



**AbiBird**™

## **Terms and Conditions**

# AbiBird Terms and Conditions

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## 1. Term

- 1.1 The Agreement shall commence on the Commencement Date and terminate on the Termination Date (**Term**).
- 1.2 The Agreement shall commence when the Customer accepts these Terms and Conditions, provides AbiBird with all information necessary to provide the Service, provides AbiBird with details of a valid credit card and authorises AbiBird to charge the Fee to the credit card (**Commencement Date**).
- 1.3 As soon as reasonably possible after the Commencement Date, AbiBird shall send the relevant parts of the Service to the Customer by registered post. Delivery is deemed to have occurred five business days after the date of postage (**Date of Delivery**).
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## 2. Payment

- 2.1 On and from the Date of Delivery, the Customer authorises AbiBird to charge the Fee to the Customer's credit card or company account at the start of each Monthly Period. The Date of Delivery is considered the start of the Monthly Period.
- 2.2 The Monthly Period is a minimum period of one calendar month. In the event of a cancellation of the Service by a Customer, there will be no pro-rata refund to the Customer for any unused portion of the Monthly Period.
- 2.3 The Customer shall ensure at all times that the credit card details provided to AbiBird are up to date and valid.
- 2.4 If any Fee remains unpaid by the Customer and/or is unable to be charged by AbiBird for longer than 14 days, AbiBird may suspend the Service immediately and request that the Customer return any Sensor/s or other Product/s immediately and may take steps to recover unpaid Fee/s.
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## 3. Termination

- 3.1 The Customer may at any time during the Term elect to terminate the Agreement by:
- (a) taking the appropriate steps to terminate the Agreement through the AbiBird website;
  - (b) contacting AbiBird by telephone and confirming its intention to terminate, which shall be immediately confirmed in writing by AbiBird (the date of confirmation by AbiBird shall be the Termination Date);
  - (c) emailing AbiBird at support@abibird.com.au, in which case the Termination Date shall be the date on which the email is successfully sent and received; or
  - (d) letter to AbiBird, in which case the Termination Date shall be the date the letter is marked as received by AbiBird. AbiBird shall not be held accountable in the event of a Termination letter not being received due to either the customer's incorrect labelling

of AbiBird's postal address or the loss of the Termination letter due to forces outside of AbiBird's control.

- 3.2 As soon as reasonably possible after the Termination Date, AbiBird shall send to the Customer a reply-paid registered post envelope or satchel to allow the Customer to return the Sensor. The Customer shall, within 21 days from the Termination Date, return the Sensor/s and/or Other Products/s to AbiBird. The Sensor/s and/or Other Products/s are deemed to have been returned when received by AbiBird.
- 3.3 The Service is considered pending cancellation until the Sensor has been received by AbiBird. In the event that the Customer does not return the Sensor to AbiBird within 21 days of the Termination Date, AbiBird may re-activate the Service and charge the Customer's credit card for each subsequent Monthly period until the Sensor is received. Alternatively, AbiBird may charge the Customer a fair and relevant once-off fee to cover the cost of the unreturned Sensor. In the event the Sensor is returned after a once-off fee has been charged, AbiBird will refund the fee, less processing charges, to the Customer.
- 3.4 AbiBird shall cease charging the Customer the Fee from the date the Sensor is received by AbiBird.
- 3.5 AbiBird may immediately terminate the Agreement for its convenience at any time upon notice to the Customer. The Customer shall not be charged for the relevant Monthly Period.

#### **4. Title and Risk**

- 4.1 Notwithstanding delivery of any part of the Service, AbiBird shall always retain title and all associated property rights (including intellectual property rights) in the Sensor or Other Products.
- 4.2 The Customer accepts the risk in the Sensor/s or Other Products/s from Delivery and is responsible for any loss or damage to the Sensor/s or Other Products/s caused by any person including the Resident due to any cause except to the extent otherwise set out in the Agreement.

#### **5. Installation and Activation**

- 5.1 The Customer shall be solely responsible for installation of the Sensor and / or Other Products and shall install the Sensor and / or Other Products in accordance with the User Guide. AbiBird is not responsible for any incorrect or improper installation.
- 5.2 Once the Sensor and / or Other Products are properly installed the Customer shall connect the Sensor and / or Other Products to the Smart Device App using an acceptable device with the Smart Device App properly downloaded and installed and shall activate the Sensor and / or Other Products in accordance with the User Guide.
- 5.3 As soon as reasonably possible after Delivery of the Sensor and / or Other Products, the Customer shall inspect the Sensor and / or Other Products and shall satisfy itself that:
- (a) it has received the Sensor and / or Other Products in good condition in the quantity ordered;

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- (b) it, and any person installing and activating the Sensor and / or Other Products and the Smart Device App, has read the User Guide and fully understands its proper use and the means of installation and removal; and
- (c) the Service is in working order.

5.4 If the Customer is not satisfied with the matters in clause 5.3 and provided that it has otherwise complied with this clause 5, it shall contact AbiBird. AbiBird shall use its best endeavours to resolve any issues with the Service. The means by which AbiBird resolves any issues with the Service (including conducting any repairs or arranging a replacement Sensor and / or Other Products) shall be within its discretion.

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**6. Use of the Service**

- 6.1 The Customer shall ensure that the Service is used strictly in accordance with User Guide and any procedures recommended by AbiBird from time to time.
- 6.2 The Customer shall at all times keep the Sensor in good condition and shall not, without AbiBird's prior written consent, alter or make additions to the Sensor or Other Products, or deface, remove, or conceal any AbiBird logo, identifying mark, number, or indication of AbiBird's ownership of the Sensor or Other Products.
- 6.3 The Customer shall at all times ensure that the Sensor or Other Products are used in a safe manner, and shall not deliberately damage, abuse or mistreat Sensor or allow Sensor to be deliberately damaged, abused, or mistreated.
- 6.4 If any damage, loss, theft, or destruction of the Sensor or Other Products occurs, whether the Customer was responsible or not, the Customer shall immediately notify AbiBird and provide full details of the damage, loss, theft, or destruction.
- 6.5 The Customer shall not use the Service for any illegal purposes.

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**7. Unusable or Damaged Sensor/s or Other Products/s**

- 7.1 In the event that the Sensor/s or Other Product/s is damaged, breaks, or otherwise stops working during the Term, the Customer shall contact AbiBird. AbiBird may provide the

Customer with instructions as to how to rectify the relevant issue, failing which the Customer may request a replacement Sensor/s or Other Product/s.

- 7.2 If the Sensor/s or Other Product/s is defective through no fault of the Customer or any other party other than AbiBird, the Customer will not be liable for the cost of the Sensor/s or Other Product/s.
- 7.3 If the Sensor/s or Other Product/s is defective as a result of an act or omission by the Customer or any party other than AbiBird, the Customer will be liable to a charge of \$150 per Sensor or an amount for Other Product/s as notified by AbiBird.
- 7.4 The Customer will be required to return the original Sensor/s or Other Products/s to AbiBird.

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## **8. Provision of Services**

- 8.1 AbiBird may use the data collected from the Sensor or Other Products and under the Agreement for limited purposes, being:
- (a) for marketing and product knowledge;
  - (b) product development;
  - (c) provision of the Services; and/or
  - (d) if the data is subject to a warrant or court order and is sought by a law enforcement agency.
- 8.2 AbiBird agrees to use any data collected under the Agreement in accordance with the Privacy Requirements.
- 8.3 AbiBird provides complimentary customer support in relation to the Service. The Customer is entitled to contact AbiBird through the AbiBird web portal, by phone, or by email to access the customer support.

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## **9. Warranties and guarantees**

- 9.1 The Customer acknowledges that:
- (a) it has read and understands these Terms and Conditions, the User Guide, the Product Disclosure Statement and the Privacy Policy;
  - (b) it has not entered into the Agreement on the basis of any representations made by AbiBird outside those recorded in the Product Disclosure Statement (if any) as to the suitability or effectiveness of the Services;
  - (c) the Sensor collects motion data, and Other Product/s may collect location data or other data which is remitted to and held by AbiBird and that any data collected from the Service is not sensitive in nature;
  - (d) the Service is not designed to be a primary means of monitoring the wellbeing of the Resident by the Customer or any other party
  - (e) it has:

- (1) obtained the consent of the Resident for the purposes of installing and using the Service and for the provision of personal information about the Resident to AbiBird for the purposes in the Privacy Policy (or any reasonable secondary purposes) and for the disclosure of personal information about the Resident by AbiBird (including to a third party company overseas for the purposes of providing the Service) so as to allow it to provide the Service; or
- (2) it has not obtained the consent the Resident for the purpose of installing and using the Service and for the provision of personal information about the Resident to AbiBird for the purposes in the Privacy Policy (or any reasonable secondary purposes) and for the disclosure of personal information about the Resident by AbiBird (including to a third party company overseas for the purposes of providing the Service) so as to allow it to provide the Service, but:
  - (A) is the Resident's Attorney under the relevant Power of Attorney legislation;
  - (B) has obtained consent by way of an order of a court of relevant jurisdiction; or
  - (C) has reasons to reasonably believe the Resident consents; and
- (f) AbiBird may store information and data collected under the Agreement to a third-party company overseas for the purposes of providing the Service and the Customer.

9.2 AbiBird acknowledges that the Customer may be a consumer for the purposes of applicable consumer law and that:

- (a) certain warranties or conditions may be implied into the Agreement; and
- (b) certain guarantees may be conferred on the Customer and certain rights and remedies may be conferred on the Customer, which cannot be excluded, restricted or modified. If so, then to the maximum extent permitted by law, AbiBird's liability to the Customer is limited at AbiBird's option to:
  - (1) replacement or repair of the Services; or
  - (2) payment of the cost of replacing or repairing the Services.

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## 10. Limitation of Liability

- 10.1 To the fullest extent permitted by law, the aggregate liability for any and all claims (including claims made by third parties), costs, expenses, losses, damages, or any other liability ("**Loss**"):
  - (a) of the Customer shall be limited to 100% of the Fees paid and/or payable to AbiBird at the time of the relevant Loss; and
  - (b) of AbiBird shall be limited to \$150.
- 10.2 The Customer shall indemnify AbiBird against any breaches of AbiBird's intellectual property rights by the Customer and the limitation of the Customer's liability in clause 10.1(a) shall not apply in respect of this indemnity.

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**11. Changes to Terms and Conditions**

AbiBird may amend these Terms and Conditions at any time by publishing the amendments on its website [www.abibird.com.au](http://www.abibird.com.au), updating the amendments on the Smart Device App, or by otherwise notifying the Customer in writing.

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**12. Privacy**

AbiBird shall only use personal information of the Customer or Resident for the purposes for which it was obtained enclosed in the Privacy Policy.

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**13. Survival**

Notwithstanding anything in this Agreement, clauses 3, 4, 9, 10 and 12 survive termination of the Agreement whether under this Agreement, any statute, or in equity, repudiation or otherwise by law.

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**14. Definitions**

In these Terms and Conditions:

**AbiBird** means ATF Services Pty Ltd ABN 54 060 402 048 trading as AbiBird and includes any employees, agents, consultants or contractors of ATF Services Pty Ltd and AbiBird;

**Additional Sensor** means any Sensor in addition to the first Sensor and forms part of the Service;

**Agreement** means the contract between AbiBird and the Customer in relation to the supply of the Service, which is governed by these Terms and Conditions and includes the User Guide, Product Disclosure Statement and AbiBird's Privacy Policy;

**Business Hours** are the hours stated on the AbiBird website as varied from time to time;

**Commencement Date** means the date determined in accordance with clause 1.1;

**Customer** means the person, company or other legal entity being the recipient of the Service from AbiBird in accordance with the Agreement and includes any employees, agents, consultants or contractors of the Customer;

**Fee** means the amount payable by the Customer to AbiBird each Monthly Period for the Term and includes any amounts payable by for an Additional Sensor and includes any additions or deductions to the Fee upon reasonable written notification by AbiBird to the Customer;

**Monthly Period** means each monthly period commencing on the Date of Delivery in which the Fee is charged by AbiBird and to be paid by the Customer on an ongoing basis;

**Other Products** means any AbiBird products or services other than the Sensor and Smart Device App as may be offered by AbiBird from time to time;

**Privacy Policy** means AbiBird's privacy policy published on its website as updated from time to time;

**Privacy Requirements** means any relevant privacy legislation in force in the jurisdiction in which the Sensor is supplied as may be amended from time to time including any Acts, regulations, ordinances, rules, principles and/or guidelines and includes AbiBird's Privacy Policy;

**Product Disclosure Statement** means the AbiBird document which provides disclosures about the Service and includes any revisions of that document issued by AbiBird or on AbiBird's website from time to time;

**Resident** means the older person who resides at the Resident's Home for which the Sensor is being supplied;

**Resident's Home** means the place where the Sensor is located;

**Sensor** means the AbiBird product as described in the User Guide supplied by AbiBird as part of the Service and where applicable includes any Additional Sensor/s;

**Service** means the service provided by AbiBird in accordance with the Agreement and includes the Smart Device App, Sensor, any Additional Sensor, and any Other Products as varied added or from time to time;

**Smart Device App** means the application provided by AbiBird as part of the Service;

**Term** has the meaning given to it in clause 1.1;

**Termination Date** means the date on which the Service is terminated; and

**User Guide** means the guide provided by AbiBird to the Customer for the use of the Service and includes any revisions to that document issued by AbiBird or published on AbiBird's website from time to time.

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## 15. Interpretation

In the Agreement, unless the context otherwise requires:

- (a) if any provision of the Agreement is prohibited by law or considered or deemed unenforceable by a court of jurisdiction, it may be severed from the remainder of the Agreement to the extent that doing so will not invalidate the remaining provisions. Unless stated to the contrary, the rights under the Agreement are in addition to any rights that may be conferred by general law;
- (b) the Agreement will be governed by the laws in force in the jurisdiction in which the Sensor is supplied as may be amended from time to time and the parties submit to the non-exclusive jurisdiction of the courts of that place; and
- (c) these Terms and Conditions supersede all previously issued terms and conditions. AbiBird is not bound by any terms and conditions contained in any document issued by the Customer whether issued before or after the Agreement.