

# Terms and Conditions for Kacific Gigstarter App

PLEASE READ THESE TERMS AND CONDITIONS (“TERMS”) CAREFULLY. BY DOWNLOADING, INSTALLING, ACCESSING OR USING THE KACIFIC APP (“APP”) OR ANY OF ITS CONTENT OR SERVICES, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE, PLEASE DISCONTINUE YOUR ACCESS AND USE OF THIS APP OR ANY CONTENT OR SERVICES, UNINSTALL THE APP AND ERASE ALL COPIES OF THE APP STORED ON ANY MEDIUM UNDER YOUR CONTROL.

## 1. DEFINITIONS

1. In these Terms, unless the context otherwise requires, the following expressions will have the following meanings:

"Agreement" refers to these Terms;

"Authorized Representatives" refers to any and all of Kacific, its affiliates and their respective directors, officers, employees, agents and contractors;

"Content" refers to any and all human readable audio and/or visual elements on the App, including any information, text, graphics, images, illustrations, photographs, animation, audio/visual works, designs, logos, trade names, service marks, advertisements, promotional material and other materials;

"Services" refers to all services provided by Kacific and/or its affiliates via the App (including broadband services), the processing of orders for the subscription of Services and the processing of orders for upgrading of Services;

"you" or "your" refers to any person that accesses and/or uses the App and makes any online transactions including any subscription to any Services via the App and where any person is accessing the App on behalf of an entity, also refers that entity;

References to "we", "us", "our" or "Kacific" shall refer to [Kacific Broadband Satellite Limited (Registration No. 201317505N)] or the relevant Kacific entity that is providing the Service to you (including its successors and assigns).

2. The headings used in these Terms are for convenient reference only and do not affect interpretation.

3. Words indicating the singular include the plural and vice versa, and words indicating a gender include every gender, unless the context otherwise requires.
4. No adverse inference shall be drawn against the party responsible for the preparation of these Terms.

## **2. CONDITIONS OF USE**

1. This App is owned by Kacific and/or its licensors. Subject to your compliance with these Terms, we grant you a revocable, personal, non-exclusive and non-transferable licence to use the App ("Licence") and the Licence will terminate automatically if you fail to abide by these Terms.
2. You are only permitted to use the App, for the sole purpose of performing the functions on the App and accessing Content and/or our Services, subject to these Terms. No other right, licence or permission is granted to you in relation to the App and your use of the App. If you are using the App on behalf of another, you warrant and represent that you have authority to do so and authority on their behalf to bind them to these terms.
3. The Licence shall continue unless and until terminated in accordance with these Terms.
4. Upon termination of the Licence, you must uninstall the App and erase all copies of the App under your control or ownership and stored in any medium.
5. You (a) must provide accurate and complete information to us when such information is sought or required from you, confirm that all the information which you have provided in connection with the App or these Terms are current, true, accurate, not misleading, supportable and complete and must inform us immediately of any change in the information provided to us (otherwise you may not be able or allowed to access Services or Content on the App); (b) must comply with all notices, directions or instructions which we may issue; and (c) must use this App (including all Content and Services available on this App) for lawful purposes only. Without prejudice to the generality of the aforesaid, you may not (1) rent, lease, lend, resell, distribute, provide, sublicense or offer or otherwise transfer in any way whatsoever, the App or any Content or Services to any third party whether for profit or not, or enable others to do so, without Kacific's permission in writing, or (2) use, download, sync or copy the app other than as permitted by these Terms. If changes relate to personal information, you may inform us of the changes in accordance with our Privacy Policy accessible at <https://kacific.com/privacy/>.
6. Your use of this App, including all orders for Services via this App, is governed by this Agreement, Kacific's Privacy Policy as stated on <https://kacific.com/nz/privacy/>, Kacific's Acceptable Use Policy as stated on <https://kacific.com/kacific-acceptable-use-policies>, and the terms of any end user contract, as may be required by Kacific or its

authorised Distributors. Any conflict or inconsistency between any of these terms shall be resolved in a manner most favourable to Kacific, to the fullest extent permissible under applicable laws.

