

TMS TERMS AND CONDITIONS

These Terms and Conditions including any changes thereof (“**Terms and Conditions**”) were last updated on 22 February 2019 by GDC Technology Limited and its subsidiaries (collectively referred to as “**GDC**”, “**We**”, “**our**” or “**us**”). “**You**” or “**your**” refers to company that is a licensee of our TmsAware (“**Company**”) and/or any individual as a user of the App, who is duly authorized by and acts on behalf of the Company. By agreeing to the Terms and Conditions, you have the full capacity to bind the Company. Terms and Conditions apply to your access and use of TMS mobile or tablet application, including all versions, updates and modifications (“**App**”), and other related services provided by GDC, in connection with the App (“**Services**”). In case of any discrepancy between the different language versions, the English version shall prevail.

1. ACCEPTANCE OF TERMS AND CHANGES

- 1.1. By downloading or using the App, or using our Services, including providing feedbacks through the App or Services, **you accept and represent that you have read, understand and agree to be bound by the Terms and Conditions**, and that you have the legal capacity and authority to enter into Terms and Conditions with GDC, under the laws of Hong Kong, your place of residency, or any other applicable jurisdiction. **If you do not agree to the Terms and Conditions, do not use the App or Services.** Terms and Conditions (including [Privacy Policy](#)) can be changed by GDC at its sole discretion from time to time. The latest version of Terms and Conditions will be available via the App, and will supersede any previous versions. In case of any changes, the “Latest Updated” date at the end of Terms and Conditions will also be updated.
- 1.2. You are responsible for reviewing the Terms and Conditions periodically for such changes. **After we post any changes onto the App, your continued use or access to our App or Services constitutes acceptance of such changes.** If you register to create your GDC account with us, we may send an email to you at the latest email address you provide to us, informing you of material changes made to the Terms and Conditions. If you do not agree to any changes after receiving such reminder via email, you should cease the use of our App or Services.

2. REGISTRATION, ACCOUNTS AND PASSWORDS

- 2.1. To access certain features of our App or Services, you need to set up a GDC account. By establishing a GDC account, you represent and warrant that you are of legal age to form a binding contract and you are not barred from opening GDC account, using the App or Services under the laws of Hong Kong, your place of residency, or any other applicable jurisdiction. Before registration, you need to prepare necessary device(s) and software(s) fit for creating GDC account, using the App or Services. You are responsible for expenses incurred in accessing our App or Services, including Internet connection fees.
- 2.2. If you create a GDC account, you agree to provide TMS with true, accurate, current and complete information about yourself, and to maintain and update such information to keep it true, accurate, current and complete. If your information is untrue, inaccurate, not current or incomplete, or GDC has reasonable grounds to suspect so, GDC is entitled to suspend or terminate your GDC account, or block your present or future use of the App or Services. After you complete registration, you will have a password to access and manage your GDC account.

- 2.3. You agree that you are solely responsible for keeping privacy of your password and account, and monitoring all use of your GDC account (whether authorized by you or not). You should not share your password or account information with any other person, post or transmit such information via unsecured routes. Please remember to log off your GDC account, or deactivate any public or shared device(s) you use to access your GDC account.
- 2.4. In the event of any violation of your privacy or account security, you will notify GDC of any unauthorized use. If we have reasonable grounds to believe that your password or GDC account is insecure or otherwise problematic, we may ask you to change the password, or we could suspend or terminate your GDC account, or block your access to the App or other Services.

