content or information;

(5) ZAPPAR shall unless the law requires otherwise not be required to refund any fees or other payments to you regardless of the remaining period of your subscription to the Services; and

(6) All provisions of these TOU that are intended to survive the cancellation or termination by their nature or because such has expressly been provided for shall survive. These provisions include provisions relating to ownership of intellectual property, disclaimers, indemnity obligations, limitation and exclusions of liability, and applicable law. Any licences granted by you under these TOU shall survive after the User Agreement has been cancelled or terminated.

15.4

The cancellation or termination of the User Agreement shall be without prejudice to the provisions of this **Clause 15** and to any rights of either party that may have accrued by, at or up to the date of such cancellation or termination.

6. OWNERSHIP OF THE SERVICES AND TRADEMARKS

16.1

The User acknowledges and agrees that ZAPPAR and/or its licensors own all title, ownership rights and intellectual property rights in and to the Services, zapcodes, Zappar Technology and ZAPPAR App (together the “ZAPPAR IPR”). Except as expressly stated herein, these TOU do not grant the User any rights to, or in, any patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the ZAPPAR IPR.

16.2

ZAPPAR is the sole and exclusive owner of the ZAPPAR Logo, ZAPWORKS and ZAPPAR POWERED trademarks, the ZAPPAR BOLT device, all zapcodes and the overall “look and feel” of the Services (collectively the “Zappar Marks”); including any registrations and applications for registration of the Zappar Marks, and their associated goodwill, throughout the world. You may not display, reproduce, or otherwise use any of the Zappar Marks, without first receiving written consent from us. All permitted use of any Zappar Marks by the User will inure to the benefit of ZAPPAR. The User will not acquire any right, title or interest in or to the any of the Zappar Marks. All other trademarks, straplines, graphics and logos used on or in connection with the Services are unregistered or registered trademarks or service marks of ZAPPAR or its licensors.

16.3

Users are free to submit comments, ideas, suggestions and recommendations to ZAPPAR with respect to the Services (a “Submission”). Submissions provided by Users may be used by ZAPPAR to improve or enhance its products and services and, accordingly, in making the Submission the User grants to ZAPPAR an unlimited, non-exclusive, royalty-free, fully paid up, perpetual, irrevocable, worldwide licence to use, copy, modify, translate, publish, display, perform, transmit, distribute, make, import, sell, offer to sell, lease, license or otherwise transfer, including the right to sub-license any of these rights to others, any and all intellectual property and other rights the User may have in the Submission. This means that ZAPPAR will be free (but not obliged) to exploit and use any Submission it receives from a User in our business in such manner as we see fit and without having to provide the User with any form of attribution or financial compensation of any kind.

7. THIRD PARTY WEBSITES

As a convenience to Users, the Services may include links to other resources, on-line services or material (a “Third Party Service”) which are beyond our control. ZAPPAR is not responsible for any content, functions, accuracy, legality, appropriateness or any other aspect of such Third Party Services. The inclusion of a link to a Third Party Service does not imply endorsement by ZAPPAR or any association with its operators.

8. ADVERTISING AND SPONSORSHIP

18.1

Part of the Services may contain or display third party advertising, promotions and sponsorship. Advertisers, promoters and sponsors are responsible for ensuring that material and promotions submitted for inclusion within the Services complies with relevant laws and codes of practice. ZAPPAR shall not be responsible to you for any error or inaccuracy in advertising or sponsorship material, or the conduct of any promotion.

18.2

Your communication or dealings with, or participation in promotions of, advertisers, promoters and sponsors found on or through the Services, including payment and delivery of related goods or services, and other terms, conditions, warranties or representations associated with such dealings are solely between you and the relevant third party and ZAPPAR shall have no responsibility or liability of any kind in relation thereto.

9. DISCLAIMERS AND LIMITATION OF LIABILITY

19.1

THE ATTENTION OF USERS IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CLAUSE 19 WHICH SET OUT THE ENTIRE LIABILITY OF ZAPPAR (INCLUDING ANY LIABILITY FOR THE ACTS OR OMISSIONS OF ITS DIRECTORS, EMPLOYEES, AGENTS AND SUB-CONTRACTORS) TO THE USER IN RESPECT OF:

- (A) ANY BREACH OF THE USER AGREEMENT;
- (B) ANY USE MADE BY THE USER OF THE SERVICES OR ANY ASPECT OF THEM;
AND
- (C) ANY REPRESENTATION, STATEMENT OR TORTIOUS ACT OR OMISSION (INCLUDING NEGLIGENCE) ARISING UNDER OR IN CONNECTION WITH THE USER AGREEMENT, THESE TOU OR THE SERVICES.

