

TERMS AND CONDITIONS OF USE FOR THE ITEMS APP

Valid from 01. 10. 2023

1. INTRODUCTORY PROVISIONS

- 1.1 **Scope and parties.** These Terms and Conditions of use for the ITEMS App govern the rights and obligations of the parties to the agreement, the company AVAPS s.r.o., with registered office at U Obalovny 488, 250 67 Klecany, Business ID No: 25650939 registered in the Commercial Register maintained by the Municipal Court in Prague under file no. C 58133, tel: +420 724 978 937, e-mail: info@app-items.com („we/us“), and you as the user („you“) during use of the ITEMS App.
- 1.2 **Definition.** The concepts **listed** below have the following meanings in this document:
- 1.2.1 **Content** means information contained in and accessible through the App, such as text, photographs, graphics, other audiovisual content, logos, trademarks and designs, comments, databases, etc.
- 1.2.2 **App** means the mobile application ITEMS.
- 1.2.3 **Terms and Conditions** means these ITEMS Terms and conditions of Use for the ITEMS App.
- 1.2.4 **Registration** means your act of agreeing to these Terms and Conditions and entering into the Agreement. In doing so, we register you in our user database and store your contact and identification information so that we can provide you with Services.
- 1.2.5 **Services** means services consisting in particular in making available the App, the Content and the individual functionalities contained in the App, such as the collection and processing of your data, the uploading of audiovisual content or the uploading of texts, as well as making this available to third parties selected by you, all through your user account.
- 1.2.6 **Agreement** means the agreement between us and you under which we provide the Services to you.
- 1.2.7 **Fee** means the amount you pay to us after the end of the free version of the App for continued access to the App and provision of the Services under the Agreement, with the current Fee always listed under your user account on the App.
- 1.3 **Conclusion of the Agreement.** By registering in accordance with the instructions contained in the App, you signify your acknowledgement and agreement to these Terms and Conditions of Use and the conclusion of the Agreement between us and you. If you do not agree to the Terms and Conditions, you are not entitled to enter into the Agreement and use the Services.

1.4 **Duration of the Agreement.** The agreement is concluded for the duration of the agreed subscription period, or in the case of the so-called free version according to the paragraph 6.3 for its duration. If an automatic renewal of the Agreement is arranged for the next subscription period, the automatic renewal may be declined at any time before the end of the current duration of the Agreement.

1.5 **Resolution of complaints.** Your suggestions and complaints will be addressed on the basis of their submission via email to the following address: info@app-items.com.

2. CONSUMER INFORMATION

2.1 **Routine communication costs.** You will not incur any increased costs on our part for using the means of remote communication through which you deal with us and enter into the Agreement. At the same time, we will not charge you anything for telephone or internet communication with us. However, you will still be required to pay standard charges for the use of these communications to your telecommunications service provider.

2.2 **No deposits.** We do not require payment of a deposit or other similar payment in connection with the provision of Services.

2.3 **Performing updates.** We do not provide updates to Services or App unless we state otherwise for that particular Service or App. If we do provide them, you are obliged to make these updates within a reasonable time after they are published, otherwise you have no rights under the defect resulting from the failure to update.

2.4 **App language.** The App is provided mainly in the Czech language, but may also have English and German language versions.

2.5 **Compatibility and interoperability.** Once downloaded, the App and related Services work on standard mobile smartphones, in particular phones with Android and iOS operating systems. However, we reserve the right to restrict use of the App and Services based on a determination of incompatibility or security risks on any devices. In order to use the App and the Services, you must be connected to the Internet, with the exception of the "Notes" Service, which can be used without such connection.

2.6 **Immediate commencement of the provision of the Services.** You expressly request and agree that the Agreement shall commence and we shall commence providing the Services to you before the expiry of the general withdrawal period. In view of the above, you may withdraw from the Agreement within 14 days only to the extent that the Services have not been provided by the time of withdrawal, or in the case of partial provision, you are not entitled to a refund of a proportionate part of the agreed Fee for the performance already provided. In relation to making the App available as digital content, you acknowledge that you will not have a right of withdrawal in relation to such digital content.

2.7 **Delays in accessing the App.** If we are in default in making the App available and we do not allow you access to it even after we have agreed an additional period of time

to do so or it is clear from our statement and the circumstances that we will not do so within the additional period of time, you may withdraw from the Agreement.

