

PRISM Terms of Use

Version date: 31 October 2023

These terms of use (**Terms**) set out the terms that govern your use of the rhiPE's proprietary application Platform for Recurring Subscription Management (**PRISM**) and constitutes a legally binding agreement between you and rhiPE Australia Pty Ltd (ACN 112 452 436) (**rhiPE**) and its subsidiaries or related body corporates (**Affiliates**).

In accessing and using PRISM, Partner (**you, your or Partner**) agree to be bound by these Terms. If you do not accept these terms and conditions, you should not proceed with using PRISM.

Background

- (A) rhiPE's Platform for Recurring Subscription Management (**PRISM**) is available for use to manage subscriptions relating to third party Vendor products and/or Services.
- (B) The parties have agreed to enter into this agreement to evidence the terms and conditions on which PRISM will be used and accessed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise:

Account means an account authorised by rhiPE associated with valid Login Credentials.

Affiliates means any of rhiPE's subsidiaries or related bodies corporate (within the meaning of the *Corporations Act 2001* (Cth)).

Agreement means this agreement, as varied from time to time.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales Australia.

Confidential Information means all information in whatever form:

- (a) relating to these Terms;
- (b) disclosed by or on behalf of rhiPE to you or your Personnel in connection with the transactions contemplated by this agreement;
- (c) obtained by you in connection with the transactions contemplated by this Agreement, that, by its nature or the circumstances surrounding its disclosure, could reasonably be expected to be confidential to rhiPE and its Affiliates; or
- (d) which rhiPE identifies as confidential at the time of disclosure,

and information derived from such information whether or not provided, obtained or created before or after the date of this agreement, but does not include Excluded Information.

End Customer means a customer who is an end user of the subscriptions managed through PRISM.

Excluded Information means information that:

- (a) is part of the public domain, other than as a result of a breach of this Agreement or obligation of confidentiality owed to the rhiPE or its Affiliates;
- (b) was known by you at the time of disclosure or that you acquired from a person other than rhiPE or its Affiliates, provided such information was not obtained in breach of any obligation of confidentiality owed to any person.

Intellectual Property Rights means, in relation to a party, that party's trade marks, business names, analysis, business methods, compilations, data, structures, trade secrets, operations and affairs, processes, management systems, systems used in the generation of business, organisational structure and reasons therefore, whether in printed, magnetic or electronic form, or on film.

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law.

Loss means, in relation to any person, any loss, liability, damage, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character, which that person pays, suffers or incurs or for which that person is liable, excluding any indirect or special loss or damage or consequential loss or damage.

PRISM means rhiPE's proprietary application Platform for Recurring Subscription Management accessible at <https://prismportal.online/> and <https://prismdirect.online/>

PRISM APIs means PRISM's application programming interface(s)

You or **your** means user of PRISM.

2. Term

This agreement is effective until terminated in accordance with clause 10 of these Terms.

3. Access

3.1 General Licence

- (a) Subject to these Terms and rhiPE's acceptance to provide you with a licence, you are granted, a non-exclusive, non-transferable, limited licence to use PRISM.
- (b) All right, title, and interest (including all copyrights and other Intellectual Property Rights) in or within PRISM belong to us. You acquire no ownership of copyright or other intellectual property rights or proprietary interest in PRISM.
- (c) You must not use PRISM in any way that infringes any copyright or other proprietary interests. You must not remove or obscure the copyright notice or other notices contained in PRISM.

3.2 Credentials

- (a) rhiPE may grant you and your Personnel access to the PRISM portal by providing you with a User ID, password or other means of identification (**Login Credentials**) to an Account to allow you to access PRISM, or credentials to access and use PRISM APIs (**API Credentials**). For ease of reference, the Login Credentials and API Credentials will collectively be referred to as “**Credentials**”. You must:
- (i) keep the Credentials secure and not disclose them to, or share them with, any other person;
 - (ii) not use any Credentials or any other mechanism to access PRISM other than via the Credentials provided to you by rhiPE;
 - (iii) comply with any conditions, usage restrictions or other requirements that apply to the Credentials (including any multi factor authentication, directions to use or stop using, temporarily or indefinitely, the Login Details) as notified or disclosed to you by rhiPE or any of its Affiliates or authorised representatives from time to time;
 - (iv) immediately cease using any Credentials if rhiPE or any of its Affiliates or authorised representatives notifies you or, if you become aware, that your authorisation to use those Credentials has been withdrawn; and
 - (v) immediately notify rhiPE if you become aware or suspect that the security of the Credentials has been compromised for any reason, or if there is any change in the information on which the issue of your Login Details has been based.
- (b) You shall be fully liable for all usage of or activity in or from your PRISM account, including but not limited to the use of the account by any third party authorised by you to use the Credentials and usage/activities resulting from your failure to keep the Credentials secure. For the avoidance of doubt, the activities you will be held liable for includes but are not limited to: the provisioning of licences, cancellation of licences, usage reporting, exporting of pricing/products and on-billing to end customers. To the fullest extent permitted by law, rhiPE shall not be liable for any Loss, damage, cost or expense arising from usage of or activity in or from your PRISM account and you shall indemnify rhiPE against the same.

3.3 End Customer accounts

- (a) You may grant End Customer(s) access to PRISM by providing a User ID, password (**End Customer Login Credentials**) subject to these Terms and Conditions and:
- (i) a written agreement with the End Customer that contains certain terms and conditions including not limited to:
 - (A) consent provisions to allow for the collection, use, storage, disclosure of any information contained within PRISM in accordance with rhiPE Privacy Policy;
 - (B) provisions outlining specific obligations to comply with sections 4 and 5 of these Terms in relation to their access and use of PRISM; and
 - (C) provisions to comply with these Terms.

4. Use and access to PRISM

4.1 Prohibited Conduct

- (a) You must not and procure that Authorised Users do not of any of the following whether directly or indirectly use PRISM to:
 - (i) post or transmit any information, content or other material, or otherwise to engage in any activity, in breach of any laws or regulations (including but not limited to any Privacy Laws), or in infringement of a third party's Intellectual Property Rights or other legal rights;
 - (ii) post or transmit any material which is or is likely to be defamatory, harassing, threatening, menacing, or offensive or which restricts or inhibits any other person from using the Portal or the internet in general;
 - (iii) make any representation on behalf of, or which in any way suggests or implies that you are a representative of, or act in any way on behalf of, rhiPE;
 - (iv) send, publish or distribute spam or other unsolicited commercial electronic communications; or
 - (v) you will not in any way tamper with, hinder or modify PRISM.
- (b) You must not:
 - (i) knowingly transmit any viruses, worms, trojans, other malicious or unauthorised code or disabling features to or via PRISM ;
 - (ii) not attempt to reverse engineer or modify, or compromise PRISM or assist another person to do the same; or
 - (iii) attempt any of the acts or facilitate or encourage or assist another person to do any of the acts referred clause 4.1 of these Terms (**Prohibited Conduct**).

5. PRISM APIs

5.1 Access and use of PRISM APIs

- (a) You may use PRISM APIs to access information in PRISM subject to these Terms.
- (b) You must not sell, rent, release, redistribute access to PRISM APIs;
- (c) rhiPE, at its sole discretion, at any time, may enforce limits on your use of PRISM APIs (eg. limiting the number of API calls made);
- (d) rhiPE reserves the right, at any time to serve notice pursuant to clause 8 with respect to the Fee payable for the use and access of PRISM APIs;
- (e) You are responsible for the security of any information or data processed via PRISM APIs and must report any security incident that may affect rhiPE; and
- (f) You agree that rhiPE may monitor the use of PRISM APIs to ensure quality and verify compliance with the terms.

6. Additional obligations

You:

- (a) must comply with all Laws to the extent that it relates to its obligations under these Terms;
 - (b) must notify rhiPE immediately if you become aware of any suspected or actual breach of any security relating to your Credentials or PRISM itself;
 - (c) must not engage in misleading, deceptive or unconscionable conduct in relation to your obligations under these Terms;
 - (d) must not damage the reputation, goodwill or brand names of rhiPE and its Affiliates;
 - (e) must not decompile, disassemble, reverse engineer, edit, alter, modify, create any derivative works from or otherwise change the whole or any part of PRISM or attempt to do such things; and
 - (f) must not reproduce, copy, resell, redistribute, sublicense, rent, lease, lend, pledge, or directly or indirectly transfer PRISM to any third party, and may not permit any third party to have access to and/or use the functionality of PRISM except for the sole purpose of accessing the functionality of the PRISM in accordance with this Agreement.
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7. rhiPE obligations

rhiPE:

- (a) must comply with all Laws to the extent that it relates to its obligations under these Terms;
 - (b) must not engage in misleading, deceptive or unconscionable conduct in relation to its obligations under these Terms; and
 - (c) will advise you of any scheduled maintenance at least two (2) Business Days prior.
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8. Fees

8.1 Fee

- (a) rhiPE will provide access to the PRISM and PRISM APIs at the Fee specified in PRISM.
 - (b) rhiPE may serve on you a notice seeking to impose or vary the Fees related to the supply of PRISM or PRISM APIs.
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9. Termination

9.1 Termination by rhiPE

- (a) rhiPE may terminate this Agreement immediately:
 - (i) in its sole discretion, if it suspects on reasonable grounds that you have breached these Terms, and without prior notice terminate your access and prevent you from using PRISM; or

- (ii) if you breach any material provision of this Agreement that is capable of being remedied and fail to rectify the breach within 10 Business Days of receiving written notice from rhiPE requiring the breach to be rectified.

9.2 Termination by you

- (a) These Terms immediately terminate if you cease to be an authorised user on behalf of the organisation you represent.

9.3 Consequences of Termination

On termination of this Agreement:

- (a) your is terminated;
- (b) you must cease using or accessing PRISM.

9.4 Survival

Clauses 4, 5, 6, 10, 11, 12 to 17 continue after termination of this Agreement for any reason.

10. Privacy

- (a) You acknowledge that rhiPE will collect, use and store any data or information transmitted, uploaded, migrated or downloaded through or from PRISM.
 - (b) You agree to comply with rhiPE's Privacy Policy and acknowledge it is accessible at <https://www.rhiPE.com/about/privacy-policy/> .
 - (c) You agree that by providing rhiPE with access to information, you will not be in breach of any obligation it has including without limitation any requirements under Law relating to the privacy and confidentiality of any person.
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11. Confidential information

- (a) You must keep all Confidential Information confidential and must not disclose any Confidential Information to any third party unless:
 - (i) rhiPE has given you prior written consent to do so; or
 - (ii) you are legally required to do so and, in this instance, you must, to the extent permitted by law, provide to rhiPE as soon as practicable, notice and particulars of such disclosure or obligation.
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12. Intellectual Property

You acknowledge that rhiPE retains all worldwide right, title and interest in PRISM including PRISM APIs and any derivative works or enhancements and all related intellectual property rights therein.

13. Force Majeure

- (a) We may cancel or suspend access to PRISM in the event of any delay or non-performance due directly or indirectly to act of God, wars, strikes, lockouts, industrial action, floods, fires, accident, earthquake, riot, explosion, terrorism, acts of

government, military, civil or regulatory authority, delays or defaults of manufacturers or suppliers, change in any law or regulation, disruption or interruption to the supply of communications, internet, power or other utility or any other cause beyond our reasonable control (Force Majeure Event).

- (b) We will not be liable for any delay or failure to perform any obligations under these Terms because of any Force Majeure Event. We will notify you as soon as practicable of any anticipated delay or impact on PRISM.

14. rhiPE warranties

- (a) To the fullest extent permitted by law and except as specified in these Terms, rhiPE gives no implied or express warranties in relation to the use of PRISM.
- (b) rhiPE does not warrant:
 - (i) that PRISM and its servers or emails sent from rhiPE are free of viruses or other harmful components; or
 - (ii) any of the information published on or transmitted via the Portal is accurate; or
 - (iii) that PRISM will be available on any given day or time, or in respect of the quality, accuracy, completeness, reliability, suitability, acceptability, title, merchantability or fitness for purpose of PRISM, or that the operation of the Software Product will be uninterrupted, free from errors, fail-safe or free from defects.
- (c) In connection with PRISM, rhiPE uses software, systems, technology and products supplied by third parties, whether public or not (**Third Party Products**). To the maximum extent permitted by law, rhiPE does not give any warranty in relation to Third Party Products.

15. Your Warranties

You represent and warrant and continue to warrant throughout the term of this agreement to rhiPE that:

- (a) You are an authorised user on behalf of the organisation you represent;
- (b) you have full power and authority to enter into, perform its obligations and be bound under these Terms;
- (c) the person who has signed these Terms is authorised to sign such Terms and rhiPE will not be liable in any way if that person does not have such authority;

16. Limitations of liability

- (a) rhiPE's liability under these Terms or in respect of PRISM shall be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount rhiPE has been paid under this Agreement to which the use of the account relates in the immediately preceding six (6) months.
- (b) To the maximum extent permitted by application law, rhiPE will not be liable for any Loss, damage, cost or expense of any resulting from:

- (i) the use or inability to use PRISM;
 - (ii) unauthorised access or alterations of your transmissions to or from the PRISM by a third party;
 - (iii) activities resulting from the loss or misuse of your Credentials or other information contained in your account;
 - (iv) statements or conduct of any third party; or
 - (v) any other matter relating to PRISM, except to the extent resulting from the gross negligence or wilful default of rhipe.
- (c) The limitations on and exclusion of liability for damages in these Terms shall apply regardless of whether the liability is based on breach of contract, tort, strict or product liability or breach of warranty.
- (d) You acknowledge that your use of PRISM is entirely at your own risk, and you are responsible for taking all precautions you deem necessary or advisable to protect you against any claim, damage, Loss or hazard that may arise from your use of PRISM.
- (e) You agree that rhipe makes no commitments in respect to the delivery of any future updates, features or functions and has no obligation to provide any such updates, features or functions. You further agree that rhipe shall not have any obligation to support any third-party applications, or to ensure/maintain compatibility between PRISM and any third-party applications.
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17. Indemnity

- (a) You agree to indemnify, defend and forever hold harmless rhipe, its Affiliates, and its and their officers, directors, employees, agents, partners, information providers, contractors, advertisers, licensors and suppliers from and against all Losses, expenses, damages and costs, including reasonable legal costs, resulting from any breach of these Terms or any activity related to your Account or your End Customer's Account(s) (including but not limited to infringement of third parties' Intellectual Property Rights anywhere in the world or negligent or wrongful conduct) by you and any liability for any Loss, damage, costs or expense whether direct, indirect, incidental, special and/or consequential, including Loss of profits or income, suffered by rhipe, its Affiliate or you or claims made against rhipe, its Affiliate or you which result from your use or your End Customer's use of PRISM.
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18. Notice

- (a) Any notices to be given under these Terms by rhipe will be sent to the email address related to your Login Credentials used to access PRISM.
- (b) Any notices to be given under these Terms by you must be emailed to legal@rhipe.com.
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19. General

19.1 No assignment

You cannot assign or otherwise transfer the benefit of these Terms without the prior written consent of rhipe.

19.2 Variation

rhipe may amend, revise or modify these Terms at any time with thirty (30) days' notice, such notice to be provided in accordance with clause 18 of these Terms. By continuing to access or use PRISM, you agree to be bound by the amended Terms.

19.3 Severability

Any provision of these Terms which is invalid in any jurisdiction must, in relation to that jurisdiction be read down to the minimum extent necessary to achieve its validity, if applicable and be severed from these Terms in any other case, without invalidating or affecting the remaining provisions of these Terms or the validity of that provision in any other jurisdiction.

19.4 Waiver

A right may only be waived in writing, signed by rhipe, and:

- (a) no other conduct of rhipe (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

19.5 Governing law

- (a) These Terms are governed by and must be construed in accordance with the laws in force in New South Wales.
- (b) The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Terms, its performance or subject matter.