19.2

NOTHING IN THESE TOU EXCLUDES ZAPPAR'S LIABILITY FOR THE FOLLOWING MATTERS:

- (A) DEATH OR PERSONAL INJURY ARISING FROM OUR NEGLIGENCE;
- (B) FRAUD OR FRAUDULENT MISREPRESENTATION; OR
- (C) ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW, INCLUDING (WHERE APPLICABLE) YOUR STATUTORY RIGHTS AS A CONSUMER.

19.3

EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN THESE TOU:

- (A) THE USER ASSUMES SOLE RESPONSIBILITY FOR RESULTS OBTAINED FROM THE USE OF THE SERVICES BY THE USER, AND FOR ANY CONCLUSIONS DRAWN FROM SUCH USE. ZAPPAR SHALL HAVE NO LIABILITY FOR ANY DAMAGE CAUSED BY ERRORS OR OMISSIONS IN ANY CONTENT, INFORMATION, INSTRUCTIONS OR OTHER MATERIALS PROVIDED TO ZAPPAR BY THE USER IN CONNECTION WITH THE SERVICES, OR ANY ACTIONS TAKEN BY ZAPPAR AT THE USER'S DIRECTION;
- (B) ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND ALL OTHER TERMS OF ANY KIND WHATSOEVER IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THESE TOU INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- (C) THE SERVICES ARE PROVIDED TO THE USER ON AN "AS IS", "AS AVAILABLE" BASIS.

19.4

ZAPPAR ACCEPTS NO RESPONSIBILITY OR LIABILITY FOR ANY INABILITY TO ACCESS OR

USE THE SERVICES OR ANY INABILITY FOR YOU TO PROVIDE ANY BUSINESS DEPENDENT ON THE SERVICES DUE TO TECHNICAL OR OTHER FAILURE OUTSIDE OUR CONTROL. ZAPPAR DOES NOT CONTROL HOW ZAPS ARE GENERATED ON YOUR ZAPCODE(S). WE ARE NOT RESPONSIBLE FOR ZAP FRAUD, OR OTHER POTENTIALLY INVALID ZAP ACTIVITY THAT MAY AFFECT YOUR BUSINESS ACTIVITIES.

19.5

ZAPPAR SHALL NOT BE LIABLE FOR NON-CONFORMANCE OR NON-PERFORMANCE OF THE SERVICES WHICH IS CAUSED BY USE OF THE SERVICES IN A MANNER FOR WHICH THEY ARE NOT INTENDED, OR CONTRARY TO ZAPPAR'S INSTRUCTIONS, OR FOR MODIFICATION OR ALTERATION OF THE SERVICES BY ANY PARTY OTHER THAN ZAPPAR OR ZAPPAR'S DULY AUTHORISED CONTRACTORS OR AGENTS.

19.6

ZAPPAR DOES NOT HAVE ANY OBLIGATION TO VERIFY THE IDENTIFY OF THE PERSONS USING THE SERVICES, NOR DO WE HAVE ANY OBLIGATION TO MONITOR THE USE OF THE SERVICES BY OTHER USERS; THEREFORE WE DISCLAIM ALL LIABILITY FOR IDENTIFY THEFT OR ANY OTHER MISUSE OF YOUR IDENTITY, INFORMATION OR USER CONTENT EXCEPT FOR ANY STATUTORY LIABILITY THAT WE MAY HAVE UNDER THE UK DATA PROTECTION ACT 1998.

19.7

IN THE EVENT OF ANY LOSS OR DAMAGE TO DATA COMPRISED IN ANY USER CONTENT ("USER DATA"), THE USER'S SOLE AND EXCLUSIVE REMEDY SHALL BE FOR ZAPPAR TO USE REASONABLE COMMERCIAL ENDEAVOURS TO RESTORE THE LOST OR DAMAGED USER DATA FROM THE LATEST BACK-UP OF SUCH USER DATA MAINTAINED BY ZAPPAR. ZAPPAR SHALL NOT BE RESPONSIBLE FOR ANY LOSS, DESTRUCTION, ALTERATION OR DISCLOSURE OF USER DATA CAUSED BY ANY THIRD PARTY. YOU ARE THEREFORE ADVISED TO SECURELY BACK-UP YOUR USER CONTENT BEFORE SUBMITTING IT TO THE SERVICES.