- 2.8 **Retention and availability of the Agreement.** The Agreement with you is concluded in Czech or English language and is kept by us in the form of an electronic record for our internal purposes. Access to it is not possible.
- 2.9 **Electronic form of information.** You agree to provide all data prior to the conclusion of the Agreement, to issue a confirmation of the conclusion of the Agreement and to issue a confirmation of consent to commence performance prior to the expiry of the withdrawal period in electronic form.
- 2.10 **The process of concluding the Agreement.** The App allows you to conclude the Agreement through it. You can check, change and correct the entered data before concluding the Agreement.
- 2.11 **Confirmation of concluding the Agreement.** Confirmation of the conclusion of the Agreement, including these Terms and Conditions and details of your agreement to commence performance before the expiry of the withdrawal period, will be sent to you by electronic means after the conclusion of the Agreement.
- 2.12 **Binding rules of conduct.** In providing the Services, we act in accordance with applicable law and the Personal Data Processing Information available at <https://app-ITEMS.com/privacy-policy>. However, we are not bound by any code of conduct in relation to you.
- 2.13 **Supervisory bodies.** The supervisory bodies that monitor our activities and to whom you can turn in case of complaints are:
- 2.13.1 in the field of consumer protection, the Czech Trade Inspection Authority, with its registered office at Štěpánská 796/44, 110 00 Praha 1, website: <https://adr.coi.cz/cs> is also the competent authority for out-of-court dispute resolution, for which the <http://ec.europa.eu/consumers/odr> platform can be used;
 - 2.13.2 in the area of trade control, the competent trade licensing authority;
 - 2.13.3 in the area of supervision over the protection of personal data, the Office for Personal Data Protection, with registered office at: Pplk. Sochora 727/27, 170 00 Praha, website: <https://www.uoou.cz/>
 - 2.13.4 in the field of consumer protection at EU level, the European Consumer Centre of the Czech Republic, located at Štěpánská 796/44, 110 00 Praha 1, website: <https://evropskyspotrebitel.cz/>; this is also the contact point under Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 concerning online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on online dispute resolution for consumer disputes).

3. USER ACCOUNT

- 3.1 **Truthfulness of data.** You are obliged to complete the registration form truthfully and accurately. By registering you confirm that all the information you have provided in the registration form is correct. We are entitled to verify the accuracy, truthfulness and up-to-date nature of the information entered and to contact you or other persons for this purpose.
- 3.2 **User account.** In order to be able to use the user account, it is necessary to Register, during which the user account is created. In particular, you can use this account to make changes to the settings of the Services, edit your personal information and manage it. You are obliged to keep your user account details up to date. You can have only one user account.
- 3.3 **Login details.** Access to the user account is secured with a username and password.
- 3.4 **Data protection.** You must ensure that your user account login credentials and other information necessary to access your user account are treated as confidential information and that such login credentials are kept confidential so that no third party has access to them.
- 3.5 **Unauthorised use.** If you believe that your user account has been misused (e.g. your account login details have been obtained by an unauthorised person, etc.), please inform us immediately. You are solely responsible for your use of the Services and all activities under your user account.

4. CONTENT AND APP USE

- 4.1 **Protection of the App and Content.** The App and Content are protected by intellectual property rights, including copyright and trade name protection rights.
- 4.2 **Rights relating to the App.** We declare and by using the App you acknowledge that we are the rightful owner of the intellectual property rights in the features and functionality of the Application and Content, in particular the rights to consent to any use of the Content. We reserve all rights to the App and Content not expressly granted to you under these Terms and Conditions.
- 4.3 **Licence.** We grant you a non-exclusive and territorially and temporally right to use the Content and the App for your personal and non-commercial use. This licence is non-transferable. You are not entitled to interfere with the source code of the App and to redistribute, sell or otherwise make available such code or the App, Content or any part thereof. Similarly, you may not decompile the App, attempt to derive source code from it, modify it, or create derivative works from it
- 4.4 **Illicit use.** Any use of the App or Content in violation of these Terms and Conditions may result in an obligation to pay damages to us, the committing of a criminal offence, or our ability to exercise other rights under the law.