3. USER CONDUCTS

- 3.1. GDC grants you permission to use the App or Services in accordance with the Terms and Conditions, and grants you a commercial, revocable, non-assignable, non-exclusive access to the App or Services. You are solely responsible for your use of the App or Services (including any content you make available to GDC, such as the feedbacks you provide to GDC), and for consequences thereof.
- 3.2. While using the App or Services, you shall not make available any content in any illegal manner or any content that (i) is false, misleading, defamatory, slanderous, libelous, or sexually suggestive; (ii) contains explicit sexual content (including nudity), violence, or any matter offending individual or group based on religion, gender, sexual orientation, race, ethnicity, age, or disability; (iv) does or may threaten, abuse, harass or invade any third-party privacy, or infringes rights of GDC or any third parties, including Intellectual Property Rights; or (v) contains software viruses, any other computer codes, files, or programs that interfere, damage or limit functionality of the App or Services.
- 3.3. You agree not to violate applicable laws or cause harm to GDC when you use the App or Services. You agree not to (i) retrieve content from the App or Services systematically, to create, compile, directly or indirectly, in single or multiple downloads, a collection, compilation, directory or the like, without prior written consent of GDC; (ii) gain (or attempt to gain) unauthorized access to the App, Services, other systems or networks connected to the App, Services or any GDC server; (iii) reverse engineer, decompile, or otherwise derive source codes of any underlying software or intellectual property in the App or Services; or (iv) access or use the App or Services in any way not expressly permitted by Terms and Conditions.

4. PRIVACY

TMS [Privacy Policy](#) applies to any use of our App or Services, and is hereby incorporated into the Terms and Conditions by reference. You agree to GDC's collection, use, protection and disclosure of your information as set forth in [Privacy Policy](#). By using the App or Services, you agree that in light of current technologies, information transmission via the Internet is not 100% private or secure. Notwithstanding our privacy practices to safeguard security of your information, the information you provide to us may still be intercepted or accessed by unauthorized third parties.

5. OWNERSHIP AND PROPRIETARY RIGHTS

- 5.1. You agree that GDC or its licensor(s) own all rights (including Intellectual Property Rights), title, and interest in the App and Services, except any content made available by you or other users of the App or Service. “**Intellectual Property Rights**” include but not limited to, rights in patents, inventions (patentable or not), industrial designs, utility models, trademarks, service marks, trade secrets, copyrights, mask-work, and other protecting intangible property or proprietary information recognized by law of any country or jurisdiction throughout the world. Intellectual Property Rights also include the right to apply for protection of the said rights. The copyright comprises of any literary, artistic, dramatic and musical works, such as software and source codes of the App, video or audio files, cinematograph films (and clips), trailers, posters, graphics, photos, layouts, visual interfaces, features, and any other media or content made available through the App or Services.
- 5.2. You represent and warrant that any content (including any feedbacks) made available by you to GDC will not infringe any rights (including Intellectual Property Rights) or interests of third parties, and that you have legitimate rights to grant license in any content made available to GDC. By making available any content to GDC, you irrevocably grant GDC Parties a perpetual, non-exclusive, royalty-free, worldwide, assignable, transferrable and sub-licensable rights (including the right to copy, reproduce, distribute, alter, translate, remove, analyze, perform or display, prepare derivatives work of, or commercialize) in any content made available to GDC by you. You further irrevocably waive Claims of moral rights in the content you make available to GDC, against GDC Parties.

6. THIRD PARTY TECHNICAL SUPPORT

The App or Services may need technical support or information from third parties, including but not limited to third-party cinema solution providers such as projector or server manufacturer(s). You understand that third-party technical support or information is not subject to the control of GDC. **You acknowledge that your use or reliance on third-party technical support or information is at your own risk.** Terms and policies of the third parties may vary from our Terms and Conditions. You should review the third party’s applicable terms and policies on your own. **GDC makes no warranties as to any third-party technical support or information, and will not be held liable for any Claims caused by any technical support or information provided by third parties.**

7. DISCLAIMERS AND NO WARRANTIES

- 7.1. You expressly acknowledge and agree that though GDC uses its commercially reasonable efforts to operate, maintain or update the App and Services, your use of the App or Services is at your own risk. The App or Services are provided on an “AS IS” and “AS AVAILABLE” basis. To the extent permitted by applicable law, GDC disclaims all warranties and conditions, statutory or otherwise, whether express or implied, including implied warranties of merchantability, fitness for a particular purpose, and non-infringement.
- 7.2. GDC makes no warranties with respect to the App or Services, including without limitation, quality, accuracy, timeliness, reliability, completeness, reputation or other features of the App or Services. Without limiting the foregoing, GDC does not warrant that (i) the App or Services will satisfy your

requirements; (ii) your use of the App or Services will be free from errors, inaccuracies, interruptions, delay, danger or other harmful components; or (iii) the App or Services will operate in the configuration, hardware or software you use. No information or any advice obtained from GDC, whether oral or written, obtained from GDC, or via the App or Services will not constitute any warranty not expressly stated herein.

- 7.3. You understand and agree that unless applicable law states otherwise, GDC does not control, approve, endorse or make any warranties with respect to any content (or any use thereof) made available by you, any other users of the App or Services, or any other third parties. GDC has no obligation to review, monitor, verify, ratify or sanction any content made available by you, or any other third parties. GDC reserves the right (but does not assume any obligation) at our sole discretion to accept, edit, or reject any content that is made available to us.
- 7.4. Disclaimers under this clause apply to all liabilities, claims, actions, demands, complaints, investigations, losses, costs and expenses (including reasonable attorney fees) of any kind (“**Claims**”) caused by any failure, error, delay in operation or transmission, defect, interruption, computer virus, file corruption, communication-line failure, network or system outage, theft or destruction of, or unauthorized access to, change of, use of your information, whether for breach of contract, tort (including negligence), or any other cause of action.

8. LIMITATION OF LIABILITY

- 8.1. You expressly understand and agree that, to the extent permitted by applicable law, in no event shall GDC, its parent, affiliates, suppliers, contractors, subcontractors, licensors, sub-licensees, third-party partners, designees, assignees, or successors, and each of their respective employees, directors, officers, shareholders, agents or representatives (“**GDC Parties**”) be liable for any direct, indirect, incidental, special, consequential, punitive, or exemplary damages (including but not limited to any damages resulting from loss of use, data, revenue, profits, business, anticipated savings or goodwill, and any damages for personal or bodily injury, emotional distress, pain and suffering), arising out of or in connection with this Terms and Conditions, your use of the App or Services, or any other interactions with GDC, whether caused by breach of contract, tort, or other causes of action, even if foreseeable or GDC has been advised of possibility of such damages.
- 8.2. Without limiting the foregoing and to the extent permitted by applicable law, you acknowledge and agree that you are solely responsible for, and that GDC Parties are not liable for any Claims arising out of or in connection with (i) your failure to comply with this Terms and Conditions (and [Privacy Policy](#)); (ii) delay, deletion, mis-delivery or failure to store any content, user communications, or personalized settings; or (iii) technical support or information from third parties, including third-party sever or projector manufacturer(s) or operators of app store(s). To the extent permitted by applicable law, under no circumstances will GDC Parties’ liability to you exceed the amount received by GDC from you (if any).

9. INDEMNITY

To the extent permissible under applicable law, you agree to hold harmless GDC Parties from any Claims, due to or in relation to your (i) use of or access to the App or Services (including registration, use of or access to GDC account, or making available any content to GDC); (ii) breach of this Terms and Conditions (including [Privacy Policy](#)); (iii) infringement of any rights or interests of third parties; or (iv) violation of any applicable laws, rules or regulations. GDC reserves the right to defend or dispose (including possible settlement) at its sole discretion any matter for which you should indemnify GDC at your sole costs and expenses. You will fully cooperate with us to assert any available defenses. You agree that this indemnity clause shall survive termination of your GDC account, this Terms and Conditions, your use of or access to our App or Services.

