

Appointment Reminder – Terms of Use

1. ABOUT THESE TERMS

- 1.1 These Terms of Use (**Terms**) form a legally binding agreement between Skilton Software Limited (**we** or **us**) and you, as either a subscribing customer or Authorised User (as the context requires) of the Appointment Reminder software-as-a-service tool (the **Service**). The Terms apply to you from the time that we first provide you with access to the Service.
- 1.2 By registering to use the Service you warrant and acknowledge that you have read and understood these Terms and have the authority to act on behalf of any person on whose behalf you are using the Service (e.g., your employer). You are deemed to have agreed to these Terms on behalf of any entity for whom you use the Service.
- 1.3 Additional features or components of the Service which we introduce may be subject to separate terms and conditions. We will provide you with a copy of those terms and conditions where that is the case.
- 1.4 It is likely that these Terms will need to change over time as we add features to the Service. We may change these Terms at any time, effective upon the posting of modified terms at <https://appointmentreminder.com/terms-of-use.pdf> and we will make every effort to communicate these changes to you via email or notification on our website. It is your responsibility to read, understand and agree to the most recent Terms available. Ongoing use of the Service following any modification to the Terms will constitute your acceptance of the modified Terms. If you don't accept any modified Terms, then you can terminate this agreement in accordance with clause 12.2 below.

2. DEFINITIONS

- 2.1 In this Agreement, unless the context requires otherwise:

Appointment Reminder means an appointment reminder that is sent to an individual using the Service (via email, text message/SMS or a telephone call), and each of the following will count as one "Appointment Reminder":

- (a) one reminder sent to one individual via email;
- (b) a reminder given to an individual via a telephone call (whether the call is inbound, outbound or transferred), where each minute of the call counts as one Appointment Reminder; or
- (c) one reminder sent to an individual via text message/SMS. Note that maximum message sizes for text messages/SMSs are set by our mobile provider, and messages that exceed that maximum size will be automatically split by our provider into two or more separate text messages or SMSs. Where that happens, each separate text message or SMS will count as a separate Appointment Reminder.

For the avoidance of doubt, where a reminder is sent to multiple people via any of the methods set out above, each reminder sent to each individual is counted as one Appointment Reminder (e.g. if one reminder is sent via one text message/SMS to five individuals, that will count as five Appointment Reminders).

Authorised Users has the meaning given to it in clause 3.1(a).

Business Associate has the meaning given to that term in HIPAA, 45 CFR § 160.103.

Business Associate Agreement means an agreement between a Covered Entity and a Business Associate required under HIPAA, 45 CFR part 164.

Business Day means any day other than a Saturday, a Sunday or a public holiday in Auckland, New Zealand.

Confidential Information means information disclosed by a party under this Agreement that is marked as confidential or which might reasonably be expected to be confidential in nature.

Covered Entity has the meaning given to that term in HIPAA, 45 CFR § 160.103.

Customer Data means the data input into the Service by you or an Authorised User on your behalf in the course of using the Service.

HIPAA means the US Health Insurance Portability and Security Act of 1996.

Intellectual Property Rights means all intellectual property rights whether conferred by statute, at common law or in equity, including all copyright, rights in relation to inventions, trade secrets and know how, rights in relation to designs, rights in relation to trademarks, business names and domain names.

Service Fee means the monthly fee (excluding any taxes) payable by you in respect of the Service, as determined with reference to our pricing tiers.

Term means the period commencing on the date that we grant you access to the Service and ending on the date that these Terms expire or are terminated in accordance with clause 12.

3. **USE OF THE APPOINTMENT REMINDER SERVICE**

3.1 **Access:** We grant you (and your Authorised Users) a right to access and use the Service via the Appointment Reminder website and software on a non-exclusive and non-transferable basis during the Term solely for your internal business purposes, and in accordance with these Terms. You agree that you will be responsible for:

- (a) determining which of your personnel should have access to the Service on your behalf (**Authorised Users**), and the level of access each Authorised User will have to the Service;
- (b) all Authorised Users' use of the Service, and ensuring they comply with these Terms;
- (c) controlling each Authorised User's access (or level of access), including by disabling or revoking any Authorised User's access as needed; and
- (d) performing your obligations as described elsewhere in these Terms.

3.2 **Changes:** We may make changes to the Service from time to time, which may include the removal or discontinuation of any element of the Service. If any change we make materially reduces the benefit of the Services or removes any material functionality, then you may terminate your subscription under clause 12.2.

