

## FREEWHEELER TERMS OF USE

The Terms of Use set out below govern Your use of the Freewheeler Service, however accessed. To agree to these Terms of Use click “Agree”. By using the Freewheeler Service you accept these Terms of Use as amended from time to time.

We may amend these Terms of Use as our business requires or the law changes. Any changes to these Terms of Use will be included in this Agreement as accessible via the App.

### 1. DEFINITIONS

**Agreement** means these Terms of Use and all materials referred to or linked to in these Terms of Use.

**App** means any applications (including mobile and web applications) made available by Freewheeler.

**Confidential Information** means any and all commercially sensitive information relating to a Party’s business including but not limited to know-how and trade secrets, however it does not include:

- a) information already known to the receiving Party at the time of disclosure by the other Party; or
- b) information in the public domain other than as a result of disclosure by a Party in breach of its obligations of confidentiality under the Agreement.

**Coupon** means an electronic or hard copy confirmation that a User has claimed a Reward by redeeming the requisite number of points.

**Data** means Input Data and Generated Data and any other data as the context permits.

**Freewheeler** means Freewheeler Pty Ltd ACN 601 523 022 trading as Freewheeler.

**Freewheeler Service** means the sustainable transport tracking and reward service operated by Freewheeler and made available via the App and the Website.

**Generated Data** means any data tracked, recorded, calculated or otherwise generated by the App and the Website in relation to the User (but not including Input Data).

**GPS** means global positioning system.

**Input Data** means any data input by the User into the App or the Website.

**Intellectual Property Rights** means any proprietary rights, whether arising at common law, in equity or under statute, anywhere in the world including but not limited to:

- a) patents, copyright (including but not limited to rights in software), rights under the *Circuit Layouts Act 1989* (Cth) (and equivalent rights outside Australia in circuit layouts), database rights, registered and unregistered designs and other industrial property, trademarks, inventions and any right to have any Confidential Information kept confidential; and
- b) any licence or other application or right to use, to grant the use of or apply for registration of, any of the above intellectual property rights.

**Invited User** means any person, other than the User, that uses the Freewheeler Service with the authorisation of the User.

**Party** means Freewheeler and/or the User as the context requires.

**Personal Information** means information or an opinion about an individual as defined in section 6 of the *Privacy Act 1988* (Cth) which is collected, used, disclosed, stored or handled by Freewheeler for the purposes of the Agreement.

**Points** means points earned by the User for sustainable or otherwise desirable travel behaviour using the Freewheeler Service.

**Reward** means a reward of some kind offered to a User in return for redemption of a specified number of Points.

**Reward Business** means a business offering a Reward (for example a discount or special offer) to a User in return for redemption of Points.

**Smartphone** means a mobile phone or cell phone with an integrated computer.

**Terms of Use** means these terms of use.

**User** means a person or other entity who uses the Freewheeler Service in any capacity and for any purpose.

**Website** means the internet site at the domain [www.freewheeler.com](http://www.freewheeler.com) or any other internet site operated by Freewheeler.

**You** and **Your** and **Yourself** means the User.

## 2. USE AND CONDUCT

- 2.1. Freewheeler grants You the right to access the App and the Website in order to use the Freewheeler Service (“**Authorised Purpose**”). This right is non-exclusive, non-transferable, and limited by and subject to these Terms of Use.
- 2.2. You must only access the App and the Website and use the Generated Data for the Authorised Purpose. You must not commercialise or otherwise use the Generated Data or any other material contained in the App or the Website.
- 2.3. You agree to conduct Yourself in a responsible manner while accessing the App and the Website and any social media sites maintained by Freewheeler.
- 2.4. You acknowledge that:
  - a) use of location and activity tracking devices (particularly GPS) can rapidly deplete Your battery - please review the settings in the App and in Your Smartphone to attempt to reach the right balance between performance and battery life; and
  - b) use of the Freewheeler Service will consume data on Your Smartphone.
- 2.5. You agree that You will not:
  - a) defame, abuse, harass or otherwise violate the rights of others, including without limitation others’ privacy rights or rights of confidentiality;
  - b) disclose, upload, post or otherwise transmit any data or information that You do not have the right to disclose, upload, post or otherwise transmit under any law or contractual relationship; or
  - c) violate any applicable laws or regulations.