7. Orders for Services are subject to Kacific's prices and applicable terms and conditions of Kacific and its authorised distributors for the Services. You are liable for all charges and payments for all services, products, Content and Services procured or obtained through the App.
8. Without prejudice to the generality of these Terms, and to the fullest extent permissible under applicable laws, Kacific may at its absolute discretion, restrict your access to or use of, add to, modify, discontinue, withdraw, terminate, remove, suspend or disable the App, features or portions of the App, or any Content or Services or terminate the Licence without notice or liability to you. For the avoidance of doubt, all pricing and availability Services on the App are subject to change and Kacific does not guarantee that such information will be error-free, complete, accurate or reliable.
9. From time to time, we may run competitions, promotions and surveys via the App, subject to additional terms and conditions. You acknowledge that if you do not agree or comply with those additional terms, including any additional terms of a third party, you may not be able to participate in the competitions, promotions and surveys.
10. You acknowledge that your use of the App may require access to other networks not owned or operated by us, including the internet and third party cellular networks. You acknowledge that your access to the App shall be subject to the availability and quality of such third party networks and any applicable terms and conditions imposed by such third parties in relation to their networks.
11. The App may also require access to your device's camera and/or microphone including for the purposes of updating your user profile settings in our databases and Gigstarter mobile application. You acknowledge that parts of the App will not function properly without providing such access.
12. Schedule 1 applies if you use this App on any Apple device or device running iOS.

### **3. DATA PROTECTION**

1. This App collects, retains, uses and discloses personal information that you have provided to us and device data for the purposes of allowing the App to perform its functions, including so that we may process your subscription of Services, for upgrading or downgrading of Services and to provide you with information such as your data usage history. Such personal information which you provide to us via this App and device data will be used in accordance with our Privacy Policy accessible at [["https://kacific.com/nz/privacy/"](https://kacific.com/nz/privacy/)]. You confirm that you have read and agree with our Privacy Policy set out on our website and consent to our collection, retention, use and disclosure of your personal information and device data for the purposes set out above.

2. You agree to keep your device and access to this App secure. You acknowledge that any removal of software restrictions and limitations imposed by the official operating system of your device may make your device vulnerable to malware, viruses or malicious programs and/or compromise your device's security features, and may also affect the proper functionality of this App.
3. You consent to receive communications from us electronically. You agree that all agreements, notices, disclosures and other communications which we provide to you electronically satisfy any legal requirement that such communications be in writing.
4. To provide location-based and real-time information services or functionalities via the App, we and/or our authorised Distributors may collect, transmit and use your precise location and other personal real time data, including your real-time geographic location. You agree to the collection, transmission and use of your location data or other data for the provision of the location based and real-time information services or functionalities via the App.
5. The App may also use or incorporate location based or real-time information application programming interfaces (APIs). You understand and agree that the use of any such functions and the information provided via such functions is at your sole risk, and that any location or real-time data provided may not be accurate or error-free.

#### **4. YOUR ACCOUNT**

1. You are responsible for the security of your account information, including usernames and/or passwords used in relation to the App. Please inform us immediately in the event of any compromise in the security of your username and/or password. Until such notification is received and confirmed by us and access is disabled at your request, you shall be responsible for all consequences arising from any unauthorized or fraudulent use of the App.

#### **5. SUBSCRIPTION TO SERVICES**

1. Orders for Services may be subject to acceptance by Kacific's distributors. Your order will also be subject to such terms and conditions as may be imposed by Kacific's distributors. To the fullest extent permitted by law, we will not be liable in any way for Kacific's distributors' provision of or failure to provide the Services.

#### **6. INTELLECTUAL PROPERTY**

1. This App (including all Content) is protected by applicable intellectual property right laws. Unless expressly permitted by Kacific in writing, you must not copy, distribute, publish, perform, modify, download, transmit, transfer, sell, license, reproduce, translate, adapt, vary, reverse engineer, disassemble, create derivative works from or based

upon, distribute, post, publicly display, frame, link, or in any other way exploit the App or any Content, whether in whole or in part. Any rights not expressly granted to you herein are reserved.