- 4.5 **Access to the App.** You may not use the App if your use or use of the Services is prohibited by applicable law or if you have previously had your user account blocked for violating these Terms and Conditions.
- 4.6 **Changes to Content and the App.** By using the App, you acknowledge that we may change, add or delete Content or make updates, upgrades and improvements or other changes to the App at any time, whether for updates, to remove erroneous or disputed information, or for no particular reason at all.
- 4.7 **Maintenance and support.** We are solely responsible for the maintenance and support of the App.
- 4.8 **App availability.** The App is available in all countries unless otherwise stated below. Its use is subject to Czech law.
- 4.9 **Terms and Conditions and their acceptance in the App.** If you use the App, these Terms and Conditions are binding from the moment you accept them on your device. Your use of the App is also subject to the terms and conditions of the operators of Google Play, the App Store or any other service on which the App is offered (see Article 8 of these Terms and Conditions).
- 4.10 **Security.** To ensure the security of the App, standard and adequate security measures are implemented within the App. These measures are regularly reviewed and adjusted in accordance with current technical requirements.
- 4.11 **Rights to embedded content.** If you upload Content to the App, you hereby grant us a non-exclusive, transferable, assignable, royalty-free, worldwide license to use, modify, release, copy, and translate such Content as of the time you first upload such Content. This licence is granted for the duration of the proprietary rights for the Content in question. However, we will only ever use any Content provided by you in accordance with your instructions or to provide or develop the Services and the App.

5. RULES OF USER CONDUCT

- 5.1 **Prohibited Uses.** When using the App, including the Services via the Application, you are obliged in particular:
- 5.1.1 not to use the App or Content in violation of these Terms and Conditions or the law;
 - 5.1.2 not to collect Content and other data from the App without our consent;
 - 5.1.3 not to use the App in any way that could damage it, prevent its operation or overload it, or harm or restrict other users;
 - 5.1.4 not to use the App in any way that would infringe our rights or violate any other terms and conditions to which you are bound in your use of the Application;

- 5.1.5 not to upload to or through the App distribute or share any, possibly malicious, offensive or otherwise unlawful software or other code containing a computer virus, spyware or malware, or otherwise upload files or other programs that may damage, alter or monitor the operation of a network or computer on our property or the property of a third party;
- 5.1.6 not to upload or share sensitive data in the form of passwords, access data or payment data within the App, both in relation to the App and to items, objects and intangible assets outside the App;
- 5.1.7 Not to upload or share information, data and other content within the App that is protected by third party rights, such as copyrighted content or content containing personal data of third parties;
- 5.1.8 Not to attempt to interrupt or compromise the security of the App, its appearance, integrity or availability, or the Content, or otherwise damage the App or the Content, other users' accounts or our administrator accounts, access passwords, servers or network elements;
- 5.1.9 not to attempt to gain unauthorized access to the App or the Services, other user accounts and other computer systems, in particular through hacking or phishing, and generally not attempt to gain access to any Content that has not been intentionally made available on the App;
- 5.1.10 not to attempt to improperly obtain any information about other users, including but not limited to their email addresses, particularly for the purpose of sending unsolicited commercial communications; and
- 5.1.11 not to use the App in violation of good morals and generally accepted rules for the use of services provided via the Internet.

5.2 **Corrective measures.** In the event of a breach of the rules set out above, we may at any time terminate or restrict your access to the Services, revoke the licence granted to you under these Terms and Conditions, remove the information you have provided to us and, if applicable, lock or delete your user account. Similarly, we may require you to immediately destroy or remove any downloaded Content. We may take all of the above steps without asking you to remedy the situation.

6. **CONDITIONS FOR THE PROVISION OF SERVICES**

6.1 **Designation of Services.** The Services are intended for access to the Content and use of the functionalities of the App through the User's account.

6.2 **Fees.** The Fee, the period of time for which the Application will be made available to You after payment of the Fee and any other conditions of access to the App and provision of the Services are indicated within the App or User Account. The Fee can also be paid by recurring payments, which you can cancel at any time.

6.3 **Free version.** Once you Register and access the App, you will be able to use it for 30 days free of charge. After this period, you will be prevented from further access to the App until you have paid the Fee.

6.4 **Fee payment.** You may pay the Fee for access to the App by electronic means made available by the App, including through third party solutions. You acknowledge that You are liable for all charges and applicable taxes incurred in connection with payment of the Fee.

