

# FreshRF SmartBridge Terms of Service ("Agreement")

This Agreement was last modified on September 02, 2017.

Please read these Terms of Service ("Agreement", "Terms of Service") carefully as they govern your access to and use of our services delivered through our SmartBridge Dispatcher, SmartBridge Mobile, SmartBridge Phone, and SmartBridge Control products as described on our website at [www.freshrf.com](http://www.freshrf.com) (our "Services"). This agreement constitutes a legal agreement between FreshRF Ltd, ("us", "we", or "our") and you ("you").

This Agreement takes effect when you access or use our Services in any manner, including signing up for an account in SmartBridge Control, validating one of our apps after download, or visiting or browsing our sites or Services (the "Effective Date"). You agree to be bound by these Terms of Service. *Please see Section 14 for definitions of certain capitalized terms used in this Agreement.*

## 1. Use of our Services

You may access and use our Services in accordance with this Agreement. In doing so, and while using our Services, you agree to the terms contained in this Agreement and will adhere to all laws, rules, and regulations applicable to your use of our Services.

## 2. Intellectual Property

Our Services and their original content, source code, features and functionality are owned by FreshRF Ltd, and are protected by international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws.

## 3. Payment for Services

We calculate and bill fees and charges on a monthly basis for all or part of the month. You will pay us the applicable fees and charges for use of our Services as described on the pricing section of website at [www.freshrf.com](http://www.freshrf.com), or as may be otherwise agreed in writing (such as a sales proposal or quote) using one of the payment methods we support. Fees and charges for any new Services or a new feature of the Services will be effective when we post updated fees and charges on the FreshRF website, or send you a notice, unless we expressly state otherwise in a notice. Unless otherwise agreed in writing, we may increase or add new fees and charges for any existing Services by giving you at least 30 days' advance notice. We may charge you interest at the rate of 1.5% per month on all late payments.

## 4. Data Security

We will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of our Services and your Content. You acknowledge, agree and provide an irrevocable licence for us to use your Content to deliver our Services.

## 5. Support

We will provide basic support for the Services at no additional charge to you. Basic support consists of live support by email during normal business hours (Monday – Friday 0830 – 1730 NZT), not including public holidays. Company will use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for:

(a) Planned maintenance outages and downtime (for which we will endeavour to give you reasonable

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prior notice).

(b) Unavailability caused by circumstances beyond our reasonable control.

If you are using our 24/7 enterprise support the terms and conditions of that agreement take precedent over this support section.

## 6. Termination

The term of this Agreement will commence on the Effective Date and will remain in effect until terminated by you or us as follows:

(a) Termination for Convenience: Unless otherwise agreed in writing; You may terminate this agreement for any reason by providing us 60 day notice in writing. We may terminate this Agreement for any reason by providing you 60 day notice in writing.

(b) Termination for Cause: Either party may terminate this Agreement for cause upon 30 days advance notice to the other party if there is any material default or breach of this Agreement by the other party, unless the defaulting party has cured the material default or breach within the 30 day notice period.

Upon any termination of this Agreement all of your rights under this Agreement immediately terminate and you remain responsible for all fees and charges you have incurred through the date of termination.

## 7. Limited License

We own and reserve all right, title, and interest in and to our Services. We grant you a limited, revocable, non-exclusive, non-sub licensable, non-transferrable license to access and use our Services solely in accordance with this Agreement. Except as provided in this Section 7, you obtain no rights under this Agreement from us or our licensors to our Services, including any related intellectual property rights.

## 8. Publicity

You agree that we may identify you as a customer on our website ([www.freshrf.com](http://www.freshrf.com)), either by name, or by displaying your company logo. Except for the foregoing, neither Party will use the other's name without prior consent.

## 9. Indemnification

You will defend, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable legal fees) arising out of or relating to any third party claim concerning: (a) your or any End Users' use of our Services; (b) breach of this Agreement or violation of applicable law by you or any End User; (c) Your Content, including any claim involving alleged infringement or misappropriation of third-party rights by Your Content or by the use, development, design, production, advertising or marketing of Your Content; or (d) a dispute between you and any End User. If we or our affiliates are obligated to respond to a third party subpoena or other compulsory legal order or process described above, you will also reimburse us for reasonable legal fees, as well as our employees' and contractors' time and materials spent responding to the third party subpoena or other compulsory legal order or process at our then-current hourly rates.

## 10. Warranty Disclaimer

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OUR SERVICES ARE PROVIDED "AS IS." WE AND OUR AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING OUR SERVICES, INCLUDING ANY WARRANTY THAT OUR SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

## 11. Limitations of Liability

WE AND OUR AFFILIATES OR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE OUR SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS, (II) OUR DISCONTINUATION OF ANY OR ALL OF OUR SERVICE OFFERINGS, OR, (III) ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF OUR SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 3 MONTHS PRECEDING THE CLAIM

## 12. Changes To This Agreement

We may modify this Agreement at any time by posting a revised version on the FreshRF website or by sending you an email message. The modified terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use our Services after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the FreshRF website regularly for modifications to this Agreement. We last modified this Agreement on the date listed at the beginning of this Agreement.

## 13. Miscellaneous

### 13.1. Governing Law

This Agreement will be governed and construed in accordance with the laws of New Zealand, without giving effect to any principles of conflicts of law.

### 13.2. Assignment

Neither Party may assign, sublicense, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the consent of the other Party, assign this Agreement to an entity merging with, consolidating with, or purchasing substantially all its assets or stock, provided that the assignee will

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assume all rights and obligations under this Agreement. Any permitted assignment of this Agreement will be binding upon and enforceable by and against the Parties' successors and assigns, provided that any unauthorized assignment will be null and void and constitute a breach of this Agreement.

### 13.3. Severability

If any provision of this Agreement is found to be invalid or unenforceable, the remainder of this Agreement will remain in full force and effect and the affected provision will be amended to make it legal and enforceable while preserving its intent.

### 13.4. Notice

(a) To You. We may provide any notice to you under this Agreement by: (i) posting a notice on our website ([www.freshrf.com](http://www.freshrf.com)); or (ii) sending a message to the email address then associated with your User account. Notices we provide by posting on our website will be effective upon posting and notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email.

(b) To Us. To give us notice under this Agreement, you must contact us as follows: (i) send the notice via our website; or (ii) sending a message to [info@freshrf.com](mailto:info@freshrf.com). Notices provided by submitting a message to us via the website will be deemed to have been received once you submit the form and receive an acknowledgement, notices provided by sending an email will be deemed to have been received when you send the email.

### 13.5. Force Majeure

We and our affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

## 14. Definitions

*"Documentation"* means the product, support, installation, and other documentation we provide on our website, located at [www.freshrf.com](http://www.freshrf.com) and any documents, images, or files we might send to you for the operation our Services.

*"Services"* means our radio and PTTc apps including SmartBridge Dispatcher, SmartBridge Mobile, SmartBridge Phone, and SmartBridge Control cloud based management console as described on our website at [www.freshrf.com](http://www.freshrf.com) and in any Documentation.

*"User account"* means the administrative user account that is used by you to login to SmartBridge Control to administer and manage your account.

*"Your Content"* means Content you add or upload to the SmartBridge platform as more fully described in our Documentation. Examples include, but are not limited to, user account information, radio idents, RSSI values, GPS locations, voice files, email content, and uploaded images or files.