10. TERM AND TERMINATION

- 10.1. Terms and Conditions take effect upon your acceptance according to Clause 1 (Acceptance of Terms and Changes), and remain in full force and effect between you and GDC, so long as you use or access the App or Services, unless terminated earlier hereunder. If you use or access the App or Services before your acceptance of Terms and Conditions, effective date of this Terms and Conditions will be the date of your first use or access.
- 10.2. You may terminate your GDC account for any reason at any time, by contacting GDC at legal@gdc-tech.com or sending notice in writing to us at Unit 1-7, 20/F, Kodak House II, 39 Healthy Street East, North Point, Hong Kong. GDC has the right to, with or without notice, at its sole discretion, (i) update, modify, suspend or terminate operation of or access to the App, Services, or any part thereof, for maintenance, error correction or other purposes as GDC deems fit; or (ii) suspend or terminate your GDC account, remove, delete or discard any information you provide, or any information stored by, sent to, or received by GDC through the App or Services for any reasonable purposes. Aforesaid purposes include but not limited to (i) concurrent use of your GDC account; (ii) any other person's use or access to the App or Services through your GDC account, whether or not with your permission; (iii) any unauthorized use of or access to the App or Services; (iv) your breach of Terms and Conditions; or (v) any intrusion or attempted intrusion of software(s) or data embedded in the App or Services.
- 10.3. GDC will not be liable for any Claims due to any conducts of GDC as stated in Clause 11.2. Upon termination of GDC services (including operation of or access to the App, Services or your GDC account), your right to use said services terminate. Termination of GDC services will not affect any right or relief that we are entitled to, at law or in equity. All clauses under Terms and Conditions that by nature will survive termination of GDC services will survive, such as Clauses 6, 7, 8, 9, 10, 11, 12 and 13.

11. GENERAL PROVISIONS

- 11.1. **Assignment.** Without prior written consent of GDC, you shall not assign, subcontract, license, sub-license, delegate or otherwise transfer the Terms and Conditions, your obligations and rights hereunder to any third party. Any attempted assignment, subcontract, license, sub-license, delegation or transfer in breach of this clause will be null and void.

- 11.2. **No Waiver.** Any failure or delay by GDC to enforce any provision of this Terms and Conditions, or to exercise any right, will not be deemed a waiver of future enforcement of that or any other provision(s), or of further exercise of the right or any other right(s). Any waiver in writing signed by GDC in one occasion will not be deemed GDC's waiver of any subsequent similar cases in another occasion(s).
- 11.3. **Force Majeure.** GDC shall not be liable for any delay or failure in performance of the Terms and Conditions due to causes beyond our reasonable control, including but not limited to acts of hackers, acts or omission of third parties (including third-party Internet service providers or telecommunications common carriers), overloading or reduced speed of the Internet, acts of God, war, terrorism, riots, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation facilities, fuel, power, energy, labor or materials.
- 11.4. **Compliance.** If you believe that GDC is in breach of the Terms and Conditions, or if you are aware of any violation of Terms and Conditions by any other users of the App or Services, please notify GDC promptly by email at legal@gdc-tech.com.
- 11.5. **Dispute Resolution.** This Terms and Conditions will be governed by, construed and enforced in accordance with the laws of Hong Kong, without giving effect to any conflict of law rules. All disputes arising out of or in connection with this Terms and Conditions, which cannot be resolved amicably shall be submitted to the courts with competent jurisdiction in Hong Kong. The preceding provision regarding venue does not apply if you are based in European Union. If you are based in European Union, you may make a claim in the courts of the county where you reside. Any claim under this Terms and Conditions must be brought within one (1) year after the cause of action arises, or such claim or cause of action is barred.
- 11.6. **Severability.** If any provision(s) of this Terms and Conditions are found under applicable law to be void or unenforceable, by a court of competent jurisdiction, the other provision(s) shall remain in full force and effect. The invalid or unenforceable provision(s) will be limited to the minimum extent necessary and replaced with valid provision(s) that best fits the intent of this Terms and Conditions, to the maximum extent permitted by applicable law.
- 11.7. **Entire Agreement.** This Terms and Conditions, and the [Privacy Policy](#) incorporated herein by reference, constitute the entire agreement between you and GDC regarding the subject matter, and supersede or replace all prior or contemporaneous understandings or agreements, written or oral, with respect to the subject matter hereof.