7. **LIABILITY AND ITS EXCLUSION**

7.1 Exclusion of liability when used for other purposes. We are not responsible for the suitability of the Services for their usual purpose, for the conformity of the content with the usual features, for the supply of accessories and instructions for use, or for conformity with the trial version or preview, unless we have specifically advised you of the difference in this feature prior to entering into the Agreement and you have expressly agreed to this.

7.2 **Exclusion of liability for payment.** We are not responsible for your lack of authorization to use your chosen payment method, including lack of consent from the account holder or parent/guardian.

7.3 **Exclusion of liability for external events.** We are not responsible for the provision of the Services if the provision of the Services is impeded by problems on Your side or on the side of third parties, in particular if there are data network failures, other failures caused by third parties or a force majeure situation.

7.4 **Exclusion of liability for malfunctions and failures.** We do not provide any guarantee for the functionality or availability of the Services. Despite our best efforts, connection failures may occur and disrupt the error-free provision of the Services. In such exceptional situations, we shall not be liable for any direct or indirect damages resulting from the inability to connect to a user account or the inability to use the Services.

7.5 **Exclusion of liability for data accuracy.** We are continually working to improve the App and Services and may change, temporarily disable or remove parts of the App and Services at any time. However, there may be instances of incorrect processing of Content, which may not be accurate or complete. In such situations, we will not be liable for the accuracy or completeness of the Content or for any damages arising from the use of or reliance on the Content or information.

7.6 **Exclusion of liability for termination of provision.** We may decide at any time not to continue to operate the App and provide the Services. In the event that we discontinue the App, we will not be liable for any direct or indirect damages resulting from the discontinuation of the App or the continued inability to use the Services.

7.7 **Digital services and content in B2B relationships.** If you are not a consumer, the applicability of the provisions of Sections 2389g to 2389u of Act No. 89/2012 of the Czech Civil Code, as amended, is excluded.

- 7.8 **Compensation for damages.** We are not liable for any damages and are not obligated to pay for any direct or indirect damages or lost profits or compensation for loss of data that may be incurred by you or any third party in the cases provided for in these Terms and Conditions, by use of the Services and Content, by modification of the Content or the App, by conduct, not in breach of these Terms and Conditions, by your own acts or omissions in breach of these Terms and Conditions, circumstances precluding an obligation to indemnify (force majeure), or as a result of acts or omissions of third parties, including damage caused to the device through which you accessed the App. Even if such liability is imposed on us, it is limited to the monthly amount you pay us for access to the App.

8. OTHER TERMS AND CONDITIONS RELATING TO MOBILE APPS

- 8.1 Other terms and conditions When using the App. You may be subject to the terms and conditions of Google Play, the App Store or other services on which our mobile apps are offered, even if not expressly stated in this section of the Terms and Conditions.

- 8.2 **App available on Google Play.** When using the App on Google Play the following terms and conditions will apply:

8.2.1 If you are considered a minor in your country, you need your parent's or legal guardian's permission to accept the Terms and Conditions and use the App. If other age restrictions apply to your use of particular Content or features of the App, you must comply with them. The terms and conditions set out in this paragraph of these Terms and Conditions remain unaffected.

8.2.2 Contact us in case of any problems, glitches or difficulties with the performance of the App. Google is not responsible for the support and maintenance of the App. We will respond to your support requests for paid products and in-app purchases within three business days, and we will respond to any support or App-related issues that Google determines to be urgent within 24 hours.

8.2.3 **App available in App Store.** When using the App through the App Store the following terms and conditions shall apply:

8.2.4 The Terms and Conditions govern solely the relationship between us and you, and Apple Inc. is not bound by the Terms and Conditions and is not responsible or liable for the App or the Content.

8.2.5 We are solely responsible for the maintenance and support of the App to the extent provided in these Terms and Conditions. Please direct any questions, complaints or claims regarding the App to us. Apple is not responsible for the support and maintenance of the App.

8.2.6 If the App fails and is in breach of the warranty we provide under these Terms and Conditions, you are entitled to notify Apple. In this case, Apple may refund the purchase price of the App, if agreed. To the fullest extent

permitted by applicable law, Apple shall have no warranty obligations with respect to the App, and any and all claims, liabilities, damages, costs or other expenses caused by the App's failure to conform to its warranty shall be our sole responsibility (to the extent provided in these Terms and Conditions).