2. This App and all marks including "Kacific", the Kacific logo and all other trademarks, tradenames, logos and service marks on this App (the "Kacific Marks"), copyright, database rights and other intellectual property rights related to the App, belong to Kacific or its licensors. You must not attempt to extract the source code of this App, or make derivative versions of it. Any product, service or trade name other than those owned by Kacific may, even if not so indicated, be the service mark or trademark of a third party ("Third Party Marks"). Third Party Marks used on this App are used with the permission of their owners or licensors and all of their rights are reserved. Any unauthorised use of the Kacific Marks or any Third Party Marks is strictly prohibited.
3. You agree and acknowledge that all intellectual property related to the App will remain at all times the property of Kacific or its licensors. You will not use or permit the use of any intellectual property related to the App except for the purposes contemplated by the App.
4. Kacific retains all right, title, and interest in and to all improvements, enhancements or modifications to or resulting from the App, Content, and/or Services, including all intellectual property in, software used, inventions, know-how, confidential information or other technology developed or arising from the App, Content, and/or Services. Kacific is entitled to use, analyse, profit from, disclose, publish, keep secret, or otherwise exploit any information, suggestion or idea arising from or during the course of providing you access to the App, Content, and/or Services to improve, modify or enhance any of Kacific's products or services without compensating or crediting you or anyone, except that Kacific will not disclose or publish your information unless in accordance with its Privacy Policy and applicable law.

## **7. INDEMNITY**

You agree to pay Kacific and any of its Authorized Representatives and any third party distributors ("Kacific Protected Persons") should any third party make any claim against that Kacific Protected Person, including all liabilities, demands, losses, damages or expenses ("Liability") relating to that third party claim (a) but only to the extent the Liability relates to your access to and use of this App, any Content and/or any Services and (b) excluding any Liability that arises from Kacific's breach of these Terms. Your obligation to pay shall survive termination of this Agreement.

## **8. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

1. This App (including all Content and Services available via this App) is provided on an "as is" and "as available" basis and you accept that your access or use of the App are at your own risk. Kacific expressly disclaims all warranties of any kind, whether express or implied,

including implied warranties of merchantability, reasonable care and skill, accuracy, satisfactory quality, non-infringement and fitness for a particular purpose or any implied warranty arising from statute, course of dealing, course of performance, or usage of trade, to the fullest extent permissible under applicable laws. Without prejudice or limitation to the foregoing, Kacific makes no warranty as to the sequence, accuracy, completeness, security, compatibility, timeliness, reliability, quality, suitability, reliability, originality or non-infringement of any Content or Service obtained or provided in this App and will not be responsible for the security of Content transmitted to, from or through the App. Kacific does not warrant that the App and any Services will be provided uninterrupted, be available at all times, be free from errors or that any identified defect will be corrected; further, no warranty is given that access to and use of this App and the Services will be free of viruses, worms, Trojan Horses, or other malicious destructive or corrupting code or program or other harmful components or from hacking or other unauthorised intrusion or disclosure of your information. Kacific shall not be responsible for any interruption, disruption to or deterioration in the quality, reliability or accuracy of any Services or any technical issue that may arise from or in relation to any Services that you may have connected to any device. If you have difficulties in accessing or using this App, we may, at our absolute discretion, extend help and assistance to you as an act of goodwill but we shall in no event be obliged to provide the same. The provision of such help and assistance shall in no event be deemed an acknowledgement and/or acceptance of any liability on our part. This clause 8(1) applies to the fullest extent permissible under applicable laws.

2. To the fullest extent permissible under applicable laws, Kacific will not be liable for any delay or failure in performance resulting from matters beyond our reasonable control, including acts of God, acts or omissions of third parties (including any supplier delivering or providing any facilities, equipment, services or infrastructure to us), requirements of any Authority, national emergency, war, riots, strikes, industrial disputes (whether or not involving our employees), accident, lightning, fire, computer software or software malfunction, equipment failure, electrical power failure, faults, interruption or disruption of our network or the networks of other service providers or of your equipment or the equipment of any third party.
3. Without prejudice to the foregoing, and to the fullest extent permissible under applicable laws, in no event shall Kacific be liable for any direct, indirect, incidental, special, punitive or consequential damages, losses, costs or expenses including loss of revenue or profit (collectively, "Losses") whether based on warranty, contract, tort, including negligence, strict liability under statute or otherwise, and whether or not Kacific is advised of the possibility of such Losses suffered or incurred by you by reason of or in connection with the use of this App and/or Services.

