

TERMS OF USE

Welcome to the Rainbow Life Reflector!

These terms and conditions (**Terms**) govern your subscription to the Rainbow Life Reflector, a product described on our Website at www.managemyrainbow.com.au (**Subscription**).

By paying for your Subscription or otherwise accepting the benefit of any part of the Solution, you agree to be bound by these Terms which form a binding contractual agreement between you or the company you represent (the '**Client**', or '**you**') and Manage My Rainbow, an Australian business with ABN 43 600 972 110 ('**our**', '**we**' or '**us**'). You represent and warrant that you have valid authority to enter into these Terms on behalf of any entity you may represent.

Please note that your Subscription will continue to renew indefinitely, and you will continue to incur Subscription Fees, unless you notify us that you want to cancel your Subscription in accordance with clause 8.3. Please ensure you email support@managemyrainbow.com.au if you want to cancel your Subscription.

We may change these Terms at any time by notifying you, and your continued use of the Solution following such an update will represent an agreement by you to be bound by the Terms as amended.

In these Terms, capitalised words and phrases have the meanings given to them where they are followed by bolded brackets, or as set out in the Definitions table at the end of these Terms.

Please read these terms and conditions carefully before agreeing to proceed with your Subscription.

1 DISCLAIMER

We may give recommendations, information or assistance in relation to the results of your or your Users use of the Platform, believing it accurate, appropriate and reliable at the time but we don't give any warranty of accuracy, appropriateness or reliability. Information we give is general in nature, dependent upon User Data and not intended to constitute or substitute for professional or medical advice. Unless required by law, we won't accept any liability or responsibility (including liability for negligence) for any loss suffered because of your or any other person's reliance on any such information or advice.

2 THE SOLUTION

2.1 YOUR SUBSCRIPTION AND THE SOLUTION

- (a) **(The Solution)** The Solution includes, the Platform, Documentation, Rainbow Code and the Support Services.
- (b) **(Scope of Subscription)** Your Subscription includes the benefits and limitations set out on our Website, or as otherwise communicated to you when you subscribe for your Subscription (as amended from time to time by notice to you).
- (c) **(Provide Information)** As part of registering for, and your continued use of, the Solution, you may be required to provide personal information and details, such as your email address, first and last name, preferred username, a secure password, billing, postal and physical addresses, mobile phone number, profile information, payment details, ratings and reviews, and other information as determined by us from time to time. You warrant that any information you give to us in the course of completing the Subscription registration process is accurate, honest, correct and up to date.
- (d) **(Your Warranty)** You warrant that any information you give to us in the course of registering for the Solution will always be accurate, honest, correct and up-to-date.
- (e) **(Our Warranty)** We will provide the Solution in accordance with all applicable laws and industry standards.
- (f) **(Suspension)** Unless otherwise agreed in writing, we may not provide access, or suspend access, to any part of the Solution until you have paid the relevant instalment of Subscription Fees.
- (g) **(Delivery)** Upon payment of the Subscription Fees, we will electronically deliver to you the Documentation and Rainbow Code.

2.2 THE PLATFORM

- (a) During the Subscription Period, we grant to you a non-exclusive, non-transferable and revocable licence to use the Platform.
- (b) We may from time to time in our absolute discretion release enhancements to the Platform, where enhancements means any upgraded, improved, modified or new versions of the Platform. Any enhancements to the Platform will not limit or otherwise affect these Terms. Enhancements may cause downtime or delays from time to time, and credits will not be provided for such downtime.

2.3 THE RAINBOW CODE

- (a) During the Subscription Period, we grant to you a non-exclusive, non-transferable and revocable licence to use, and share with your Clients, the Rainbow Code.
- (b) The Rainbow Code will allow you to grant to Users access to the Platform, associate their access to you and send you User Data related to their access.

2.4 SUPPORT SERVICES

The following terms apply to Support Services:

- (a) We will take reasonable steps to provide Support Services where necessary. You must first endeavour to resolve any issues with the Platform yourself and we will not assist with issues that are beyond our reasonable control.
- (b) You are responsible for all internal administration and managing access and assisting your Personnel or Clients to access and use the Platform.
- (c) You will not have any claim for delay to your or your Clients' access to the Platform due to any failure or delay in Support Services.

2.5 THIRD PARTY TERMS AND CONDITIONS

- (a) You acknowledge and agree that third party terms and conditions (**Third Party Terms**) may apply to your use of the Solution, including Stripe Payments Australia's terms, currently located at <https://stripe.com/en-au/legal>, as updated from time to time.
- (b) You agree to any Third Party Terms applicable to any third party goods and services that are used in providing the Solution, and we will not be liable for any loss or damage suffered by you in connection with such Third Party Terms.

3 SUBSCRIPTION FEES AND PAYMENT

3.1 GENERAL

- (a) You must pay fees to us in the amounts and at the times specified in the pricing section of the Website, or as otherwise agreed in writing (**Subscription Fees**).
- (b) All Subscription Fees must be paid in advance and are non-refundable for change of mind.
- (c) Unless otherwise agreed in writing, the Subscription Fees are due and payable on an annual basis for the duration of the Subscription Period, with the first payment being due on the first day of the Subscription Period.
- (d) Unless otherwise indicated, the Fees do not include GST. In relation to any GST payable for a taxable supply by us, you must pay the GST subject to us providing a tax invoice.
- (e) We reserve the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).
- (f) We reserve the right, from time to time, to change the Subscription Fees. We will notify you in advance if we do this.
- (g) We reserve the right to suspend all or part of the Solution indefinitely if you fail to pay any Subscription Fees in accordance with this clause 3.

3.2 AUTOMATIC RENEWAL

- (a) Your Subscription will continue to renew on an annual basis indefinitely, and you must pay Subscription Fees in respect of each annual period, unless you notify us prior to 5 days of the expiry of the then current year that you want to cancel your Subscription. Otherwise, we will continue to debit the Subscription Fees from your account each year.
- (b) We will not pay any charge back amount if you fail to cancel your Subscription in accordance with this clause.
- (c) By choosing a recurring payment plan, you acknowledge that your Subscription has an initial and recurring payment feature and you accept responsibility for all recurring charges prior to your cancellation of your Subscription.
- (d) We may submit periodic charges for the Subscription Fees without further authorization from you, until you provide prior written notice (receipt of which is confirmed by us) that you have terminated this authorization or wish to change your payment method. Such notice will not affect charges submitted before we could reasonably act on such notice. To terminate your authorization or change your payment method, please contact us via the details on our Website.

4 YOUR OBLIGATIONS

- (a) You acknowledge and agree that we will have no liability in respect of any damage, loss or expense which arises in connection with your, your Personnel's, or any User's, breach of these Terms, and you indemnify us in respect of any such damage, loss or expense.
- (b) You acknowledge and agree:
 - (i) to comply with each of your obligations in these Terms;
 - (ii) in using the Platform to comply with any end user license agreement we provide to you;
 - (iii) we may change any features of the Solution at any time on notice to you;
 - (iv) to provide us with all documentation, information and assistance reasonably required by us to provide the Solution;
 - (v) any information provided to you as part of or in connection with the Solution is general in nature, may not be suitable for your circumstances and does not constitute health, financial, legal or any other kind of professional advice; and
 - (vi) it is your responsibility to comply with applicable laws relevant to your business, including industrial relations laws and privacy laws.
- (c) You must not, and must not encourage or permit any User, Personnel or any third party to, without our prior written approval:
 - (i) on-sell or share your Rainbow Code to any third parties who are not a Client;
 - (ii) use the Solution for any purpose other than for the purpose for which it was designed, including in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity (including requesting or accepting a job which includes illegal activities or purposes);
 - (iii) act in any way that may harm our reputation or that of associated or interested parties or do anything at all contrary to the interests of us or the Solution;
 - (iv) upload any inappropriate, offensive, illicit, illegal, pornographic, sexist, homophobic or racist material using the Platform;
 - (v) upload any material that is owned or copyrighted by a third party;
 - (vi) make copies of the Platform;
 - (vii) adapt, modify or tamper in any way with the Platform;
 - (viii) remove or alter any copyright, trade mark or other notice on or forming part of the Platform or Documentation;
 - (ix) create derivative works from or translate the Platform or Documentation;

- (x) publish or otherwise communicate the Platform or Documentation to the public, including by making it available online or sharing it with third parties who are not Clients;
- (xi) sell, loan, transfer, sub-licence, hire or otherwise dispose of the Platform or Documentation to any third party;
- (xii) decompile or reverse engineer the Platform or any part of it, or otherwise attempt to derive its source code;
- (xiii) attempt to breach the security of the Platform or our system security, or otherwise interfere with the normal function of the Platform, including by:
 - (A) gaining unauthorised access to user accounts or data about other users of the Platform you are not authorised to have access to;
 - (B) scanning, probing or testing the Platform for security vulnerabilities;
 - (C) overload, flood, mailbomb, crash or submit a virus to the Platform or our system; or
 - (D) instigate or participate in a denial-of-service attack against the Platform or our system.
- (d) If you become aware of misuse of the Solution by any person, any errors in the Solution or any difficulty in accessing or using your Solution, please contact us immediately using the contact details provided on our Website.

5 INTELLECTUAL PROPERTY

- (a) **(Our ownership)** We retain ownership of all materials provided to you throughout the course of your Subscription (including the Platform, Documentation, Rainbow Code, text, graphics, logos, design, icons, images, sound and video recordings, pricing, downloads and software) **(Solution Content)**, and reserve all rights in any Intellectual Property Rights owned or licensed by us not expressly granted to you.
- (b) **(Licence to you)** You are granted a licence to the Solution Content, and you may make a temporary electronic copy of all or part of any materials provided to you for the sole purpose of viewing them and using them for the purposes of the Solution. You must not otherwise reproduce, transmit, adapt, distribute, sell, modify or publish those materials or any Solution Content without prior written consent from us or as otherwise permitted by law.

6 CONFIDENTIALITY AND PRIVACY

- (a) Except as contemplated by these Terms, a party must not and must not permit any of its Personnel or related companies to use or to disclose to any person any Confidential Information disclosed to it by the other party without the disclosing party's prior written consent.
- (b) Each party must promptly notify the other party if it learns of any potential, actual or suspected loss, misappropriation or unauthorised access to, or disclosure or use of Confidential Information or other compromise of the security, confidentiality, or integrity of Confidential Information **(Security Breaches)**.
- (c) The notifying party will investigate each potential, actual or suspected Security Breach and assist the other party in connection with any related investigation.
- (d) You agree to our Privacy Policy, located on our Website, which is incorporated into these Terms by reference. Please read the Privacy Policy carefully as it governs our collection, use, and disclosure of personal information.

7 LIABILITY

7.1 WARRANTIES AND LIMITATIONS

- (a) **(Warranties)** We warrant that:

- (i) during the Subscription Period, the Platform will perform substantially in accordance with the Documentation and as described on the Website; and
 - (ii) during the Subscription Period, the Solution will be provided as described to you in, and subject to, these Terms.
- (b) **(Service Limitations)** The Solution is made available to you strictly on an 'as is' basis. Without limitation, you acknowledge and agree that we cannot guarantee that:
- (i) the Solution will be free from errors or defects;
 - (ii) the Solution will be accessible at all times;
 - (iii) information you receive or supply through the Platform will be secure or confidential; or
 - (iv) any information provided through the Platform is accurate or true.
- (c) **(Exclusion)** To the maximum extent permitted by applicable law, all express or implied representations and warranties (whether relating to fitness for purpose or performance, or otherwise) not expressly stated in these Terms are excluded.
- (d) **(Consumer law)** Nothing in these Terms is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, you may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services we provide.

7.2 LIMITATION OF LIABILITY

To the maximum extent permitted by law, our liability for all claims in aggregate (whether those claims be for breach of contract, negligence or otherwise, and whether those claims be only for economic loss, or for personal injury or other damage) arising under or in connection with these Terms, the Solution or a Subscription:

- (a) is totally excluded, to the extent it concerns liability for indirect, special and consequential damages, and damages (whether direct or indirect) reflecting loss of revenue, loss of profits and loss of goodwill (except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth)); and
- (b) is limited, insofar as concerns other liability, to the total money paid to us under these Terms as at the date the event giving rise to the relevant liability occurs (or, where there are multiple events, the date of the first such event).

7.3 INDEMNITY

You indemnify us from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise in connection with:

- (a) any breach of these Terms by you or your Personnel; or
- (b) any act or omission of you or your Personnel.

8 DISPUTES AND TERMINATION

8.1 DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with this agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with this agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

8.2 TERMINATION BY US

- (a) We may terminate your Subscription in whole or in part immediately by written notice to you if:
 - (i) you or your Personnel are in breach of any term of these Terms; or
 - (ii) you become subject to any form of insolvency or bankruptcy administration.
- (b) We may cancel your Subscription immediately at any time by written notice to you.

8.3 TERMINATION BY YOU

- (a) Notwithstanding clause 8.3(b) and 8.3(c), within the first 14 calendar days of your Subscription, you may at any time terminate your Subscription immediately by written notice to us.
- (b) You may terminate your Subscription immediately by written notice to us if:
 - (i) we have committed a material breach of these Terms or a Subscription and have failed to remedy the breach within 30 days' written notice by you; or
 - (ii) we become subject to any form of insolvency or bankruptcy administration.
- (c) You may cancel your Subscription at any time by written notice to us.