8.2.7 It is our sole responsibility to resolve and, where applicable, settle any claims made by you or other third parties in connection with the App or its use, including but not limited to:

8.2.7.1 Rights concerning defective performance;

8.2.7.2 claims arising from possible non-compliance of the App with relevant laws and requirements;

8.2.7.3 claims under consumer protection, privacy or similar laws.

8.2.8 In the event that a third party makes a claim that the App or your use of the App infringes that third party's intellectual property rights, we are solely responsible for investigating, defending against, settling or disputing such claim of intellectual property infringement.

8.2.9 By installing the App, you state that you are not using the App from a country that is embargoed by the United States or designated by the United States government as a state sponsor of terrorism, and that you are not on the United States government's list of prohibited entities. You also agree to abide by these Terms and Conditions throughout your use of the App.

8.2.10 Apple or its subsidiaries, as applicable, are third party beneficiaries of these Terms and Conditions and shall have the right, subject to Your acceptance of these Terms and Conditions, to require and enforce Your compliance with these Terms and Conditions, including, without limitation, in connection with the licence granted, at its sole discretion.

9. CLAIMS AND DEFECTIVE PERFORMANCE

9.1 **Defective services.** If you receive defective performance from us, you can immediately file a claim with us, electronically via e-mail at: info@app-items.com.

9.2 **Definition of defects.** Defects in performance do not include inability to access the Services, App or User Account due to failure of Your internet connection or technical device, unavailability of the Services, App or User Account, any other circumstances considered by these Terms and Conditions, or inconsistency of the Services and App and their features with Your expectations. At the same time, a situation excluded by these Terms and Conditions cannot be considered a defect.

9.3 **Exercise of rights concerning defects.** You must exercise your rights concerning defects immediately after discovering the defect or immediately after you could have discovered the defect by exercising ordinary care. Any claim must always be in writing. Include in the written justification of the complaint all the information necessary to examine the justification, but in particular state:

- 9.3.1 Your name, surname and contact details (tel, e-mail);
 - 9.3.2 a description of the facts giving rise to the claim; and
 - 9.3.3 documents and papers relating to the alleged occurrence.
- 9.4 **Claim Settlement.** On the basis of your information, we will decide on the validity of the claim, and we will review and process the claim without undue delay and inform you of the outcome of the claim within 30 days of the claim.
- 9.5 **Acceptance of the claim.** If we accept the claim, we will provide you with a replacement without defects, unless you expressly assert another claim for defects under the law, which are:
- 9.5.1 a reasonable discount on the price paid, which is determined as the difference between the value of the App without the defect and the App with the defect as provided to You;
 - 9.5.2 withdrawal from the Agreement in the event of failure to remedy the defect within a reasonable time, failure to remedy the defect due to significant difficulties on your part, material breach of the Agreement or repeated defective performance.
- 9.6 **Consumer Claims.** If you are a consumer, in addition to the general rules set out above in this Article, the following rules also apply in priority to defects in digital content or digital content services:
- 9.6.1 If a defect manifests itself during the term of the Agreement, it is up to us to prove that the Digital Content or Digital Content Services were provided without defect; this does not apply if we prove that the defect was caused by your inadequate hardware, software or network connection necessary for proper functioning of content or services provided (hereinafter referred to as "Digital Environment"), although you were made aware of the need for it; You provide the necessary cooperation to verify that the defect is due to the inadequate digital environment, and if We refuse to provide such cooperation, We are not obligated to prove that the digital content or digital content services were provided without defect.
 - 9.6.2 We shall also be liable for any defect caused by the incorrect connection of the Digital Content or Digital Content Service to the Digital Environment made by us or under our responsibility or made by You in accordance with instructions provided by us.
 - 9.6.3 You may complain about a defect in the digital content or digital service that becomes apparent or occurs during the term of the obligation, or in the case of a one-off performance within two years of it being made available:
 - 9.6.4 If the digital content or digital content service has a defect, you can demand that it be removed, unless it is impossible or unreasonably costly to do so.