4. **YOUR OBLIGATIONS**

4.1 **Responsibilities:** You agree to use the Service solely for your own internal and lawful business purposes and in accordance with these Terms and all applicable laws (including privacy and

electronic marketing laws). In addition, you are responsible for:

- (a) paying all Service Fees in accordance with these Terms and as agreed with us;
- (b) obtaining all necessary licenses, consents, and permissions necessary for your use of the Service (including consents from any individuals whose personal information or contact information you may store or use using the Service);
- (c) maintaining sufficient network connections and telecommunications links from your systems to ours, and remedying any problems, delays, delivery failures and other issues that may arise;
- (d) keeping all usernames and passwords used to access the Service confidential, and notifying us immediately if there is any unauthorised use of your logins or other security breach so that we can reset your passwords;
- (e) maintaining your own backup copies of all Customer Data that you input into the Service (as we are not responsible for backing up your Customer Data, and we expressly exclude all liability for any data loss or corruption); and
- (f) obtaining all necessary consents for sending Appointment Reminders via the relevant method (including, if you are subject to US laws, obtaining all necessary express consents from recipients for sending SMS/text messages as required under those laws). We take no responsibility for obtaining such consents.

4.2 **Restrictions:** You must not, and shall ensure that Authorised Users do not:

- (a) attempt to undermine the security of any part of the Service or use it in a manner which may impair its functionality;
- (b) except to the extent expressly permitted under these Terms, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, make available or distribute all or any portion of the Service (as applicable) in any form or media or by any means to any party that is not an Authorised User;
- (c) use or attempt to use the Service to send unsolicited or bulk messages, spam or any messages that would not be permitted under applicable law;
- (d) access all or any part of the Service in order to build a product or service which competes with our products or services;
- (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, operate as a bureau service or otherwise commercially exploit or make available to any third party the Service; or
- (f) access, store, or transmit any virus or any material that is unlawful, harmful, threatening, defamatory, or offensive, facilitates illegal activity, discriminatory, or breaches the confidence or other rights of a third party.

4.3 **Indemnity:** You indemnify us for all losses, liabilities, costs and expenses (including but not limited to legal costs) suffered or incurred by us which arise directly or indirectly from any breach by you of any of the restrictions in clause 4.2 or any claim brought against us alleging that your Customer Data and/or your use of the Service is defamatory, unlawful or infringes a third party's rights or any applicable laws.

4.4 **Obligations under HIPAA:** If you are a Covered Entity you must, in addition to agreeing to these Terms:

- (a) notify us that you are a Covered Entity before you commence using the Service; and
- (b) execute and return to us a Business Associate Agreement, in which case such Business Associate Agreement will be incorporated into and form part of these Terms.

5. **PRIVACY AND SECURITY**

5.1 **Privacy Policy:** Please see our Privacy Policy at <https://appointmentreminder.com/privacy-policy.pdf> for information on how we handle personal information. By using the Service and accepting these Terms, you are taken to have accepted that Privacy Policy.

5.2 **Offshore storage:** In particular, you agree and acknowledge that your Customer Data (which may include personal information) may be stored outside New Zealand.

5.3 **Security:** We use all reasonable efforts to keep information secure, through technical and organisational measures. However, it is your responsibility to ensure that those security measures are appropriate in the context of your Customer Data. In the event of any unauthorised access or use of your Customer Data or other security breach, our liability will be limited in accordance with clause 11 of these Terms.

6. **SERVICE FEES**

6.1 **Free trial:** A free trial allows you to receive the Service for fourteen (14) days free of charge (the **Free Trial**). When you sign up for a Free Trial, you may (depending on which country you're signing up from) be asked to provide valid credit card details. Your credit card won't be charged until the end of the Free Trial, at which point you will be charged for Service Fees for a subscription starting on expiry of the Free Trial period. Your subscription will start (and your credit card will be charged) automatically at the end of the Free Trial, so if you don't wish to use the Service after the end of the Free Trial, you will need to terminate your subscription pursuant to clause 12.2 before the end of the Free Trial. In some countries, we may not ask for your credit card details or other payment information until the end of the Free Trial. Your continued use of the Service will be subject to you paying the Service Fees from the end of the Free Trial.

6.2 **Pricing:** You agree to pay the Service Fees to us. The Service Fees payable for your selected pricing tier are payable regardless of your actual usage of the Service (but subject to clause 6.3 below). Unless other arrangements are agreed, we will charge you or invoice you for payment of the Service Fees monthly, or annually if you have selected an annual pricing tier, in advance using the payment information you've provided. All invoices are payable within ten (10) days of the invoice date.