4. Notwithstanding the above, if for any reason Kacific cannot rely on the limitations of liability set out above and Kacific is deemed liable to you, Kacific's maximum liability in contract, tort (including negligence or breach of statutory duty) or otherwise to you and anyone who uses this App (except for death or personal injury to the extent required by law) shall be, limited to US Dollars Five Thousand only (US\$5000)].

## 9. GENERAL TERMS

1. Kacific's decision on all matters relating to this App (including all Content and Services available on this App) will be final and conclusive. In the absence of fraud or manifest error, Kacific's records of all matters relating to this App (including all Content and Services available on this App) are conclusive evidence of the accuracy, completeness and truth of such matters. This right does not extend to the interpretation of, or the determination of either party's compliance with, this Agreement.
2. No delay or failure by Kacific to take any action or to enforce or exercise any of its rights in this Agreement will operate as a waiver of such rights by Kacific, nor will such failure or delay in any way prejudice or affect Kacific's rights at any time thereafter to act strictly in accordance with Kacific's rights in this Agreement.
3. This Agreement and any rights and obligations under it may not be assigned or transferred by you, but may be assigned, novated or transferred by Kacific without restriction.
4. Without prejudice to Clause 3.3 above, notices by us to you may also be sent by post, fax or email to your contact details in our records.
5. We reserve the right to amend this Agreement from time to time, subject to applicable laws. We will give you notice of such changes. Where practicable to do so, we will give you reasonable advance notice of such changes. Any notice under this clause can take the form of postings on our website or such other forms as we deem appropriate. You agree that the display of the revised Terms on our website will constitute notice of the changes and your continued use of this App, any Content or Services will constitute acceptance of the changes to this Agreement.
6. Unless otherwise provided in this Agreement, this Agreement constitutes the entire agreement between you and Kacific and supersedes all prior agreements, understandings, promises, conditions, representations and communications, oral or written, whether issued by you or Kacific, with respect to the subject matter of the Agreement and the transactions contemplated by it.
7. If any provision of this Agreement is held to be unenforceable, invalid or illegal (whether in whole or in part), such provision shall to the extent permissible be deemed modified or severed from this Agreement, but only to the extent of such unenforceability, invalidity or illegality and the remaining provisions shall not be affected.

8. Except for Clause 7, a person (including any user) who is not a party to this Agreement has no right to enforce any of these Terms and Conditions under the Contracts (Rights of Third Parties) Act (Cap 53B).
9. This Agreement shall be governed by Singapore law and all parties agree to submit to the exclusive jurisdiction of the Singapore courts. Any processes or judgment may be given to you in the same way as notices under this Agreement., unless applicable law requires otherwise.
10. [Where you are using the app for business purposes, the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply in connection with these Terms and Conditions, to the fullest extent permitted by applicable law. The parties acknowledge and agree that where they are contracting for business purposes, this clause 9(10) is fair and reasonable in the context of their commercial relationship.]



## Schedule 1

1. You agree that these Terms are concluded between you and we only and not with Apple Inc ("Apple") and we, not Apple, are solely responsible for the App and the Content/Services.
2. You agree that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App.
3. In the event of any failure of the App to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price of the App to you. You agree that to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App, and no responsibility for any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty.
4. You agree that, except for paragraph 3 above, Apple is not responsible for addressing any claims relating to the App or your possession or use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
5. You agree that in the event of any third party claim that the App or the user's possession and use of that App infringes that third party's intellectual property rights, Apple is not responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.
6. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
7. Your questions, complaints and claims with respect to this App should be directed to:

Name: Kacific Broadband Satellites Ltd

Address: 127 Jalan Sultan, Singapore 119012

Email: [info@kacific.com](mailto:info@kacific.com)

8. You agree that you must comply with all applicable third party terms of agreement when using the App.
9. You agree that Apple, and Apple's subsidiaries, are third party beneficiaries of these Terms and that, upon your acceptance of these terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary.