

3D MEASURE ME – TERMS OF SERVICE

The Services (defined below) are provided by 3D Measure Me Pty Ltd (ABN 89 627 676 984) ('**3D Measure Me**', '**us**', '**we**', '**our**'). The term '**You**' or '**Your**' refers to the User.

By creating an Account and accessing the Services, You acknowledge that You have read, understood, and agree to be bound by this agreement which incorporates our Privacy Policy. If You do not agree to the terms of this agreement, You cannot use the Services.

Overview

The Services are tools intended for use by consumers to generate personal anatomical data so that retail partners can provide better services to the users. First, the Services create an avatar and body measurements using an image of Your body taken through the App. With your consent, retail partners are then given the measurements with your avatar and the nickname you have assigned to it.

As the measurements are recorded based on an image taken by You, the accuracy of the measurements depends on the quality of the image taken.

Disclosure of referral arrangements with retail partners

We work with a variety of retail partners so that our Services can assist You with Your user experience with those retail partners. You can click through to our retail partners' websites through the App and Website. We may receive some form of payment or referral fee each time you do so. By creating an Account and accessing our retail partners' websites through the App and Website, You acknowledge and accept our referral arrangements with our retail partners.

1. REQUIREMENTS

- (a) To use the Services, You must:
 - (i) be over 18 years of age or have parental consent;
 - (ii) be capable of forming a legally binding contract in the place in which you are using the App;
 - (iii) create an Account with a unique username and password;
 - (iv) in Your Account, provide Your full name and e-mail address.
- (b) We reserve the right to:
 - (i) request further information from You (for example mobile number, gender, credit card details) before granting access to certain content, features and functionality;

- (ii) not grant You access to the Services if You do not provide the information requested by us pursuant to this clause, or if we are otherwise unable to verify the information You provide to us to our satisfaction.

2. TERM

This agreement commences from the time You create the Account and continues until terminated by either party.

3. FEES AND CHARGES

3.1 No fee to create Account

- (a) It is free to create the Account and access the Services and Products except any Paid Services and Paid Products.

3.2 Payment

- (a) If you wish to purchase Paid Services and/or Paid Products, You must provide to us your payment details.
- (b) You warrant that all details You provide to us in Your Account are current, correct and complete, that You are an authorised user of the account or credit or debit card given in Your Account and that Your nominated account or credit or debit card will cover the full cost of the purchase.
- (c) If we are unable to successfully process Your account or debit or credit card payment, we or our Payment Provider will notify You and You will not be granted access to the Paid Services and/or Paid Products.
- (d) The Payment Provider used by us to process payment is not owned or controlled by us. We do not assume any responsibility for, or liability in relation to, the Payment Provider's service, actions, or omissions. Your use of the Payment Provider is at Your own risk. You agree that we are not responsible for any loss or damage of any kind relating to Your dealings with the Payment Provider.

4. SERVICE

4.1 What You can expect from us

- (a) Subject to Your compliance with the terms of this agreement, we grant to You the non-exclusive, non-transferrable, non-licensable right to use the Services and Products during the Term.

4.2 Use and Access

- (a) You must:

- (i) not assign, sublicense, license, sell, lease, rent or otherwise make the Services or Products available to third parties or use the Services to provide outsourced or bureau services to any third party;
- (ii) ensure that any access to and use of the Services and Products is solely for Your own purposes as a consumer; and
- (iii) ensure that You take all reasonable steps to safeguard access to the Services and Products.

4.3 Restrictions

- (a) All rights not expressly granted to You under this agreement are reserved to us.
- (b) Without limiting subclause 5.3(a), You must not:
 - (i) copy, modify, translate, enhance or adapt the Services or Products;
 - (ii) attempt to reverse-engineer, disassemble, or decompile the Services or determine or attempt to determine any source code, algorithms, methods or techniques used or embodied in the Services or Products;
 - (iii) distribute, sell, sublicense, rent, transfer or otherwise dispose of the Services or Products;
 - (iv) advertise or attempt to create any competitive product or any service which has features or functionality the same as or similar to those of the Services or copy any features, functions, graphics or interfaces of the Services or Products;
 - (v) exploit or use the Services or Products otherwise than as permitted under this agreement, including by providing the Services or Products to a third party;
 - (vi) use the Services or Products to:
 - A. defame, abuse, harass, stalk, threaten or intimidate others;
 - B. impersonate another person;
 - C. solicit money or passwords from other Users;
 - D. infringe the intellectual property rights of any person;
 - E. publish, exchange or communicate comments to offend or insult others (which will be judged in our sole and absolute opinion);
 - F. publish, distribute or otherwise disseminate information which is false, inaccurate, misleading or deceptive, unlawful, abusive, malicious, harassing, tortious, defamatory, vulgar, obscene, libellous or invasive of

another's privacy right or right of publicity, or racially or ethnically objectionable or inappropriate (which will be judged in our sole and absolute opinion);