6.3 **Pricing tiers:** Each pricing tier has a monthly or annual limit for the number of Appointment Reminders that can be sent.

- (a) **Monthly limits:** If you exceed the monthly limit for the pricing tier you've subscribed to, we will upgrade your subscription to the next pricing tier for the following month, and the Service Fees for that pricing tier will apply to you. You will remain on this higher pricing tier unless we agree other arrangements with you (such agreement not to be unreasonably withheld).
- (b) **Annual limits:** If you subscribe to a pricing tier with an annual limit, we will periodically

assess your usage during that annual period and keep you updated on your usage, where we consider this is necessary. If at any point your usage is at 120% of your annual limit or more, we reserve the right to upgrade your subscription to the appropriate pricing tier for the remainder of your annual term, and invoice you for the additional amount payable.

We will endeavour to notify you in advance if you are close to reaching your use limit for a period.

- 6.4 **Taxes:** Unless otherwise stated the Service Fees are stated exclusive of all taxes or duties payable in respect of the Service and you are responsible for payment of all taxes or duties in addition to the Service Fees.
- 6.5 **Suspension:** In addition to rights available to us elsewhere under these Terms or at law, we may suspend your access to the Service if payment is not made by the due date, until payment is made in full.
- 6.6 **Changes to the Service Fees:** We may increase the Service Fees no more than once in every three month period by giving thirty (30) days' prior written notice. If you do not accept the increased Service Fees, you may terminate your subscription pursuant to clause 12.2.

7. AVAILABILITY AND SUPPORT

- 7.1 **Availability:** We agree to use reasonable efforts to ensure the Service is available without interruption. At times we may need to withdraw or limit availability of the Service to allow for maintenance or development to take place, or where the Service (or the infrastructure used to host or deliver it) is unavailable for reasons outside our control. Where possible, we will endeavour to provide you with reasonable notice in advance of such withdrawal or limitation of availability. We do not warrant that the Service will be available continuously or will be fault free.
- 7.2 **Technical support:** If you encounter any technical problems in using the Service that you are unable to resolve yourself, you can contact us by visiting <https://appointmentreminder.com/contact>.

8. INTELLECTUAL PROPERTY

- 8.1 **Service:** All Intellectual Property Rights in the Service (including the software used to provide it, the web client and/or API through which it is accessed, all documentation relating to the Service, and the branding, look and feel and any trade marks associated with it) remain owned by us (or our licensors) and you will not dispute such ownership.
- 8.2 **Customer Data:** You remain the owner of all Intellectual Property Rights in your Customer Data. You grant to us a right to use, copy, transmit and store your Customer Data and other information for the sole purpose of providing the Service to you.

9. CONFIDENTIALITY

- 9.1 Except as permitted by clause 9.2, neither party will disclose the other party's Confidential Information to any person, or use such Confidential Information for any purpose other than to perform this Agreement.
- 9.2 Notwithstanding clause 9.1, either party may disclose any of the other party's Confidential Information with the other party's prior written consent or if and to the extent disclosure is required by law (provided that the disclosing party gives the other party notice of the requirement as soon as practicable before such disclosure is made).

10. WARRANTIES

10.1 **Mutual Warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under this Agreement.

10.2 **Your warranties:** You represent, warrant and acknowledge that:

- (a) you are authorised to use the Service and to use and input the Customer Data, and that you have obtained all necessary consents and permissions to do so;
- (b) either:
 - (i) if you are a Covered Entity, you have notified us of that before commencing use of the Service; or
 - (ii) you are not a Covered Entity;
- (c) you are responsible for complying with all applicable employment, privacy and other laws, and for ensuring that storage and use of your Customer Data using the Services will comply with laws applicable to you;
- (d) you are solely responsible for determining whether the Service meets your business requirements and is suitable for your purposes; and
- (e) you are acquiring the right to access and use the Service for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Services or these Terms.

10.3 **No warranties:** The Service is provided on an "as is" basis and at your risk. You acknowledge that while we use reasonable efforts to make sure it is, we do not warrant that the Service will be uninterrupted, available, secure or error free. Except as expressly set out in this Agreement, and to the maximum extent permitted by law, we expressly exclude all representations, warranties, obligations and liabilities in connection with the Service, including warranties of merchantability, accuracy, completeness, non-infringement, title, fitness for a particular purpose, and any warranties arising by statute or otherwise in law or from course of dealing.

11. LIABILITY

11.1 **Cap:** Each party's maximum aggregate liability under or in connection with these Terms or the Service, whether arising in contract, tort (including negligence) or otherwise, shall in no event exceed the amount equal to the Service Fees paid by you in the three month period immediately before the date the claim arose.

11.2 **Exclusions:** Subject to clause 11.3 neither party will be liable to the other party for:

- (a) loss of profit, loss of revenue, loss of or damage to data, loss of business opportunity, or damage to goodwill; or
- (b) any indirect, consequential or special loss or damage.

11.3 **Exceptions:** Clauses 11.1 and 11.2 shall not limit either party's liability:

- (a) to pay any Service Fees under clause 6;
- (b) in connection with any indemnity provided in this Agreement;

- (c) for death or personal injury caused to any person; or
- (d) for fraud or fraudulent misrepresentation.

12. TERMINATION

- 12.1 **Breach:** Either party may terminate these Terms immediately by notice to the other party if the other party commits a material or persistent breach of this Agreement which is incapable of remedy, or the other party fails to remedy that breach within ten (10) Business Days after receipt of notice by that party requiring the breach to be remedied.
- 12.2 **No-fault termination:** Either Party may terminate these Terms at any time by giving notice to the other party. Termination will take effect at the end of your then-current (prepaid) subscription period. You will not be entitled to a refund of any prepaid Service Fees if you terminate under this clause (unless you terminate because we change these Terms under clause 1.4 and/or change or remove a Service under clause 3.2, and such change and/or removal would cause a detriment to you, in which case you would be entitled to a pro rata refund of any prepaid Service Fees).
- 12.3 **Consequences of termination:** On termination or expiry of these Terms for any reason:
- (a) the termination or expiry shall be without prejudice to either party's accrued rights and remedies;
 - (b) all licenses and other rights of use granted (including your right to continue using any aspect of the Service) under these Terms will immediately terminate;
 - (c) you must pay all Service Fees owed by you up to the date of termination (to the extent not already paid in advance); and
 - (d) clauses 6, 8, 9, 11, 12, 13 and 14, together with other provisions that are by their nature intended to survive, will remain in effect.

13. DISPUTE RESOLUTION

- 13.1 **Dispute notice:** If there is a dispute between the parties in relation to these Terms, either party must give the other party notice of the nature and details of the dispute, and neither party will commence any court or arbitration proceedings until clauses 13.2 and 13.3 have been complied with.
- 13.2 **Negotiation:** Within ten (10) Business Days of receipt of the notice of dispute, senior managers of the parties shall meet to endeavour to resolve the dispute.
- 13.3 **Mediation:** If the dispute is not resolved within twenty (20) Business Days of receipt of the notice of dispute, either party may by notice to the other party refer the dispute to mediation. The mediation will be in Auckland and conducted under the LEADR New Zealand Incorporated ("LEADR") standard mediation agreement. If the parties do not agree on a mediator or the mediator's fees within ten (10) Business Days of receipt of the notice of mediation, the mediator shall be appointed or the fees set by the chair of LEADR (or his/her nominee) at the request of either party.

14. GENERAL

- 14.1 **Assignment:** You may not assign or transfer any or part of these Terms without our prior written consent (not to be unreasonably withheld). The rights provided to you under these Terms are

personal to you and are not granted to any of your related companies (including any subsidiary or holding company), unless otherwise agreed in writing.

- 14.2 **Entire agreement:** These Terms and any separate agreement, including a Business Associate Agreement, and agreements regarding pricing and/or subscription type constitute the entire agreement of the parties and supersedes all prior agreements, arrangements, understandings and representations (whether oral or written) given by or made between the parties, relating to the matters dealt with in these Terms.
- 14.3 **Force majeure:** A party shall not be liable for any breach of these Terms to the extent such breach is due to an event or circumstance beyond the reasonable control of a party, such as an act of God (but excluding lack of funds).
- 14.4 **Further assurances:** Each party shall, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of these Terms.
- 14.5 **Relationship:** The parties are independent contractors, and these Terms do not create any partnership, agency or employment relationship between them.
- 14.6 **Severance:** If any provision of these Terms is illegal, invalid or unenforceable, that provision shall be read down to the extent necessary to make it legal, valid and enforceable.
- 14.7 **Waiver:** A waiver of a right under these Terms is ineffective unless it is in writing.
- 14.8 **Governing law and jurisdiction:** These Terms are governed by New Zealand law and the parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts.