

## APPBACKR – TERMS OF SERVICE

Welcome to appbackr.com (the “**Site**”), a website operated by appbackr Inc. (“**appbackr**”, “**we**”, or “**us**”). The Site is a digital wholesale marketplace (a “**Marketplace**”) where developers can “pre-sell” downloads of iPhone applications they are developing (an “**Application**”) to buyers who want to share in the revenue when the Application is sold through Apple’s iTunes Store. In short, appbackr provides developers the opportunity to receive money now (perhaps to support development efforts or pay the rent) while allowing buyers an opportunity to make a profit, a little later. The individuals who create and market the Applications are called “**Developers**” and the people who purchase “downloads” – or Queue Numbers (as defined below) – of the Application are called “**Buyers**”.

**PLEASE READ THIS TERMS OF SERVICE (THE “AGREEMENT”) CAREFULLY.** BY ACCESSING THE SITE, OR ANY SERVICES OFFERED THROUGH THE SITE (THE “**SERVICES**”), YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT WISH TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT ACCESS THE SITE OR THE SERVICES.

**Some Services may have additional terms and conditions, including fees and charges, that apply to your use of those Services (“Supplemental Terms”). For example, if you want to list an Application as a developer on the Site, you must agree to a separate Developer Agreement with us. If you buy or sell Queue Numbers through the Site, you must execute a separate Wholesale Purchase Agreement with another appbackr member.** The Supplemental Terms will be disclosed to you through a link or adjacent to the Service at the time it is offered. To the extent that there is any conflict between this Agreement and any Supplemental Terms, the Supplemental Terms will govern with respect to those Services.

- 1. THE MARKETPLACE.** The Marketplace is at the core of the Services provided through the Site. Developers market their Applications to Buyers by posting information about the Applications on the Site (collectively, the “**Application Information**”). The Application Information should include, among other things, the features and functions of the Application, the date that the Application is expected to go on sale through Apple, Inc.’s iTunes Store (the “**iTunes Store**”), the retail price of the Application when sold through the iTunes Store, the maximum number of Queue Numbers to be sold and biographical information about the Developer which, theoretically, should instill in a potential buyer confidence that the Developer can timely produce a commercially viable application. What is the Developer selling and what is the Buyer buying? A Queue Number. A Queue Number? When an Application is downloaded through the iTunes Store, appbackr associates each copy of the Application that is downloaded with a queue number (each a “**Queue Number**”). The first iTunes download of the Application is Queue Number 1 and the ten thousandth iTunes download is Queue Number 10,000 (creative, right?). Through the Marketplace, Buyers pay wholesale prices for Queue Numbers associated with Applications that may still be in development. Then, when the Buyer’s Queue Number is downloaded through the iTunes Store, the Developer returns to the Buyer the wholesale price paid, plus a profit, according to the Distribution Model.
- 2. ROLE OF APPBACKR.** appbackr is the entity that hosts the Marketplace and provides certain services on behalf of the Developer. In short, we provide the platform, manage all payments, accounting, and access to the Marketplace, and provide transparency to both Developers and Buyers on how sales are going in the iTunes Store. In addition we provide verification services that include ensuring that Developers on our Site are listed as Developers in the iTunes Store. Our goal is to let Developers focus on what they do best, developing applications. But here’s what we don’t do: we do not generally review Application Information or guarantee the accuracy, integrity or quality of any Application Information. Without implying any obligation on our part, we reserve the right, but have no obligation, to remove Application Information as required by law or if necessary to cause the Application Information to be in compliance with this agreement or any other Agreement between the Developer and appbackr. In addition, appbackr does not warrant that: (i) Apple will approve an Application or make any Application available on the iTunes Store, either by any date listed on the Marketplace or at any point thereafter; (ii) that an Application will conform to the Application Information; (iii) copies of the Application associated with the Buyer’s Queue Numbers will be purchased and downloaded by end users; or (iv) that the Application will generate any sales through the iTunes Store.
- 3. ACCOUNT.** In order to become a Developer or a Buyer, you must first become a member of the Site. When you set up an Account to become an appbackr member, you will be required to submit your name and email address and select a password. You may not transfer or share password or account (collectively, the “**Account Information**”) with anyone, and you are solely responsible for maintaining the confidentiality of your Account Information. You agree to immediately notify us of any unauthorized use of your Account Information or any other breach of security. You are solely responsible for any and all use of your Account and all activities that occur under or in connection with your Account. You agree to be responsible for any act or omission of any users that access the Site under your Account or using your password, that if undertaken by you, would be deemed a breach of this Agreement, and that such act or omission shall be deemed a breach of this Agreement by you. You must not use your Account in a misleading or unlawful manner, including in a manner intended to trade on the name or reputation of others. You must not use the Site if it will violate any applicable law or regulation, or any obligation (including contractual obligations) that you may have to a third party. All appbackr members who submit or otherwise provide information to us, agree that such information is true, accurate, current and complete and to maintain and promptly update such information to keep it true, accurate, current and complete. If we have reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, we may suspend or terminate your use of the Site (or any portion thereof). You agree not to register for more than one Account, register for an account on behalf of an individual other than yourself, or register for an account on behalf of any group or entity without such group or entity’s written authorization.
- 4. ACCESS RIGHTS.** You must be no less than 18 years of age in order to access the Site and use the Services. By accessing the Site you represent that you are at least 18 years old. Subject to the terms of this Agreement, we hereby grant to you a limited, non-exclusive, nontransferable access right to access the Site and use the Services solely for the purpose of participating in the Marketplace or for the purpose of evaluating whether to participate in the Marketplace. You understand and

acknowledge that the Site and the Services are our property and except for the very limited rights granted to you in this Agreement, we reserve all right, title and interest in the Site and the Services.

- 5. YOUR RESPONSIBILITIES AND ACCEPTABLE USE.** You agree not to use the Site or any Services: (a) to violate any local, state, federal or international law or other applicable regulation including fraud or money laundering; (b) stalk, harass, defame or harm another individual or otherwise violate their right of privacy or publicity; (c) to infringe someone else's patent, trademark, trade secret, copyright or other intellectual property right; (d) in any manner that uploads or otherwise spreads any software viruses, worms, time bombs, corrupted files, Trojan horses or any other computer code, files, or programs that are designed or intended to disrupt, damage, overburden, impair or limit the functioning of the Site or the Services; (e) collect or store personal data about other members of or visitors to the Site; (f) contact any other member without their prior explicit consent; (g) to impersonate any person or entity, including an appbackr employee, or otherwise misrepresent your affiliation with a person or entity; (h) to interfere with or disrupt the Site or Services (including any servers or networks), any other person's use and enjoyment of the Site or Services or otherwise disobey any requirements, procedures, policies or regulations of networks we provide you, or (i) in a manner that is harmful to minors, vulgar, gratuitously violent, obscene, pornographic, indecent, lewd, or racially, ethnically or otherwise offensive, hateful or abusive. You agree not to use, reproduce, sell, resell, distribute, modify, display, publicly perform, import, or otherwise exploit any portion of the Site or Services for any purpose other than for which the Site or the Services are being provided to you. Without our written consent, you may not (i) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail (spam); (ii) use any high volume, automated, or electronic means to access the Services (including without limitation robots, spiders or scripts); or (iii) frame the Site, place pop-up windows over its pages, or otherwise affect the display of its pages. All information that you provide to us is and will remain true, accurate, complete and current. We reserve the right to restrict the number of communications which any member may send to other members to a number and amount which we deem appropriate in our sole discretion.

In addition, you are required to follow the following guidelines when posting content and information, including Application Information ("**Member Content**"), to the Site:

Do:

- Remember you're in public — the information you post can be seen by all visitors to the Site. Be thoughtful about whether others should have access to the information you are posting.
- Respect others' opinions — if necessary, agree to disagree.
- Behave ethically.
- Use good judgment — stay in good taste
- Focus on the facts
- Be fair and informative — include both the pluses and minuses.
- A word about language: Mild expletives are allowed. However, strong vulgar language or crude references are not appropriate.

Don't:

- Harass, verbally attack, or threaten others.
- Pretend to be someone you are not or claim false credentials.
- Post or link to content that is obscene or otherwise objectionable.
- Use the community for commercial or advertising purposes [well, except to market your Application in the Marketplace]
- Use the community to solicit charity requests, petitions for signature, chain letters or similar communications
- Post content that isn't yours — whether copyrighted or someone's personal material.
- Believe everything you read — postings may be inaccurate or inappropriate for you and should not be taken as advice.
- Engage in, link to, or promote illegal activities or content.
- Post or collect personal information about someone else
- Use a post as an opportunity to vent, disparage or flame another person, organization or entity
- Express negative opinions without supporting facts
- Post or link directly to any content with vulgarities directed towards another person, organization or entity.

We do not endorse any Member Content or any opinion, recommendation, or advice expressed therein, and we expressly disclaim any and all liability in connection with Member Content. We reserve the right to remove Member Content without prior notice. By providing Member Content, you grant to appbackr and its licensees a worldwide, royalty-free, fully paid, perpetual, irrevocable license to use, reproduce, modify, publish, edit, adapt, create derivative works from, translate, distribute, perform, display and otherwise exploit such Member Content in any form, media, or technology, whether now known or hereafter developed or discovered.

- 6. Third Party Materials.** Material from other members of appbackr, advertisers, and other third parties ("**Third-Party Material**") is made available to you through the Site, and may include feedback and advertising and information about third-party products or services. Because we do not control Third-Party Material, you agree that we (i) are not responsible for any Third-Party Material; and (ii) make no representations or guarantees about the accuracy, currency, suitability, or quality of Third-Party Material. Without limiting the foregoing, we assume no responsibility for objectionable, inaccurate, misleading, or unlawful Third-Party Material. We have the right, but not the obligation, to remove from the Marketplace at any time any Third-Party Material which we deem harmful, offensive, or otherwise in violation of this Developer Agreement or a Wholesale Purchase Agreement.

7. **MODIFICATIONS** We may change this Agreement from time to time. We also reserve the right to modify or discontinue the Site or Services with or without notice to you. We will not be liable to you or any third party should we exercise our right to modify or discontinue the Site or Services. If you object to any such changes, your sole recourse will be to cease using the Site and/or Services. Continued use of the Site and/or the Services following notice of change will indicate your acknowledgement of such changes and agreement to be bound by the revised Agreement.
8. **PRIVACY AND SECURITY.** We know that your privacy is important. For this reason, we have created a [privacy policy](#) that describes our collection, use and disclosure practices regarding any personal information that you provide to us. The security of your personal information is important to us. While there is no such thing as "perfect security" on the Internet, we will take reasonable steps to help ensure the safety of your personal information. However, you understand and agree that such steps do not guarantee that the Site and the Services are invulnerable to all security breaches or immune from viruses, security threats or other vulnerabilities.
9. **SERVICE INFORMATION.** We do not warrant that any information, graphic depictions, product and service descriptions or other content appearing on the Site or through the Services (including any such materials created by us) are accurate, complete, reliable, updated, current, or error-free. It is possible that information regarding an Application or Member Content may contain an inaccuracy. We maintain the right, but not the obligation, to remove any materials from the Site or the Services that we believe to be inaccurate in our sole discretion. In the event that you become aware of any pricing or descriptive errors or inconsistencies within the Site or the Services, we would very much appreciate your letting us know by contacting us at: [support@appbackr.com](mailto:support@appbackr.com).
10. **LINKS.** Our provision of a link to any other website or location is for your convenience and does not signify our endorsement of such other site or location or its contents. We have no control over, do not review, and cannot be responsible for, these outside websites or their content. Access to any other websites linked to appbackr is at your own risk. When leaving appbackr, you should carefully review the applicable terms and policies, including privacy and data gathering practices, of that third-party website. WE WILL NOT BE LIABLE FOR ANY INFORMATION, SOFTWARE, OR LINKS FOUND AT ANY OTHER WEBSITE, INTERNET LOCATION, OR SOURCE OF INFORMATION, NOR FOR YOUR USE OF SUCH INFORMATION, SOFTWARE OR LINKS, NOR FOR THE ACTS OR OMISSIONS OF ANY SUCH WEBSITES OR THEIR RESPECTIVE OPERATORS.
11. **COPYRIGHTS; RESTRICTIONS ON USE.** Both (i) the content of the Site and Services (excluding any Member Content), including without limitation, text, data, information, music, sound, photos, and graphics ("Our Content"), as well as (ii) the software, code, proprietary methods and systems used to provide the Services ("Our Technology") are (1) copyrighted by us and/or our licensors under United States and international copyright laws, (2) subject to other intellectual property and proprietary rights and laws, and (3) owned by us or our licensors. Neither Our Content nor Our Technology may be copied, modified, reproduced, republished, posted, transmitted, sold, offered for sale, displayed, publicly performed, distributed or redistributed in any way without our prior written permission and the prior written permission of our applicable licensors. You must abide by all copyright notices, information, or restrictions contained in or attached to any of Our Content or Our Technology. Nothing in this Agreement grants you any right to receive delivery of a copy of Our Technology or to obtain access to Our Technology except as generally and ordinarily permitted through the Site according to this Agreement.
12. **COPYRIGHT COMPLAINTS.** We respect the intellectual property of others, and we ask you to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, please provide our copyright agent the following information:
- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
  - A description of the copyrighted work that you claim has been infringed;
  - A description of where the material that you claim is infringing is located on the Site or the Services;
  - your address, telephone number, and email address;
  - A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
  - A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Our copyright agent for notice of claims of copyright infringement on the Site or the Services can be reached by directing an e-mail to the copyright agent at [support@appbackr.com](mailto:support@appbackr.com).

13. **TERMINATION.** appbackr may terminate your use of the Site and/or your Account for any reason at any time. You understand that termination of this Agreement and your Account may involve deletion of your information, including any Member Content, from our live databases. Either party may terminate this Agreement at any time and for any reason by providing notice to the other party in accordance with this Agreement, except that you may not terminate this Agreement to the extent that your Developer Agreement or any Wholesale Purchase Agreement is still in effect. NOTWITHSTANDING THE FOREGOING, ANY TERMINATION OF YOUR ACCOUNT WILL IN NO WAY MODIFY, CHANGE OR VOID ANY PAYMENT OBLIGATIONS YOU MAY HAVE INCURRED THROUGH YOUR USE OF THE SITE OR ANY SERVICES, WHETHER SUCH OBLIGATION IS TO US OR A THIRD PARTY. YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY TERMINATION OF YOUR ACCESS TO THE SITE OR ANY SERVICES OR DELETION OF YOUR ACCOUNT OR MEMBER CONTENT UPLOADED BY YOU.
14. **DISCLAIMER OF WARRANTIES.** YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE AND/OR THE SERVICES IS AT YOUR SOLE RISK. BOTH THE SITE AND THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE,

NON-INFRINGEMENT, TITLE, OPERABILITY, CONDITION, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA AND SYSTEM INTEGRATION. WE MAKE NO WARRANTY THAT THE SITE OR THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE SITE OR THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DO WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SITE OR THE SERVICES, OR THAT DEFECTS IN THE SITE OR THE SERVICES WILL BE CORRECTED. YOU UNDERSTAND AND AGREE THAT ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SITE OR THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SERVICES OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR INFORMATION. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH THE SITE OR THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

