

FREEREIN MOBILE PTY LTD ACN 112 052 007

TERMS OF SERVICE

1. DEFINITIONS

In this document unless expressed or implied to the contrary:

Account means an arrangement to pay a monthly account as set in clause 6.1.

Content means the data (including messages, mobile phone and pager numbers and the identification of senders and recipients) you send to FreeRein Mobile.

Content Specifications means the technical specification for Content accepted by FreeRein Mobile and includes Telocator Alphanumeric Protocol (TAP) and other protocols or interfaces that FreeRein Mobile tells you it will accept.

Contract Price means the amount that you pay to FreeRein Mobile under this agreement for the 12 months preceding the incurring of the liability for which the indemnity is sought.

Event of Delay means an event which renders a party unable to carry out the whole or any part of this agreement for any reason beyond its control including but not limited to acts of God, acts of governments or governmental authorities, strikes or riots, acts of war or terrorism and any other causes of like nature.

Insolvency Event means any of the following events:

- (a) a party, being an individual, commits an act of bankruptcy;
- (b) a party becomes insolvent;
- (c) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to a party or a party enters into a scheme of arrangement with its creditors or is wound up;
- (d) a party assigns any of its property for the benefit of creditors or any class of them;
- (e) an encumbrance takes any step towards taking possession or takes possession of any assets of a party or exercises any power of sale; or
- (f) a distress, attachment or other execution is levied or enforced against a party in excess of \$10,000.00.

Message means an SMS or MMS message sent via a mobile phone network or a pager message sent via a paging network from FreeRein Mobile to a number you nominate. Messages are restricted to 160 characters. Accordingly, FreeRein Mobile may send one or more SMS messages when it receives Content from you which exceeds the 160 character limit applicable to SMS messages.

Marketing Message means a Message that is designed to promote the sale of or demand for goods or services.

FreeRein Mobile means FreeRein Mobile Pty Ltd ACN 112 052 007 of Level 4, 606 St Kilda Rd Melbourne Victoria

MMS means a Multimedia Message Service message.

Pay As You Go means an arrangement to pay in advance as set out in clause 6.1.

Security Identification means all logon identity passwords and any other security code or devices used from time to time to access an Internet service provided as part of the Service.

Service means the service provided by FreeRein Mobile for the delivery of Messages via telecommunication networks and any other Additional Services selected by you as indicated in the registration form.

SMS means a digital mobile phone Short Message Service message.

Software means any software supplied by FreeRein Mobile from time to time and includes any modifications or alterations to the software.

You means the customer identified in the registration form and **your** has a corresponding meaning.

2. OUR AGREEMENT

This agreement is with you and FreeRein Mobile for the provision of the Service as set out in the registration form and these terms and conditions.

3. TERM

This agreement will start when FreeRein Mobile notifies you that it has accepted your application to use the Service. It will continue until terminated by either party in accordance with this agreement. However, the minimum term for Account customers is one month.

4. THE SERVICE

- 4.1 FreeRein Mobile will use its best endeavours to provide you with the Service. However, it does not guarantee delivery of Messages either in a timely manner or at all.
- 4.2 The provision of the Service may be affected by a range of factors including technical problems and telecommunications network coverage and availability which relies on third party services. Also, Messages may not be received where the recipient's mobile phone memory is full.
- 4.3 FreeRein Mobile does not make any warranties in respect of services provided by third parties.

5. FEES

FreeRein Mobile will charge you the fees set out in the registration form and may vary the fees at any time by giving you at least 30 days notice in writing.

6. PAYMENT

You may pay for the Service in arrears by selecting an Account or in advance with the Pay As You Go option.

6.1 Account

If you select the Account option:

- 6.1.1 FreeRein Mobile reserves the right to refuse you credit and you may be required to Pay As You Go.
- 6.1.2 FreeRein Mobile will invoice you on the last day of each calendar month for the monthly fee and any other fees for use of the Service in that calendar month.
- 6.1.3 you must pay within 30 days of the date of the invoice.
- 6.1.4 any unused included messages for a month are forfeited and will not be credited to the next month.

6.2 Pay As You Go

If you select the Pay As You Go option:

- 6.2.1 FreeRein Mobile will credit your FreeRein Mobile account for an initial amount and charge you accordingly on registration; when your FreeRein Mobile account runs out of credit; on each anniversary of the date your FreeRein Mobile account was last credited; and as requested (for the amount requested);
- 6.2.2 FreeRein Mobile will deduct fees for use of the Service from the credit on your FreeRein Mobile account;
- 6.2.3 FreeRein Mobile may notify you when your FreeRein Mobile account is running low; and
- 6.2.4 You will forfeit any unused credit on your FreeRein Mobile account on each anniversary of the date your FreeRein Mobile account was last credited.

7. DIRECT DEBIT AUTHORITY

- 7.1 FreeRein Mobile will arrange payment of your FreeRein Mobile account by debiting your credit card where you have given us your credit card details and authorised us to do so in your registration form.
- 7.2 If you select the Account option, your credit card account will be debited monthly for the amount you owe on your FreeRein Mobile account; and
- 7.3 If you select the Pay As You Go option, your credit card account will be debited on registration and at other times as set out in clause 6.2.1.
- 7.4 You may also be charged fees on direct debits that are dishonoured. You should contact FreeRein Mobile if you have any issues or complaints about your direct debit arrangement or to cancel it. You can phone FreeRein Mobile on 03 8520 9025.

8. YOUR OBLIGATIONS

8.1 Compliance with Content Specifications

You must ensure that you (and anyone you authorise to use the Service, such as employees) only provide content to FreeRein Mobile that complies with the Content Specifications.

You must ensure that any content sent to FreeRein Mobile conforms to the Federal Governments Email, Mobile Marketing and Spam acts and where no Federal Government act is in place, the relative Australian Direct Marketing Associations code of practise.

8.2 Reselling prohibited

You must not re-sell or make the Service available to any third party (other than your employees) without FreeRein Mobile's consent.

9. RESTRICTIONS ON USE OF THE SERVICE

You must ensure that you (and anyone you authorise to use the Service, such as employees) do not use it to transmit any Messages that:

- 9.1 are defamatory, offensive, abusive, indecent, sexually explicit, menacing or harassing or cause damage or injury to any person or property;
- 9.2 result in a misuse of a third party's confidential information;
- 9.3 constitute a violation or an infringement of any duty or obligation in contract, tort or otherwise to a third party;
- 9.4 infringe any intellectual property rights owned or licensed by a third party;
- 9.5 represent (by act or omission, unless accurate) that FreeRein Mobile, its network suppliers or any other person created, endorses, has reviewed, or is in any way involved in the production of the Content;
- 9.6 contain a Marketing Message unless:
 - 9.6.1 the recipient has first consented to receiving the Marketing Message; and
 - 9.6.2 the recipient is provided with a means to opt-out of receiving the Marketing Message; and

- 9.7 the Marketing Message includes a clear indication of the source or originating entity of the Marketing Message to enable the recipient to determine who sent the Marketing Message; are unsolicited or unauthorised;
- 9.8 involve sending or receiving any instructions which, if implemented, might cause damage or injury to any person or property;
- 9.9 expose either party to the risk of any legal or administrative action including prosecution under any law;
- 9.10 affects the availability of the Service or causes interference to the normal operation of a telecommunications network or equipment;
- 9.11 result in the sending of a "virus", "worm" or trojan" or similar program;
- 9.12 are for any illegal purpose or contravene any law, code, standard or regulation, or are in contempt of court; or
- 9.13 impersonate another person or entity or are misleading or deceptive as to your (or the sender's) identity.

10. SOFTWARE

- 10.1 If FreeRein Mobile gives you access to the Software, FreeRein Mobile grants you a non-exclusive licence to use the Software for the purpose of accessing the Service.
- 10.2 You must not (except with FreeRein Mobile's written consent):
 - 10.2.1 use the Software for any purpose other than accessing the Service;
 - 10.2.2 adapt or modify the Software;
 - 10.2.3 transfer, sub-licence or otherwise dispose of your rights in the Software; or
 - 10.2.4 make the Software available to any other person (other than your employees).
- 10.3 Unless otherwise agreed, you will be responsible for installation and support of the Software.

11. SECURITY IDENTIFICATION

- 11.1 You are responsible for keeping secure and protected from unauthorised use all Security Identification.
- 11.2 You agree that FreeRein Mobile is entitled to treat any access by the use of your Security Identification as access with your authority and FreeRein Mobile is not required to verify that authority.
- 11.3 You must notify FreeRein Mobile immediately if you become aware of any access to your Security Identification by unauthorised persons or any unauthorised access to information intended for you.

12. PRIVACY

12.1 Limitations of security

You acknowledge that FreeRein Mobile cannot guarantee that the Content will be secure at all times.

12.2 FreeRein Mobile's Privacy Statement

FreeRein Mobile will only collect, use and disclose your personal information and the Content in accordance with its Privacy Statement and the *Privacy Act 1998*. FreeRein Mobile will provide a copy of its Privacy Statement at your request.

13. SOFTWARE WARRANTIES

- 13.1 FreeRein Mobile warrants that the Software will not infringe the intellectual property rights of any third party. However, FreeRein Mobile reserves the right to terminate your licence to use the Software and, if requested, you must delete or return any copies of the Software.
- 13.2 FreeRein Mobile does not warrant that the software will operate free from defects, bugs or errors. It is your responsibility to ensure that the software is compatible with any hardware, software, accessories or services supplied by third parties.

14. GENERAL WARRANTY

Each party warrants to the other that it is duly authorised to enter into and perform this agreement.

15. YOUR INDEMNITY

You indemnify and keep FreeRein Mobile, its officers and employees indemnified against liability for or in respect of any losses, expenses, damages and costs including, but not limited to, all consequential, indirect or special losses or damages of any kind (including, without limitation, loss of profit or indirect costs) incurred by FreeRein Mobile, its officers and employees as a result of persons making any claim whatsoever against FreeRein Mobile arising out of the provision of the Service to you, in so far as they are attributable to:

- 15.1 any breach of this agreement by you, or
- 15.2 your negligent or unlawful action in the course of complying with your obligations under this agreement.

16. LIABILITY OF FREEIREIN MOBILE

16.1 No liability for delay or failure

FreeRein Mobile will not be liable for any delay or failure to provide the Service if the delay is due to an Event of Delay.

16.2 Limitation of liability

To the extent permitted by law, FreeRein Mobile is not under any liability to you in respect of any consequential, indirect or special losses or damages of any kind (including, without limitation, loss of profit or

indirect costs) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the supply of the Service under this agreement or the failure or omission on the part of FreeRein Mobile to comply with its obligations under this agreement.

16.3 Exclusion of warranties

Except as expressly provided to the contrary in this agreement, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this agreement or to this agreement generally, are excluded.

16.4 Limitation of warranties that may not be excluded at law

Where any Act of Parliament implies in this agreement any term, and that Act avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such term, such term will be deemed to be included in this agreement. However, the liability of FreeRein Mobile for any breach of such term will be, if permitted by that Act, limited, at the option of FreeRein Mobile:

16.4.1 to the supplying of the Service again; or

16.4.2 to the payment of the cost of having the Service supplied again.

16.5 Limitation of indemnities

Regardless of any other provision of this agreement, FreeRein Mobile's total liability to you under any indemnities that FreeRein Mobile has given to you under this agreement must not exceed the Contract Price.

17. TERMINATION AND SUSPENSION

17.1 Termination by either party

Either party may terminate this agreement at any time by notifying the other party. FreeRein Mobile will deal with a request for termination as soon as reasonably practicable.

17.2 Termination and suspension by FreeRein Mobile

FreeRein Mobile may terminate this agreement or suspend the Service immediately by giving you written notice:

17.2.1 if you have selected the Account option and you fail to pay your account on time;

17.2.2 if you have selected the Pay As You Go option and a debit to your credit card is not accepted;

17.2.3 if you breach any of these terms and conditions or suffer an Insolvency Event; or

17.2.4 if FreeRein Mobile can no longer provide the Service.

17.3 Consequences of termination

If this agreement is terminated for any reason:

17.3.1 you will no longer be able to use the Service;

17.3.2 you will forfeit any included messages or unused credits; and

17.3.3 if you have selected an Account, you will be liable for any accrued or unpaid fees.

18. GENERAL

18.1 This agreement may only be varied or replaced by an agreement duly executed by the parties.

18.2 This agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this document and have no effect.

18.3 A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

18.4 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

18.5 You cannot assign, novate or transfer any of its rights and/or obligations under this agreement without FreeRein Mobile's written consent.

18.6 Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this document.

18.7 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this document.

19. NOTICES

All notices to be given to or demands to be made upon any party to this agreement must be in writing and may be delivered in person or sent by mail, email or facsimile to the current business address of the party.

All notices are deemed served 48 hours after the date of posting or if delivered personally, on the actual date of receipt or if sent by facsimile or email, in the normal course of transmission.

20. INTERPRETATION

20.1 This document is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

20.2 If a party consists of more than one person, this document binds them jointly and each of them severally.

20.3 In this document:

- 20.3.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
 - 20.3.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this document; and
 - 20.3.3 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
- 20.4 If a provision in this document is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 20.5 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this document.