19.8

THE SERVICES AND ZAPCODES PROVIDED FOR USE BY USERS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS OR IN ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE (SUCH AS IN THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF NUCLEAR FACILITIES; AIRCRAFT NAVIGATION, COMMUNICATION OR FLIGHT CONTROL; LIFE SUPPORT MACHINES; WEAPON SYSTEMS; SECURITY SYSTEMS; HEALTH CARE OR PHARMACEUTICAL PRODUCTS OR SERVICES; OR ANY OTHER ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SERVICES OR ZAPCODES COULD LEAD TO SERIOUS INJURY OR DEATH, ENVIRONMENTAL DAMAGE OR FINANCIAL LOSS. THE USER RELEASES ZAPPAR FROM ANY AND ALL LIABILITY FOR USE OF THE SERVICES AND ZAPCODES IN ANY OF THE ACTIVITIES OR ENVIRONMENTS REFERRED TO IN THIS CLAUSE AND SHALL INDEMNIFY AND HOLD HARMLESS ZAPPAR

TOGETHER WITH ITS EMPLOYEES, DIRECTORS AND SHAREHOLDERS FROM ANY CLAIM ARISING OUT OF THE USER'S USE OF THE SERVICES AND ZAPCODES IN ALL OF THOSE ACTIVITIES AND ENVIRONMENTS.

19.9

SUBJECT TO CLAUSE 19.2, ZAPPAR SHALL NOT BE LIABLE TO THE USER WHETHER IN TORT (INCLUDING FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY), CONTRACT, MISREPRESENTATION, RESTITUTION OR OTHERWISE FOR ANY OF THE FOLLOWING:

- (A) ANY LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF OPPORTUNITY, OR LOSS OF ANTICIPATED SAVINGS;
- (B) DEPLETION OF GOODWILL OR INJURY TO REPUTATION;
- (C) LOSS OR CORRUPTION OF DATA OR INFORMATION;
- (D) LOSSES SUFFERED BY THIRD PARTIES;
- (E) ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES (INCLUDING EXEMPLARY, MULTIPLE OR PUNITIVE DAMAGES OF ANY KIND);

HOWSOEVER ARISING UNDER OR IN CONNECTION WITH THE USER AGREEMENT AND/OR THE SERVICES AND REGARDLESS OF WHETHER OR NOT SUCH LOSSES WERE FORESEEABLE OR IN THE CONTEMPLATION OF THE PARTIES AT THE START OF THE USER AGREEMENT OR ZAPPAR WAS ADVISED OF THE POSSIBILITY OF THE USER SUFFERING THE SAME.

19.10

SUBJECT TO CLAUSE 19.2, ZAPPAR'S TOTAL AGGREGATE LIABILITY TO THE USER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION OR OTHERWISE ARISING UNDER OR IN CONNECTION WITH THE USER AGREEMENT AND/OR THE SERVICES SHALL BE LIMITED TO WHICHEVER IS THE GREATER OF (1) THE TOTAL FEES ACTUALLY PAID BY THE USER FOR USE OF THE SERVICES DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM AROSE AND (2) THE SUM OF £100. THE LIABILITY LIMIT IN THIS CLAUSE SHALL INCLUDE ALL CLAIMS FOR INTEREST WHETHER STATUTORY OR OTHERWISE.

20. INTERNATIONAL USE

20.1

Although the Services may be accessible worldwide, ZAPPAR makes no promise that the Services are appropriate or available for use in locations outside the United Kingdom, and accessing the Services from territories where its contents are illegal or unlawful is

prohibited. If you choose to access and use the Services from locations outside the United Kingdom, you do so on your own initiative and are responsible for compliance with local laws. Any offer for any product, service and/or information made in connection with the Services is void where prohibited.

20.2

Business Users established outside the European Union warrant and undertake that the Services will not be used within the United Kingdom.

21. MISCELLANEOUS

21.1 Amendments

Except as expressly provided otherwise herein, the User Agreement and these TOU may only be amended or varied by a written document that has been signed by the Account Holder and an authorised representative of ZAPPAR.

21.2 Assignment

The User Agreement is personal to the parties. The Account Holder may not assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of the User Agreement without the prior written consent of ZAPPAR. We may assign all or any of our rights under the User Agreement to another legal entity or business where we reasonably believe your rights will not be adversely affected.

21.3 Entire Agreement

You agree that the User Agreement, these TOU and the other documents referred to in it constitute the entire agreement between you and ZAPPAR regarding the Services and their use, and supersede all prior agreements, understandings, communications and proposals (whether oral, written or electronic) with respect to the subject matter of the User Agreement. Each of the parties acknowledges and agrees that in entering into the User Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party hereto or not) relating to the subject matter of the User Agreement, other than as expressly set out in these TOU, or, in the case of Personal Users, incorporated by the Consumer Rights Act 2015. This provision does not exclude liability for fraud or fraudulent misrepresentation.

21.4 Force Majeure

ZAPPAR shall not be responsible for any breach of the User Agreement caused by circumstances beyond our reasonable control, including any act of God, terrorism, failures or delays in transportation or communications, strikes, labour disturbances or slowdowns, or any act or failure by a User or their employees, agents, or contractors.

21.5 No Injunctive Relief

In no event shall you seek or be entitled to rescission, injunctive or other equitable relief, or to enjoin or restrain the operation of the Services, the exploitation of any advertising or other materials issued in connection therewith, or exploitation of the Services or any content or other material used or displayed through the Services.

21.6 No Waiver

If you breach the User Agreement and ZAPPAR chooses to ignore this, we will still be entitled to use our rights and remedies at a later date or in any other situation where you breach the User Agreement.

21.7 Relationship between us

No agency, partnership, joint venture, or employment relationship is created as a result of the User Agreement and neither party has any authority to act in the name or on behalf of or otherwise to bind the other in any respect (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise or any right or power).

21.8 Severability

If any provision of the User Agreement is held invalid or unenforceable, all remaining provisions shall nevertheless remain valid and enforceable, to the extent they can be given effect without the invalid portions.

21.9 Third party rights

The User Agreement does not confer any rights on any person or party other than ZAPPAR and the Account Holder and, where applicable, their successors and permitted assigns.

2. NOTICES

Any notice ZAPPAR is required or permitted to give under these TOU may either be sent to you by email or posted on the ZapWorks Website. You may send notices to us by email or by post using our addresses listed in **Clause 24** below. An email will be deemed received on the date of successful transmission and any notice sent to us by post will be deemed received when we actually received it at our offices.

3. APPLICABLE LAW AND JURISDICTION

23.1

Notwithstanding any conflicts of laws principles, these TOU, the User Agreement and all other aspects of the relationship between you and ZAPPAR (including any non-contractual disputes or claims) shall be governed by and construed in all respects with the laws of England and Wales regardless of your country of origin.

23.2

We will try to resolve any disagreements arising out of or related to these TOU, the User Agreement or the Services (a “Dispute”) quickly and efficiently. If you are not happy with the way we deal with any Dispute (including any non-contractual dispute or claim) and you want to take legal action or court proceedings in respect of the Dispute, you must do so exclusively within the United Kingdom. Notwithstanding this clause, you agree that ZAPPAR shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal action) in any jurisdiction where you reside or have assets.

4. OUR CONTACT DETAILS

24.1

The Services are owned and operated by ZAPPAR LIMITED a company incorporated and registered in Scotland with company number SC394617. The Company’s registered office address is The Cairn, Auchterarder, Perthshire PH3 1NR, United Kingdom. The Company is VAT registered in the United Kingdom and our VAT registration number is 108 3635 25.

24.2

If you have any queries or complaints concerning the Services we can be contacted at the following addresses:

Postal address

ZAPPAR
Barley Mow Centre
10 Barley Mow Passage
Chiswick
London W4 4PH
United Kingdom

Email address

contact@zappar.com

5. VIOLATIONS

If you wish to report any violation of these TOU please send an email to legal@zappar.com. If you have a complaint about User Content please see our policy at: <https://zap.works/unlawful-content-policy/> for information on how to proceed.

Last Updated: July 2017