8.4 EFFECT OF TERMINATION

- (a) Upon termination of your Subscription under clause 8.3(a):
 - (i) we will refund to you the Subscription Fees in full; and
 - (ii) your license to the Solution will be revoked and you will no longer have access to the Solution.
- (b) Upon termination of your Subscription under clause 8.2(a):
 - (i) the Subscription Fees already paid will be non-refundable; and
 - (ii) your license to the Solution will be revoked and you will no longer have access to the Solution.
- (c) Upon termination of your Subscription under clause 8.2(b) or 8.3(a):
 - (i) in circumstances where you have not breached any of these Terms, we will issue you with a refund of a pro rata amount of the Subscription Fee, in proportion to the remainder of the Subscription Period in which you will not have access to the Solution; and
 - (ii) your license to the Solution will be revoked and you will no longer have access to the Solution.
- (d) Upon termination of your Subscription under clause 8.3(c):
 - (i) your Subscription will end at the end of the then current Subscription Period at which point your license to the Solution will be revoked and you will no longer have access to the Solution; and
 - (ii) no further fees will be payable by you and any Subscription Fees already paid will be non-refundable.

9 NOTICES

- (a) A notice or other communication to a party under this agreement must be:
 - (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:

- (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this agreement, in which case the notice will be taken to be given on the next occurring business day in that state or territory; or
 - (ii) when replied to by the other party,
- whichever is earlier.

10 FORCE MAJEURE

- (a) We will not be liable for any delay or failure to perform its obligations under this agreement if such delay or failure arises out of a Force Majeure Event.
- (b) If a Force Majeure Event occurs, we must use reasonable endeavours to notify the Customer of:
 - (i) reasonable details of the Force Majeure Event; and
 - (ii) so far as is known, the probable extent to which We will be unable to perform or be delayed in performing its obligations under this agreement.
- (c) Subject to compliance with clause 10(b), our relevant obligation will be suspended during the Force Majeure Event to the extent that it is affected by the Force Majeure Event.
- (d) For the purposes of this agreement, a 'Force Majeure Event' means any:
 - (i) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
 - (ii) strikes or other industrial action outside of the control of us; or
 - (iii) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic; or
 - (iv) any decision of a government authority in relation to COVID-19, or any threat of COVID-19 beyond the reasonable control of us, to the extent it affects our ability to perform our obligations.

11 GENERAL

11.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in Queensland. Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

11.2 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

11.3 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

11.4 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

11.5 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

11.6 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

11.7 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(currency)** a reference to \$; or “dollar” is to Australian currency;
- (c) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (d) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) **(person)** a reference to “person” or “you” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (f) **(party)** a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (g) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (j) **(includes)** the word “includes” and similar words in any form is not a word of limitation; and
- (k) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision.

DEFINITIONS

Term	Definition
Client	means a customer of any goods or services you provide.
Confidential Information	means information of or provided by a party that is by its nature is confidential information, is designated by that party as confidential, or that the other party knows or ought to know is confidential, but does not include information, which is or becomes, without a breach of confidentiality, public knowledge.
Documentation	means all manuals, help files and other documents supplied by us to you relating to the Platform, whether in electronic or hardcopy form.
Intellectual Property Rights	means any and all present and future intellectual and industrial property rights throughout the world (whether registered or unregistered), including copyright, trade marks, designs, patents, moral rights, semiconductor and circuit layout rights, trade, business, company and domain names, and other proprietary rights, trade secrets, know-how, technical data, confidential information and the right to have information kept confidential, or any rights to registration of such rights (including renewal), whether created before or after the date of this agreement.
Personnel	means, in respect of a party, its officers, employees, contractors (including subcontractors) and agents.
Platform	means the online platform known as Rainbow Life Reflector as described on our Website.
Rainbow Code	means the unique string of characters assigned to you to grant Users access to the Platform, associate their access to you and send you User Data related to their access.
Solution	has the meaning given in clause 2.1(a).
Solution Content	has the meaning given in clause 5(a).
Subscription	has meaning given in the first paragraph of these Terms, and includes the limitations set out in clause 2.1(b).
Subscription Fees	has the meaning set out in clause 3.1(a) of these Terms.
Subscription Period	means the period of your Subscription to the Solution as agreed on the Website.
Support Services	means services to provide you with support where necessary to resolve technical issues with the Platform.
User	means end users of the Platform, and any other third party granted access to the Platform by you.
User Data	means files, data, materials or any other information, which is uploaded to the Platform by you or a User, or otherwise provided to us, including any Intellectual Property Rights attaching to those materials.
Website	means the website at the URL set out in the first paragraph of these Terms, and any other site operated by us in connection with the Solution.