15. **LIMITATION OF LIABILITY.** YOU UNDERSTAND THAT TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL WE OR OUR OFFICERS, EMPLOYEES, DIRECTORS, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS OR LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF REVENUES, PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF SUCH PARTIES WERE ADVISED OF, KNEW OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY), ARISING OUT OF OR RELATED TO YOUR USE OF THE SITE OR THE SERVICES, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), WARRANTY, STATUTE OR OTHERWISE. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SITE OR THE SERVICES, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SITE OR THE SERVICES. IN NO EVENT WILL WE BE LIABLE FOR THE PROCUREMENT OF SUBSTITUTE SERVICES. OUR AGGREGATE LIABILITY TO YOU FOR ALL CLAIMS ARISING FROM OR RELATED TO THE SITE OR THE SERVICES IS LIMITED TO THE GREATER OF (I) THE AMOUNT OF FEES ACTUALLY PAID BY YOU TO US IN CONNECTION WITH ANY SERVICES OR (II) ONE HUNDRED DOLLARS (U.S. \$100.00). Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the above limitations and disclaimers may not apply to you. To the extent that we may not, as a matter of applicable law, disclaim any implied warranty or limit its liabilities, the scope and duration of such warranty and the extent of our liability will be the minimum permitted under such applicable law.
16. **INDEMNIFICATION.** You agree to indemnify, defend and hold us, our parents, subsidiaries, affiliates, officers, directors, co-branders and other partners, employees, consultants and agents, harmless from and against any and all third-party claims, liabilities, damages, losses, costs, expenses, fees (including reasonable attorneys' fees and court costs) that such parties may incur as a result of or arising from (a) any Member Content or information submitted, posted or transmitted through the Site or any Services through your Account, (b) your use of the Site or Services, (c) your violation of this Agreement or any other agreement to which you and we are parties, or which you are a party and we are a third-party beneficiary, (d) your violation of any rights of any other person or entity or (e) any viruses, trojan horses, worms, time bombs, cancelbots or other similar harmful or deleterious programming routines input by you into the Services.
17. **TRADEMARKS.** Certain of the names, logos, and other materials displayed on the Site or in the Services may constitute our or our licensors' trademarks, trade names, service marks or logos ("**Marks**"). You are not authorized to use any such Marks. Ownership of all such Marks and the goodwill associated therewith remains with us or those other entities.
18. **DISPUTES.** If a dispute arises between you and another member or between you and us, we want to learn about and address your concerns. We have the right, in our discretion and on a case by case basis, to assist you in resolving your disputes with third parties arising out of the Site and the Services. However, you agree that appbackr will have no obligation to do so, and will not be liable to you for any action it takes to help resolve any dispute. Any resolution or action imposed by appbackr pursuant to this Section 17 shall be binding on you. Please contact us at [support@appbackr.com](mailto:support@appbackr.com) if you have any disputes you would like to raise.
19. **MISCELLANEOUS.** Unless otherwise set forth in a developer agreement with us, this Agreement constitutes the entire and exclusive and final statement of the agreement between you and us with respect to the subject matter hereof, and governs your access to the Site and your use of the Services, superseding any prior agreements or negotiations between you and us with respect to the subject matter hereof. The Agreement and the relationship between you and us will be governed by the laws of the State of California, without giving effect to any choice of laws principles that would require the application of the laws of a different country or state. Any legal action, suit or proceeding arising out of or relating to the Agreement, or your use of the Site or any Services must be instituted exclusively in the federal or state courts located in the State of California and in no other jurisdiction. You further consent to exclusive personal jurisdiction and venue in, and agree to service of process issued or authorized by, any such court. Our failure to exercise or enforce any right or provision of the Agreement will not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and that the other provisions of this agreement remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Site or Services or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred. The section titles in the Agreement are for convenience only and have no legal or contractual effect. You and we are acting as independent contractors, and nothing in this Agreement creates an agency or partnership. You may not assign your rights under this Agreement without our prior written consent, and any attempted assignment will be null and void. As a condition of access to the Site or the Services, you release us from claims, demands and damages (direct and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with any dispute (or resolution thereof) you have or claim to have with one or more members of appbackr. **If you are a California resident, you waive California Civil Code §1542, which says: "A general release does not extend to claims**

**which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."**

- 20. SURVIVAL.** The terms of Sections 2, 5, 9, 11, and 13 through 20, and any other limitations on liability explicitly set forth herein will survive the expiration or earlier termination of the Agreement for any reason. Our (and our licensors') proprietary rights (including any and all intellectual property rights) in and to Our Content and the Site or Services will survive the expiration or earlier termination of the Agreement for any reason.
- 21. NOTICE; VIOLATIONS.** We may give notice to you by email, a posting on the Site, or other reasonable means. You must give notice to us in writing via email or as otherwise expressly provided. Please report any violations of this Agreement to [support@appbackr.com](mailto:support@appbackr.com).

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