## 3. POINTS AND REWARDS

- 3.1. You acknowledge that the Points cannot be refunded, converted (other than by redemption) or transferred.
- 3.2. The Points may be subject to an expiry period to be determined at Freewheeler’s discretion.
- 3.3. If Points are redeemed and the Reward Business fails to honour a Reward to which You are entitled, Freewheeler will not be liable for any loss or damage whatsoever, however please notify Freewheeler by email ([support@freewheeler.com](mailto:support@freewheeler.com)) of the incident.
- 3.4. If a Reward is claimed such that Points are deducted from Your account and a Coupon is generated, please note that Coupons may be subject to a timed expiry period and other conditions.

- 3.5. You acknowledge and agree that:
- a) Rewards (and any goods or services connected to such Rewards) are offered by third parties directly to Users;
  - b) Freewheeler makes no representations or warranties as to any Rewards; and
  - c) Freewheeler is not responsible to You for any loss or damage whatsoever in connection with any Rewards.

#### **4. ACCESS CONDITIONS**

- 4.1. Freewheeler has no responsibility to any person other than You and nothing in the Agreement confers, or purports to confer, a benefit on any person other than You.
- 4.2. If You use the Freewheeler Service or access the App or Website on behalf of or for the benefit of anyone other than Yourself (whether a body corporate or otherwise) You agree that You are responsible for ensuring that You have the right to do so.
- 4.3. Freewheeler is entitled to assume that any person accessing Your account or using Your log-in details is authorised to do so.
- 4.4. You must ensure that all usernames, passwords and log-in details issued to You to access the Freewheeler Service are kept secure and confidential. Please immediately notify Freewheeler of any breach of security.
- 4.5. If You do not use the Freewheeler Service for a continuous period of 6 months Freewheeler may close Your account and / or delete Data relating to You.
- 4.6. Notwithstanding clause 4.5 above, Freewheeler reserves the right to, without notice or explanation and at Freewheeler's discretion:
- a) terminate, suspend or modify Your access to the Freewheeler Service and any component thereof;
  - b) delete any Data relating to You; and
  - c) change the functionality and appearance of the Freewheeler Service.
- 4.7. When accessing and using the Freewheeler Service, You must:
- a) not attempt to undermine the security or integrity of Freewheeler's computing systems or networks or, where the Freewheeler Service is hosted by a third party, that third party's computing systems or networks;
  - b) not use, or misuse, the Freewheeler Service in any way that may impair the functionality of the Freewheeler Service, App, Website or other systems used to deliver the Freewheeler Service or impair the ability of any other user to use the Freewheeler Service;
  - c) not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Freewheeler Service is hosted;
  - d) not transmit, or input into the App or Website, any:
    - i. files that may damage any other person's computing devices or software;
    - ii. content that may be offensive;
    - iii. material or data in violation of any law (including data or other material protected by copyright or trade secrets which You do not have the right to use); and

- e) not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Freewheeler Service or to operate the App or Website except as is strictly necessary to use them for normal operation.

## **5. INDEMNITY**

You hereby indemnify, and agree to hereafter hold Freewheeler fully indemnified, against all liability or loss whatsoever, including consequential damage, costs, charges and expenses (including legal costs on a solicitor/client indemnity basis), to the extent to which it arises directly or indirectly from or in connection with:

- a) any breach of Your obligations under the Agreement;
- b) any violation of law or regulation from Your use of the Freewheeler Service;
- c) any actual or alleged infringement by You of the intellectual property, privacy or confidentiality rights of any third party (including Your customers); and
- d) any act or omission by any of Your employees, officers, agents, contractors or Invited Users which, if done or omitted to be done by You, would be a breach of Your obligations under the Agreement.

## **6. CONFIDENTIALITY AND PRIVACY**

- 6.1. A Party will not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.
- 6.2. A Party will not be in breach of clause 6.1 to the extent to which it is legally compelled to disclose the other Party's Confidential Information.
- 6.3. Each Party must take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of the Agreement, do not make public, disclose or use for any purpose other than the performance of the Agreement the other Party's Confidential Information.
- 6.4. Freewheeler maintains a privacy policy that sets out the Parties' obligations with respect to Personal Information. You should read that policy on the App. You will be taken to have accepted that policy when You accept these Terms of Use.

## **7. INTELLECTUAL PROPERTY**

- 7.1. Title to, and all Intellectual Property Rights with respect to, the Freewheeler Service, the App, the Website, the Generated Data and any associated documentation are the property of Freewheeler (or its transferees, assignees or licensees, as applicable) to the extent permitted at law.
- 7.2. Title to, and all Intellectual Property Rights with respect to, the Input Data remain Your property. You grant Freewheeler a perpetual, irrevocable, royalty free licence to use, copy, transmit, store and back-up the Input Data for the purpose of enabling You to use the Freewheeler Service and for any other purpose related to the provision of the Freewheeler Service, to the extent permitted by law (including Your rights surrounding Personal Information).
- 7.3. You may not modify, copy or otherwise commercialise:
  - a) the layout of the App or the Website;
  - b) any computer software or code contained in the App or the Website; and
  - c) the Generated Data.

## **8. NO WARRANTIES**

- 8.1. Freewheeler gives no express warranties regarding the App, the Website, the Rewards, the Data or the Freewheeler Service.
- 8.2. All implied conditions or warranties regarding the App, the Website, the Rewards, the Data and the

Freewheeler Service are excluded to the extent permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

- 8.3. For the avoidance of doubt, Freewheeler does not warrant that the use of the Freewheeler Service will:
- a) be uninterrupted or delay free;
  - b) be error free; or
  - c) operate on Your Smartphone.

## **9. LIMITATION OF LIABILITY**

- 9.1. To the maximum extent permitted by law, Freewheeler excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, Data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Freewheeler Service, the App or the Website.
- 9.2. Freewheeler expressly excludes liability for any loss or corruption of Data no matter how caused.
- 9.3. If You suffer loss or damage as a result of Freewheeler's negligence or failure to comply with the Agreement, any claim by You against Freewheeler arising from Freewheeler negligence or failure will be limited to an amount equal to any fees paid by You to Freewheeler in the preceding 12 month period.
- 9.4. If You are not satisfied with the Freewheeler Service, Your sole and exclusive remedy is to cease using the Freewheeler Service.

## **10. SURVIVING TERMS**

Clauses 5, 6, 7, and 9 survive the expiry or termination of the Agreement.

## **11. SUPPORT**

In the case of technical problems that You cannot solve, please check the Website for relevant support or email us at [support@freewheeler.com](mailto:support@freewheeler.com).

## **12. ENTIRE AGREEMENT**

The Agreement supersedes and extinguishes all prior agreements, representations (whether oral or written), and understandings and constitutes the entire agreement between You and Freewheeler relating to the Freewheeler Service and any other matters dealt with in these Terms of Use.

## **13. WAIVER**

If Freewheeler waives any breach of the Agreement by You, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

## **14. ALTERATION OF TERMS OF USE**

Freewheeler reserves the right to change these Terms of Use by publishing the updated version on the App and / or Website (at which point they are effective immediately):

- a) without giving You notice; and
- b) without giving You any explanation or justification for such change.

## **15. ASSIGNMENT**

15.1. Freewheeler may licence, assign or otherwise transfer its rights under the Agreement.

15.2. You may not licence, assign or otherwise transfer any rights under the Agreement without

Freewheeler's prior written consent.

**16. GOVERNING LAW AND JURISDICTION**

The Agreement is governed by the laws of Western Australia, without giving effect to any principles of conflicts of laws. You agree to the jurisdiction of the courts of Western Australia to determine any dispute arising out of the Agreement.

**17. SEVERABILITY**

If any part of the Agreement is found to be void, unlawful, or unenforceable then that part will be deemed to be severed without affecting the validity and enforceability of the remaining provisions.

**18. NOTICES**

- 18.1. Any notice given under the Agreement by either Party to the other must be in writing by email and will be deemed to have been given on transmission.
- 18.2. Notices to Freewheeler must be sent to [support@freewheeler.com](mailto:support@freewheeler.com) or to any other email address for this purpose notified to You by Freewheeler.
- 18.3. Notices to You will be sent to the email address which You provided when registering for the Freewheeler Service.