- (vii) hack into or insert malicious code, including viruses, trojans, worms, logic bombs or other harmful or destructive code or data, into the App or Website or any operating system, including through password mining, phishing or other means;
- (viii) use automated scripting tools or software in connection with the Services;
- (ix) circumvent the structure, presentation or navigational function of the Services so as to obtain information that we have chosen not to make publicly available through the Services;
- (x) share Personal Information about Users with any person;
- (xi) breach the confidence of or otherwise violate the legal rights of others, including other Users;
- (xii) transmit any unsolicited advertising, promotional materials (including in relation to any contest or pyramid scheme), surveys, chain letters or any other forms of solicitation, unless expressly authorised by us;
- (xiii) harvest information about other Users in order to transmit, or facilitate the transmitting of, such materials as listed in clause 4.3(b)(xii) above;
- (xiv) interfere with or disrupt the software or systems used to host the Services, or other systems, equipment or networks connected to the Services;
- (xv) disrupt an exchange of information between Users or otherwise act in a manner that negatively affects other Users, including through a denial-of-service attack or a distributed denial-of-service attack;
- (xvi) supply another service or obtain information which You either incorporate into Your own service or product to enhance Your service or product or Your business in any way, such as to create potential customer lists;
- (xvii) supply third party advertising services (for example, Google advertising) on or through the Services;
- (xviii) remove any product identification, proprietary, copyright or other notices contained in the Services;
- (xix) use, or permit the use of, the Services in any manner that would be materially detrimental to or inconsistent with our name, goodwill, reputation and image

and our Products and Services (which will be judged in our sole and absolute opinion);

- (xx) circumvent or disclose the user authentication or security of the Service; or
- (xxi) make any use of the Service that violates any applicable law or regulation.

4.4 Your responsibilities regarding access

- (a) You acknowledge and agree that:
 - (i) You are solely responsible, at Your cost, for providing all equipment, facilities and connectivity, including web browser and internet access or telecommunications services (for example, data stored on third party servers), necessary to use and access the Service (**Your Systems**); and
 - (ii) our ability to provide the Services will depend on You ensuring that Your Systems are compatible with, and remain compatible with, the Services.
- (b) You agree that You are responsible for any person accessing or using the Service through the access provided to You.
- (c) We reserve the right to monitor use of the Services by You or any other person but have no obligation to do so.

4.5 Our obligation regarding security

- (a) We will use commercially reasonable security measures consistent with industry standards (such as password and firewall protection and encryption) in providing the Service.

4.6 Our obligations regarding Support

- (a) We will use reasonable endeavours to provide You with assistance to help You use the Services by email (**Support**).
- (b) We will provide the Support as soon as reasonably practical having regard to various factors including the availability of our resources and personnel, Your availability and time zones.
- (c) You acknowledge and agree that we are under no obligation to provide You any minimum level or specified amount of Support.

4.7 Modification of the Services

- (a) We may, on reasonable notice to You, change or modify the Services at any time.

- (b) We may provide new functionality or features for the Services which You may use at Your discretion. You acknowledge that we may charge for any new functionality or features which You choose to use.

5. ACCESS

5.1 Your Data and the Outputs

- (a) We do not own the Intellectual Property Rights in Your Data.
- (b) You grant to us the non-exclusive, perpetual, royalty-free licence to:
 - (i) use, reproduce, modify, upload, display, publish, communicate, distribute or otherwise make available Your Data and the Outputs (to the extent they incorporate Your Data) for the purpose of our providing the Services to You;
 - (ii) use Your Data and the Outputs (to the extent they incorporate Your Data) for the purpose of our further developing the Services and Our Products including but not limited to improving its functionality and algorithms; and
 - (iii) use, reproduce, modify, upload, display, publish, communicate, distribute, sell, exploit or otherwise make available Your Data and the Outputs (to the extent they incorporate Your Data) on an aggregated and/or anonymised basis for any purpose whatsoever.
- (c) You acknowledge that You are responsible for:
 - (i) entering Your Data into the Services (to the extent required by the Services);
 - (ii) the content of Your Data as supplied by You;
 - (iii) where Your Data is stored on or generated by Your Systems (including third party servers), the availability of and connectivity to that data; and
 - (iv) complying with any provision of the *Privacy Act 1988* (Cth) and other applicable data privacy and protection laws, rules and regulations, including those of other countries, in relation to Your Data.
- (d) You warrant that You have obtained all permissions necessary for us to deal with Your Data as contemplated by this agreement and that we are lawfully able so to deal with Your Data.
- (e) We may remove any of Your Data if we reasonably consider that it breaches any law or third party rights or otherwise does not comply with the terms of this agreement.

5.2 Children's data

- (a) You cannot use the Services to create avatars for a child that is not your child except with the consent of that child's parent.

5.3 Privacy

- (a) Without limiting Your obligations under subclauses 5.1(c) or (d), You must:
 - (i) not provide us with Personal Information (including any Sensitive Information) about any individual unless You have the express consent of that individual to do so;
 - (ii) if You do provide us with Personal Information about an individual, before doing so:
 - A. tell that individual that You will be providing their information to us and that we will handle their information in accordance with our Privacy Policy (as amended from time to time);
 - B. provide that individual with a copy of (or refer them to) our Privacy Policy; and
 - C. warrant that You have that individual's consent to provide their information to us.
- (b) Subparagraph (a) does not apply if you are providing us with Personal Information (including any Sensitive Information) about a child that is your own child;
- (c) You must otherwise comply with our Privacy Policy.
- (d) You hereby agree to indemnify us in relation any loss, damage, costs or expenses, whether direct or indirect, that we suffer or incur as a result of Your breach of clause 5.1(d) or 5.3(a)(ii)(C).
- (e) Terms used in clause 5.3 have the same meanings as in the *Privacy Act 1988* (Cth).

6. INTELLECTUAL PROPERTY

6.1 Intellectual Property Rights

- (a) You acknowledge that:
 - (i) we own all Intellectual Property Rights in the Services and any Feedback;
 - (ii) this agreement does not assign to You any Intellectual Property Rights in the Services or any Feedback.

6.2 Feedback

- (a) You acknowledge that any Feedback may involve the creation of Intellectual Property Rights and that we may incorporate the Feedback (including any Intellectual Property Rights therein) into future versions of the Services and Products at our sole discretion.

- (b) You acknowledge that You will not be remunerated or be entitled to any remuneration or any other benefit for providing the Feedback.
- (c) In consideration of Your use of the Service, You:
 - (i) assign to us, all right, title and interest (including all Intellectual Property Rights) in any Feedback as and when created;
 - (ii) will do all things, including signing documents, as reasonably requested by us, in order to perfect such assignment;
 - (iii) will procure any applicable moral rights consents (in a form approved by us) from those individuals involved in the creation or development of the Feedback.
- (d) You must not use, publish or disclose any Feedback to any third party.
- (e) You must not make any patent application or other application to register any Intellectual Property Rights in respect of the Feedback.
- (f) If we consider that the Feedback or any part thereof warrants pursuing patent protection or any other form of intellectual property protection, You must provide all assistance requested by us to pursue and secure such protection solely in our name or in the name of another person or entity nominated by us.

7. RISK

You acknowledge that:

- (a) You are solely responsible for Your selection of the Service to achieve Your intended results and for Your use of and the results obtained from Your use of the Service;
- (b) we provide no warranty or assurance as to the accuracy, validity or fitness for a particular purpose of the Services or Products, including the Outputs;
- (c) the Services and Products are provided “as is” and Your use of the Service is at Your own risk;
- (d) You are solely responsible for Your access to the Services through Your internet service provider and we will not be responsible for any connectivity issues or any damage to equipment used by You to access the Services;
- (e) we are not responsible for the unavailability of the Services or the unavailability or loss of Your Data;
- (f) we are not responsible for any Losses that You may suffer as a result of using the Service or Your Data;

- (g) You are solely responsible for ensuring that You have all the necessary licences and agreements to access or use any third-party websites or services that you use in conjunction with the Services and Products;
- (h) any Feedback provided will not necessarily result in changes to the current or any future version of the Services;
- (i) the Services may contain content over which we exercise no editorial control; and
- (j) although we do not monitor or exercise any editorial control over the content, we reserve the right:
 - (i) to access or examine any content; and
 - (ii) at our discretion, to move, remove or disable access to the content which we consider, in our sole opinion, to breach any applicable law or to be otherwise unacceptable.

8. RETAIL PARTNER POLICIES

- (a) 3D Measure Me does not act as agent for any retail partners that we work with.
- (b) If You access any retail partners' websites through the App or Website, the retail partners' terms of use, including their terms and conditions, privacy policies and cookies policies will apply to Your access.
- (c) You accept that the retail partners operate independently of us and not under our control.
- (d) We do not assume any responsibility for, or liability in relation to, the retail partners' services, actions or omissions. You agree that we are not responsible for any loss or damage of any kind relating to Your dealings with the retail partners.
- (e) We are not responsible for any changes to our retail partners, including cessation of any retail partner's use of the Services or association with us or our services.

9. YOUR WARRANTIES

You warrant that:

- (a) You have all the rights and authority necessary to enter into and perform Your obligations under this agreement;
- (b) Neither Your use of the Service, Your Data nor any Feedback will infringe any copyright, patent or trademark or any other intellectual property or proprietary rights (including rights to confidential information) of any third party; and

- (c) You will comply with all requirements and restrictions under this agreement, as well as all applicable laws, rules and regulations.

10. EXCLUSIONS AND LIMITATIONS OF LIABILITY

10.1 Exclusion

All terms, warranties and representations not expressly stated in this agreement are excluded from this agreement to the extent permitted by law.

10.2 Non-excludable rights

- (a) Nothing in this agreement excludes, restricts or modifies any condition, warranty, right or remedy implied or imposed by any statute or regulation which cannot lawfully be excluded, restricted or modified (**Non-Excludable Provision**).
- (b) Subject to subclause 10.2(a) and to the extent that we are able to limit our liability for any breach of a Non-Excludable Provision, our liability is limited, at our option, to:
 - (i) in the case of goods, replacing or repairing the goods or supplying equivalent goods, or paying for the cost of replacing or repairing the goods or of acquiring equivalent goods; and
 - (ii) in the case of services, resupplying the services, or paying the cost of resupplying the services.

10.3 Maximum Liability

- (a) Except as provided in clause 10.2, our maximum total aggregate liability to You for all losses, damage, costs and expenses that you claim from or against us in connection with this agreement, whether in contract, tort (including negligence), equity, under statute or on any other basis, is limited to the lesser of:
 - (i) the amount that You have paid to us since the date that is six (6) calendar months before the date of Your claim or, if there is more than one claim, the most recent of those claims; and
 - (ii) \$100,000.
- (b) Without limiting the effect of any other provision of this agreement, we will not be liable for any (together, **Losses**):
 - (i) lost profits, lost revenue, loss of opportunity, loss of management time or failure to realise anticipated savings, loss of or damage to reputation or goodwill, personal injury, loss of life, accident or harm incurred or suffered by You ; or
 - (ii) special, indirect, incidental or consequential damages, losses, costs, or expenses suffered or incurred by You,

resulting from any use or misuse of the App, the Website or the Services (including where such use or misuse results in suspension of the Services).

10.4 Reduction of Liability

Our liability to You under or in relation to this agreement is reduced to the extent that Your acts or omissions, or those of a third party, contributed to or caused the liability.

10.5 Indemnity

- (a) You indemnify us from and against any claim, demand, suit, action or proceeding by any person against us for any damage, loss cost, expense, harm or liability that may arise in connection with:
- (i) Your use of the Service;
 - (ii) Your breach of this agreement;
 - (iii) any person accessing or using the Service through Your access in breach of this agreement; and
 - (iv) any act or omission (including negligence) by You in any way relating to this agreement.

11. SUSPENSION

We may temporarily suspend Your access to the Services and Products if:

- (a) we reasonably consider that the continued use of the Services or Products may result in harm to the Services or Products, any User or the rights of third parties;
- (b) we reasonably consider that You, any User or any person who accesses the Services or Products through You is using the Services or Products for an unlawful or improper purpose; or
- (c) we are required to do so to comply with a direction by a competent authority or regulator,

and we will endeavour to contact You immediately to inform You of this.

12. TERMINATION

12.1 Termination by You

- (a) You may terminate this agreement any time by visiting the Website or App and selecting the cancellation option.
- (b) Termination is effective on the date we notify You that Your access has been cancelled pursuant to Your request.

12.2 Termination by Us

- (a) We may terminate this agreement by notice to You if:

- (i) You have used the Services in breach of this agreement or any other applicable law or regulation;
- (ii) You provide erroneous or insufficient information in relation to Your payment method, billing details (including if the billing details You provide are different from the details Your financial institution has on record) or shipping address;
- (iii) we know or suspect that You intend to on-supply the Services or Products to other parties in trade or commerce or otherwise in breach of this agreement; or
- (iv) we know of or suspect any fraudulent or dishonest activity in relation to Your Account or Your subsequent use of the Services or Products.

12.3 Events on termination

- (a) On termination of this agreement:
 - (i) Your access to the Services and Products will be terminated; and
 - (ii) You will not receive a refund of any fees or other amounts already paid to us.
- (b) Termination of this agreement (or any element of it) shall not affect any rights, obligations or liabilities of either party which shall have accrued before termination or expiration.
- (c) Clauses 4.3, 5.1(b), 5.25.3(d), 6, 7, 8, 10, and 12.3(b) survive any termination or expiry of this agreement .

13. NOTICES

- (a) We may give notice to You under this agreement by direct communication to the email or mailing address provided in Your Account.
- (b) You may give notice to us by email at hello@3dmeasureme.com.

14. GENERAL PROVISIONS

14.1 Relationship of the parties

Nothing in this agreement creates an agency, partnership, joint venture or employment relationship between the parties or any of their respective employees, agents or contractors.

14.2 Amendments

This agreement may only be varied by written agreement signed by both parties.

14.3 Entire Agreement

This agreement constitutes the entire understanding between us and You to the exclusion of any prior communications, representations or agreements between the parties whether verbal or written.

14.4 Assignment

- (a) We may assign our rights and novate our obligations under this agreement at any time by notice to You.
- (b) You may only assign a right under this agreement with our prior written consent.

14.5 Severance

If any part of this agreement is void or unenforceable that part will be severable from and will not affect the enforceability of the remaining provisions.

14.6 Waiver

- (a) A failure or delay by a party to exercise any right or remedy it holds under this agreement or at law does not operate as a waiver.
- (b) A single or partial exercise by a party of any right or remedy it holds under this agreement or at law does not prevent the party from exercising the right to such further extent as the law permits.

14.7 Governing law and jurisdiction

This agreement is governed by the laws in force in the State of Western Australia, Australia. The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Western Australia.

15. DEFINITION AND INTERPRETATION

- (a) In this agreement, the following definitions apply:

App	means the '3D Measure Me' mobile application.
Account	means the user account created by You in order to access the Services which contains, among other things, Your name, contact details and payment details.
Business Day	means Monday, to Friday, excluding Western Australian public holidays.
Feedback	means any and all feedback, comment, critique and analysis arising as a result of Your use of the Services and Products and includes all feedback on the Services themselves, ideas for improvements, changes, variations, enhancements, adaptations or modifications to the Services and Products.

Intellectual Property Rights	<p>means all:</p> <ul style="list-style-type: none"> (a) rights in inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, algorithms, methods or techniques; (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright subsists and may in the future subsist; (c) trademarks (whether registered or unregistered) and domain names; (d) rights to prevent the use and disclosure of Confidential Information, including know-how; (e) proprietary rights under the <i>Circuit Layouts Act 1989</i> (Cth).
Losses	has the meaning in 11.3(b).
Outputs	means all reports, statistics, outputs and other analyses produced or generated by or through the Services.
Paid Products	means the Products offered by 3D Measure Me through the App and the Website that are only available to the User upon payment.
Paid Services	means any part of the Services that are only available to the User upon payment.
Payment Provider	means the financial institutions used by us to process any payments.
Privacy Policy	means the Privacy Policy as amended from time to time available at our Website.
Products	means any materials (not including Your Data) owned by us, or produced by, on behalf of, or with us related to the performance of this agreement and includes, among other things:

	<p>(a) all content available on the Website or App including all text, data, forms, images, videos, but excluding Your Data;</p> <p>(b) user documentation and user manuals;</p> <p>(c) all documentation and other materials (including source code) created in providing the Support;</p> <p>(d) the Outputs;</p> <p>(e) all other source code, object code, software libraries and additional software including tracking links, application programming interfaces (i.e. APIs), software development kits (i.e. SDKs), plugins and server-side modules relating to the Services or provided by us to You for use with the Services.</p>
Retail partner	means an online retailer whose website can be accessed by a User through the App or Website and includes providers of personal training services.
Services	means the services provided by 3D Measure Me through the App and the Website.
Support	has the meaning given to it in clause 5.6.
User	means the party using the Services.
Term	means the term of use of the Services for the period stated in clause 3.
Website	means the website www.3dmeasureme.com .
Your Data	means all data, content, materials and information entered by You into the Service, including images of your (and any other person's, taken with your authority) face and body and the avatars that the app creates using those images but excludes Feedback.
Your Systems	has the meaning given to it in clause 5.4(a)(i).

(b) In this agreement, unless the context otherwise requires:

- (i) a reference to a dollar amount or the symbol: '\$' denotes Australian Dollars;
- (ii) the singular denotes the plural and vice versa;

- (iii) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (iv) a person includes a company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (v) a reference to a thing includes a part of that thing;
- (vi) a reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (vii) a reference to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced; and
- (viii) an agreement which binds or benefits two or more persons binds or benefits those persons jointly and severally.