- 9.6.5 We will rectify the defect within a reasonable time after the defect has been identified so as not to cause you significant inconvenience.
- 9.6.6 You may claim a reasonable discount or withdraw from the Agreement if we do not remedy the defect within a reasonable time or it is apparent from our statement or the circumstances that the defect will not be remedied within a reasonable time or without significant inconvenience to You, if the defect persists after remedy or if the defect is a material breach of the Agreement.
- 9.6.7 The reasonable discount under the preceding paragraph shall be determined as the difference between the value of the digital content or digital content service without defect and the defective digital content or digital content service provided to You; if the digital content or digital content service is to be provided for a certain period of time, the period during which it was provided defectively shall be taken into account; the discount shall also be due to You in the event of withdrawal from the Agreement.
- 9.6.8 You cannot withdraw from the Agreement if the defect in the Digital Content or Digital Content Service is insignificant.
- 9.6.9 We will return any sums of money that we have to return to You due to defective performance at our own expense without undue delay, but at the latest within 14 days from the date of your assertion of the defective performance right, in the manner in which the remuneration was paid to us, unless You expressly agree otherwise and no further costs are incurred.

10. TERMINATION OF THE AGREEMENT

- 10.1 **Withdrawal.** You may withdraw from the Agreement by sending a signed withdrawal form, which forms part of Annex 1 to these Terms and Conditions, to our address set out in paragraph, or via the App, if applicable. In order to meet the withdrawal deadline, you must send a withdrawal statement within the withdrawal period.
- 10.2 **Legal effects of withdrawal.** The legal effects of withdrawal shall commence on the date of delivery of the written notice of withdrawal from the Agreement to the other party. Withdrawal from the Agreement results in the termination of the Agreement at the time of delivery of the notice of withdrawal to the other party. After withdrawal, we may prevent you from continuing to use the App or Services, in particular by making them unavailable. If You withdraw from the Agreement, we will return all funds to You without delay, within 14 days at the latest; this does not apply if You withdraw from an Agreement which is the subject of the provision of services that We have begun to perform at Your express request before the expiry of the withdrawal period; in such a case, We are not obliged to return a proportionate part of the agreed Price paid for performance provided up to the time of withdrawal.
- 10.3 **Arrangement and notice.** The Agreement may be terminated by written consent of the parties on an agreed date or unilaterally by written termination without giving reasons, effective on the date of its delivery to the other party.

- 10.4 **Termination for breach of the Agreement.** In the event that You breach the Agreement or these Term and Conditions in a manner that may be considered a material breach, we may unilaterally terminate the Agreement with immediate effect.
- 10.5 **Account deletion.** You can also terminate the Agreement at any time by deleting your user account.
- 10.6 **Continuing rights.** Termination of the Agreement shall not relieve either party of its duty to settle its obligations arising from the default, including obligations incurred during the term of the Agreement.

11. CONCLUDING PROVISIONS

- 11.1 **Governing law.** The Agreement and all relations arising from it, including questions of its formation and validity, shall be governed by the laws of the Czech Republic, excluding conflict of laws rules. The courts of the Czech Republic are the competent courts for the settlement of any disputes.
- 11.2 **Assignment.** We may assign our rights and obligations under the Agreement, in whole or in part, to an affiliate or successor in interest or to a purchaser or assignee of its business assets related to the Services without your prior consent.
- 11.3 **Changes to Terms and Conditions.** These Terms and Conditions, including the prices for access to the App not set out herein, are subject to change from time to time. Please note that the next time you use the Services, the Terms and Conditions may be different. Therefore, please read these Terms and Conditions carefully before each individual use of the Services. You agree to the change and the current version of the Terms and Conditions by continuing to use the Services. We publish the amended version of the Terms and Conditions in the App and at <https://app-ITEMS.com/terms-of-service>. If you do not agree to the change of the Terms and Conditions, you must stop using the Services.

Annex 1

Withdrawal form

Address:	AVAPS s.r.o. Registered office: U Obalovny 488, 250 67 Klecany, Business ID no.: 25650939 listed in the Commercial Register maintained by the Municipal Court in Prague under file no. C 58133
I hereby give notice that I withdraw from the ITEMS App Provision Agreement.	
Date of conclusion of the Agreement (date of Registration):	
Name and surname:	
Address:	
Signature:	
Date:	